Committee on Criminal Justice Appropriations

Tuesday, April 11, 2006
9:30 pm – 12:00 pm
214 Capitol

Allan Bense
Speaker

Gustavo Barreiro, CHAIR
Arthenia Joyner, Vice-Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Criminal Justice Appropriations Committee

Start Date and Time:	Tuesday, April 11, 2006 09:30 am
End Date and Time:	Tuesday, April 11, 2006 12:00 pm
Location:	214 Capitol
Duration:	2.50 hrs

Consideration of the following bill(s):

HB 327 CS Sexual and Career Offenders by Porth
HB 335 CS Juvenile Justice by Culp
HB 367 Accessories to a Crime by Carroll
HB 469 CS Human Trafficking by Gannon
HB 669 CS Criminal Justice Standards and Training Commission by Dean
HB 763 Luring or Enticing a Child by Ambler
HB 815 Strangulation by Russell
HB 827 Pretrial Release by Planas
HB 1169 Vehicular Accidents Involving Death or Personal Injuries by Galvano
HB 1193 CS Driving Under the Influence by Kottkamp
HB 1457 CS Youth Custody Officers by Lopez-Cantera
HB 1577 Personal Identification Information by Brandenburg
HB 7021 Stolen Property by Criminal Justice Committee
HB 7137 CS Drug Testing Within the Department of Corrections by Criminal Justice Committee
HB 7157 Fraudulent Use or Possession of Identifying Information by Economic Development, Trade & Banking Committee
HB 7187 Criminal Justice by Criminal Justice Committee
HB 297 CS Driving and Boating Under the Influence by Harrell
HB 7135 Youthful Offenders by Criminal Justice Committee

NOTICE FINALIZED on 04/07/2006 16:15 by KAG

Florida House of Representatives

Fiscal Council

Committee on Criminal Justice Appropriations

Allan Bense
Speaker

Gustavo Barreiro
Chair

AGENDA
COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS
TUESDAY, APRIL 11, 2006
9:30am - 12:00pm
214 Capitol

I. Roll Call and opening comments by Vice-Chair Joyner

II. Consideration of the following bills:

- **HB 7157 by Economic Development, Trade & Banking Committee- Fraudulent Use or Possession of Identifying Information**
- **HB 327 CS by Porth- Sexual and Career Offenders**
- **HB 335 CS by Culp- Juvenile Justice**
- **HB 367 by Carroll- Accessories to a Crime**
- **HB 469 CS by Gannon- Human Trafficking**
- **HB 669 CS by Dean- Criminal Justice Standards and Training Commission**
- **HB 763 by Ambler- Luring or Enticing a Child**
- **HB 815 by Russell- Strangulation**
- **HB 827 by Planas- Pretrial Release**
- **HB 1169 by Galvano- Vehicular Accidents Involving Death or Personal Injuries**
- **HB 1193 CS by Kottkamp- Driving Under the Influence**
- **HB 1457 CS by Lopez-Cantera- Youth Custody Officers**
- **HB 1577 by Brandenburg- Personal Identification Information**
- **HB 7021 by Criminal Justice Committee- Stolen Property**
- **HB 7135 by Criminal Justice Committee- Youthful Offenders**
- **HB 7137 CS by Criminal Justice Committee- Drug Testing Within the Department of Corrections**
- **HB 7187 by Criminal Justice Committee- Criminal Justice**
- **HB 297 CS by Harrell- Driving and Boating Under the Influence**

III. Adjourn

221 Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300 (850) 488-6204

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7157 PCB EDTB 06-03 Internet Phishing
SPONSOR(S): Economic Development, Trade & Banking Committee; Bilivakis
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Development, Trade & Banking Committee	13 Y, 0 N	Olmedillo	Carlson
1) Civil Justice Committee	7 Y, 0 N	Blalock	Bond
2) Criminal Justice Appropriations Committee		Sneed	DeBeaugrine
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

"Phishing" refers to obtaining personal identifying information from individuals via the Internet with the intent to possess or use such information fraudulently.

This bill creates the "Anti-Phishing Act" and will prohibit the acquisition of personal identifying information from a Florida resident through the use of a website or e-mail with the intent to possess or use such information fraudulently. To accomplish this goal the Anti-Phishing Act provides the following:

- Creates a civil cause of action for Internet access providers, financial institutions, web page or trademark owners harmed by a violation, and the Attorney General.
- Provides the plaintiffs with the power to seek injunctive relief and damages in the greater amount of the actual damages arising from the violation, or $5,000 for each violation of the same nature. A court may increase damages to three times the actual damages sustained if violations constitute a pattern. The bill does not preclude the award of damages otherwise available under federal or state law.
- Provides for an award of attorney's fees and costs to a prevailing plaintiff.
- Establishes personal jurisdiction for a violator, sets venue in any county where the plaintiff resides or where any part of the action occurred, and creates a three year statute of limitations.
- Provides that certain moneys received by the Attorney General shall be deposited in the Legal Affairs Revolving Trust Fund.
- Grants the Department of Legal Affairs (Department) rulemaking authority to implement the provisions of this act.

According to the Department of Legal Affairs, this bill will have an indeterminate fiscal impact on the Department's revenues and expenditures. This bill does not appear to have a fiscal impact on local government. See fiscal comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility -- This bill increases personal accountability for unlawful actions and injurious behavior.

Provide limited government -- This bill creates a new civil cause of action designed to deter and punish identity theft.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Identity theft is a substantial problem in the United States and "phishing" represents the cutting edge of this widely recognized as practice.

"Phishing" refers to obtaining personal identifying information from individuals via the Internet with the intent to possess or use such information fraudulently. Typically, a person attempting to obtain information sends an e-mail that appears to come from a bank or other trusted business requesting an individual to verify their account by typing personal identifying information, such as credit card information, social security numbers, account usernames, passwords, etc. A person may also use a phony web site to trick citizens into revealing sensitive personal information.

The Federal Trade Commission (FTC) reported that 27.3 million Americans have been victims of identity theft in the last five years, including 9.9 million people in 2003 alone.[1] According to the FTC, last year's identity theft losses to businesses and financial institutions totaled nearly $48 billion and consumer victims reported $5 billion in out-of-pocket expenses.[2]

Moreover, according to the Anti-Phishing Working Group, the volume of fraudulent phishing e-mail is growing at a rate in excess of 30 percent each month.[3]

Anti-Phishing Bills in Congress

The Subcommittee on Crime, Terrorism, and Homeland Security of the U.S. House of Representatives is currently reviewing H.R. 1099, which criminalizes internet scams involving the fraudulent obtaining of information, commonly known as "phishing".[4]

H.R. 1099 imposes a fine or imprisonment for up to five years, or both, for a person who knowingly and with the intent to engage in an activity constituting fraud or identity theft under Federal or State law: (1) creates or procures the creation of a website or domain name that represents itself as a legitimate online business without the authority or approval of the registered owner of such business; and (2) uses that website or domain name to solicit means of identification from any person.

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[1] See article issued by Federal Trade Commission, dated September 3, 2003 "FTC Releases Survey of Identity Theft in U.S. 27.3 Million Victims in Past 5 Years, Billions in Losses for Businesses and Consumers". See also http://www.ftc.gov/opa/2003/idtheft.htm.

[2] Id.

[3] The Anti-Phishing Working Group (APWG) is a global pan-industrial and law enforcement association that focuses on eliminating fraud and identity theft that results from phishing and e-mail spoofing of all types.

[4] The Senate companion, S.472 is before the Judiciary Committee.

In addition, H.R. 1099 imposes a fine or imprisonment for up to five years, or both, for a person who knowingly and with the intent to engage in activity constituting fraud or identity theft under Federal or State law sends an electronic mail message that: (1) falsely represents itself as being sent by a legitimate online business; (2) includes an Internet location tool referring or linking users to an online location on the World Wide Web that falsely purports to belong to or be associated with a legitimate online business; and (3) solicits means of identification from the recipient.

Effect of bill

Name

This bill creates the "Anti-Phishing Act".

Prohibited Acts

This bill prohibits obtaining identifying information from individuals through certain means via the Internet with the intent to possess or use such information fraudulently. This bill prohibits:

- representing oneself, either directly or by implication to be another person, without the authority or approval of such other person, through the use of a web page or Internet domain name; and
- using that web page, a link to the web page, or another site on the Internet to induce, request, or solicit another person to provide identifying information.

This bill also prohibits sending or causing to be sent an e-mail to a resident of this state that:

- is falsely represented as being sent by another person, without the authority or approval of such other person;
- refers or links the recipient to a falsely represented web site; and
- directly or indirectly solicits from the recipient identifying information for a purpose that the recipient believed to be legitimate.

This bill defines or incorporates by reference definitions of terms as follows:

- "Department" means the Department of Legal Affairs.
- "Electronic mail message" means an electronic message or computer file that is transmitted between two or more telecommunications devices; computers; computer networks, regardless of whether the network is a local, regional, or global network; or electronic devices capable of receiving electronic messages, regardless of whether the message is converted to hard copy format after receipt, viewed upon transmission, or stored for later retrieval.[5]
- "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.[6]
- "Identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:
    - name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food stamp account number, bank account number, credit or debit

[5] s. 668.602(7), F.S.
[6] s. 668.602(6), F.S.

card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
    - unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
    - unique electronic identification number, address, or routing code;
    - medical records;
    - telecommunication identifying information or access device; or
    - other number or information that can be used to access a person's financial resources.[7]
- "Internet domain name" means a globally unique, hierarchical reference to an Internet host or service, which is assigned through centralized Internet naming authorities and which is comprised of a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.[8]
- "Web page" means a location that has a single uniform resource locator (URL) with respect to the world wide web or another location that can be accessed on the Internet.

Remedies

This bill gives standing to bring a civil action under this part to:

- a person engaged in the business of providing Internet access to the public who was adversely affected by the violation;
- a financial institution as defined by s. 655.005(1)(h), F.S., adversely affected by the violation.
- an owner of a web page or trademark who was harmed by a violation under this bill; and
- the Attorney General.

A person bringing an action may seek injunctive relief to halt a violation under this bill, recover damages in the greater amount of the actual damages arising from the violation, or $5,000 for each violation of the same nature, or seek both injunctive relief and damages. Violations are considered of the same nature if they consisted of the same action or course of conduct regardless of how many times the act occurred. A court may increase damages to three times the actual damages sustained if violations constitute a pattern or practice.

This bill also provides for an award of attorney's fees and costs to a prevailing plaintiff.

This bill provides that the violator submits personally to the jurisdiction of the courts of the State of Florida by committing a violation of this Act. In addition, the bill establishes a 3 year statute of limitations to bring a suit under the Act.

This bill also provides that venue lies in any county in which the plaintiff resides or in which any part of the violation occurred.

This bill requires that any moneys received by the Attorney General for attorney's fees and costs, or not utilized to reimburse persons harmed under this act, shall be deposited in the Legal Affairs Revolving Trust Fund.

This bill does not preclude the award of damages otherwise available for the same conduct pursuant to federal or state law.

This bill grants the Department rulemaking authority to implement the provisions of this act.

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[7] s. 817.568(1)(f), F.S.
[8] s. 668.602(10), F.S.

Exemption

This bill exempts from liability a telecommunication provider's or an Internet service provider's good faith transmission or intermediate temporary storing of identifying information. The bill also exempts providers of an interactive computer service when removing or disabling access to content that resides on an Internet website or other online location controlled or operated by such provider if such provider believes in good faith that the content is used to engage in a violation of the provisions of this bill.

C. SECTION DIRECTORY:

Section 1 creates s. 668.701, F.S., to provide a title; s. 668.702, F.S., to provide definitions; s. 668.703, F.S., to provide prohibited acts; s. 668.704, F.S., to provide remedies and standing; and s. 668.705, F.S., to provide exemptions.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill provides that the Attorney General may bring a civil action against a person that violates the Act, and would be able to collect the greater of the actual damages or $5,000, which is to be deposited into the Legal Affairs Revolving Trust Fund.

The bill grants the Attorney General authority to enforce violations under this bill. Therefore, the Attorney General will incur costs in order to prosecute persons that violate this bill. The costs, however, are indeterminate.

According to the Department of Legal Affairs, it prosecuted only two cases under the 2004 Electronic Mail Communications Act, which creates criminal penalties for sending unsolicited false or misleading commercial electronic mail messages to an electronic mail address that is held by a resident of Florida. A number of persons filed additional complaints; however the

Department of Legal Affairs has not been able to determine who sent the messages, preventing further action under the statute.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

This Act creates sections 668.701 – 668.705, F.S., to provide civil penalties for the acquisition of personal identifying information from a resident of this State with the intent to possess or use such information fraudulently. Under certain circumstances, it is possible that this bill could assert Florida's police power over non-residents of Florida, and therefore this bill could possibly violate the Commerce Clause of the U.S. Constitution.

The Commerce Clause empowers Congress to regulate commerce among the several states.[9] "This affirmative grant of authority to Congress also encompasses an implicit or dormant limitation on the authority of the States to enact legislation affecting interstate commerce."[10] The aspect of the Commerce Clause, which operates as an implied limitation upon state and local government authority is often referred to as the dormant Commerce Clause.[11]

In Pike v. Bruce Church Inc.,[12] the court devised a two prong test to determine if a state statute violates the dormant Commerce Clause:

> Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

The Supreme Court explained that the critical consideration is the overall effect of the statute on both local and interstate activity with respect to both parts of the Pike test.[13] The Supreme Court has invalidated statutes under the Pike test on the grounds that their extraterritorial effect renders them unconstitutional.

For instance, in Healy, the court held:

> [T]he extraterritorial effects of state economic regulation stand at a minimum for the following proposition:
>
> First, the "commerce clause . . . preludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has

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[9] *See* U.S. Const., art. I, § 8, cl. 3.
[10] Healy v. The Beer Insitiute, 491 U.S. 324 (1989).
[11] MaryCle, LLC. v. First Choice Internet, Inc., 2006 WL 173659 (Md. App. 2006); citing Bd. of Trs. of the Employees' Ret. Sys. of Baltimore City v. Mayor and City Council of Baltimore, 317 Md. 72 at 131 (1989).
[12] 397 U.S. 137 (1970).
[13] *See* Brown-Forman Distillers Corp. v. N.Y. State Liquor Authority, 476 U.S. 573 at 579 (1986).

> effects within the State" . . . . Second, a statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority and is invalid regardless of whether the statute's extraterritorial reach was intended by the legislature. The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State. Third, the practical effect of the statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other Sates and what effect would arise if not one, but many or every, State adopted similar legislation. Generally speaking, the Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another state.[14]

In American Libraries Ass'n v. Pataki[15], the first case to apply the dormant Commerce Clause to a state law on Internet use[16], a federal trial court granted an injunction preventing the State of New York from enforcing a statute that criminalized intentional communications via the internet for the purpose of engaging in harmful sexual conduct with a minor. The court held that the New York Act is concerned with interstate commerce and contravenes the Commerce Clause for three reasons:

> First, the Act represents an unconstitutional projection of New York law into conduct that occurs wholly outside New York. Second, the Act is invalid because although protecting children from indecent material is a legitimate and indisputably worthy subject of state legislation, the burdens on interstate commerce resulting from the Act clearly exceed any local benefit derived from it. Finally, the Internet is one of those areas of commerce that must be marked off as a national preserve to protect users from inconsistent legislation that, taken to its most extreme, could paralyze development of the Internet altogether. Thus, the Commerce Clause ordains that only Congress can legislate in this area, subject, of course, to whatever limitations other provisions of the Constitution (such as the First Amendment) may require.[17]

"Many courts have followed the logic of American Libraries Ass'n."[18]

Moreover, courts have examined "spam" statutes, which prohibit unsolicited false or misleading commercial electronic mail under the dormant Commerce Clause and found those statutes to be constitutional.[19]

In Heckel, the court held that there was no sweeping extraterritorial effect that would outweigh the local benefits of the Act because the statute regulates only those emails directed to a Washington resident or sent from a computer located within Washington.[20] The Act specifically prohibited e-mail solicitors from using misleading information in the subject line or transmission path of any commercial e-mail message sent to Washington residents or from a computer located in Washington.[21] The court distinguished the case from American Libraries Ass'n stating that the Washington Act did not impose liability for messages that are merely routed through Washington or that are read by a Washington resident who was not the actual addressee.[22]

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[14] Healy at 336-37; *see also* MaryCle, at 15.
[15] Am. Libraries Ass'n, 969 F. Supp. 160 (S.D.N.Y. 1997).
[16] *See* State v. Heckel, 24 P.3d 404 (Wash 2001).
[17] Am. Libraries Ass'n, 969 F. Supp. at 169 (S.D.N.Y. 1997)
[18] *See* The Internet and the Dormant Commerce Clause, 110 The Yale Law Journal 787 (2001).
[19] *See* State v. Heckel, 24 P.3d 404 (Wash 2001); MaryCle, LLC. v. First Choice Internet, Inc., 2006 WL 173659 (Md. App. 2006); Ferguson v. Friendfinders, Inc., 94 Cal.App.4th 1255 (1st Dist. 2002).
[20] Heckel ,at 412-13.
[21] Id at 413.
[22] Id.

In MaryCle, the court held that a Maryland statute was facially neutral because it applies to all email advertisers, regardless of their geographic location. It does not discriminate against out-of-state senders.[23]

In Ferguson, the court held that a California statute did not violate the commerce clause because the only burden on interstate commerce is that the email be truthful and non-deceptive email.[24]

Similarly, in Cashatt, a Florida court, using the Pike test, upheld a statute that criminalized the use of a computer on-line service or Internet service to seduce, lure or entice, a child to commit any illegal act.[25]

The Anti-Phishing Act, appears to apply evenhandedly to in-state and out-of-state transmitters. The local benefit of this Act is to protect the public and businesses from misleading and deceptive practices involving fraudulent use of personal information, a legitimate local public interest, and the only burden imposed is not using the Internet for the purpose of obtaining another's personal information for a fraudulent purpose.

B. RULE-MAKING AUTHORITY:

The bill grants the Department of Legal Affairs rulemaking authority to implement the provisions of the Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 16, 2006, the Economic Development, Trade and Banking Committee adopted an amendment to the bill. The amendment adds an exemption for providers of interactive computer services who remove or disable access to content due to a good faith belief that the content is being used to violate provisions of this bill. The bill was then reported favorably with a committee substitute.

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[23] MaryCle, at 19.
[24] Feruson, at 1265.
[25] *See* Cashatt v. State, 873 So.2d 430 (1st DCA 2004).

1 A bill to be entitled
2 An act relating to fraudulent use or possession of
3 identifying information; creating part IV of ch. 668,
4 F.S.; providing a short title; providing definitions;
5 prohibiting certain acts relating to fraudulent use or
6 possession of identifying information; authorizing civil
7 actions for violations; providing for injunctive relief
8 and damages; authorizing courts to increase awards of
9 actual damages under certain circumstances; providing for
10 recovery of attorney's fees and court costs; providing for
11 jurisdiction and venue; providing for deposit of certain
12 moneys received by the Attorney General into the Legal
13 Affairs Revolving Trust Fund; authorizing the Department
14 of Legal Affairs to adopt rules; providing for
15 nonapplication to certain entities' good faith handling of
16 identifying information; specifying the absence of
17 liability for certain actions taken to prevent certain
18 violations; providing an effective date.
19
20 Be It Enacted by the Legislature of the State of Florida:
21
22 Section 1. Part IV of chapter 668, Florida Statutes,
23 consisting of sections 668.701, 668.702, 668.703, 668.704, and
24 668.705, Florida Statutes, is created to read:
25 PART IV
26 FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION
27 668.701 Short title.--This part may be cited as the "Anti-
28 Phishing Act."

29 668.702 Definitions.--As used in this part, the term:
30 (1) "Department" means the Department of Legal Affairs.
31 (2) "Electronic mail address" has the same meaning as
32 provided in s. 668.602.
33 (3) "Electronic mail message" has the same meaning as
34 provided in s. 668.602.
35 (4) "Identifying information" has the same meaning as the
36 term "personal identification information" as defined in s.
37 817.568(1).
38 (5) "Internet domain name" has the same meaning as
39 provided in s. 668.602.
40 (6) "Web page" means a location that has a single uniform
41 resource locator (URL) with respect to the World Wide Web or
42 another location that can be accessed on the Internet.
43 668.703 Prohibited acts.--
44 (1) A person with an intent to engage in conduct involving
45 the fraudulent use or possession of another person's identifying
46 information may not represent oneself, directly or by
47 implication, to be another person without the authority or
48 approval of such other person through the use of a web page or
49 Internet domain name and use that web page, Internet domain
50 name, or a link to that web page or domain name or another site
51 on the Internet to induce, request, or solicit a resident of
52 this state to provide identifying information.
53 (2) A person with an intent to engage in conduct involving
54 the fraudulent use or possession of identifying information may
55 not send or cause to be sent to an electronic mail address held
56 by a resident of this state an electronic mail message that is

57 falsely represented as being sent by another person without the
58 authority or approval of such other person, refers or links the
59 recipient of the message to a web page, and directly or
60 indirectly induces, requests, or solicits the recipient of the
61 electronic mail message to provide identifying information.
62 668.704 Remedies.--
63 (1) The following persons may bring a civil action against
64 a person who violates this part:
65 (a) A person engaged in the business of providing Internet
66 access service to the public who is adversely affected by the
67 violation.
68 (b) A financial institution as defined in s. 655.005(1)
69 that is adversely affected by the violation.
70 (c) An owner of a web page, trademark, or service mark who
71 is adversely affected by the violation.
72 (d) The Attorney General.
73 (2) A person bringing an action under this section may:
74 (a) Seek injunctive relief to restrain the violator from
75 continuing the violation.
76 (b) Recover damages in an amount equal to the greater of:
77 1. Actual damages arising from the violation; or
78 2. The sum of $5,000 for each violation of the same
79 nature.
80 (3) The court may increase an award of actual damages in
81 an action brought under this section to an amount not to exceed
82 three times the actual damages sustained if the court finds that
83 the violations have occurred with a frequency as to constitute a
84 pattern or practice.

85 (4) For purposes of this section, violations are of the
86 same nature if the violations consist of the same course of
87 conduct or action, regardless of the number of times the conduct
88 or action occurred.
89 (5) A plaintiff who prevails in an action filed under this
90 section is entitled to recover reasonable attorney's fees and
91 court costs.
92 (6) By committing a violation under this part, the
93 violator submits personally to the jurisdiction of the courts of
94 this state. This section does not preclude other methods of
95 obtaining jurisdiction over a person who commits a violation
96 under this part.
97 (7) An action under this part may be brought in any court
98 of competent jurisdiction to enforce such rights and to recover
99 damages as stated in this part.
100 (8) The venue for a civil action brought under this
101 section shall be the county in which the plaintiff resides or in
102 any county in which any part of the alleged violation under this
103 part took place, regardless of whether the defendant was ever
104 actually present in that county. A civil action filed under this
105 section must be brought within 3 years after the violation
106 occurred.
107 (9) The remedies available under this section are in
108 addition to remedies otherwise available for the same conduct
109 under federal or state law.
110 (10) Any moneys received by the Attorney General for
111 attorney's fees and costs of investigation or litigation in
112 proceedings brought under this section shall be deposited as

113 received into the Legal Affairs Revolving Trust Fund.
114 (11) Any moneys received by the Attorney General which are
115 not for attorney's fees and costs of investigation or litigation
116 or used for reimbursing persons found under this part to be
117 damaged shall accrue to the state and be deposited as received
118 into the Legal Affairs Revolving Trust Fund.
119 (12) The Department of Legal Affairs may adopt rules
120 pursuant to ss. 120.536(1) and 120.54 to implement the
121 provisions of this part.
122 668.705 Exemptions.--
123 (1) This part does not apply to a telecommunications
124 provider's or Internet service provider's good faith
125 transmission or routing of, or intermediate temporary storing or
126 caching of, identifying information.
127 (2) A provider of an interactive computer service is not
128 liable under the laws of this state for removing or disabling
129 access to content that resides on an Internet website or other
130 online location controlled or operated by such provider if such
131 provider believes in good faith that the content is used to
132 engage in a violation of this part.
133 Section 2. This act shall take effect July 1, 2006.

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Criminal Justice Appropriations
2 Committee
3 Representative(s) Bilirakis offered the following:
4
5 **Amendment (with title amendment)**
6 Between lines 21 and 22, insert:
7 Section 1. Any agency, as defined in s. 119.011, Florida
8 Statutes, or legislative entity that operates a website and uses
9 electronic mail shall post the following statement in a
10 conspicuous location on its website:
11 Under Florida law, e-mail addresses are public records. If you
12 do not want your e-mail address released in response to a
13 public-records request, do not send electronic mail to this
14 entity. Instead, contact this office by phone or in writing.
15 Section 2. Subsection (2) of section 668.606, Florida
16 Statutes, is amended to read:
17 668.606 Civil remedies; service provider immunity.--
18 (2) This part does not create a cause of action or provide
19 for criminal charges against an interactive computer service,
20 customer premise equipment provider, communications service
21 provider ~~telephone company~~, or cable provider whose equipment is

22 used to transport, handle, or retransmit a commercial electronic
23 mail message that violates s. 668.603.
24 Section 3. Section 668.6075, Florida Statutes, is amended,
25 and subsection (2) of that section is renumbered as section
26 668.610, Florida Statutes, and amended to read:
27 668.6075 Unfair and deceptive trade practices ~~Violations~~
28 ~~of s. 668.603~~.--
29 ~~(1)~~ A violation of s. 668.603 shall be deemed an unfair
30 and deceptive trade practice within the meaning of part II of
31 chapter 501. In addition to any remedies or penalties set forth
32 in that part, a violator shall be subject to the penalties and
33 remedies provided for in this part.
34 668.610 Cumulative remedies.--
35 ~~(2)~~ The remedies and criminal penalties of this part are
36 in addition to remedies and criminal penalties otherwise
37 available for the same conduct under federal or state law.
38 Section 4. Section 668.608, Florida Statutes, is created
39 to read:
40 668.608 Criminal violations.--
41 (1) Except as provided in subsection (2), any person who
42 violates s. 668.603 commits a misdemeanor of the first degree,
43 punishable as provided in s. 775.082 or s. 775.083.
44 (2) Any person who violates s. 668.603 commits a felony of
45 the third degree, punishable as provided in s. 775.082, s.
46 775.083, or s. 775.084, if:
47 (a) The volume of commercial electronic mail messages
48 transmitted by the person exceeds 2,500 attempted recipients in
49 any 24-hour period;

50 (b) The volume of commercial electronic mail messages
51 transmitted by the person exceeds 25,000 attempted recipients in
52 any 30-day period;
53 (c) The volume of commercial electronic mail messages
54 transmitted by the person exceeds 250,000 attempted recipients
55 in any 1-year period;
56 (d) The revenue generated from a specific commercial
57 electronic mail message transmitted by the person exceeds
58 $1,000;
59 (e) The total revenue generated from all commercial
60 electronic mail messages transmitted by the person to any
61 electronic mail message service provider or its subscribers
62 exceeds $50,000;
63 (f) The person knowingly hires, employs, uses, or permits
64 any minor to assist in the transmission of a commercial
65 electronic mail message in violation of s. 668.603; or
66 (g) The person commits a violation otherwise punishable
67 under subsection (1) within a 5-year period after a previous
68 conviction under this section.
69
70 ========== T I T L E A M E N D M E N T ==========
71 Insert after the semicolon on line 3:
72 requiring certain governmental entities to post a notice on
73 their websites that electronic mail addresses sent to them are
74 subject to release to the public; amending s. 668.606, F.S;
75 providing an exemption from criminal liability for certain
76 carriers whose equipment transmits commercial electronic mail
77 messages that violate s. 668.603, F.S., which prohibits
78 specified actions relating to transmission of false or
79 misleading unsolicited commercial electronic mail messages;

80 amending s. 668.6075, F.S., and renumbering and amending
81 subsection (2) thereof as s. 668.610, F.S.; providing that
82 remedies and penalties under the Electronic Mail Communications
83 Act are cumulative; creating s. 668.608, F.S.; providing
84 criminal penalties for violations of s. 668.603, F.S., which
85 prohibits specified actions relating to transmission of false or
86 misleading unsolicited commercial electronic mail messages;
87 providing applicability;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 327 CS Sexual and Career Offenders
SPONSOR(S): Porth
TIED BILLS: **IDEN./SIM. BILLS:** SB 646

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

SUMMARY ANALYSIS

HB 327 expands the list of criminal offenses which qualify an individual for sexual offender or sexual predator registration. The list is expanded to include the offense of selling or buying a minor into sex trafficking or prostitution and the offense of sexual misconduct by a Department of Juvenile Justice program employee with a juvenile offender.

HB 327 amends the definition of the term "institution of higher education" for the purposes of the sexual predator and sexual offender statutes to include career centers. This will require a sexual predator or sexual offender to notify law enforcement and require law enforcement, in turn, to notify the career center when a sexual offender or sexual predator is employed or enrolled there.

The bill provides that a sexual predator or sexual offender must register at a sheriff's office. Currently such registration can occur at a sheriff's office or at a FDLE office. The sheriff will then submit this information to FDLE as under current law.

The bill clarifies circumstances for which a sexual predator or sexual offender is required to report his or her intent to move out of state.

HB 327 revises the operational date used for career offender registration from January 1, 2003 to July 1, 2002.

The bill will have a minimal impact on state expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill may require an increased number of individuals to register as sexual predators or sexual offenders.

Promote personal responsibility: Offenders who have been convicted of certain criminal offenses will be required to register as a sexual predator or sexual offender.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Sexual Predator Registration: As of November 17, 2005, there were 5,492 sexual predators in the state registry. Section 775.21, F.S., provides that a person convicted of an enumerated sexual offense must be designated a "sexual predator." Specifically, a person must be designated a sexual predator if he or she has been convicted of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of one of the following offenses:
    a. kidnapping or false imprisonment[1] where the victim is a minor and the defendant is not the victim's parent;
    b. sexual battery;[2]
    c. lewd or lascivious offenses;[3]
    d. selling or buying a minor for child pornography;[4] or
    e. a violation of a similar law of another jurisdiction.
2. Any felony violation of one of the following offenses where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication one of the following offenses:
    a. kidnapping, false imprisonment or luring or enticing a child[5] where the victim is a minor and the defendant is not the victim's parent,
    b. sexual battery;[6]
    c. procuring a person under the age of 18 for prostitution;[7]
    d. lewd or lascivious offenses;
    e. lewd or lascivious battery on an elderly person;[8]
    f. promoting sexual performance by a child;[9]
    g. selling or buying a minor for child pornography; or
    h. a violation of a similar law of another jurisdiction.[10]

In order to be counted as a prior felony, the felony must have resulted in a conviction sentenced separately or an adjudication of delinquency entered separately, prior to the current offense and

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[1] s. 787.01, F.S. or s. 787.02, F.S.,
[2] See chapter 794. F.S.
[3] s. 800.04, F.S.
[4] s. 847.0145, F.S.
[5] s. 787.025, F.S.
[6] Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.
[7] s. 796.03, F.S.
[8] s. 825.1025(2)(b), F.S.
[9] s. 827.071, F.S.
[10] Additionally, a person must be designated as a sexual predator if he or she committed one of the offenses listed in a. through h. above and has previously been convicted of the offense of selling or showing obscenity to a minor or using a computer to solicit sexual conduct of or with a minor [ss. 847.0133 or 847.0135, F.S.]

sentenced or adjudicated separately from any other felony conviction that is to be counted as a prior felony.

If the sexual predator is in the custody or control of, or under the supervision of, the Department of Corrections (DOC), or is in the custody of a private correctional facility, the predator must register with the DOC and provide specified information. Private correctional facilities are also governed by these requirements.

If the sexual predator is not in the custody or control of, or under the supervision of, the DOC, or is not in the custody of a private correctional facility, and the predator establishes or maintains a residence in this state, the predator must initially register in person at a Florida Department of Law Enforcement (FDLE) office, or at the sheriff's office in the county of residence within 48 hours after establishing permanent or temporary residence.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community, including a predator under DOC supervision, must register at a driver's license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements. This information is provided to FDLE which maintains the statewide registry of all sexual predators and sexual offenders (discussed further below). The department maintains a searchable web-site containing the names and addresses of all sexual predators and offenders as well as a toll-free telephone number.

Registration procedures are also provided for sexual predators who are under federal supervision, in the custody of a local jail, designated as a sexual predator (or another sexual offender designation) in another state and establish or maintain a residence in this state, or are enrolled, employed, or carrying on a vocation at an institution of higher education in this state.

Extensive procedures are provided for notifying communities about certain information relating to sexual predators, much of which is compiled during the registration process. A sexual predator must report in person every six months to the sheriff's office in the county in which he or she resides to reregister.[11]

A sexual predator's failure to comply with registration requirements is a third degree felony.[12] A sexual predator who has been convicted of one a list of enumerated offenses when the victim of the offense was a minor is prohibited from working or volunteering at any business, school, day care center, park, playground, or other place where children regularly congregate. A violation of this provision is a third degree felony.[13]

Sexual offender registration: As of November 17, 2005, there were 30,583 sexual offenders in the state registry. In very general terms, the distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense and the date the offense occurred. Specifically, a sexual offender is a person who has been convicted of one of the following offenses and has been released on or after October 1, 1997 from the sanction imposed for the offense:

1. kidnapping, false imprisonment or luring or enticing a child[14] where the victim is a minor and the defendant is not the victim's parent;
2. sexual battery;[15]

[11] s. 775.21(8), F.S.
[12] s. 775.21(10), F.S.
[13] S. 775.21(10)(b), F.S.
[14] s. 787.025, F.S.

3. procuring a person under the age of 18 for prostitution;[16]
4. lewd or lascivious offenses;
5. lewd or lascivious battery on an elderly person;[17]
6. promoting sexual performance by a child;[18]
7. selling or buying a minors for child pornography;
8. selling or showing obscenity to a minor;[19]
9. using a computer to solicit sexual conduct of or with a minor;[20]
10. transmitting child pornography;[21]
11. transmitting material harmful to minors;[22]
12. violating of a similar law of another jurisdiction.

A sexual offender is required to report and register in a manner similar to a sexual predator. Failure of a sexual offender to comply with the registration requirements is a third degree felony.

Effect of Proposed Changes

HB 327 amends the definition of "institution of higher education" within the sexual predator and sexual offender statutes to include career centers. As a result, a sexual predator or sexual offender who is enrolled, employed or carrying on a vocation at a career center will be required to provide to FDLE the name, address and county of the institution as well as additional information and will be required to report any change in enrollment or employment status to the sheriff or Department of Corrections as appropriate. The sheriff will be required to notify the career center of the sexual predator's presence and any change in enrollment or employment status. The change to the definition of institution of higher education is intended to ensure compliance with the federal Campus Sex Crimes Prevention Act.[23]

HB 327 adds to the list of offenses that qualify a person for sexual offender or sexual predator registration the offense of sexual misconduct by a Department of Juvenile Justice program employee (or an employee of a program operated by a provider under a contract with the department) with a juvenile offender.[24] HB 327 also adds the offense of selling or buying of a minor into sex trafficking or prostitution.[25] As such, a person who commits one of these offenses and has a previous conviction for this offense, or another qualifying offense, must be designated a sexual predator. A person who has been convicted of one of these offenses (and has no other prior qualifying offense) will be considered a sexual offender. HB 327 also adds these offenses to the list of offenses which preclude a sexual predator from working or volunteering at a place where children regularly congregate.

The bill clarifies that a person who lives in Florida and has been designated as a sexual predator or sexual offender and who is subject to registration or public notification in another state must register as a sexual offender in Florida, even if the person does not otherwise qualify as a sexual predator or sexual offender under Florida law. According to the FDLE "[t]his change will help ensure compliance with the requirements of the Federal Jacob Wetterling Act mandating state to state notification upon the movement of offenders."

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[15] Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.
[16] s. 796.03, F.S.
[17] s. 825.1025(2)(b), F.S.
[18] s. 827.071, F.S.
[19] s. 847.0133, F.S.
[20] s. 847.0135, F.S.
[21] s. 847.0137, F.S.
[22] s. 847.0138, F.S.
[23] Codified at 42 U.S.C. 14071(j)
[24] s. 985.4045(1), F.S.
[25] s. 796.035, F.S.

The bill provides that a sexual predator or sexual offender must register at a sheriff's office. Currently such registration can occur at a sheriff's office or at a FDLE office. The sheriff will then submit this information to FDLE as under current law.

The bill clarifies under what circumstances a sexual predator or sexual offender is required to report his or her intent to move out of state.

HB 327 revises the operational date used for career offender registration from January 1, 2003 to July 1, 2002.

C. SECTION DIRECTORY:

Section 1. Amends s. 775.21, F.S., relating to Florida Sexual Predators Act to add qualifying offenses.

Section 2. Amends s. 775.261, F.S., relating to Florida Career Offender Registration Act.

Section 3. Amends s. 943.0435, F.S, relating to sexual offender registration to modify definitions and add qualifying offenses.

Section 4. Amends s. 944.606, relating to sexual offender notification upon release.

Section 5. Amends s. 944.607, F.S. relating to sexual offender registration to add qualifying offenses.

Section 6. Provides effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   HB 327 will require a person who has been convicted of the offense of sexual misconduct by an employee of the Department of Juvenile Justice or of the offense of selling or buying a minor into sex trafficking to register as a sexual predator or a sexual offender. FDLE has indicated that the changes made by the bill to the sexual offender and sexual predator laws will have a minor impact on the functions of their respective registries. The department states that "[m]odifications and updates will be made to electronic and print training and educational materials and forms. Updates will disburse to local law enforcement, other criminal justice partners and registrants advising of modification to these laws."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Criminal Justice Committee adopted two amendments. One amended the sexual predator statute to provide that all registrations occur at a sheriff's office and that FDLE offices be removed from this process. This amendment also clarifies circumstances in which a sexual predator is required to report to a sheriff's office. The other amendment made identical changes to the sexual offender statute.

CHAMBER ACTION

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1 The Criminal Justice Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to sexual and career offenders; amending
7 s. 775.21, F.S.; revising the definition of "institution
8 of higher education" to include a career center; revising
9 provisions relating to use of prior felonies for sexual
10 predator determination; removing language allowing a
11 sexual predator to register at a Department of Law
12 Enforcement office; amending s. 775.261, F.S.; revising an
13 operational date used for career offender registration;
14 expanding applicability of registration requirements;
15 amending s. 943.0435, F.S.; removing language allowing a
16 sexual offender to register at a Department of Law
17 Enforcement office; revising language relating to the
18 definition of "sexual offender"; revising the definition
19 of "institution of higher education" to include a career
20 center; revising a provision relating to an offender's
21 driver license or identification card renewal; amending s.
22 944.606, F.S.; revising language relating to the
23 definition of "sexual offender"; amending s. 944.607,

24 F.S.; revising language relating to the definition of
25 "sexual offender"; revising the definition of "institution
26 of higher education" to include a career center; providing
27 an effective date.
28
29 Be It Enacted by the Legislature of the State of Florida:
30
31 Section 1. Paragraph (h) of subsection (2), paragraphs (a)
32 and (b) of subsection (4), paragraph (d) of subsection (5),
33 paragraphs (e), (g), (h), (i), and (j) of subsection (6), and
34 paragraph (b) of subsection (10) of section 775.21, Florida
35 Statutes, are amended to read:
36 775.21 The Florida Sexual Predators Act.--
37 (2) DEFINITIONS.--As used in this section, the term:
38 (h) "Institution of higher education" means a <u>career</u>
39 <u>center,</u> community college, college, state university, or
40 independent postsecondary institution.
41 (4) SEXUAL PREDATOR CRITERIA.--
42 (a) For a current offense committed on or after October 1,
43 1993, upon conviction, an offender shall be designated as a
44 "sexual predator" under subsection (5), and subject to
45 registration under subsection (6) and community and public
46 notification under subsection (7) if:
47 1. The felony is:
48 a. A capital, life, or first-degree felony violation, or
49 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
50 is a minor and the defendant is not the victim's parent, or of

51 chapter 794, s. 800.04, or s. 847.0145, or a violation of a
52 similar law of another jurisdiction; or
53 b. Any felony violation, or any attempt thereof, of s.
54 787.01, s. 787.02, or s. 787.025, where the victim is a minor
55 and the defendant is not the victim's parent; chapter 794,
56 excluding ss. 794.011(10) and 794.0235; s. 796.03; s. 796.035;
57 s. 800.04; s. 825.1025(2)(b); s. 827.071; ~~or~~ s. 847.0145; or s.
58 985.4045(1); or a violation of a similar law of another
59 jurisdiction, and the offender has previously been convicted of
60 or found to have committed, or has pled nolo contendere or
61 guilty to, regardless of adjudication, any violation of s.
62 787.01, s. 787.02, or s. 787.025, where the victim is a minor
63 and the defendant is not the victim's parent; s. 794.011(2),
64 (3), (4), (5), or (8); s. 794.05; s. 796.03; s. 796.035; s.
65 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135; ~~or~~ s.
66 847.0145; or s. 985.4045(1);~~,~~ or a violation of a similar law of
67 another jurisdiction;
68 2. The offender has not received a pardon for any felony
69 or similar law of another jurisdiction that is necessary for the
70 operation of this paragraph; and
71 3. A conviction of a felony or similar law of another
72 jurisdiction necessary to the operation of this paragraph has
73 not been set aside in any postconviction proceeding.
74 (b) In order to be counted as a prior felony for purposes
75 of this subsection, the felony must have resulted in a
76 conviction sentenced separately, or an adjudication of
77 delinquency entered separately, prior to the current offense and
78 sentenced or adjudicated separately from any other felony

79 conviction that is to be counted as a prior felony regardless of
80 the date of offense of the prior felony.
81 (5) SEXUAL PREDATOR DESIGNATION.--An offender is
82 designated as a sexual predator as follows:
83 (d) A person who establishes or maintains a residence in
84 this state and who has not been designated as a sexual predator
85 by a court of this state but who has been designated as a sexual
86 predator, as a sexually violent predator, or by another sexual
87 offender designation in another state or jurisdiction and was,
88 as a result of such designation, subjected to registration or
89 community or public notification, or both, or would be if the
90 person was a resident of that state or jurisdiction, without
91 regard to whether the person otherwise meets the criteria for
92 registration as a sexual offender, shall register in the manner
93 provided in s. 943.0435 or s. 944.607 and shall be subject to
94 community and public notification as provided in s. 943.0435 or
95 s. 944.607. A person who meets the criteria of this section is
96 subject to the requirements and penalty provisions of s.
97 943.0435 or s. 944.607 until the person provides the department
98 with an order issued by the court that designated the person as
99 a sexual predator, as a sexually violent predator, or by another
100 sexual offender designation in the state or jurisdiction in
101 which the order was issued which states that such designation
102 has been removed or demonstrates to the department that such
103 designation, if not imposed by a court, has been removed by
104 operation of law or court order in the state or jurisdiction in
105 which the designation was made, and provided such person no

106 longer meets the criteria for registration as a sexual offender
107 under the laws of this state.
108 (6) REGISTRATION.--
109 (e) If the sexual predator is not in the custody or
110 control of, or under the supervision of, the Department of
111 Corrections, or is not in the custody of a private correctional
112 facility, and establishes or maintains a residence in the state,
113 the sexual predator shall register in person at ~~an office of the~~
114 ~~department, or at~~ the sheriff's office in the county in which
115 the predator establishes or maintains a residence, within 48
116 hours after establishing permanent or temporary residence in
117 this state. Any change in the sexual predator's permanent or
118 temporary residence or name, after the sexual predator registers
119 in person at ~~an office of the department or at~~ the sheriff's
120 office, shall be accomplished in the manner provided in
121 paragraphs (g), (i), and (j). When ~~If~~ a sexual predator
122 registers with the sheriff's office, the sheriff shall take a
123 photograph and a set of fingerprints of the predator and forward
124 the photographs and fingerprints to the department, along with
125 the information that the predator is required to provide
126 pursuant to this section.
127 (g)1. Each time a sexual predator's driver's license or
128 identification card is subject to renewal, and, without regard
129 to the status of the predator's driver's license or
130 identification card, within 48 hours after any change of the
131 predator's residence or change in the predator's name by reason
132 of marriage or other legal process, the predator shall report in
133 person to a driver's license office and shall be subject to the

134 requirements specified in paragraph (f). The Department of
135 Highway Safety and Motor Vehicles shall forward to the
136 department and to the Department of Corrections all photographs
137 and information provided by sexual predators. Notwithstanding
138 the restrictions set forth in s. 322.142, the Department of
139 Highway Safety and Motor Vehicles is authorized to release a
140 reproduction of a color-photograph or digital-image license to
141 the Department of Law Enforcement for purposes of public
142 notification of sexual predators as provided in this section.
143 2. A sexual predator who vacates a permanent residence and
144 fails to establish or maintain another permanent or temporary
145 residence shall, within 48 hours after vacating the permanent
146 residence, report in person to ~~the department or~~ the sheriff's
147 office of the county in which he or she is located. The sexual
148 predator shall specify the date upon which he or she intends to
149 or did vacate such residence. The sexual predator must provide
150 or update all of the registration information required under
151 paragraph (a). The sexual predator must provide an address for
152 the residence or other location that he or she is or will be
153 occupying during the time in which he or she fails to establish
154 or maintain a permanent or temporary residence.
155 3. A sexual predator who remains at a permanent residence
156 after reporting his or her intent to vacate such residence
157 shall, within 48 hours after the date upon which the predator
158 indicated he or she would or did vacate such residence, report
159 in person to the sheriff's office ~~agency~~ to which he or she
160 reported pursuant to subparagraph 2. for the purpose of
161 reporting his or her address at such residence. When ~~If~~ the

162 sheriff receives the report, the sheriff shall promptly convey
163 the information to the department. An offender who makes a
164 report as required under subparagraph 2. but fails to make a
165 report as required under this subparagraph commits a felony of
166 the second degree, punishable as provided in s. 775.082, s.
167 775.083, or s. 775.084.
168 (h) ~~If the sexual predator registers at an office of the~~
169 ~~department,~~ The department must notify the sheriff and the state
170 attorney of the county and, if applicable, the police chief of
171 the municipality~~,~~ where the sexual predator maintains a
172 residence ~~within 48 hours after the sexual predator registers~~
173 ~~with the department~~.
174 (i) A sexual predator who intends to establish residence
175 in another state or jurisdiction other than the State of Florida
176 shall report in person to the sheriff of the county of current
177 residence ~~or the department~~ within 48 hours before the date he
178 or she intends to leave this state to establish residence in
179 another state or jurisdiction. The sexual predator must provide
180 to the sheriff ~~or department~~ the address, municipality, county,
181 and state of intended residence. The sheriff shall promptly
182 provide to the department the information received from the
183 sexual predator. The department shall notify the statewide law
184 enforcement agency, or a comparable agency, in the intended
185 state or jurisdiction of residence of the sexual predator's
186 intended residence. The failure of a sexual predator to provide
187 his or her intended place of residence is punishable as provided
188 in subsection (10).

189 (j) A sexual predator who indicates his or her intent to
190 reside in another state or jurisdiction other than the State of
191 Florida and later decides to remain in this state shall, within
192 48 hours after the date upon which the sexual predator indicated
193 he or she would leave this state, report in person to the
194 sheriff ~~or the department, whichever agency is the agency~~ to
195 whom ~~which~~ the sexual predator reported the intended change of
196 residence~~,~~ and report ~~of~~ his or her intent to remain in this
197 state. If the sheriff is notified by the sexual predator that he
198 or she intends to remain in this state, the sheriff shall
199 promptly report this information to the department. A sexual
200 predator who reports his or her intent to reside in another
201 state or jurisdiction, but who remains in this state without
202 reporting to the sheriff ~~or the department~~ in the manner
203 required by this paragraph, commits a felony of the second
204 degree, punishable as provided in s. 775.082, s. 775.083, or s.
205 775.084.
206 (10) PENALTIES.--
207 (b) A sexual predator who has been convicted of or found
208 to have committed, or has pled nolo contendere or guilty to,
209 regardless of adjudication, any violation, or attempted
210 violation, of s. 787.01, s. 787.02, or s. 787.025, where the
211 victim is a minor and the defendant is not the victim's parent;
212 s. 794.011(2), (3), (4), (5), or (8); s. 794.05; s. 796.03; s.
213 796.035; s. 800.04; s. 827.071; s. 847.0133; ~~or~~ s. 847.0145; or
214 s. 985.4045(1);~~,~~ or a violation of a similar law of another
215 jurisdiction~~,~~ when the victim of the offense was a minor, and
216 who works, whether for compensation or as a volunteer, at any

217 business, school, day care center, park, playground, or other
218 place where children regularly congregate, commits a felony of
219 the third degree, punishable as provided in s. 775.082, s.
220 775.083, or s. 775.084.
221 Section 2. Paragraph (a) of subsection (3) of section
222 775.261, Florida Statutes, is amended to read:
223 775.261 The Florida Career Offender Registration Act.--
224 (3) CRITERIA FOR REGISTRATION AS A CAREER OFFENDER.--
225 (a) A career offender released on or after July 1, 2002
226 ~~January 1, 2003~~, from a sanction imposed in this state ~~for a~~
227 ~~designation as a habitual violent felony offender, a violent~~
228 ~~career criminal, or a three-time violent felony offender under~~
229 ~~s. 775.084 or as a prison releasee reoffender under s.~~
230 ~~775.082(9)~~ must register as required under subsection (4) and is
231 subject to community and public notification as provided under
232 subsection (5). For purposes of this section, a sanction imposed
233 in this state includes, but is not limited to, a fine,
234 probation, community control, parole, conditional release,
235 control release, or incarceration in a state prison, private
236 correctional facility, or local detention facility, and:
237 1. The career offender has not received a pardon for any
238 felony or other qualified offense that is necessary for the
239 operation of this paragraph; or
240 2. A conviction of a felony or other qualified offense
241 necessary to the operation of this paragraph has not been set
242 aside in any postconviction proceeding.
243 Section 3. Paragraphs (a) and (d) of subsection (1),
244 subsections (2), (4), (7), and (8), and paragraph (c) of

245 subsection (11) of section 943.0435, Florida Statutes, are
246 amended to read:
247 943.0435 Sexual offenders required to register with the
248 department; penalty.--
249 (1) As used in this section, the term:
250 (a) "Sexual offender" means a person who meets the
251 criteria in subparagraph 1., subparagraph 2., or subparagraph
252 3., as follows:
253 1.a. Has been convicted of committing, or attempting,
254 soliciting, or conspiring to commit, any of the criminal
255 offenses proscribed in the following statutes in this state or
256 similar offenses in another jurisdiction: s. 787.01, s. 787.02,
257 or s. 787.025, where the victim is a minor and the defendant is
258 not the victim's parent; chapter 794, excluding ss. 794.011(10)
259 and 794.0235; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s.
260 827.071; s. 847.0133; s. 847.0135; s. 847.0137; s. 847.0138; s.
261 847.0145; or s. 985.4045(1); or any similar offense committed in
262 this state which has been redesignated from a former statute
263 number to one of those listed in this sub-subparagraph
264 ~~subparagraph~~; and
265 b.~~2.~~ Has been released on or after October 1, 1997, from
266 the sanction imposed for any conviction of an offense described
267 in sub-subparagraph a. ~~subparagraph 1.~~ For purposes of sub-
268 subparagraph a. ~~subparagraph 1.~~, a sanction imposed in this
269 state or in any other jurisdiction includes, but is not limited
270 to, a fine, probation, community control, parole, conditional
271 release, control release, or incarceration in a state prison,

272 federal prison, private correctional facility, or local
273 detention facility; ~~or~~
274 2.~~3.~~ Establishes or maintains a residence in this state
275 and who has not been designated as a sexual predator by a court
276 of this state but who has been designated as a sexual predator,
277 as a sexually violent predator, or by another sexual offender
278 designation in another state or jurisdiction and was, as a
279 result of such designation, subjected to registration or
280 community or public notification, or both, or would be if the
281 person were a resident of that state or jurisdiction, without
282 regard to whether the person otherwise meets the criteria for
283 registration as a sexual offender; or
284 3.~~4.~~ Establishes or maintains a residence in this state
285 who is in the custody or control of, or under the supervision
286 of, any other state or jurisdiction as a result of a conviction
287 for committing, or attempting, soliciting, or conspiring to
288 commit, any of the criminal offenses proscribed in the following
289 statutes or similar offense in another jurisdiction: s. 787.01,
290 s. 787.02, or s. 787.025, where the victim is a minor and the
291 defendant is not the victim's parent; chapter 794, excluding ss.
292 794.011(10) and 794.0235; s. 796.03; s. 796.035; s. 800.04; s.
293 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0137; s.
294 847.0138; s. 847.0145; or s. 985.4045(1); or any similar offense
295 committed in this state which has been redesignated from a
296 former statute number to one of those listed in this
297 subparagraph.

298 (d) "Institution of higher education" means a career
299 center, community college, college, state university, or
300 independent postsecondary institution.
301 (2) A sexual offender shall:
302 (a) Report in person at ~~an office of the department, or at~~
303 the sheriff's office in the county in which the offender
304 establishes or maintains a permanent or temporary residence,
305 within 48 hours after establishing permanent or temporary
306 residence in this state or within 48 hours after being released
307 from the custody, control, or supervision of the Department of
308 Corrections or from the custody of a private correctional
309 facility. Any change in the sexual offender's permanent or
310 temporary residence or name, after the sexual offender reports
311 in person at ~~an office of the department or at~~ the sheriff's
312 office, shall be accomplished in the manner provided in
313 subsections (4), (7), and (8).
314 (b) Provide his or her name, date of birth, social
315 security number, race, sex, height, weight, hair and eye color,
316 tattoos or other identifying marks, occupation and place of
317 employment, address of permanent or legal residence or address
318 of any current temporary residence, within the state and out of
319 state, including a rural route address and a post office box,
320 date and place of each conviction, and a brief description of
321 the crime or crimes committed by the offender. A post office box
322 shall not be provided in lieu of a physical residential address.
323 1. If the sexual offender's place of residence is a motor
324 vehicle, trailer, mobile home, or manufactured home, as defined
325 in chapter 320, the sexual offender shall also provide to the

326 department written notice of the vehicle identification number;
327 the license tag number; the registration number; and a
328 description, including color scheme, of the motor vehicle,
329 trailer, mobile home, or manufactured home. If the sexual
330 offender's place of residence is a vessel, live-aboard vessel,
331 or houseboat, as defined in chapter 327, the sexual offender
332 shall also provide to the department written notice of the hull
333 identification number; the manufacturer's serial number; the
334 name of the vessel, live-aboard vessel, or houseboat; the
335 registration number; and a description, including color scheme,
336 of the vessel, live-aboard vessel, or houseboat.
337 2. If the sexual offender is enrolled, employed, or
338 carrying on a vocation at an institution of higher education in
339 this state, the sexual offender shall also provide to the
340 department the name, address, and county of each institution,
341 including each campus attended, and the sexual offender's
342 enrollment or employment status. Each change in enrollment or
343 employment status shall be reported in person at ~~an office of~~
344 ~~the department, or at~~ the sheriff's office, within 48 hours
345 after any change in status. The sheriff shall promptly notify
346 each institution of the sexual offender's presence and any
347 change in the sexual offender's enrollment or employment status.
348
349 When ~~If~~ a sexual offender reports at the sheriff's office, the
350 sheriff shall take a photograph and a set of fingerprints of the
351 offender and forward the photographs and fingerprints to the
352 department, along with the information provided by the sexual

353 offender. The sheriff shall promptly provide to the department
354 the information received from the sexual offender.
355 (4)(a) Each time a sexual offender's driver's license or
356 identification card is subject to renewal, and, without regard
357 to the status of the offender's ~~predator's~~ driver's license or
358 identification card, within 48 hours after any change in the
359 offender's permanent or temporary residence or change in the
360 offender's name by reason of marriage or other legal process,
361 the offender shall report in person to a driver's license
362 office, and shall be subject to the requirements specified in
363 subsection (3). The Department of Highway Safety and Motor
364 Vehicles shall forward to the department all photographs and
365 information provided by sexual offenders. Notwithstanding the
366 restrictions set forth in s. 322.142, the Department of Highway
367 Safety and Motor Vehicles is authorized to release a
368 reproduction of a color-photograph or digital-image license to
369 the Department of Law Enforcement for purposes of public
370 notification of sexual offenders as provided in ss. 943.043,
371 943.0435, and 944.606.
372 (b) A sexual offender who vacates a permanent residence
373 and fails to establish or maintain another permanent or
374 temporary residence shall, within 48 hours after vacating the
375 permanent residence, report in person to the ~~department or the~~
376 sheriff's office of the county in which he or she is located.
377 The sexual offender shall specify the date upon which he or she
378 intends to or did vacate such residence. The sexual offender
379 must provide or update all of the registration information
380 required under paragraph (2)(b). The sexual offender must

381 provide an address for the residence or other location that he
382 or she is or will be occupying during the time in which he or
383 she fails to establish or maintain a permanent or temporary
384 residence.
385 (c) A sexual offender who remains at a permanent residence
386 after reporting his or her intent to vacate such residence
387 shall, within 48 hours after the date upon which the offender
388 indicated he or she would or did vacate such residence, report
389 in person to the agency to which he or she reported pursuant to
390 paragraph (b) for the purpose of reporting his or her address at
391 such residence. When ~~If~~ the sheriff receives the report, the
392 sheriff shall promptly convey the information to the department.
393 An offender who makes a report as required under paragraph (b)
394 but fails to make a report as required under this paragraph
395 commits a felony of the second degree, punishable as provided in
396 s. 775.082, s. 775.083, or s. 775.084.
397 (7) A sexual offender who intends to establish residence
398 in another state or jurisdiction other than the State of Florida
399 shall report in person to the sheriff of the county of current
400 residence ~~or the department~~ within 48 hours before the date he
401 or she intends to leave this state to establish residence in
402 another state or jurisdiction. The notification must include the
403 address, municipality, county, and state of intended residence.
404 The sheriff shall promptly provide to the department the
405 information received from the sexual offender. The department
406 shall notify the statewide law enforcement agency, or a
407 comparable agency, in the intended state or jurisdiction of
408 residence of the sexual offender's intended residence. The

409 failure of a sexual offender to provide his or her intended
410 place of residence is punishable as provided in subsection (9).
411 (8) A sexual offender who indicates his or her intent to
412 reside in another state or jurisdiction other than the State of
413 Florida and later decides to remain in this state shall, within
414 48 hours after the date upon which the sexual offender indicated
415 he or she would leave this state, report in person to the
416 sheriff ~~or department, whichever agency is the agency~~ to whom
417 ~~which~~ the sexual offender reported the intended change of
418 residence~~,~~ and report ~~of~~ his or her intent to remain in this
419 state. ~~If the sheriff is notified by the sexual offender that he~~
420 ~~or she intends to remain in this state,~~ The sheriff shall
421 promptly report this information to the department. A sexual
422 offender who reports his or her intent to reside in another
423 state or jurisdiction but who remains in this state without
424 reporting to the sheriff ~~or the department~~ in the manner
425 required by this subsection commits a felony of the second
426 degree, punishable as provided in s. 775.082, s. 775.083, or s.
427 775.084.
428 (11) A sexual offender must maintain registration with the
429 department for the duration of his or her life, unless the
430 sexual offender has received a full pardon or has had a
431 conviction set aside in a postconviction proceeding for any
432 offense that meets the criteria for classifying the person as a
433 sexual offender for purposes of registration. However, a sexual
434 offender:
435 (c) As defined in subparagraph (1)(a)2.~~3.~~ must maintain
436 registration with the department for the duration of his or her

437 life until the person provides the department with an order
438 issued by the court that designated the person as a sexual
439 predator, as a sexually violent predator, or by another sexual
440 offender designation in the state or jurisdiction in which the
441 order was issued which states that such designation has been
442 removed or demonstrates to the department that such designation,
443 if not imposed by a court, has been removed by operation of law
444 or court order in the state or jurisdiction in which the
445 designation was made, and provided such person no longer meets
446 the criteria for registration as a sexual offender under the
447 laws of this state.
448 Section 4. Paragraph (b) of subsection (1) of section
449 944.606, Florida Statutes, is amended to read:
450 944.606 Sexual offenders; notification upon release.--
451 (1) As used in this section:
452 (b) "Sexual offender" means a person who has been
453 convicted of committing, or attempting, soliciting, or
454 conspiring to commit, any of the criminal offenses proscribed in
455 the following statutes in this state or similar offenses in
456 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025, where
457 the victim is a minor and the defendant is not the victim's
458 parent; chapter 794, excluding ss. 794.011(10) and 794.0235; s.
459 796.03; <u>s. 796.035;</u> s. 800.04; s. 825.1025; s. 827.071; s.
460 847.0133; s. 847.0135; s. 847.0137; s. 847.0138; s. 847.0145; <u>or</u>
461 <u>s. 985.4045(1);</u> or any similar offense committed in this state
462 which has been redesignated from a former statute number to one
463 of those listed in this subsection, when the department has
464 received verified information regarding such conviction; an

465 offender's computerized criminal history record is not, in and
466 of itself, verified information.
467 Section 5. Paragraphs (a) and (c) of subsection (1) of
468 section 944.607, Florida Statutes, are amended to read:
469 944.607 Notification to Department of Law Enforcement of
470 information on sexual offenders.--
471 (1) As used in this section, the term:
472 (a) "Sexual offender" means a person who is in the custody
473 or control of, or under the supervision of, the department or is
474 in the custody of a private correctional facility:
475 1. On or after October 1, 1997, as a result of a
476 conviction for committing, or attempting, soliciting, or
477 conspiring to commit, any of the criminal offenses proscribed in
478 the following statutes in this state or similar offenses in
479 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025, where
480 the victim is a minor and the defendant is not the victim's
481 parent; chapter 794, excluding ss. 794.011(10) and 794.0235; s.
482 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s.
483 847.0133; s. 847.0135; s. 847.0137; s. 847.0138; s. 847.0145; or
484 s. 985.4045(1); or any similar offense committed in this state
485 which has been redesignated from a former statute number to one
486 of those listed in this paragraph; or
487 2. Who establishes or maintains a residence in this state
488 and who has not been designated as a sexual predator by a court
489 of this state but who has been designated as a sexual predator,
490 as a sexually violent predator, or by another sexual offender
491 designation in another state or jurisdiction and was, as a
492 result of such designation, subjected to registration or

493 community or public notification, or both, or would be if the
494 person were a resident of that state or jurisdiction, without
495 regard as to whether the person otherwise meets the criteria for
496 registration as a sexual offender.
497 (c) "Institution of higher education" means a career
498 center, community college, college, state university, or
499 independent postsecondary institution.
500 Section 6. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

Florida law currently requires electronic monitoring for home detention of youth imposed in lieu of a consequence unit for probation and conditional release violations. The funding appropriated by the Legislature for such monitoring has been vetoed during the past two fiscal years. The bill amends statute to provide that the electronic monitoring requirements are subject to appropriation.

The bill also amends statute to authorize a court to detain an adjudicated youth in secure detention or on home detention with electronic monitoring until disposition if the youth has a history of willfully failing to appear at any previous delinquency court proceedings or has violated conditions governing his or her behavior, which must be specified by the court in the youth's adjudication order. Distinguishably, under current law: (a) a youth may be placed in post-adjudication/predisposition detention for a maximum of 15 days, not until disposition; (b) current criteria permitting detention for failure to appear apply only where the youth has failed to appear in the case at bar; and (c) a court is not required to specify conditions in a youth's adjudication order.

Finally, the bill revises annual reporting requirements applicable to the Department of Juvenile Justice (DJJ) by: (a) repealing requirements for individual annual reports on juvenile justice subjects where such data is duplicative of data reported in other publications; (b) reorganizing the section's contents more logically and removing obsolete terms and outdated provisions; (c) reinstating the requirement for publication of an annual Outcome Evaluation Report by the DJJ; and (d) amending provisions relating to the Program Accountability Measures Report to accurately describe the cost-effectiveness model currently implemented and to permit the report to be submitted on January 15th, rather than December 31st of each year.

The only provisions of this bill expected to generate a fiscal impact are those permitting the placement of adjudicated youth in secure detention or on home detention with electronic monitoring until disposition in specified circumstances. Fiscal data regarding this impact has been requested, but has not yet been received, from the DJJ. Increased detention costs under the bill will be shared as follows: (a) non-fiscally constrained counties will be responsible for the costs of predisposition, secure detention; and (b) the state will be responsible for the costs of predisposition, secure detention for fiscally constrained counties and for the costs of home detention with electronic monitoring. Please see the fiscal section of this analysis for more details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill eliminates statutory requirements for separate reports on specified juvenile justice subjects where this information is also reported in other publications that comprehensively address all juvenile justice programs.

Promote personal responsibility—The bill requires courts to impose conditions relating to curfew compliance, school attendance, and proscriptions against ungovernable behavior in adjudication orders, which must be followed by youth until disposition. The bill increases the availability of predisposition detention for adjudicated youth by authorizing secure detention or home detention with electronic monitoring until disposition where an adjudicated youth has a history of willfully failing to appear in delinquency proceedings or has violated adjudication order conditions.

B. EFFECT OF PROPOSED CHANGES:

Electronic monitoring of youth on home detention: Sections 985.215(2)(h) and 985.231(1)(a)1.c.I., F.S., provide that youth who have violated probation, postcommitment probation, or conditional release supervision may be held in a consequence unit, if available, or placed on home detention with electronic monitoring. Currently, there are no consequence units available. Additionally, electronic monitoring for home detention is not funded because the Governor has vetoed the Legislature's appropriation for such monitoring during the past two fiscal years.[1]

Effect of bill: The bill amends ss. 985.215(2)(h) and 985.231(1)(a)1.c.I., F.S., to condition the requirement of electronic monitoring for home detention upon legislative appropriation. In other words, under the bill, if there is no appropriation for electronic monitoring, home detention without electronic monitoring may be imposed in lieu of a consequence unit.

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

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

If the RAI results do not warrant detention based on the aforementioned criteria, the court may not order detention for the youth unless: (a) the youth is charged with specified domestic violence offenses

[1] *See* Veto Message Fiscal Year 2005-2006 (veto of specific appropriation 1076A).

or with possession or discharge of a firearm on school property;[2] (b) the youth is detained on a judicial order for failure to appear and has previously failed to appear for an adjudicatory hearing or at two or more hearings in the same case;[3] or (c) the court enters written reasons for a deviation from the RAI results.[4]

If the youth is detained by the court, the maximum amounts of time in secure, nonsecure, or home detention that may be imposed are 21-days pre-adjudication and 15-days post-adjudication/predisposition, except that in either case detention may be extended for an additional 9 days if the court finds that the prosecution or defense require additional time and the charge is a capital, life, or first degree felony or a second degree felony involving violence; thus, if such additional time is granted by the court, a maximum of 30-days pre-adjudication or 24-days post-adjudication/predisposition may be imposed.[5]

Effect of bill: The bill enables a court to place an adjudicated youth in secure detention or on home detention with electronic monitoring until disposition in the following two circumstances.

First, the bill amends s. 985.228(5), F.S., to require a court to specify conditions in the delinquent's order of adjudication, which must be followed by the youth until disposition and which must include, but are not limited to:

- *If the youth is not in secure detention, the conditions must require the youth until disposition to comply with a curfew and attend school or another educational program if eligible and must prohibit the youth from engaging in ungovernable behavior.*
- *If the youth is in secure detention, the conditions must prohibit the youth from engaging in ungovernable behavior.*

The bill defines "ungovernable behavior" as: (a) failing to obey a parent, legal guardian, or person responsible for supervising the youth in school, an educational program, or secure detention; (b) engaging in behavior that evidences a risk that the youth may fail to appear at future court proceedings or may inflict harm upon others or the property of others; and (c) other behavior specified in writing by the court.

If a youth willfully violates an adjudication order condition, the bill creates s. 985.207(1)(e), F.S., to authorize a law enforcement officer to take the youth into custody and provides in s. 985.228(5)(d), F.S., that the court may hold the youth in contempt of court under s. 985.216, F.S., for such violation. The bill specifies that the sanctions for such contempt of court are placement in secure detention or on home detention with electronic monitoring until disposition.

Second, the bill creates s. 985.215(2)(k), F.S., to authorize a court to place an adjudicated youth in secure detention or on home detention with electronic monitoring until disposition if the youth has previously willfully failed to appear, after proper notice, at prior delinquency court proceedings. The bill specifies that a youth's failure to keep the clerk of court and defense counsel informed of a current mailing address does not excuse a youth's nonappearance at hearings.

Reporting requirements: Currently, ss. 985.31(1)(a)4. and 985.311(1)(a)4., F.S., require the Department of Juvenile Justice (DJJ) to annually provide written reports to the Governor, Attorney General, and Legislature on the performance of: (a) serious or habitual juvenile offender (SHO) programs; and (b) intensive residential treatment (IRT) programs. Performance data for SHO and IRT

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

programs, which are high-risk commitment programs, is also reported in the following annual written reports published by the DJJ pursuant to s. 985.412, F.S.:[6]

- Outcome Evaluation (OE) Report -- This report is submitted to the Legislature each year by February 15th,[7] and it includes referral, offense type, demographic profile, length of stay, program completion, and recidivism data for all programs offered in the DJJ's four branches, i.e., Prevention and Victim Services, Detention, Probation and Community Corrections, and Residential Corrections. Prior to 2002, the Juvenile Justice Advisory Board (JJAB) was responsible, under s. 985.401, F.S., for completion of the OE Report. After the sunset of the JJAB on June 30, 2001, the DJJ assumed responsibility for the report. Currently, there is no statutory description of the contents of the OE Report, as this was repealed with the sunset of s. 985.401, F.S.; however, references to outcome evaluations of DJJ programs continue to be made in ss. 985.404(10)(d) and 985.412(4)(a), F.S.[8]

- Program Accountability Measures (PAM) Report – This report is required by s. 985.412(4)(a), F.S., to be submitted to the Legislature each year by December 31st,[9] and it contains PAM scores for each DJJ commitment program. A PAM score consists of a program recidivism effectiveness measure and a cost effectiveness measure. Recidivism effectiveness is calculated as the standardized difference between the program's expected recidivism and observed recidivism. Cost effectiveness is calculated as the standardized difference between each program's average cost per youth completing the program and the statewide average cost per completion of $34,083.[10]

- Quality Assurance (QA) Report – This report is required by s. 985.412(5), F.S., to be submitted to the Legislature each year by February 1st,[11] and it contains the following for each DJJ program: (a) a description of the population served; (b) a description of the services offered; (c) the program's QA rating;[12] and (d) cost data.

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

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[6] *See* 2005 Outcome Evaluation Report, February 15, 2005, pp. 83-112; 2005 Program Accountability Measures Report, December 2004, pp. 15, 19-20, 28, 35, 40, 44, 47, 55-56, 58; and 2005 Quality Assurance Report, January 2006, at pp. 286-291, 303, and 314.
[7] Data reported in the 2005 OE Report was based upon programs that released youth between July 1, 2002 and June 30, 2003.
[8] Section 985.412(4)(a), F.S., continues to reference, ". . . the standard methodology developed under s. 985.401(4) for interpreting program outcome evaluations . . ."; however, as indicated above s. 985.401, F.S., sunset on June 30, 2001.
[9] Data reported in the 2005 PAM Report was based upon 151 programs that had released at least 15 youth between July 1, 2001 and June 30, 2003.
[10] *See* 2005 Program Accountability Measures Report, December 2004 at p. 5.
[11] Data reported in the 2005 QA Report was based upon QA reviews conducted during calendar year 2005.
[12] QA ratings are based upon evaluation of the following three elements: (1) level of performance and quality of services; (2) immediate and long-term outcomes; and (3) cost. *See* An Introduction to Florida's Juvenile Justice Quality Assurance System, Department of Juvenile Justice, May 2004, p. 4.

Effect of bill: The bill repeals:

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

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

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

- *Revise the definition section by:*
  - *Substituting the term "youth" for the obsolete term "client" to more accurately reflect the population served by the DJJ.*
  - *Adding the term "program" to mean a department-operated or contracted facility, service, or program for youth.*
  - *Repealing the term "program effectiveness" as it is no longer used in the section.*
  - *Adding the term "program group" to mean a collection of programs with sufficient similarity of function, services, and youth to permit comparisons among programs within the group.*

- *Reinstate the statutory requirement for an annual OE Report. As discussed above, this requirement was repealed with the sunset of the JJAB in 2001; however, outcome evaluations of DJJ programs continue to be referenced in ch. 985, F.S., and the DJJ continues to produce the report. The bill:*
  - *Requires the DJJ, in consultation with specified others, to develop and utilize a standard methodology for annually measuring, evaluating, and reporting program outputs and youth outcomes for each program and program group.*
  - *Specifies that the standard methodology should incorporate performance-based budgeting measures; must include common terminology and operational definitions; and must specify program outputs and desired youth outcomes for each program and program group.*
  - *Requires the OE Report to be annually submitted to the Legislature and Governor by February 15th and specifies that the report must identify and describe the standard methodology implemented; programs offered within each program group; the demographic profile and offense history of youth served in each program group; and actual program outputs and youth outcomes achieved in each program group.*

- *Eliminate the requirement in s. 985.412(3), F.S., for a separate annual cost data report. A similar requirement for annual cost data reporting is added to the description of mandatory QA Report contents at subparagraph (5)(g)4. Like current law, the bill's cost data reporting provision requires use of a uniform format to allow cost comparisons among programs and requires inclusion of the cost of educational programs in the cost reported for residential programs. At the request of the DJJ, the bill removes current requirements for the inclusion of market equivalent rent in the cost of state operated services. According to the DJJ, such inclusion is not current practice despite the statutory requirement and it would require the hiring of consultants to become compliant. The bill also deletes the requirement for a cost benefit analysis to be implemented for juvenile justice educational programs. According to the DJJ and DOE, cost data and quality assurance review scores are required to be annually reported under s. 1003.52(19), F.S., for all juvenile justice educational programs in the state.*

- *Revise the statutory description of the cost-effectiveness model utilized for the PAM Report to: reflect the model currently being implemented, i.e., a comparison of program costs to expected and*

actual youth recidivism rates; and change the PAM report due date from December 31st until January 15th.

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

C. SECTION DIRECTORY:

Section 1. Creates s. 985.207(1)(e), F.S., to authorize a law enforcement officer to take a youth into custody if the officer has probable cause to believe the youth violated conditions in his or her adjudication order.

Section 2. Amends s. 985.215(2) and (5)(d) and (g), F.S., to: provide that home detention imposed in lieu of a consequence unit shall, subject to legislative appropriation, be with electronic monitoring; provide that adjudicated delinquents with a history of willful failure to appear at delinquency court proceedings may be detained until disposition; and make conforming changes.

Section 3. Amends s. 985.228(5), F.S., to: require a court to include specified conditions in an order of adjudication of delinquency; define the term "ungovernable behavior"; provide that a youth may be held in contempt of court for failing to comply with adjudication order conditions; and provide detention sanctions for such contempt of court.

Section 4. Amends s. 985.231(1)(a)1.c., F.S., to provide that home detention imposed in lieu of a consequence unit shall, subject to legislative appropriation, be with electronic monitoring.

Section 5. Repeals s. 985.31(1)(a)4., F.S., to eliminate the requirement of an annual report on the performance of SHO programs.

Section 6. Repeals s. 985.311(1)(a)4., F.S., to eliminate the requirement of an annual report on the performance of IRT programs.

Section 7. Repeals s. 985.317(5), F.S., to eliminate the requirement of annual report on the implementation and progress of residential literacy programs.

Section 8. Amends s. 985.412, F.S. to: rename the section; reorganize the section's contents more logically; add subsection headings; revise definitions; specify the contents of OE Report; transfer separate cost data reporting requirements to QA reporting requirements; repeal specified cost data reporting requirements; revise the PAM report's cost-effectiveness model; change the PAM report due date; revise QA reporting requirements; repeal outdated requirements regarding incentive and disincentive proposals and liquidated damages.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   There could be decreased workload resulting from consolidating reporting requirements. There could be additional demand for electronic monitoring, but the bill makes provision of the service subject to appropriations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The provisions of the bill that allow additional options to judges to detain youth could increase utilization of pre-disposition detention. This could increase the cost of secure detention to counties if a significant increase in utilization actually materializes. The DJJ has not submitted an estimate of this impact to the House Fiscal Council, but an analysis of a similar proposal last session indicated an indeterminate impact[13]. Further, DJJ representatives have recently indicated that adjudicatory and disposition hearings are held simultaneously in the majority of delinquency cases[14]. The bill's provisions would have no effect on these cases. Therefore, the impact is anticipated to be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to data provided by the DJJ, the OE, QA, and PAM reports discussed in this bill analysis are produced by department employees in the Bureau of Quality Assurance and Office of Research and Planning and through contracted services costing $352K annually, which are provided by the Justice Research Center (JRC). In addition to the aforementioned services, the JRC provides the following to the DJJ: (a) monthly data extracts; (b) performance based budgeting data and reports; (c) contract status reports; and (d) monthly reports on commodity and contractual service purchases from Minority Business Enterprises.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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

CHAMBER ACTION

1 The Juvenile Justice Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to juvenile justice; amending s. 985.207,
7 F.S.; permitting a law enforcement officer to take a child
8 into custody for a violation of adjudication order
9 conditions; amending s. 985.215, F.S.; requiring specified
10 home detention to be with electronic monitoring, subject
11 to appropriation; permitting specified types of
12 postadjudication detention for a child who has previously
13 failed to appear at delinquency court proceedings
14 regardless of risk assessment instrument results;
15 providing exceptions that permit postadjudication
16 detention for more than 15 days; conforming a cross-
17 reference; amending s. 985.228, F.S.; requiring the court
18 to include specified conditions in a child's order of
19 adjudication of delinquency that apply during the
20 postadjudication and predisposition period; providing a
21 definition; permitting a court to find a child in contempt
22 of court for a violation of adjudication order conditions;
23 providing sanctions; amending s. 985.231, F.S.; requiring

24 specified home detention to be with electronic monitoring,
25 subject to appropriation; amending s. 985.31, F.S.;
26 deleting requirement for a report on serious or habitual
27 juvenile offenders; amending s. 985.311, F.S.; deleting
28 requirement for a report on intensive residential
29 treatment; amending s. 985.317, F.S.; deleting a
30 requirement for a report on literacy programs for juvenile
31 offenders; amending s. 985.412, F.S.; directing the
32 Department of Juvenile Justice to collect and analyze
33 specified data; creating and revising definitions;
34 requiring the development of a standard methodology for
35 annually measuring, evaluating, and reporting program
36 outputs and youth outcomes; requiring an annual report;
37 specifying report contents; deleting a requirement for an
38 annual cost data report; deleting a requirement for a
39 cost-benefit analysis of educational programs; revising a
40 cost-effectiveness model for commitment programs; revising
41 a cost-effectiveness report due date; revising
42 requirements for annual quality assurance reporting;
43 deleting outdated incentive and disincentive proposal
44 requirements; deleting outdated authorization for
45 liquidated damages contract provisions; providing an
46 effective date.
47
48 Be It Enacted by the Legislature of the State of Florida:
49
50 Section 1. Paragraph (e) is added to subsection (1) of
51 section 985.207, Florida Statutes, to read:

52 985.207 Taking a child into custody.--
53 (1) A child may be taken into custody under the following
54 circumstances:
55 (e) When a law enforcement officer has probable cause to
56 believe that a child who is awaiting disposition has violated
57 conditions imposed by the court under s. 985.228(5) in his or
58 her order of adjudication of delinquency.
59
60 Nothing in this subsection shall be construed to allow the
61 detention of a child who does not meet the detention criteria in
62 s. 985.215.
63 Section 2. Subsection (2) and paragraphs (d) and (g) of
64 subsection (5) of section 985.215, Florida Statutes, are amended
65 to read:
66 985.215 Detention.--
67 (2) Subject to the provisions of subsection (1), a child
68 taken into custody and placed into nonsecure or home detention
69 care or detained in secure detention care prior to a detention
70 hearing may continue to be detained by the court if:
71 (a) The child is alleged to be an escapee from a
72 residential commitment program, or an absconder from a
73 nonresidential commitment program, a probation program, or
74 conditional release supervision, or is alleged to have escaped
75 while being lawfully transported to or from a residential
76 commitment program.
77 (b) The child is wanted in another jurisdiction for an
78 offense which, if committed by an adult, would be a felony.

79 (c) The child is charged with a delinquent act or
80 violation of law and requests in writing through legal counsel
81 to be detained for protection from an imminent physical threat
82 to his or her personal safety.
83 (d) The child is charged with committing an offense of
84 domestic violence as defined in s. 741.28 and is detained as
85 provided in s. 985.213(2)(b)3.
86 (e) The child is charged with possession or discharging a
87 firearm on school property in violation of s. 790.115.
88 (f) The child is charged with a capital felony, a life
89 felony, a felony of the first degree, a felony of the second
90 degree that does not involve a violation of chapter 893, or a
91 felony of the third degree that is also a crime of violence,
92 including any such offense involving the use or possession of a
93 firearm.
94 (g) The child is charged with any second degree or third
95 degree felony involving a violation of chapter 893 or any third
96 degree felony that is not also a crime of violence, and the
97 child:
98 1. Has a record of failure to appear at court hearings
99 after being properly notified in accordance with the Rules of
100 Juvenile Procedure;
101 2. Has a record of law violations prior to court hearings;
102 3. Has already been detained or has been released and is
103 awaiting final disposition of the case;
104 4. Has a record of violent conduct resulting in physical
105 injury to others; or
106 5. Is found to have been in possession of a firearm.

107 (h) The child is alleged to have violated the conditions
108 of the child's probation or conditional release supervision.
109 However, a child detained under this paragraph shall ~~may~~ be held
110 ~~only~~ in a consequence unit as provided in s. 985.231(1)(a)1.c.,
111 except that, if a consequence unit is not available, the child
112 shall be placed on home detention. Subject to legislative
113 appropriation, home detention under this paragraph shall be with
114 electronic monitoring.
115 (i) The child is detained on a judicial order for failure
116 to appear and has previously willfully failed to appear, after
117 proper notice, for an adjudicatory hearing on the same case
118 regardless of the results of the risk assessment instrument. A
119 child may be held in secure detention for up to 72 hours in
120 advance of the next scheduled court hearing pursuant to this
121 paragraph. The child's failure to keep the clerk of court and
122 defense counsel informed of a current and valid mailing address
123 where the child will receive notice to appear at court
124 proceedings does not provide an adequate ground for excusal of
125 the child's nonappearance at the hearings.
126 (j) The child is detained on a judicial order for failure
127 to appear and has previously willfully failed to appear, after
128 proper notice, at two or more court hearings of any nature on
129 the same case regardless of the results of the risk assessment
130 instrument. A child may be held in secure detention for up to 72
131 hours in advance of the next scheduled court hearing pursuant to
132 this paragraph. The child's failure to keep the clerk of court
133 and defense counsel informed of a current and valid mailing
134 address where the child will receive notice to appear at court

135 proceedings does not provide an adequate ground for excusal of
136 the child's nonappearance at the hearings.
137 (k) At his or her adjudicatory hearing, the child has been
138 found to have committed a delinquent act or violation of law and
139 has previously willfully failed to appear, after proper notice,
140 for other delinquency court proceedings of any nature regardless
141 of the results of the risk assessment instrument. A child may be
142 held in secure detention or, at the discretion of the court and
143 if available, placed on home detention with electronic
144 monitoring until the child's disposition order is entered in his
145 or her case. The child's failure to keep the clerk of court and
146 defense counsel informed of a current and valid mailing address
147 where the child will receive notice to appear at court
148 proceedings does not provide an adequate ground for excusal of
149 the child's nonappearance at the hearings.
150
151 A child who meets any of these criteria and who is ordered to be
152 detained pursuant to this subsection shall be given a hearing
153 within 24 hours after being taken into custody. The purpose of
154 the detention hearing is to determine the existence of probable
155 cause that the child has committed the delinquent act or
156 violation of law with which he or she is charged and the need
157 for continued detention, except where the child is alleged to
158 have absconded from a nonresidential commitment program in which
159 case the court, at the detention hearing, shall order that the
160 child be released from detention and returned to his or her
161 nonresidential commitment program. Unless a child is detained
162 under paragraph (d), ~~or~~ paragraph (e), or paragraph (k), the

163 court shall use the results of the risk assessment performed by
164 the juvenile probation officer and, based on the criteria in
165 this subsection, shall determine the need for continued
166 detention. A child placed into secure, nonsecure, or home
167 detention care may continue to be so detained by the court
168 pursuant to this subsection. If the court orders a placement
169 more restrictive than indicated by the results of the risk
170 assessment instrument, the court shall state, in writing, clear
171 and convincing reasons for such placement. Except as provided in
172 s. 790.22(8) or in subparagraph (10)(a)2., paragraph (10)(b),
173 paragraph (10)(c), or paragraph (10)(d), when a child is placed
174 into secure or nonsecure detention care, or into a respite home
175 or other placement pursuant to a court order following a
176 hearing, the court order must include specific instructions that
177 direct the release of the child from such placement no later
178 than 5 p.m. on the last day of the detention period specified in
179 paragraph (5)(b) or paragraph (5)(c), or subparagraph (10)(a)1.,
180 whichever is applicable, unless the requirements of such
181 applicable provision have been met or an order of continuance
182 has been granted pursuant to paragraph (5)(f).
183 (5)
184 (d) Except as provided in <u>paragraph (2)(k),</u> paragraph (g),
185 <u>or s. 985.228(5),</u> a child may not be held in secure, nonsecure,
186 or home detention care for more than 15 days following the entry
187 of an order of adjudication.
188 (g) Upon good cause being shown that the nature of the
189 charge requires additional time for the prosecution or defense
190 of the case, the court may extend the time limits for detention

191 specified in paragraph (c) or paragraph (d) an additional 9 days
192 if the child is charged with an offense that would be, if
193 committed by an adult, a capital felony, a life felony, a felony
194 of the first degree, or a felony of the second degree involving
195 violence against any individual.
196 Section 3. Subsection (5) of section 985.228, Florida
197 Statutes, is amended to read:
198 985.228 Adjudicatory hearings; withheld adjudications;
199 orders of adjudication.--
200 (5)(a) If the court finds that the child named in a
201 petition has committed a delinquent act or violation of law, but
202 elects not to proceed under subsection (4), it shall incorporate
203 that finding in an order of adjudication of delinquency entered
204 in the case, briefly stating the facts upon which the finding is
205 made, and the court shall thereafter have full authority under
206 this chapter to deal with the child as adjudicated.
207 (b) The order of adjudication of delinquency under
208 paragraph (a) shall also include conditions that must be
209 followed by the child until a disposition order is entered in
210 his or her case. These conditions must include, but are not
211 limited to, specifying that the child, during any period of time
212 that he or she:
213 1. Is not in secure detention, must comply with a curfew;
214 must attend school or another educational program, if eligible;
215 and is prohibited from engaging in ungovernable behavior.
216 2. Is in secure detention, is prohibited from engaging in
217 ungovernable behavior.

218 (c) For purposes of this subsection, the term
219 "ungovernable behavior" means:
220 1. The child's failing to obey the reasonable and lawful
221 demands of the child's parent or legal guardian and, where
222 applicable, the reasonable and lawful demands of a person
223 responsible for supervising the child while he or she is in
224 school, another educational program, or secure detention.
225 2. The child engaging in behavior that evidences a risk
226 that the child may fail to appear for future court proceedings
227 or may inflict harm upon others or the property of others.
228 3. Other behavior of the child as specified in writing by
229 the court in the order of adjudication of delinquency.
230 (d) If a child willfully violates a condition contained in
231 his or her order of adjudication of delinquency, the court may
232 find the child in direct or indirect contempt of court under s.
233 985.216; however, notwithstanding s. 985.216 and the results of
234 the risk assessment instrument, the child's sanctions for such
235 contempt of court shall be placement in secure detention or, at
236 the discretion of the court and if available, on home detention
237 with electronic monitoring until the child's disposition order
238 is entered in his or her case.
239 Section 4. Paragraph (a) of subsection (1) of section
240 985.231, Florida Statutes, is amended to read:
241 985.231 Powers of disposition in delinquency cases.--
242 (1)(a) The court that has jurisdiction of an adjudicated
243 delinquent child may, by an order stating the facts upon which a
244 determination of a sanction and rehabilitative program was made
245 at the disposition hearing:

246 1. Place the child in a probation program or a
247 postcommitment probation program under the supervision of an
248 authorized agent of the department or of any other person or
249 agency specifically authorized and appointed by the court,
250 whether in the child's own home, in the home of a relative of
251 the child, or in some other suitable place under such reasonable
252 conditions as the court may direct. A probation program for an
253 adjudicated delinquent child must include a penalty component
254 such as restitution in money or in kind, community service, a
255 curfew, revocation or suspension of the driver's license of the
256 child, or other nonresidential punishment appropriate to the
257 offense and must also include a rehabilitative program component
258 such as a requirement of participation in substance abuse
259 treatment or in school or other educational program. If the
260 child is attending or is eligible to attend public school and
261 the court finds that the victim or a sibling of the victim in
262 the case is attending or may attend the same school as the
263 child, the court placement order shall include a finding
264 pursuant to the proceedings described in s. 985.23(1)(d). Upon
265 the recommendation of the department at the time of disposition,
266 or subsequent to disposition pursuant to the filing of a
267 petition alleging a violation of the child's conditions of
268 postcommitment probation, the court may order the child to
269 submit to random testing for the purpose of detecting and
270 monitoring the use of alcohol or controlled substances.
271 a. A classification scale for levels of supervision shall
272 be provided by the department, taking into account the child's
273 needs and risks relative to probation supervision requirements

274 to reasonably ensure the public safety. Probation programs for
275 children shall be supervised by the department or by any other
276 person or agency specifically authorized by the court. These
277 programs must include, but are not limited to, structured or
278 restricted activities as described in this subparagraph, and
279 shall be designed to encourage the child toward acceptable and
280 functional social behavior. If supervision or a program of
281 community service is ordered by the court, the duration of such
282 supervision or program must be consistent with any treatment and
283 rehabilitation needs identified for the child and may not exceed
284 the term for which sentence could be imposed if the child were
285 committed for the offense, except that the duration of such
286 supervision or program for an offense that is a misdemeanor of
287 the second degree, or is equivalent to a misdemeanor of the
288 second degree, may be for a period not to exceed 6 months. When
289 restitution is ordered by the court, the amount of restitution
290 may not exceed an amount the child and the parent or guardian
291 could reasonably be expected to pay or make. A child who
292 participates in any work program under this part is considered
293 an employee of the state for purposes of liability, unless
294 otherwise provided by law.
295 b. The court may conduct judicial review hearings for a
296 child placed on probation for the purpose of fostering
297 accountability to the judge and compliance with other
298 requirements, such as restitution and community service. The
299 court may allow early termination of probation for a child who
300 has substantially complied with the terms and conditions of
301 probation.

302 c. If the conditions of the probation program or the
303 postcommitment probation program are violated, the department or
304 the state attorney may bring the child before the court on a
305 petition alleging a violation of the program. Any child who
306 violates the conditions of probation or postcommitment probation
307 must be brought before the court if sanctions are sought. A
308 child taken into custody under s. 985.207 for violating the
309 conditions of probation or postcommitment probation shall be
310 held in a consequence unit if such a unit is available. The
311 child shall be afforded a hearing within 24 hours after being
312 taken into custody to determine the existence of probable cause
313 that the child violated the conditions of probation or
314 postcommitment probation. A consequence unit is a secure
315 facility specifically designated by the department for children
316 who are taken into custody under s. 985.207 for violating
317 probation or postcommitment probation, or who have been found by
318 the court to have violated the conditions of probation or
319 postcommitment probation. If the violation involves a new charge
320 of delinquency, the child may be detained under s. 985.215 in a
321 facility other than a consequence unit. If the child is not
322 eligible for detention for the new charge of delinquency, the
323 child may be held in the consequence unit pending a hearing and
324 is subject to the time limitations specified in s. 985.215. If
325 the child denies violating the conditions of probation or
326 postcommitment probation, the court shall appoint counsel to
327 represent the child at the child's request. Upon the child's
328 admission, or if the court finds after a hearing that the child
329 has violated the conditions of probation or postcommitment

330 probation, the court shall enter an order revoking, modifying,
331 or continuing probation or postcommitment probation. In each
332 such case, the court shall enter a new disposition order and, in
333 addition to the sanctions set forth in this paragraph, may
334 impose any sanction the court could have imposed at the original
335 disposition hearing. If the child is found to have violated the
336 conditions of probation or postcommitment probation, the court
337 may:
338 (I) Place the child in a consequence unit in that judicial
339 circuit~~, if available,~~ for up to 5 days for a first violation~~,~~
340 and up to 15 days for a second or subsequent violation, or, if a
341 consequence unit is not available, the court may place the child
342 on home detention, which shall, subject to legislative
343 appropriation, include electronic monitoring.
344 ~~(II) Place the child on home detention with electronic~~
345 ~~monitoring. However, this sanction may be used only if a~~
346 ~~residential consequence unit is not available.~~
347 (II) ~~(III)~~ Modify or continue the child's probation program
348 or postcommitment probation program.
349 (III) ~~(IV)~~ Revoke probation or postcommitment probation and
350 commit the child to the department.
351 d. Notwithstanding s. 743.07 and paragraph (d), and except
352 as provided in s. 985.31, the term of any order placing a child
353 in a probation program must be until the child's 19th birthday
354 unless he or she is released by the court, on the motion of an
355 interested party or on its own motion.
356 2. Commit the child to a licensed child-caring agency
357 willing to receive the child, but the court may not commit the

358 child to a jail or to a facility used primarily as a detention
359 center or facility or shelter.
360 3. Commit the child to the department at a restrictiveness
361 level defined in s. 985.03. Such commitment must be for the
362 purpose of exercising active control over the child, including,
363 but not limited to, custody, care, training, urine monitoring,
364 and treatment of the child and release of the child from
365 residential commitment into the community in a postcommitment
366 nonresidential conditional release program. If the child is
367 eligible to attend public school following commitment and the
368 court finds that the victim or a sibling of the victim in the
369 case is or may be attending the same school as the child, the
370 commitment order shall include a finding pursuant to the
371 proceedings described in s. 985.23(1)(d). If the child is not
372 successful in the conditional release program, the department
373 may use the transfer procedure under s. 985.404. Notwithstanding
374 s. 743.07 and paragraph (d), and except as provided in s.
375 985.31, the term of the commitment must be until the child is
376 discharged by the department or until he or she reaches the age
377 of 21.
378 4. Revoke or suspend the driver's license of the child.
379 5. Require the child and, if the court finds it
380 appropriate, the child's parent or guardian together with the
381 child, to render community service in a public service program.
382 6. As part of the probation program to be implemented by
383 the department, or, in the case of a committed child, as part of
384 the community-based sanctions ordered by the court at the
385 disposition hearing or before the child's release from

386 commitment, order the child to make restitution in money,
387 through a promissory note cosigned by the child's parent or
388 guardian, or in kind for any damage or loss caused by the
389 child's offense in a reasonable amount or manner to be
390 determined by the court. The clerk of the circuit court shall be
391 the receiving and dispensing agent. In such case, the court
392 shall order the child or the child's parent or guardian to pay
393 to the office of the clerk of the circuit court an amount not to
394 exceed the actual cost incurred by the clerk as a result of
395 receiving and dispensing restitution payments. The clerk shall
396 notify the court if restitution is not made, and the court shall
397 take any further action that is necessary against the child or
398 the child's parent or guardian. A finding by the court, after a
399 hearing, that the parent or guardian has made diligent and good
400 faith efforts to prevent the child from engaging in delinquent
401 acts absolves the parent or guardian of liability for
402 restitution under this subparagraph.
403 7. Order the child and, if the court finds it appropriate,
404 the child's parent or guardian together with the child, to
405 participate in a community work project, either as an
406 alternative to monetary restitution or as part of the
407 rehabilitative or probation program.
408 8. Commit the child to the department for placement in a
409 program or facility for serious or habitual juvenile offenders
410 in accordance with s. 985.31. Any commitment of a child to a
411 program or facility for serious or habitual juvenile offenders
412 must be for an indeterminate period of time, but the time may
413 not exceed the maximum term of imprisonment that an adult may

414 serve for the same offense. The court may retain jurisdiction
415 over such child until the child reaches the age of 21,
416 specifically for the purpose of the child completing the
417 program.
418 9. In addition to the sanctions imposed on the child,
419 order the parent or guardian of the child to perform community
420 service if the court finds that the parent or guardian did not
421 make a diligent and good faith effort to prevent the child from
422 engaging in delinquent acts. The court may also order the parent
423 or guardian to make restitution in money or in kind for any
424 damage or loss caused by the child's offense. The court shall
425 determine a reasonable amount or manner of restitution, and
426 payment shall be made to the clerk of the circuit court as
427 provided in subparagraph 6.
428 10. Subject to specific appropriation, commit the juvenile
429 sexual offender to the department for placement in a program or
430 facility for juvenile sexual offenders in accordance with s.
431 985.308. Any commitment of a juvenile sexual offender to a
432 program or facility for juvenile sexual offenders must be for an
433 indeterminate period of time, but the time may not exceed the
434 maximum term of imprisonment that an adult may serve for the
435 same offense. The court may retain jurisdiction over a juvenile
436 sexual offender until the juvenile sexual offender reaches the
437 age of 21, specifically for the purpose of completing the
438 program.
439 Section 5. Paragraph (a) of subsection (1) of section
440 985.31, Florida Statutes, is amended to read:
441 985.31 Serious or habitual juvenile offender.--

442 (1) ASSESSMENT AND TREATMENT SERVICES.--Pursuant to the
443 provisions of this chapter and the establishment of appropriate
444 program guidelines and standards, contractual instruments, which
445 shall include safeguards of all constitutional rights, shall be
446 developed as follows:
447 (a) The department shall provide for:
448 1. The oversight of implementation of assessment and
449 treatment approaches.
450 2. The identification and prequalification of appropriate
451 individuals or not-for-profit organizations, including minority
452 individuals or organizations when possible, to provide
453 assessment and treatment services to serious or habitual
454 delinquent children.
455 3. The monitoring and evaluation of assessment and
456 treatment services for compliance with the provisions of this
457 chapter and all applicable rules and guidelines pursuant
458 thereto.
459 ~~4. The development of an annual report on the performance~~
460 ~~of assessment and treatment to be presented to the Governor, the~~
461 ~~Attorney General, the President of the Senate, the Speaker of~~
462 ~~the House of Representatives, and the Auditor General no later~~
463 ~~than January 1 of each year.~~
464 Section 6. Paragraph (a) of subsection (1) of section
465 985.311, Florida Statutes, is amended to read:
466 985.311 Intensive residential treatment program for
467 offenders less than 13 years of age.--
468 (1) ASSESSMENT AND TREATMENT SERVICES.--Pursuant to the
469 provisions of this chapter and the establishment of appropriate

470 program guidelines and standards, contractual instruments, which
471 shall include safeguards of all constitutional rights, shall be
472 developed for intensive residential treatment programs for
473 offenders less than 13 years of age as follows:
474 (a) The department shall provide for:
475 1. The oversight of implementation of assessment and
476 treatment approaches.
477 2. The identification and prequalification of appropriate
478 individuals or not-for-profit organizations, including minority
479 individuals or organizations when possible, to provide
480 assessment and treatment services to intensive offenders less
481 than 13 years of age.
482 3. The monitoring and evaluation of assessment and
483 treatment services for compliance with the provisions of this
484 chapter and all applicable rules and guidelines pursuant
485 thereto.
486 ~~4. The development of an annual report on the performance~~
487 ~~of assessment and treatment to be presented to the Governor, the~~
488 ~~Attorney General, the President of the Senate, the Speaker of~~
489 ~~the House of Representatives, the Auditor General, and the~~
490 ~~Office of Program Policy Analysis and Government Accountability~~
491 ~~no later than January 1 of each year.~~
492 Section 7. Subsection (5) of section 985.317, Florida
493 Statutes, is amended to read:
494 985.317 Literacy programs for juvenile offenders.--
495 ~~(5) EVALUATION AND REPORT.--The department, in~~
496 ~~consultation with the Department of Education, shall develop and~~
497 ~~implement an evaluation of the literacy program in order to~~

498 ~~determine the impact of the programs on recidivism. The~~
499 ~~department shall submit an annual report on the implementation~~
500 ~~and progress of the programs to the President of the Senate and~~
501 ~~the Speaker of the House of Representatives by January 1 of each~~
502 ~~year.~~
503 Section 8. Section 985.412, Florida Statutes, is amended
504 to read:
505 985.412 Program review and reporting requirements ~~Quality~~
506 ~~assurance and cost effectiveness~~.--
507 (1) LEGISLATIVE PURPOSE.--It is the intent of the
508 Legislature that the department:
509 (a) Ensure that information be provided to decisionmakers
510 in a timely manner so that resources are allocated to programs
511 that ~~of the department which~~ achieve desired performance levels.
512 (b) Collect and analyze available statistical data for the
513 purpose of ongoing evaluation of all programs.
514 (c) ~~(b)~~ Provide information about the cost of ~~such~~ programs
515 and their differential effectiveness so that program ~~the~~ quality
516 may ~~of such programs can~~ be compared and improvements made
517 continually.
518 (d) ~~(c)~~ Provide information to aid in developing related
519 policy issues and concerns.
520 (e) ~~(d)~~ Provide information to the public about the
521 effectiveness of ~~such~~ programs in meeting established goals and
522 objectives.
523 (f) ~~(e)~~ Provide a basis for a system of accountability so
524 that each youth ~~client~~ is afforded the best programs to meet his
525 or her needs.

526 (g) ~~(f)~~ Improve service delivery to youth ~~clients~~.
527 (h) ~~(g)~~ Modify or eliminate activities that are not
528 effective.
529 (2) DEFINITIONS.--As used in this section, the term:
530 (a) "Youth" ~~"Client"~~ means any person who is being
531 provided treatment or services by the department or by a
532 provider under contract with the department.
533 (b) "Program" means any facility, service, or program for
534 youth that is operated by the department or by a provider under
535 contract with the department.
536 (c) ~~(b)~~ "Program component" means an aggregation of
537 generally related objectives which, because of their special
538 character, related workload, and interrelated output, can
539 logically be considered an entity for purposes of organization,
540 management, accounting, reporting, and budgeting.
541 ~~(c) "Program effectiveness" means the ability of the~~
542 ~~program to achieve desired client outcomes, goals, and~~
543 ~~objectives.~~
544 (d) "Program group" means a collection of programs with
545 sufficient similarity of function, services, and youth to permit
546 appropriate comparisons among programs within the group.
547 (3) OUTCOME EVALUATION.--The department, in consultation
548 with the Office of Economic and Demographic Research, the Office
549 of Program Policy Analysis and Government Accountability, and
550 contract service providers, shall develop and use a standard
551 methodology for annually measuring, evaluating, and reporting
552 program outputs and youth outcomes for each program and program
553 group.

554 (a) The standard methodology must:
555 1. Incorporate, whenever possible, performance-based
556 budgeting measures.
557 2. Include common terminology and operational definitions
558 for measuring the performance of system and program
559 administration, program outputs, and youth outcomes.
560 3. Specify program outputs for each program and for each
561 program group within the juvenile justice continuum.
562 4. Specify desired youth outcomes and methods by which to
563 measure youth outcomes for each program and program group.
564 (b) By February 15 of each year, the department shall
565 submit to the appropriate substantive and fiscal committees of
566 each house of the Legislature and the Governor a report that
567 identifies and describes:
568 1. The standard methodology implemented under paragraph
569 (a).
570 2. The programs offered within each program group.
571 3. The demographic profile and offense history of youth
572 served in each program group.
573 4. The actual program outputs and youth outcomes achieved
574 in each program group. ~~The department shall annually collect and~~
575 ~~report cost data for every program operated or contracted by the~~
576 ~~department. The cost data shall conform to a format approved by~~
577 ~~the department and the Legislature. Uniform cost data shall be~~
578 ~~reported and collected for state-operated and contracted~~
579 ~~programs so that comparisons can be made among programs. The~~
580 ~~department shall ensure that there is accurate cost accounting~~
581 ~~for state-operated services including market-equivalent rent and~~

582 ~~other shared cost. The cost of the educational program provided~~
583 ~~to a residential facility shall be reported and included in the~~
584 ~~cost of a program. The department shall submit an annual cost~~
585 ~~report to the President of the Senate, the Speaker of the House~~
586 ~~of Representatives, the Minority Leader of each house of the~~
587 ~~Legislature, the appropriate substantive and fiscal committees~~
588 ~~of each house of the Legislature, and the Governor, no later~~
589 ~~than December 1 of each year. Cost benefit analysis for~~
590 ~~educational programs will be developed and implemented in~~
591 ~~collaboration with and in cooperation with the Department of~~
592 ~~Education, local providers, and local school districts. Cost~~
593 ~~data for the report shall include data collected by the~~
594 ~~Department of Education for the purposes of preparing the annual~~
595 ~~report required by s. 1003.52(19).~~
596 (4)~~(a)~~ PROGRAM ACCOUNTABILITY MEASURES.--The department ~~of~~
597 ~~Juvenile Justice~~, in consultation with the Office of Economic
598 and Demographic Research~~,~~ and contract service providers, shall
599 develop a cost-effectiveness model and apply the model to each
600 commitment program. ~~Program recidivism rates shall be a~~
601 ~~component of the model.~~
602 (a) The cost-effectiveness model shall compare program
603 costs to expected and actual youth recidivism rates ~~client~~
604 ~~outcomes and program outputs~~. It is the intent of the
605 Legislature that continual development efforts take place to
606 improve the validity and reliability of the cost-effectiveness
607 model ~~and to integrate the standard methodology developed under~~
608 ~~s. 985.401(4) for interpreting program outcome evaluations~~.

609 (b) The department shall rank commitment programs based on
610 the cost-effectiveness model and shall submit a report to the
611 appropriate substantive and fiscal committees of each house of
612 the Legislature by January 15 ~~December 31~~ of each year.
613 (c) Based on ~~reports of the department on client outcomes~~
614 ~~and program outputs and on~~ the department's most recent cost-
615 effectiveness rankings, the department may terminate a
616 commitment program ~~operated by the department or a provider~~ if
617 the program has failed to achieve a minimum threshold of cost-
618 effectiveness ~~program effectiveness~~. This paragraph does not
619 preclude the department from terminating a contract as provided
620 under this section or as otherwise provided by law or contract~~,~~
621 and does not limit the department's authority to enter into or
622 terminate a contract.
623 (d) In collaboration with the Office of Economic and
624 Demographic Research~~,~~ and contract service providers, the
625 department shall develop a work plan to refine the cost-
626 effectiveness model so that the model is consistent with the
627 performance-based program budgeting measures approved by the
628 Legislature to the extent the department deems appropriate. The
629 department shall notify the Office of Program Policy Analysis
630 and Government Accountability of any meetings to refine the
631 model.
632 (e) Contingent upon specific appropriation, the
633 department, in consultation with the Office of Economic and
634 Demographic Research~~,~~ and contract service providers, shall:
635 1. Construct a profile of each commitment program that
636 uses the results of the quality assurance report required by

637 this section, the cost-effectiveness report required in this
638 subsection, and other reports available to the department.
639 2. Target, for a more comprehensive evaluation, any
640 commitment program that has achieved consistently high, low, or
641 disparate ratings in the reports required under subparagraph 1.
642 3. Identify the essential factors that contribute to the
643 high, low, or disparate program ratings.
644 4. Use the results of these evaluations in developing or
645 refining juvenile justice programs or program models, youth
646 ~~client~~ outcomes and program outputs, provider contracts, quality
647 assurance standards, and the cost-effectiveness model.
648 (5) QUALITY ASSURANCE.--The department shall:
649 (a) Establish a comprehensive quality assurance system for
650 each program ~~operated by the department or operated by a~~
651 ~~provider under contract with the department~~. Each contract
652 entered into by the department must provide for quality
653 assurance.
654 (b) Provide operational definitions of and criteria for
655 quality assurance for each specific program component.
656 (c) Establish quality assurance goals and objectives for
657 each specific program component.
658 (d) Establish the information and specific data elements
659 required for the quality assurance program.
660 (e) Develop a quality assurance manual of specific,
661 standardized terminology and procedures to be followed by each
662 program.
663 (f) Evaluate each program ~~operated by the department or a~~
664 ~~provider under a contract with the department~~ and establish

665 minimum thresholds for each program component. If a provider
666 fails to meet the established minimum thresholds, such failure
667 shall cause the department to cancel the provider's contract
668 unless the provider achieves compliance with minimum thresholds
669 within 6 months or unless there are documented extenuating
670 circumstances. In addition, the department may not contract with
671 the same provider for the canceled service for a period of 12
672 months. If a department-operated program fails to meet the
673 established minimum thresholds, the department must take
674 necessary and sufficient steps to ensure and document program
675 changes to achieve compliance with the established minimum
676 thresholds. If the department-operated program fails to achieve
677 compliance with the established minimum thresholds within 6
678 months and if there are no documented extenuating circumstances,
679 the department must notify the Executive Office of the Governor
680 and the Legislature of the corrective action taken. Appropriate
681 corrective action may include, but is not limited to:
682 1. Contracting out for the services provided in the
683 program;
684 2. Initiating appropriate disciplinary action against all
685 employees whose conduct or performance is deemed to have
686 materially contributed to the program's failure to meet
687 established minimum thresholds;
688 3. Redesigning the program; or
689 4. Realigning the program.
690 (g) ~~The department shall~~ Submit an annual report to the
691 President of the Senate, the Speaker of the House of
692 Representatives, the minority leader of each house of the

693 Legislature, the appropriate substantive and fiscal committees
694 of each house of the Legislature, and the Governor by~~, no later~~
695 ~~than~~ February 1 of each year. The annual report must contain, at
696 a minimum, for each ~~specific~~ program ~~component~~:
697 1. A comprehensive description of the population served.
698 ~~by the program;~~
699 2. A specific description of its ~~the~~ services.
700 3. A summary of the performance of each program component
701 evaluated. ~~provided by the program;~~
702 4. Cost data that is reported in a uniform format so that
703 cost comparisons may be made among programs. For a residential
704 program, the cost data must include the cost of its educational
705 program.~~;~~
706 5. A comparison of expenditures to federal and state
707 funding.~~;~~
708 6. Immediate and long-range concerns.~~; and~~
709 7. Recommendations to maintain, expand, improve, modify,
710 or eliminate each program component so that changes in services
711 lead to enhancement in program quality. ~~The department shall~~
712 ~~ensure the reliability and validity of the information contained~~
713 ~~in the report.~~
714 ~~(6) The department shall collect and analyze available~~
715 ~~statistical data for the purpose of ongoing evaluation of all~~
716 ~~programs. The department shall provide the Legislature with~~
717 ~~necessary information and reports to enable the Legislature to~~
718 ~~make informed decisions regarding the effectiveness of, and any~~
719 ~~needed changes in, services, programs, policies, and laws.~~

720 ~~(7) No later than November 1, 2001, the department shall~~
721 ~~submit a proposal to the Legislature concerning funding~~
722 ~~incentives and disincentives for the department and for~~
723 ~~providers under contract with the department. The~~
724 ~~recommendations for funding incentives and disincentives shall~~
725 ~~be based upon both quality assurance performance and cost-~~
726 ~~effectiveness performance. The proposal should strive to achieve~~
727 ~~consistency in incentives and disincentives for both department-~~
728 ~~operated and contractor provided programs. The department may~~
729 ~~include recommendations for the use of liquidated damages in the~~
730 ~~proposal; however, the department is not presently authorized to~~
731 ~~contract for liquidated damages in non-hardware-secure~~
732 ~~facilities until January 1, 2002.~~
733 Section 9. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

This bill would take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

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

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

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

C. SECTION DIRECTORY:

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

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

Section 3. Provides an effective date upon becoming law.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to accessories to a crime; providing a
3 short title; amending s. 777.03, F.S.; limiting the
4 provision that exempts certain members of an offender's
5 family from being charged with the offense of acting as an
6 accessory after the fact to circumstances involving third
7 degree felony offenses; specifying additional actions that
8 constitute being an accessory after the fact, for which
9 penalties are provided; providing an effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. This act may be cited as the "Jason A. Gucwa
14 Act."
15 Section 2. Subsection (1) of section 777.03, Florida
16 Statutes, is amended to read:
17 777.03 Accessory after the fact.--
18 (1)(a) Any person not standing in the relation of husband
19 or wife, parent or grandparent, child or grandchild, brother or
20 sister, by consanguinity or affinity to the offender, who
21 maintains or assists the principal or an accessory before the
22 fact, or gives the offender any other aid, knowing that the
23 offender had committed a crime and such crime was a third degree
24 felony, or had been an accessory thereto before the fact, with
25 the intent that the offender avoids or escapes detection,
26 arrest, trial or punishment, is an accessory after the fact.
27 (b) Any person~~, regardless of the relation to the~~
28 ~~offender,~~ who maintains or assists the principal or accessory

29 before the fact, or gives the offender any other aid, knowing
30 that the offender had committed the offense of child abuse,
31 neglect of a child, aggravated child abuse, aggravated
32 manslaughter of a child under 18 years of age, or murder of a
33 child under 18 years of age, or had been an accessory thereto
34 before the fact, with the intent that the offender avoids or
35 escapes detection, arrest, trial, or punishment, is an accessory
36 after the fact unless the court finds that the person is a
37 victim of domestic violence.
38 (c) Any person who maintains or assists the principal or
39 an accessory before the fact, or gives the offender any other
40 aid, knowing that the offender had committed a crime and such
41 crime was a first or second degree felony, or had been an
42 accessory thereto before the fact, with the intent that the
43 offender avoids or escapes detection, arrest, trial, or
44 punishment, is an accessory after the fact.
45 Section 3. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **367**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Criminal Justice Appropriations
2 Committee
3 Representative(s) Carroll offered the following:
4
5 **Amendment (with directory and title amendments)**
6 Remove line(s) 41 and insert:
7 crime was a capital, life, first or second degree felony, or had
8 been an
9

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

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

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Human Trafficking

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

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

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

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

Federal legislation

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

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

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

Current law

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

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

"Forced labor or services" is currently defined as:

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

Effect of bill

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. SECTION DIRECTORY:

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

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

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

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

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

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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

This analysis reflects HB 469 as a committee substitute.

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

The bill was reported favorably as a committee substitute.

CHAMBER ACTION

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1 The Future of Florida's Families Committee recommends the
2 following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to human trafficking; amending s. 787.06,
8 F.S.; providing legislative findings and intent;
9 redefining the term "forced labor or services" to include
10 labor obtained from a person when the person's
11 identification documents are destroyed, concealed, or
12 withheld by another or obtained through fraud or coercion;
13 defining the terms "financial harm" and "maintain";
14 prohibiting benefiting financially or receiving anything
15 of value from participation in a venture that has
16 subjected a person to forced labor or services; providing
17 criminal penalties; directing the Florida Court
18 Educational Council to establish standards for instructing
19 circuit and county court judges on matters relating to
20 victims of human trafficking; directing the council to
21 provide for periodic and timely instruction; amending s.
22 772.102, F.S.; expanding the definition of the term
23 "criminal activity" to include the offense of human

24 trafficking for purposes of seeking civil remedies for
25 criminal offenses; amending s. 772.104, F.S.; providing
26 that persons who are victims of sex trafficking have a
27 civil action to recover three times the profit of the sex
28 trafficking; amending s. 895.02, F.S.; redefining the term
29 "racketeering activity" to include the offense of human
30 trafficking for purposes of the Florida RICO Act;
31 reenacting ss. 16.56(1)(a), 655.50(3)(g), 896.101(2)(g),
32 and 905.34, F.S., relating to the authority of the Office
33 of the Statewide Prosecutor, the definition of "specified
34 unlawful activity" in a law prohibiting money laundering
35 in financial institutions and in the Florida Money
36 Laundering Act, and the subject matter jurisdiction of a
37 statewide grand jury, to incorporate the amendments made
38 to s. 895.02, F.S., in references thereto; providing an
39 effective date.
40
41 Be It Enacted by the Legislature of the State of Florida:
42
43 Section 1. Section 787.06, Florida Statutes, is amended to
44 read:
45 787.06 Human trafficking.--
46 (1)(a) The Legislature finds that human trafficking is a
47 form of modern-day slavery. Victims of human trafficking are
48 young children, teenagers, and adults. Thousands of victims are
49 trafficked annually across international borders worldwide. Many
50 of these victims are trafficked into this state. The Legislature
51 finds that victims of human trafficking are subjected to force,

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

80 trafficking and direct victims to appropriate agencies for
81 assistance. It is the intent of the Legislature that the
82 Department of Children and Family Services and other state
83 agencies cooperate with other state and federal agencies to
84 ensure that victims of human trafficking can access social
85 services and benefits to alleviate their plight.
86 (2) ~~(1)~~ As used in this section, the term:
87 (a) "Financial harm" includes extortionate extension of
88 credit, loan sharking as defined in s. 687.071, or employment
89 contracts that violate the statute of frauds as provided in s.
90 725.01.
91 (b) "Forced labor or services" means labor or services
92 obtained from a person by:
93 1. Using or threatening to use physical force against that
94 person or another person; ~~or~~
95 2. Restraining, isolating, or confining or threatening to
96 restrain, isolate, or confine that person or another person
97 without lawful authority and against her or his will; ~~.~~
98 3. Destroying, concealing, removing, confiscating,
99 withholding, or possessing any actual or purported passport,
100 visa, or other immigration document, or any other actual or
101 purported government identification document, of that person or
102 another person; or
103 4. Fraud or coercion.
104 (c) ~~(b)~~ "Human trafficking" means transporting, soliciting,
105 recruiting, harboring, providing, or obtaining another person
106 for transport.

107 (d) "Maintain," when used in relation to labor or
108 services, means to secure continued performance thereof,
109 regardless of any initial agreement on the part of the victim to
110 perform such type of service.
111 (3) ~~(2)~~ Any person who knowingly:
112 (a) Engages in human trafficking with the intent or
113 knowledge that the trafficked person will be subjected to ~~engage~~
114 ~~in~~ forced labor or services; or
115 (b) Benefits financially or by receiving anything of value
116 from participation in a venture that has subjected a person to
117 forced labor or services,
118
119 commits a felony of the second degree, punishable as provided in
120 s. 775.082, s. 775.083, or s. 775.084.
121 (4) The Florida Court Educational Council shall establish
122 standards of instruction for circuit and county court judges who
123 hear cases involving victims of human trafficking and shall
124 provide for periodic and timely instruction.
125 Section 2. Subsection (1) of section 772.102, Florida
126 Statutes, is amended to read:
127 772.102 Definitions.--As used in this chapter, the term:
128 (1) "Criminal activity" means to commit, to attempt to
129 commit, to conspire to commit, or to solicit, coerce, or
130 intimidate another person to commit:
131 (a) Any crime that ~~which~~ is chargeable by indictment or
132 information under the following provisions:
133 1. Section 210.18, relating to evasion of payment of
134 cigarette taxes.

135 2. Section 414.39, relating to public assistance fraud.
136 3. Section 440.105 or s. 440.106, relating to workers'
137 compensation.
138 4. Part IV of chapter 501, relating to telemarketing.
139 5. Chapter 517, relating to securities transactions.
140 6. Section 550.235, s. 550.3551, or s. 550.3605, relating
141 to dogracing and horseracing.
142 7. Chapter 550, relating to jai alai frontons.
143 8. Chapter 552, relating to the manufacture, distribution,
144 and use of explosives.
145 9. Chapter 562, relating to beverage law enforcement.
146 10. Section 624.401, relating to transacting insurance
147 without a certificate of authority, s. 624.437(4)(c)1., relating
148 to operating an unauthorized multiple-employer welfare
149 arrangement, or s. 626.902(1)(b), relating to representing or
150 aiding an unauthorized insurer.
151 11. Chapter 687, relating to interest and usurious
152 practices.
153 12. Section 721.08, s. 721.09, or s. 721.13, relating to
154 real estate timeshare plans.
155 13. Chapter 782, relating to homicide.
156 14. Chapter 784, relating to assault and battery.
157 15. Chapter 787, relating to kidnapping <u>or human</u>
158 <u>trafficking</u>.
159 16. Chapter 790, relating to weapons and firearms.
160 17. Section 796.03, s. 796.04, <u>s. 796.045,</u> s. 796.05, or
161 s. 796.07, relating to prostitution <u>or sex trafficking</u>.
162 18. Chapter 806, relating to arson.

163 19. Section 810.02(2)(c), relating to specified burglary
164 of a dwelling or structure.
165 20. Chapter 812, relating to theft, robbery, and related
166 crimes.
167 21. Chapter 815, relating to computer-related crimes.
168 22. Chapter 817, relating to fraudulent practices, false
169 pretenses, fraud generally, and credit card crimes.
170 23. Section 827.071, relating to commercial sexual
171 exploitation of children.
172 24. Chapter 831, relating to forgery and counterfeiting.
173 25. Chapter 832, relating to issuance of worthless checks
174 and drafts.
175 26. Section 836.05, relating to extortion.
176 27. Chapter 837, relating to perjury.
177 28. Chapter 838, relating to bribery and misuse of public
178 office.
179 29. Chapter 843, relating to obstruction of justice.
180 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
181 s. 847.07, relating to obscene literature and profanity.
182 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
183 849.25, relating to gambling.
184 32. Chapter 893, relating to drug abuse prevention and
185 control.
186 33. Section 914.22 or s. 914.23, relating to witnesses,
187 victims, or informants.
188 34. Section 918.12 or s. 918.13, relating to tampering
189 with jurors and evidence.

190 (b) Any conduct which is subject to indictment or
191 information as a criminal offense and listed in 18 U.S.C. s.
192 1961(1) (A), (B), (C), or (D).
193 Section 3. Section 772.104, Florida Statutes, is amended
194 to read:
195 772.104 Civil cause of action.--Any person who proves by
196 clear and convincing evidence that he or she has been injured by
197 reason of any violation of the provisions of s. 772.103 shall
198 have a cause of action for threefold the actual damages
199 sustained and, in any such action, is entitled to minimum
200 damages in the amount of $200, and reasonable attorney's fees
201 and court costs in the trial and appellate courts. <u>If the</u>
202 <u>violation is related to sex trafficking, the injured person</u>
203 <u>shall have a cause of action for threefold the amount of profit</u>
204 <u>gained from the sex trafficking.</u> In no event shall punitive
205 damages be awarded under this section. The defendant shall be
206 entitled to recover reasonable attorney's fees and court costs
207 in the trial and appellate courts upon a finding that the
208 claimant raised a claim which was without substantial fact or
209 legal support. In awarding attorney's fees and costs under this
210 section, the court shall not consider the ability of the
211 opposing party to pay such fees and costs. Nothing under this
212 section shall be interpreted as limiting any right to recover
213 attorney's fees or costs provided under other provisions of law.
214 Section 4. Subsection (1) of section 895.02, Florida
215 Statutes, as amended by section 3 of chapter 2005-362, Laws of
216 Florida, is amended to read:

217 895.02 Definitions.--As used in ss. 895.01-895.08, the
218 term:
219 (1) "Racketeering activity" means to commit, to attempt to
220 commit, to conspire to commit, or to solicit, coerce, or
221 intimidate another person to commit:
222 (a) Any crime that ~~which~~ is chargeable by indictment or
223 information under the following provisions of the Florida
224 Statutes:
225 1. Section 210.18, relating to evasion of payment of
226 cigarette taxes.
227 2. Section 403.727(3)(b), relating to environmental
228 control.
229 3. Section 409.920 or s. 409.9201, relating to Medicaid
230 fraud.
231 4. Section 414.39, relating to public assistance fraud.
232 5. Section 440.105 or s. 440.106, relating to workers'
233 compensation.
234 6. Section 443.071(4), relating to creation of a
235 fictitious employer scheme to commit unemployment compensation
236 fraud.
237 7. Section 465.0161, relating to distribution of medicinal
238 drugs without a permit as an Internet pharmacy.
239 8. Sections 499.0051, 499.0052, 499.00535, 499.00545, and
240 499.0691, relating to crimes involving contraband and
241 adulterated drugs.
242 9. Part IV of chapter 501, relating to telemarketing.
243 10. Chapter 517, relating to sale of securities and
244 investor protection.

245 11. Section 550.235, s. 550.3551, or s. 550.3605, relating
246 to dogracing and horseracing.
247 12. Chapter 550, relating to jai alai frontons.
248 13. Section 551.109, relating to slot machine gaming.
249 14. Chapter 552, relating to the manufacture,
250 distribution, and use of explosives.
251 15. Chapter 560, relating to money transmitters, if the
252 violation is punishable as a felony.
253 16. Chapter 562, relating to beverage law enforcement.
254 17. Section 624.401, relating to transacting insurance
255 without a certificate of authority, s. 624.437(4)(c)1., relating
256 to operating an unauthorized multiple-employer welfare
257 arrangement, or s. 626.902(1)(b), relating to representing or
258 aiding an unauthorized insurer.
259 18. Section 655.50, relating to reports of currency
260 transactions, when such violation is punishable as a felony.
261 19. Chapter 687, relating to interest and usurious
262 practices.
263 20. Section 721.08, s. 721.09, or s. 721.13, relating to
264 real estate timeshare plans.
265 21. Chapter 782, relating to homicide.
266 22. Chapter 784, relating to assault and battery.
267 23. Chapter 787, relating to kidnapping <u>or human</u>
268 <u>trafficking</u>.
269 24. Chapter 790, relating to weapons and firearms.
270 25. Section 796.03, s. 796.035, s. 796.04, s. 796.045, s.
271 796.05, or s. 796.07, relating to prostitution and sex
272 trafficking.

273 26. Chapter 806, relating to arson.
274 27. Section 810.02(2)(c), relating to specified burglary
275 of a dwelling or structure.
276 28. Chapter 812, relating to theft, robbery, and related
277 crimes.
278 29. Chapter 815, relating to computer-related crimes.
279 30. Chapter 817, relating to fraudulent practices, false
280 pretenses, fraud generally, and credit card crimes.
281 31. Chapter 825, relating to abuse, neglect, or
282 exploitation of an elderly person or disabled adult.
283 32. Section 827.071, relating to commercial sexual
284 exploitation of children.
285 33. Chapter 831, relating to forgery and counterfeiting.
286 34. Chapter 832, relating to issuance of worthless checks
287 and drafts.
288 35. Section 836.05, relating to extortion.
289 36. Chapter 837, relating to perjury.
290 37. Chapter 838, relating to bribery and misuse of public
291 office.
292 38. Chapter 843, relating to obstruction of justice.
293 39. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
294 s. 847.07, relating to obscene literature and profanity.
295 40. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
296 849.25, relating to gambling.
297 41. Chapter 874, relating to criminal street gangs.
298 42. Chapter 893, relating to drug abuse prevention and
299 control.

300 43. Chapter 896, relating to offenses related to financial
301 transactions.
302 44. Sections 914.22 and 914.23, relating to tampering with
303 a witness, victim, or informant, and retaliation against a
304 witness, victim, or informant.
305 45. Sections 918.12 and 918.13, relating to tampering with
306 jurors and evidence.
307 (b) Any conduct defined as "racketeering activity" under
308 18 U.S.C. s. 1961(1).
309 Section 5. For the purpose of incorporating the amendment
310 made by this act to section 895.02, Florida Statutes, in a
311 reference thereto, paragraph (a) of subsection (1) of section
312 16.56, Florida Statutes, is reenacted to read:
313 16.56 Office of Statewide Prosecution.--
314 (1) There is created in the Department of Legal Affairs an
315 Office of Statewide Prosecution. The office shall be a separate
316 "budget entity" as that term is defined in chapter 216. The
317 office may:
318 (a) Investigate and prosecute the offenses of:
319 1. Bribery, burglary, criminal usury, extortion, gambling,
320 kidnapping, larceny, murder, prostitution, perjury, robbery,
321 carjacking, and home-invasion robbery;
322 2. Any crime involving narcotic or other dangerous drugs;
323 3. Any violation of the provisions of the Florida RICO
324 (Racketeer Influenced and Corrupt Organization) Act, including
325 any offense listed in the definition of racketeering activity in
326 s. 895.02(1)(a), providing such listed offense is investigated
327 in connection with a violation of s. 895.03 and is charged in a

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

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

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

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

Bill No. **0469**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Criminal Justice Appropriations
2 Committee
3 Representative Gannon offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Section 787.06, Florida Statutes, is amended to
8 read:
9 787.06 Human trafficking.--
10 (1)(a) The Legislature finds that human trafficking is a
11 form of modern-day slavery. Victims of human trafficking are
12 young children, teenagers, and adults. Thousands of victims are
13 trafficked annually across international borders worldwide. Many
14 of these victims are trafficked into this state. The Legislature
15 finds that victims of human trafficking are subjected to force,
16 fraud, or coercion for the purpose of sexual exploitation or
17 forced labor.
18 (b) The Legislature finds that while many victims of human
19 trafficking are forced to work in prostitution or the sexual
20 entertainment industry, trafficking also occurs in forms of
21 labor exploitation, such as domestic servitude, restaurant work,

22 janitorial work, sweatshop factory work, and migrant
23 agricultural work.
24 (c) The Legislature finds that traffickers use various
25 techniques to instill fear in victims and to keep them enslaved.
26 Some traffickers keep their victims under lock and key. However,
27 the most frequently used practices are less obvious techniques
28 that include isolating victims from the public and family
29 members; confiscating passports, visas, or other identification
30 documents; using or threatening to use violence toward victims
31 or their families; telling victims that they will be imprisoned
32 or deported for immigration violations if they contact
33 authorities; and controlling the victims' funds by holding the
34 money for "safekeeping."
35 (d) It is the intent of the Legislature that the
36 perpetrators of human trafficking be penalized for their illegal
37 conduct and that the victims of trafficking be protected and
38 assisted by this state and its agencies. In furtherance of this
39 policy, it is the intent of the Legislature that the state
40 Supreme Court, The Florida Bar, and relevant state agencies
41 prepare and implement training programs in order that judges,
42 attorneys, law enforcement personnel, investigators, and others
43 are able to identify traffickers and victims of human
44 trafficking and direct victims to appropriate agencies for
45 assistance. It is the intent of the Legislature that the
46 Department of Children and Family Services and other state
47 agencies cooperate with other state and federal agencies to
48 ensure that victims of human trafficking can access social
49 services and benefits to alleviate their plight.
50 (2) ~~(1)~~ As used in this section, the term:
51 (a) "Financial harm" includes extortionate extension of
52 credit, loan sharking as defined in s. 687.071, or employment

53 contracts that violate the statute of frauds as provided in s.
54 725.01.
55 (b) "Forced labor or services" means labor or services
56 obtained from a person by:
57 1. Using or threatening to use physical force against that
58 person or another person; ~~or~~
59 2. Restraining, isolating, or confining or threatening to
60 restrain, isolate, or confine that person or another person
61 without lawful authority and against her or his will;~~.~~
62 3. Using lending or other credit methods to establish a
63 debt by that person or another person when the labor or services
64 are pledged as a security for the debt, if the value of the
65 labor or services as reasonably assessed is not applied toward
66 the liquidation of the debt of the length and nature of the
67 labor or services are not respectively limited and defined; or
68 4. Destroying, concealing, removing, confiscating,
69 withholding, or possessing any actual or purported passport,
70 visa, or other immigration document, or any other actual or
71 purported government identification document, of that person or
72 another person.
73 5. Causing or threatening to cause financial harm to any
74 person.
75 (c) ~~(b)~~ "Human trafficking" means transporting, soliciting,
76 recruiting, harboring, providing, or obtaining another person
77 for transport.
78 (3) ~~(2)~~ Any person who knowingly engages or attempts to
79 engage in human trafficking with the intent that the trafficked
80 person engage in forced labor or services or who knowingly
81 benefits financially or knowingly receives anything of value
82 from human trafficking when the trafficked person engages in

83 forced labor or services commits a felony of the second degree,
84 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
85 Section 2. Subsection (1) of section 772.102, Florida
86 Statutes, is amended to read:
87 772.102 Definitions.--As used in this chapter, the term:
88 (1) "Criminal activity" means to commit, to attempt to
89 commit, to conspire to commit, or to solicit, coerce, or
90 intimidate another person to commit:
91 (a) Any crime that ~~which~~ is chargeable by indictment or
92 information under the following provisions:
93 1. Section 210.18, relating to evasion of payment of
94 cigarette taxes.
95 2. Section 414.39, relating to public assistance fraud.
96 3. Section 440.105 or s. 440.106, relating to workers'
97 compensation.
98 4. Part IV of chapter 501, relating to telemarketing.
99 5. Chapter 517, relating to securities transactions.
100 6. Section 550.235, s. 550.3551, or s. 550.3605, relating
101 to dogracing and horseracing.
102 7. Chapter 550, relating to jai alai frontons.
103 8. Chapter 552, relating to the manufacture, distribution,
104 and use of explosives.
105 9. Chapter 562, relating to beverage law enforcement.
106 10. Section 624.401, relating to transacting insurance
107 without a certificate of authority, s. 624.437(4)(c)1., relating
108 to operating an unauthorized multiple-employer welfare
109 arrangement, or s. 626.902(1)(b), relating to representing or
110 aiding an unauthorized insurer.
111 11. Chapter 687, relating to interest and usurious
112 practices.

113 12. Section 721.08, s. 721.09, or s. 721.13, relating to
114 real estate timeshare plans.
115 13. Chapter 782, relating to homicide.
116 14. Chapter 784, relating to assault and battery.
117 15. Chapter 787, relating to kidnapping or human
118 trafficking.
119 16. Chapter 790, relating to weapons and firearms.
120 17. Section 796.03, s. 796.04, s. 796.045, s. 796.05, or
121 s. 796.07, relating to prostitution.
122 18. Chapter 806, relating to arson.
123 19. Section 810.02(2)(c), relating to specified burglary
124 of a dwelling or structure.
125 20. Chapter 812, relating to theft, robbery, and related
126 crimes.
127 21. Chapter 815, relating to computer-related crimes.
128 22. Chapter 817, relating to fraudulent practices, false
129 pretenses, fraud generally, and credit card crimes.
130 23. Section 827.071, relating to commercial sexual
131 exploitation of children.
132 24. Chapter 831, relating to forgery and counterfeiting.
133 25. Chapter 832, relating to issuance of worthless checks
134 and drafts.
135 26. Section 836.05, relating to extortion.
136 27. Chapter 837, relating to perjury.
137 28. Chapter 838, relating to bribery and misuse of public
138 office.
139 29. Chapter 843, relating to obstruction of justice.
140 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
141 s. 847.07, relating to obscene literature and profanity.
142 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
143 849.25, relating to gambling.

144 32. Chapter 893, relating to drug abuse prevention and
145 control.
146 33. Section 914.22 or s. 914.23, relating to witnesses,
147 victims, or informants.
148 34. Section 918.12 or s. 918.13, relating to tampering
149 with jurors and evidence.
150 (b) Any conduct which is subject to indictment or
151 information as a criminal offense and listed in 18 U.S.C. s.
152 1961(1) (A), (B), (C), or (D).
153 Section 3. Section 772.104, Florida Statutes, is amended
154 to read:
155 772.104 Civil cause of action.--
156 (1) Any person who proves by clear and convincing evidence
157 that he or she has been injured by reason of any violation of
158 the provisions of s. 772.103 shall have a cause of action for
159 threefold the actual damages sustained and, in any such action,
160 is entitled to minimum damages in the amount of $200, and
161 reasonable attorney's fees and court costs in the trial and
162 appellate courts.
163 (2) As an alternative to recovery under subsection (1),
164 any person who proves by clear and convincing evidence that he
165 or she has been injured by reason of any violation of the
166 provisions of s. 772.103 due to sex trafficking or human
167 trafficking shall have a cause of action for threefold the
168 amount gained from the sex trafficking or human trafficking and,
169 in any such action, is entitled to minimum damages in the amount
170 of $200 and reasonable attorney's fees and court costs in the
171 trial and appellate courts.
172 (3) In no event shall punitive damages be awarded under
173 this section. The defendant shall be entitled to recover
174 reasonable attorney's fees and court costs in the trial and

175 appellate courts upon a finding that the claimant raised a claim
176 which was without substantial fact or legal support. In awarding
177 attorney's fees and costs under this section, the court shall
178 not consider the ability of the opposing party to pay such fees
179 and costs. Nothing under this section shall be interpreted as
180 limiting any right to recover attorney's fees or costs provided
181 under other provisions of law.
182 Section 4. Subsection (1) of section 895.02, Florida
183 Statutes, as amended by section 3 of chapter 2005-362, Laws of
184 Florida, is amended to read:
185 895.02 Definitions.--As used in ss. 895.01-895.08, the
186 term:
187 (1) "Racketeering activity" means to commit, to attempt to
188 commit, to conspire to commit, or to solicit, coerce, or
189 intimidate another person to commit:
190 (a) Any crime <u>that</u> ~~which~~ is chargeable by indictment or
191 information under the following provisions of the Florida
192 Statutes:
193 1. Section 210.18, relating to evasion of payment of
194 cigarette taxes.
195 2. Section 403.727(3)(b), relating to environmental
196 control.
197 3. Section 409.920 or s. 409.9201, relating to Medicaid
198 fraud.
199 4. Section 414.39, relating to public assistance fraud.
200 5. Section 440.105 or s. 440.106, relating to workers'
201 compensation.
202 6. Section 443.071(4), relating to creation of a
203 fictitious employer scheme to commit unemployment compensation
204 fraud.

205 7. Section 465.0161, relating to distribution of medicinal
206 drugs without a permit as an Internet pharmacy.
207 8. Sections 499.0051, 499.0052, 499.00535, 499.00545, and
208 499.0691, relating to crimes involving contraband and
209 adulterated drugs.
210 9. Part IV of chapter 501, relating to telemarketing.
211 10. Chapter 517, relating to sale of securities and
212 investor protection.
213 11. Section 550.235, s. 550.3551, or s. 550.3605, relating
214 to dogracing and horseracing.
215 12. Chapter 550, relating to jai alai frontons.
216 13. Section 551.109, relating to slot machine gaming.
217 14. Chapter 552, relating to the manufacture,
218 distribution, and use of explosives.
219 15. Chapter 560, relating to money transmitters, if the
220 violation is punishable as a felony.
221 16. Chapter 562, relating to beverage law enforcement.
222 17. Section 624.401, relating to transacting insurance
223 without a certificate of authority, s. 624.437(4)(c)1., relating
224 to operating an unauthorized multiple-employer welfare
225 arrangement, or s. 626.902(1)(b), relating to representing or
226 aiding an unauthorized insurer.
227 18. Section 655.50, relating to reports of currency
228 transactions, when such violation is punishable as a felony.
229 19. Chapter 687, relating to interest and usurious
230 practices.
231 20. Section 721.08, s. 721.09, or s. 721.13, relating to
232 real estate timeshare plans.
233 21. Chapter 782, relating to homicide.
234 22. Chapter 784, relating to assault and battery.

235 23. Chapter 787, relating to kidnapping or human
236 trafficking.
237 24. Chapter 790, relating to weapons and firearms.
238 25. Section 796.03, s. 796.035, s. 796.04, s. 796.045, s.
239 796.05, or s. 796.07, relating to prostitution and sex
240 trafficking.
241 26. Chapter 806, relating to arson.
242 27. Section 810.02(2)(c), relating to specified burglary
243 of a dwelling or structure.
244 28. Chapter 812, relating to theft, robbery, and related
245 crimes.
246 29. Chapter 815, relating to computer-related crimes.
247 30. Chapter 817, relating to fraudulent practices, false
248 pretenses, fraud generally, and credit card crimes.
249 31. Chapter 825, relating to abuse, neglect, or
250 exploitation of an elderly person or disabled adult.
251 32. Section 827.071, relating to commercial sexual
252 exploitation of children.
253 33. Chapter 831, relating to forgery and counterfeiting.
254 34. Chapter 832, relating to issuance of worthless checks
255 and drafts.
256 35. Section 836.05, relating to extortion.
257 36. Chapter 837, relating to perjury.
258 37. Chapter 838, relating to bribery and misuse of public
259 office.
260 38. Chapter 843, relating to obstruction of justice.
261 39. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
262 s. 847.07, relating to obscene literature and profanity.
263 40. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
264 849.25, relating to gambling.
265 41. Chapter 874, relating to criminal street gangs.

266 42. Chapter 893, relating to drug abuse prevention and
267 control.
268 43. Chapter 896, relating to offenses related to financial
269 transactions.
270 44. Sections 914.22 and 914.23, relating to tampering with
271 a witness, victim, or informant, and retaliation against a
272 witness, victim, or informant.
273 45. Sections 918.12 and 918.13, relating to tampering with
274 jurors and evidence.
275 (b) Any conduct defined as "racketeering activity" under
276 18 U.S.C. s. 1961(1).
277 Section 5. For the purpose of incorporating the amendment
278 made by this act to section 895.02, Florida Statutes, in a
279 reference thereto, paragraph (a) of subsection (1) of section
280 16.56, Florida Statutes, is reenacted to read:
281 16.56 Office of Statewide Prosecution.--
282 (1) There is created in the Department of Legal Affairs an
283 Office of Statewide Prosecution. The office shall be a separate
284 "budget entity" as that term is defined in chapter 216. The
285 office may:
286 (a) Investigate and prosecute the offenses of:
287 1. Bribery, burglary, criminal usury, extortion, gambling,
288 kidnapping, larceny, murder, prostitution, perjury, robbery,
289 carjacking, and home-invasion robbery;
290 2. Any crime involving narcotic or other dangerous drugs;
291 3. Any violation of the provisions of the Florida RICO
292 (Racketeer Influenced and Corrupt Organization) Act, including
293 any offense listed in the definition of racketeering activity in
294 s. 895.02(1)(a), providing such listed offense is investigated
295 in connection with a violation of s. 895.03 and is charged in a
296 separate count of an information or indictment containing a

297 count charging a violation of s. 895.03, the prosecution of
298 which listed offense may continue independently if the
299 prosecution of the violation of s. 895.03 is terminated for any
300 reason;
301 4. Any violation of the provisions of the Florida Anti-
302 Fencing Act;
303 5. Any violation of the provisions of the Florida
304 Antitrust Act of 1980, as amended;
305 6. Any crime involving, or resulting in, fraud or deceit
306 upon any person;
307 7. Any violation of s. 847.0135, relating to computer
308 pornography and child exploitation prevention, or any offense
309 related to a violation of s. 847.0135;
310 8. Any violation of the provisions of chapter 815;
311 9. Any criminal violation of part I of chapter 499;
312 10. Any violation of the provisions of the Florida Motor
313 Fuel Tax Relief Act of 2004;
314 11. Any criminal violation of s. 409.920 or s. 409.9201;
315 or
316 12. Any crime involving voter registration, voting, or
317 candidate or issue petition activities;
318
319 or any attempt, solicitation, or conspiracy to commit any of the
320 crimes specifically enumerated above. The office shall have such
321 power only when any such offense is occurring, or has occurred,
322 in two or more judicial circuits as part of a related
323 transaction, or when any such offense is connected with an
324 organized criminal conspiracy affecting two or more judicial
325 circuits.
326 Section 6. For the purpose of incorporating the amendment
327 made by this act to section 895.02, Florida Statutes, in a

328 reference thereto, paragraph (g) of subsection (3) of section
329 655.50, Florida Statutes, is reenacted to read:
330 655.50 Florida Control of Money Laundering in Financial
331 Institutions Act; reports of transactions involving currency or
332 monetary instruments; when required; purpose; definitions;
333 penalties.--
334 (3) As used in this section, the term:
335 (g) "Specified unlawful activity" means any "racketeering
336 activity" as defined in s. 895.02.
337 Section 7. For the purpose of incorporating the amendment
338 made by this act to section 895.02, Florida Statutes, in a
339 reference thereto, paragraph (g) of subsection (2) of section
340 896.101, Florida Statutes, is reenacted to read:
341 896.101 Florida Money Laundering Act; definitions;
342 penalties; injunctions; seizure warrants; immunity.--
343 (2) As used in this section, the term:
344 (g) "Specified unlawful activity" means any "racketeering
345 activity" as defined in s. 895.02.
346 Section 8. For the purpose of incorporating the amendment
347 made by this act to section 895.02, Florida Statutes, in a
348 reference thereto, section 905.34, Florida Statutes, is
349 reenacted to read:
350 905.34 Powers and duties; law applicable.--The
351 jurisdiction of a statewide grand jury impaneled under this
352 chapter shall extend throughout the state. The subject matter
353 jurisdiction of the statewide grand jury shall be limited to the
354 offenses of:
355 (1) Bribery, burglary, carjacking, home-invasion robbery,
356 criminal usury, extortion, gambling, kidnapping, larceny,
357 murder, prostitution, perjury, and robbery;
358 (2) Crimes involving narcotic or other dangerous drugs;

359 (3) Any violation of the provisions of the Florida RICO
360 (Racketeer Influenced and Corrupt Organization) Act, including
361 any offense listed in the definition of racketeering activity in
362 s. 895.02(1)(a), providing such listed offense is investigated
363 in connection with a violation of s. 895.03 and is charged in a
364 separate count of an information or indictment containing a
365 count charging a violation of s. 895.03, the prosecution of
366 which listed offense may continue independently if the
367 prosecution of the violation of s. 895.03 is terminated for any
368 reason;
369 (4) Any violation of the provisions of the Florida Anti-
370 Fencing Act;
371 (5) Any violation of the provisions of the Florida
372 Antitrust Act of 1980, as amended;
373 (6) Any violation of the provisions of chapter 815;
374 (7) Any crime involving, or resulting in, fraud or deceit
375 upon any person;
376 (8) Any violation of s. 847.0135, s. 847.0137, or s.
377 847.0138 relating to computer pornography and child exploitation
378 prevention, or any offense related to a violation of s.
379 847.0135, s. 847.0137, or s. 847.0138;
380 (9) Any criminal violation of part I of chapter 499; or
381 (10) Any criminal violation of s. 409.920 or s. 409.9201;
382
383 or any attempt, solicitation, or conspiracy to commit any
384 violation of the crimes specifically enumerated above, when any
385 such offense is occurring, or has occurred, in two or more
386 judicial circuits as part of a related transaction or when any
387 such offense is connected with an organized criminal conspiracy
388 affecting two or more judicial circuits. The statewide grand
389 jury may return indictments and presentments irrespective of the

390 county or judicial circuit where the offense is committed or
391 triable. If an indictment is returned, it shall be certified
392 and transferred for trial to the county where the offense was
393 committed. The powers and duties of, and law applicable to,
394 county grand juries shall apply to a statewide grand jury except
395 when such powers, duties, and law are inconsistent with the
396 provisions of ss. 905.31-905.40.
397 Section 9. This act shall take effect October 1, 2006.
398
399 ========== T I T L E A M E N D M E N T ==========
400 Remove the entire title and insert:
401 A bill to be entitled
402 An act relating to human trafficking; amending s. 787.06,
403 F.S.; providing legislative findings and intent; defining
404 the term "financial harm"; redefining the term "forced
405 labor or services" to include circumstances involving the
406 use of fraud or coercion against a person, the use of
407 certain debt practices, and the destruction, concealing,
408 or withholding of a person's identification documents;
409 providing for attempted human trafficking to be an equal
410 crime to human trafficking; prohibiting knowingly
411 benefiting financially or receiving anything of value from
412 human trafficking when the trafficked person engages in
413 forced labor or services;; providing criminal penalties;
414 directing the Florida Court Educational Council to
415 establish standards for instructing circuit and county
416 court judges on matters relating to victims of human
417 trafficking; amending s. 772.102, F.S.; expanding the
418 definition of the term "criminal activity" to include the
419 offense of human trafficking and the offense of sex
420 trafficking for purposes of seeking civil remedies for

421 criminal offenses; amending s. 772.104, F.S.; revising a
422 civil cause of action relating to injuries by reason of
423 criminal activity; providing for alternative damages for
424 violations relating to sex trafficking and human
425 trafficking; amending s. 895.02, F.S.; redefining the term
426 "racketeering activity" to include the offense of human
427 trafficking for purposes of the Florida RICO Act;
428 reenacting ss. 16.56(1)(a), 655.50(3)(g), 896.101(2)(g),
429 and 905.34, F.S., relating to the authority of the Office
430 of the Statewide Prosecutor, the definition of "specified
431 unlawful activity" in a law prohibiting money laundering
432 in financial institutions and in the Florida Money
433 Laundering Act, and the subject matter jurisdiction of a
434 statewide grand jury, to incorporate the amendments made
435 to s. 895.02, F.S., in references thereto; providing an
436 effective date
437
438

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 669 CS Criminal Justice Standards and Training Commission
SPONSOR(S): Dean and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2032

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

SUMMARY ANALYSIS

In 2004, Congress passed the "Law Enforcement Officers Safety Act of 2004". According to the act, notwithstanding any other provision of the law of any state or political subdivision, an individual who is a "qualified law enforcement officer" or "qualified retired law enforcement officer" as defined by the act and who is carrying specified identification is authorized to carry a concealed firearm. Under this act, the definition of the term "qualified retired law enforcement officer" includes a requirement that the person has met the state's standards for training and qualification for active law enforcement officers to carry firearms. Florida currently does not have a statewide standard for training and qualifications in firearms for active law enforcement officers. The Florida Department of Law Enforcement (FDLE) has issued proposed rules which would create a statewide standard for active officers but those rules are not yet in effect.

HB 669 requires the Criminal Justice Standards and Training Commission within FDLE to adopt rules establishing the manner in which the federal Law Enforcement Officers Safety Act of 2004 will be implemented in the state. The bill requires the commission to develop and authorize a uniform proficiency verification card to be issued to persons who achieve a passing score on the firing range testing component of the minimum firearms proficiency course for active law enforcement officers. The card will indicate the person's name and the date on which he or she achieved the passing score. Such a card will be issued only by firearms instructors certified by the commission.

The bill allows facilities operating firing ranges which use certified firearms instructors to open the firing range to other persons who wish to demonstrate their ability to achieve a passing score on the firing range proficiency course. All costs associated with the demonstration by any such person that he or she meets the requirements of the firing range testing component of the minimum firearms proficiency course will be at the expense of the person being tested.

The bill will have a minimal fiscal impact on state expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires the Criminal Justice Standards and Training Commission to develop a manner of implementing the federal Law Enforcement Officers Safety Act of 2004 which authorizes qualified law enforcement officers and qualified retired law enforcement officers to carry concealed firearms.

B. EFFECT OF PROPOSED CHANGES:

Criminal Justice Standards and Training Commission: The Criminal Justice Standards and Training Commission (CJSTC) is established within the Florida Department of Law Enforcement, pursuant to s. 943.11, F.S. It has a number of responsibilities relating to the training, certification, and discipline of law enforcement officers, correctional officers, and correctional probation officers [1] The CJSTC requires training in the use of firearms and a demonstration of proficiency in order to receive initial law enforcement officer, correctional officer or correctional probation officer certification.[2] After an officer is certified, there are no statewide standards for firearms proficiency. Firearms training and proficiency standards are then the responsibility of the employing agency.

The CJSTC also certifies individuals who provide instruction in law enforcement officer and correctional officer training courses.[3] The CJSTC certifies instructors to teach specialized topics. For example, the commission certifies vehicle operations instructors, defensive tactics instructors and firearms instructors.[4]

Concealed weapons: Section 790.01, F.S. provides that it is a first degree misdemeanor to carry a concealed weapon and a third degree felony to carry a concealed firearm. The provision does not apply to a person licensed to carry a concealed weapon or firearm. The Department of Agriculture and Consumer Services is authorized to issue licenses to carry concealed weapons or firearms to qualified persons.[5] There are a number of statutory requirements that must be met before a license can be issued including the following:

- The applicant is a resident of the United States;
- The applicant is 21 years of age or older;
- The applicant does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- The applicant has not been convicted of a felony or other disqualifying offense;
- The applicant demonstrates competence by completing specified training;
- The applicant has not recently been committed to a mental institution;

Upon approval by the department and payment of an $85 fee, the applicant is issued a license card that the applicant must carry when possessing a concealed weapon or firearm. The license is valid for 5 years. Even if a person holds a concealed weapon license, there are a large number of places that the licensee is prohibited from carrying a concealed weapon or firearm.[6]

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[1] s. 943.12, F.S.
[2] See 11B-35.0024, F.A.C.
[3] S. 943.14(3), F.S.
[4] See 11B-20.0013(3)(b) and (c), F.A.C. and 11B-20.0014(2)(c) and (d), F.A.C.
[5] See generally, S. 790.06, F.S.
[6] s. 790.06(12), F.S.

A law enforcement officer, correctional officer or correctional probation officer holding active certification from the CJSTC is exempt from the above licensing requirements.[7] If off duty, the officer is required to have a license in order to carry a concealed firearm or have the permission of his or her superior officer.[8] A law enforcement, correctional or correctional probation officer who wishes to receive a concealed weapons or firearm license is exempt from the background investigation and the fees for such investigation.[9] A retired law enforcement, correctional or correctional probation officer is exempt from the required fees and background investigation for one year after his or her retirement.[10]

Currently, Florida law permits a non-resident of Florida to carry a concealed weapon or firearm within the state if he or she has a license from a state that honors Florida licenses. The Division of Licensing within the Department of Agriculture and Consumer services has established reciprocity agreements with 29 states.[11]

Law Enforcement Officers Safety Act of 2004: In 2004, Congress passed the "Law Enforcement Officers Safety Act of 2004".[12] According to the act, notwithstanding any other provision of the law of any state or political subdivision, an individual who is a "qualified law enforcement officer" and who is carrying identification issued by the officer's employing agency may carry a concealed firearm. The term qualified law enforcement officer is defined to mean an employee of a governmental agency who:[13]

> (1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;
>
> (2) is authorized by the agency to carry a firearm;
>
> (3) is not the subject of any disciplinary action by the agency;
>
> (4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
>
> (5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
>
> (6) is not prohibited by Federal law from receiving a firearm.

The bill also provides that notwithstanding any state or local law, a "qualified *retired* law enforcement officer" that is carrying identification discussed further below is permitted to carry a concealed firearm.

The act defines the term "qualified retired law enforcement officer" to mean an individual who:[14]

> (1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;
>
> (2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

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[7] s. 790.06(5)(b), F.S.
[8] See ss. 790.052 and 790.06, F.S.
[9] s. 790.06(5)(b), F.S.
[10] s. 790.06(5)(b), F.S.
[11] http://licgweb.doacs.state.fl.us/news/concealed_carry.html
[12] H.R. 218; 18 U.S.C 926B; 18 U.S.C. 926C.
[13] 18 U.S.C. 926B(c)
[14] 18 U.S.C. 926C(c)

(3) (A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or

(B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) has a nonforfeitable right to benefits under the retirement plan of the agency;

(5) *during the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms;*

(6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) is not prohibited by Federal law from receiving a firearm.

The act specifies that the identification required to be carried by the retired law enforcement officer is:

(1) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that indicates that the individual has, within one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or

(2) (A) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; and

(B) a certification issued by the State in which the individual resides that indicates that the individual has, within one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

Until recently, Florida has not had a statewide standard for firearms proficiency for active law enforcement officers. The responsibility for ensuring firearms proficiency has rested with the employing law enforcement agency. According to a recent Attorney General's opinion, "retired law enforcement officers may carry concealed weapons permits pursuant to 18 U.S.C. 926C even though the state does not currently have statewide firearms training and qualifications standards for active law enforcement officers."[15] On December 30, 2005, FDLE published proposed rules which will create a statewide proficiency standard for active law enforcement officers.[16] According to FDLE, this will facilitate retired law enforcement officer's attempts to demonstrate that they fall under HR 218 because they will be able to demonstrate that they are able to pass their state's proficiency standard for active officers.[17] The rule will become effective on March 27, 2006 and beginning on July 1, 2006, law enforcement officers will be required to qualify under the new standards.

Effect of HB 669: HB 669 requires the CJSTC to adopt rules establishing the manner in which the federal Law Enforcement Officers Safety Act of 2004 will be implemented in the state. The bill requires the commission to develop and authorize a uniform proficiency verification card to be issued to persons

[15] AGO 2005-45, August 2, 2005.
[16] Volume 31, Number 52, F.A.W. (December 30, 2005)
[17] http://www.fdle.state.fl.us/hr218/attach/hr218update-fall05.html

who achieve a passing score on the firing range testing component of the minimum firearms proficiency course for active law enforcement officers. The card will indicate the person's name and the date on which he or she achieved the passing score. Such a card will be issued only by firearms instructors certified by the commission.

The bill also provides that facilities operating firing ranges for active law enforcement officers may open the firing range to other persons who wish to demonstrate their ability to achieve a passing score on the firing range proficiency course. All costs associated with the demonstration by any such person that he or she meets the requirements of the firing range testing component of the minimum firearms proficiency course will be at the expense of the person being tested.

C. SECTION DIRECTORY:

Section 1. Creates s. 943.132, F.S. to implement federal Law Enforcement Officers Safety Act of 2004.

Section 2. Provides effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There would be a minimal indeterminate loss of revenue.

2. Expenditures:

   According to the fiscal analysis provided by FDLE, this bill will have a "negligible" fiscal impact on the agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A qualified retired law enforcement officer, as this term is defined in the Law Enforcement Officers Safety Act, with a firearms proficiency verification card issued by a firearm instructor will be authorized to carry a concealed firearm without paying the fee associated with the state permit.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the CJSTC to adopt rules relating to the carrying of concealed firearms by active and retired law enforcement officers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Criminal Justice Committee amended the bill to change a reference from "range instructors" to "firearms instructors" in conformity with FDLE's administrative rules. The bill was also amended to clarify that any person who receives a passing score on the firing range testing component of the minimum firearms proficiency court for active law enforcement officers can obtain a uniform proficiency verification card.

CHAMBER ACTION

The Criminal Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Criminal Justice Standards and Training Commission; creating s. 943.132, F.S.; requiring the Criminal Justice Standards and Training Commission to adopt rules for the implementation of the federal Law Enforcement Officers Safety Act of 2004; requiring the commission to develop and authorize the issuance of a uniform firearms proficiency verification card; authorizing the use of specified facilities operating firing ranges for testing of persons other than law enforcement officers; providing an effective date.

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

Section 1. Section 943.132, Florida Statutes, is created to read:

943.132 Implementation of federal Law Enforcement Officers Safety Act of 2004.--

24 (1) The commission shall by rule establish the manner in
25 which Title 18, 44 U.S.C. ss. 926B and 926C, the federal Law
26 Enforcement Officers Safety Act of 2004, relating to the
27 carrying of concealed firearms by qualified law enforcement
28 officers and qualified retired law enforcement officers, as
29 defined in the act, shall be implemented in the state. In order
30 to facilitate the implementation within the state of Title 18,
31 44 U.S.C. ss. 926B and 926C, the commission shall develop and
32 authorize a uniform firearms proficiency verification card to be
33 issued to persons who achieve a passing score on the firing
34 range testing component of the minimum firearms proficiency
35 course for active law enforcement officers, indicating the
36 person's name and the date upon which he or she achieved the
37 passing score. Each such card shall be issued only by firearms
38 instructors certified by the commission.
39 (2) Facilities operating firing ranges on which firearms
40 instructors certified by the commission administer the firing
41 range testing component of the minimum firearms proficiency
42 course for active law enforcement officers may open the firing
43 range under terms and conditions established by the operating
44 entity to other persons for purposes of allowing such persons to
45 demonstrate their ability to achieve a passing score on the
46 firing range testing component of the minimum firearms
47 proficiency course. All costs associated with the demonstration
48 by any such person that he or she meets the requirements of the
49 firing range testing component of the minimum firearms
50 proficiency course shall be at the expense of the person being
51 tested.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

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

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

B. EFFECT OF PROPOSED CHANGES:

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

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

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

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

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

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

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

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

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

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

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

Warrantless arrests

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

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

C. SECTION DIRECTORY:

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

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

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

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

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

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

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[6] The court explained its holding as follows:

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

Id. at 529.

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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

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

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

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

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

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

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

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

225 otherwise might result by reason of his or her action.

226 Section 8. This act shall take effect July 1, 2006.

HB 815

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 815 Strangulation
SPONSOR(S): Russell
TIED BILLS: **IDEN./SIM. BILLS:** SB 2150

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

SUMMARY ANALYSIS

This bill amends felony battery to include the act of strangulation. Currently, a battery by strangulation where there is no great bodily harm, permanent disability, or permanent disfigurement is a misdemeanor; this bill makes battery by strangulation a third degree felony. This bill defines the act of strangulation and provides an affirmative defense.

The Criminal Justice Estimating Conference met February 28, 2006 and determined that this bill would have an indeterminate prison bed impact on the Department of Corrections.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government / Promote Personal Responsibility- This bill provides criminal penalties for battery by strangulation.

B. EFFECT OF PROPOSED CHANGES:

Under Florida law a simple battery occurs when a person actually and intentionally touches or strikes another person against the will of the other[1] or intentionally causes bodily harm to another person.[2] The crime of felony battery[3] requires that the offender cause great bodily harm, permanent disability, or permanent disfigurement. The crime of aggravated battery[4] requires intent to cause great bodily harm, permanent disability, permanent disfigurement, or use of a deadly weapon.

Currently, Florida does not have statutes in place that specifically address strangulation unlike some other states[5]. The act of strangulation can be potentially fatal; however, non-fatal strangulations rarely cause visible injuries. Consequently, non-fatal strangulations are charged as a simple battery because a prosecutor can not establish great bodily harm, permanent disability, or permanent disfigurement. Simple battery is a first degree misdemeanor which is punishable by a term of imprisonment not exceeding 1 year[6] and a fine of $1,000.[7]

This bill amends felony battery to include the act of strangulation. This bill provides that the act of strangulation is committed by knowingly or intentionally impeding the normal breathing or circulation of the blood of the other person by applying pressure on the throat or neck or by blocking the nose or mouth of the other person. A felony battery is a third degree felony punishable by a term of imprisonment not exceeding 5 years[8] and a fine of $5,000.[9]

This bill also provides it is an affirmative defense that an act constituting strangulation was the result of a legitimate medical procedure.

C. SECTION DIRECTORY:

Section 1 amends section 784.041, F.S., to include the act of strangulation and to provide an affirmative defense.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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1 Section 784.03(1)(a)1., F.S.
2 Section 784.03(1)(a)2., F.S.
3 Section 784.041, F.S.
4 Section 784.045, F.S.
5 *See* North Carolina State Statute § 14-32.4; State of Nebraska Statutes § 28-310.01; Missouri Revised Statutes § 565.073.
6 Section 775.082(4)(a), F.S.
7 Section 775.083(1)(d), F.S.
8 Section 775.082(3)(d), F.S.
9 Section 778.083(1)(c), F.S.

None.

2. Expenditures:

The Criminal Justice Impact Conference met February 28, 2006 and determined this bill would have an indeterminate prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to strangulation; amending s. 784.041,
3 F.S.; providing that knowingly or intentionally impeding
4 the normal breathing or circulation of the blood of
5 another person in specified ways constitutes felony
6 battery; providing an affirmative defense; providing
7 penalties; providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Section 784.041, Florida Statutes, is amended
12 to read:
13 784.041 Felony battery.--
14 (1) A person commits felony battery if he or she:
15 (a) Actually and intentionally touches or strikes another
16 person against the will of the other; and
17 (b)1. Causes great bodily harm, permanent disability, or
18 permanent disfigurement; or
19 2. Commits the act of strangulation by knowingly or
20 intentionally impeding the normal breathing or circulation of
21 the blood of the other person by applying pressure on the throat
22 or neck or by blocking the nose or mouth of the other person. It
23 is an affirmative defense to a charge under this subparagraph
24 that an act constituting strangulation was the result of a
25 legitimate medical procedure.
26 (2) A person who commits felony battery commits a felony
27 of the third degree, punishable as provided in s. 775.082, s.
28 775.083, or s. 775.084.

29 Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 827 Pretrial Release
SPONSOR(S): Planas
TIED BILLS: **IDEN./SIM. BILLS:** SB 2018

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	8 Y, 0 N	Cunningham	Kramer
2) Criminal Justice Appropriations Committee		DeBeaugrine	DeBeaugrine
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions. With certain exceptions, there is a presumption in favor of release on nonmonetary conditions. Additionally, courts *must* impose conditions requiring the defendant on pretrial release to refrain from criminal activity of any kind and to refrain from contact with the victim.

HB 827 requires judges who grant monetary bail to set a separate and specific bail amount for each charge. This bill also provides that defendants charged with a second or subsequent felony within three years after the date of a prior felony charge, regardless of whether a conviction was entered, forfeit their right to a presumption in favor of release on nonmonetary conditions. This bill also provides that a court must require a defendant to comply with all conditions of pretrial release.

Bail, one of the most common monetary conditions of pretrial release, requires an accused to pay a set sum of money to the sheriff. As an alternative to posting bail, a defendant may employ the services of a bail bond agent who pledges that a defendant will appear at all scheduled proceedings before a court. If a defendant does not appear for judicial proceedings as ensured by the bail bond, the bond is considered breached and the court declares the bond "forfeited." In cases where a bond has been forfeited and not paid or discharged by a court within 60 days, the court enters a judgment against the bail bond agent for the amount of the bond.

HB 827 amends statutes relating to bail bonds, specifically their forfeiture, judgment, and cancellation. Additionally, it clarifies that the original appearance bond does not guarantee a defendant's appearance after a defendant enters a guilty or nolo contendere plea, after a defendant is adjudicated guilty, after adjudication is withheld, and in other situations.

This bill takes effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security → This bill provides that a court must require persons on pretrial release to comply with all conditions of pretrial release; provides that a court must set a separate bail for each charged offense; provides that defendants charged with a second or subsequent felony within three years after the date of a prior felony charge, regardless of whether a conviction was entered, forfeit their right to a presumption in favor of pretrial release on nonmonetary conditions; and requires courts to issue a capias or arrest warrant if a defendant on bond fails to appear.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Pretrial Release
Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions.[1] There is a presumption in favor of release on *nonmonetary* conditions[2] for any person who is granted pretrial release unless such person is charged with a dangerous crime.[3] Although courts have the authority to impose any number of pretrial release conditions, courts *must* impose conditions requiring the defendant to refrain from criminal activity of any kind and to refrain from contact with the victim.[4]

Bail Bonds
Bail, one of the most common monetary conditions of pretrial release, requires an accused to pay a set sum of money to the sheriff. As an alternative to posting bail, a defendant may employ the services of a bail bond agent.[5] A bail bond serves as a pledge by a bail bond agent that a defendant will appear at all scheduled proceedings before a court.

Bail bond agents are licensed and regulated by the Department of Financial Services (DFS), pursuant to chapter 648, F.S. A bail bond agent may either be a limited surety agent who is appointed by a surety insurance company to execute or countersign bail bonds, or a professional bail bond agent who pledges his or her own funds as security for a bail bond. The chapter provides requirements for licensure of bail bond agents, limits the amount of premium and expenses which can be charged, restricts the types of collateral which can be demanded, and requires that such collateral be returned in a timely manner once the bond has been canceled.

Chapter 903, F.S., sets forth the requirements relating to bail and bail bonds, including all forms of pretrial release. After a defendant has been released on bail, the bail bond agent has the authority to

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[1] Conditions of pretrial release are determined at a defendant's first appearance hearing. Rule 3.130, Fla. R. Crim. Proc.
[2] Nonmonetary conditions include releasing defendants on their own recognizance. Rule 3.131(b)(1), Fla. R. Crim. Proc.
[3] "Dangerous crimes" include: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; and attempting or conspiring to commit any such crime. s. 907.041, F.S.
[4] s. 903.047, F.S.
[5] Section 648.25, F.S., defines "Professional bail bond agent" as any person who pledges United States currency, United States postal money orders, or cashier's checks as security for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value.

"surrender," or return, the defendant to the custody of the person who would have held the defendant absent the bail.[6] Ordinarily, a bail bond agent will do this if the bail bond agent believes the defendant is a flight risk or if the collateral provided for bail is discovered to be insufficient. Upon surrender, the official taking custody of the defendant will issue a certificate acknowledging the surrender.[7] The bail bond agent then can present the certificate and bond to the court which will issue an order exonerating the obligors and refunding money or bonds deposited as bail.[8]

If a defendant does not appear for judicial proceedings as ensured by the bail bond, the bond is considered breached and the court declares the bond "forfeited."[9] Within 5 days after forfeiture of a bail bond, the court must mail a notice to the surety agent and the surety company.[10] The forfeiture of a bond must be paid within 60 days of the date the notice to the bail bond agent and surety was filed.[11] However, after a breach of the bond, the law requires a court to "discharge" a forfeiture (before it is paid) within 60 days upon:

- a determination that it was impossible for the defendant to appear as required due to circumstances beyond the defendant's control;
- a determination that, at the time of the appearance, the defendant was adjudicated insane and confined in an institution or hospital or was confined in a jail or prison; or
- surrender or arrest of the defendant if the delay has not thwarted the proper prosecution of the defendant.[12]

In addition to the above, the clerk of court must discharge the forfeiture of the bond if the defendant is arrested and returned to the county of jurisdiction of the court prior to judgment.[13] The bail bond agent is required to pay the costs associated with returning the defendant to the county of jurisdiction, as a condition of the clerk discharging the forfeiture.[14]

In cases where a bond has been forfeited and not paid or discharged by a court within 60 days, the court enters a judgment against the bail bond agent for the amount of the bond.[15] After the judgment is entered, the court is required to furnish DFS and the surety company issuing the bond with a certified copy of the judgment.[16] If this judgment is not paid within 35 days, the court provides DFS and the sheriff of the county in which the bond was executed, copies of the judgment and a certification that the judgment has not been satisfied.[17] DFS receives notice of the judgment and monitors unpaid judgments as a part of its regulation of surety insurance companies. Bail bond agents who have outstanding judgments which are unpaid for 35 days are precluded by law from executing bail bonds. After 50 days of an unpaid judgment, the surety company is precluded by law from issuing bail bonds.[18]

The law provides that within 10 days after all of the conditions of a bond have been satisfied or the forfeiture discharged or remitted, the court shall order the bond canceled.[19] All of the conditions of a bond are deemed to be satisfied after the defendant has been adjudicated guilty or not guilty.[20]

Polakoff Bail Bonds v. Orange County

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[6] s. 903.21, F.S.
[7] *Id.*
[8] *Id.*
[9] s. 903.26, F.S.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] s. 903.27, F.S.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] s. 903.31, F.S.
[20] *Id.*

Section 903.31(1), F.S., states, in part: "An adjudication of guilt or innocence of the defendant shall satisfy the conditions of the bond."

Section 903.31(2), F.S. states:

> The original appearance bond shall not be construed to guarantee deferred sentences, appearance during or after a presentence investigation, appearance during or after appeals, conduct during or appearance after admission to a pretrial intervention program, payment of fines, or attendance at educational or rehabilitation facilities the court otherwise provides in the judgment. If the original appearance bond has been forfeited or revoked, the bond shall not be reinstated without approval from the surety on the original bond.

In *Polakoff Bail Bonds v. Orange County*, the Florida Supreme Court said the condition of an appearance bond was not satisfied when the trial court accepts a plea of guilty and enters a finding of guilt, but withholds adjudication and judgment and continues the case for sentencing until the completion of the presentence investigation.[21] The court found that a judgment must be entered in order for the conditions of bond to be satisfied.[22] The court read s. 903.31, F. S., in conjunction with s. 903.045, F.S., which explains the nature of a surety bail bond:

> It is the public policy of this state and the intent of the Legislature that a criminal surety bail bond, executed by a bail bond agent licensed pursuant to chapter 648 in connection with the pretrial or appellate release of a criminal defendant, shall be construed as a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all subsequent criminal proceedings and otherwise fulfills all conditions of the bond. The failure of a defendant to appear at any subsequent criminal proceeding or the breach by the defendant of any other condition of the bond constitutes a breach by the bail bond agent of this commitment and obligation.[23]

The court found that "in the context of a presentence investigation, unless the trial court adjudicates the defendant guilty and provides for the presentence investigation within the judgment, the bond is not satisfied and the defendant must continue to appear at all subsequent proceedings to avoid forfeiture."[24]

Subsequent to the *Polakoff Bail Bonds* decision, the Fifth District Court of Appeal found that the Florida Supreme Court's decision in *Polakoff Bail Bonds* was limited to the circumstances of a presentence investigation where no judgment had been entered, but reasoned that "because there is never an adjudication of guilt or innocence before a defendant is accepted into a pretrial intervention program, we believe that the legislature must have intended, in cases involving pretrial intervention, an exception to the general rule requiring an adjudication for discharge of a bond."[25]

Effect of Proposed Changes

<u>*Pretrial Release*</u>
As noted above, there is currently a presumption in favor of release on *nonmonetary* conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime. This bill provides that defendants charged with a second or subsequent felony within three years after the date

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[21] 634 So.2d 1083 (Fla. 1994).
[22] *Id.* at 1085.
[23] *Id.*
[24] *Id.*
[25] *Rosenberg Bail Bonds v. Orange County*, 663 So.2d 1389, 1392 (Fla. 5th DCA 1995).

of a prior felony charge, regardless of whether a conviction was entered, forfeit their right to a presumption in favor of release on nonmonetary conditions.

Additionally, existing law mandates certain conditions of pretrial release. A defendant on pretrial release must refrain from criminal activity and must refrain from contact with the victim. This bill requires a defendant to comply with all conditions of pretrial release.

This bill also *requires* judges who grant monetary bail to set a separate and specific bail amount for each charge.[26]

Bail Bonds

This bill amends the bail bond forfeiture statute to *require* a court to issue a capias or an arrest warrant for a defendant who has failed to appear.[27] The capias or arrest warrant must comply with the requirements of s. 903.046(2)(d), F.S.,[28] and must require extradition of the defendant when arrested in another state if the original charge is a felony. The capias must also require return transportation of the defendant when arrested in another state to the jurisdiction of the court. The bill provides that if the court fails to issue a capias or an arrest warrant, any bonds deposited by a bail bond agent shall be discharged.

This bill also allows for exoneration of the surety if the State Attorney fails to institute extradition proceedings or extradite a defendant on a bail bond if the surety agrees in writing to pay transportation costs. In such instances, any forfeiture or judgment must be set aside or vacated.

This bill provides that in any case in which a bond forfeiture has been discharged by the court conditioned on payment of costs and fees, the amount for which judgment may be entered may not exceed the costs and fees. The bill provides for the cancellation of the bond by the clerk of the court without a court order. This bill provides that a bond does not guarantee a defendant's conduct or appearance at any time after:

- The defendant enters a plea of guilty or nolo contendere;
- The defendant enters into an agreement for deferred prosecution or agrees to enter a pretrial intervention program;
- The defendant is acquitted;
- The defendant is adjudicated guilty;
- Adjudication of guilt is withheld; or
- The defendant is found guilty by a judge or jury.

This bill would have the effect of overruling the *Polakoff Bail Bond* holding that a bond is not satisfied when adjudication is withheld.

C. SECTION DIRECTORY:

Section 1. Amends s. 903.02, F.S., providing that any judge setting or granting bail shall set a separate bail amount for each charge or offense.

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[26] Florida Statutes do not currently require (or prevent) a judge to set a separate bail for each offense charged. However, the usual practice is for judges to set one bail amount regardless of how many offenses a defendant is charged with.

[27] Although not required by statute, courts will generally issue a capias or an arrest warrant for a defendant who has failed to appear as required by a bail bond. Additionally, Rule 3.131(g), Fla. R. Crim. Proc., authorizes, but does not require, courts to direct the arrest and commitment of a defendant at large on bail when there has been a breach.

[28] Section 903.046(2)(d), F.S., relates to what a court may consider in determining whether to release a defendant on bail or other conditions. It is not related to capiases or arrest warrants and thus appears to be an incorrect citation.

Section2. Amends s. 903.046, F.S., providing that a defendant forfeits the right to a presumption in favor of release on nonmonetary conditions if charged with a second or subsequent felony within a certain time period;

Section 3. Amends s. 903.047, F.S., requiring a defendant to comply with all conditions of pretrial release.

Section 4. Amends s, 903.26, F.S., providing for issuance of a capias or arrest warrant for a defendant who has failed to appear; providing requirements for such a capias or warrant; providing for exoneration of a surety and discharge of any bonds if a court fails or refuses to issue such capias or warrant; providing that failure of the state attorney to institute extradition proceedings or extradite the principal on a bail bond after the surety's written agreement to pay actual transportation costs exonerates the surety.

Section 5. Amends s. 903.27, F.S., providing that in cases in which the bond forfeiture has been discharged by the court, the amount of the judgment may not exceed the amount of unpaid fees or costs upon which the discharge had been conditioned.

Section 6. Amends s. 903.31, F.S., providing that the clerk of court shall furnish an executed certificate of cancellation to the surety; providing that the original appearance bond does not guarantee the defendant's conduct or appearance in court under certain circumstances.

Section 7. This act takes effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bail bond industry will benefit in the following ways:

- Requiring judges to set separate bail amounts for each charged offense may result in an increase of bail bond premiums;
- Removing the presumption in favor of release on nonmonetary conditions for defendants charged with a second or subsequent felony within three years of a prior felony charge will likely increase the number of persons who receive bail and use the services of a bail bond agent;
- Bail bond agents will be exonerated and their bond will be returned if a court fails to issue a capias or warrant that contains specific conditions in **all** instances where a defendant fails to appear; and

- After a bail bond agent agrees in writing to pay the transport costs, the agent will be exonerated and their bond will be returned if the state attorney fails to institute extradition proceedings or extradite the principal on a bail bond.

D. FISCAL COMMENTS:

There could be a workload increase associated with requiring judges to set bail separately for each charge or offense. This would increase the amount of time spent by a judge spent per defendant and increase paperwork required of the courts, clerks of court and county jail personnel.

Removing the presumption in favor of release on nonmonetary conditions for defendants charged with a second or subsequent felony within three years and the requirement to set separate bail amounts for each offense could increase the number of defendants that are not able to bond out of jail. This could increase detainee populations in county jails.

In addition, the requirement for the court to issue an arrest warrant each time a defendant fails to appear could increase workload for the sheriff.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Although the bill could result in increased workload for county jails and sheriffs, the bill appears to be exempt from the provisions of Article VII, section 18 because it is a criminal law.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 2 of the bill provides that defendants give up their right to a presumption in favor of release on nonmonetary conditions if the defendant is charged with a second or subsequent felony offense within three years after the date of a prior felony charge.

- The Florida Constitution provides, with some exceptions, that persons charged with a crime are entitled to pretrial release *on reasonable conditions*. Section 907.041, F.S., creates a presumption in favor of release on nonmonetary conditions, and provides that persons must be released on monetary conditions if such conditions are necessary to assure the presence of the person at court proceedings, protect the community from risk of physical harm to persons; and to assure the integrity of the judicial process. Any challenge to the above provision would likely relate to whether it is a reasonable condition that would assure the defendant's presence in court, protect the community from risk of physical harm to persons, and assure the integrity of the judicial process.

Section 4 of the bill *requires* a court to issue a capias or an arrest warrant for a defendant who has failed to appear. The capias or arrest warrant must comply with the requirements of s. 903.046(2)(d), F.S., must require extradition of the defendant when arrested in another state if the original charge is a felony, and must require return transportation of the defendant when arrested in another state to the jurisdiction of the court. If the court fails to issue a capias or an arrest warrant, any bonds deposited by a bail bond agent shall be discharged.

- As noted above, the citation to s. 903.046(2)(d), F.S., appears to be incorrect as the cited section does not discuss capiases or arrest warrants.
- Currently, Florida Statutes do not *require* a court to issue a capias or warrant when a defendant fails to appear. Instead, courts are given *discretion* to issue a capias or warrant in such circumstances. *See* Rule 3.131, Fla. R. Crim. Proc. There are times when a defendant fails to appear because he or she is unavailable (e.g. hospitalized, has another court appearance at the same time) to attend. In many of these instances, the court is aware of the circumstances and permits the defendant to be absent. However, as drafted, this bill would *require* a court to issue a capias or warrant in these circumstances. If the court fails to do so, even if it was intentional, any bonds deposited by the bail bond agent must be discharged (i.e. given back to the bail bond agent).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to pretrial release; amending s. 903.02,
3 F.S.; providing that any judge setting or granting bail
4 shall set a separate bail amount for each charge or
5 offense; amending s. 903.046, F.S.; providing that a
6 defendant forfeits the right to a presumption in favor of
7 release on nonmonetary conditions if charged with a second
8 or subsequent felony within a certain time period;
9 amending s. 903.047, F.S.; requiring a defendant to comply
10 with all conditions of pretrial release; amending s.
11 903.26, F.S.; providing for issuance of a capias or arrest
12 warrant for a defendant who has failed to appear;
13 providing requirements for such a capias or warrant;
14 providing for exoneration of a surety and discharge of any
15 bonds if a court fails or refuses to issue such capias or
16 arrest warrant; providing that failure of the state
17 attorney to institute extradition proceedings or extradite
18 the principal on a bail bond after the surety's written
19 agreement to pay actual transportation costs exonerates
20 the surety; amending s. 903.27, F.S; providing that in
21 cases in which the bond forfeiture has been discharged by
22 the court, the amount of the judgment may not exceed the
23 amount of the unpaid fees or costs upon which the
24 discharge had been conditioned; amending s. 903.31, F.S.;
25 providing that the clerk of court shall furnish an
26 executed certificate of cancellation to the surety;
27 providing that the original appearance bond does not
28 guarantee the defendant's conduct or appearance in court

29 under certain circumstances; providing an effective date.
30
31 Be It Enacted by the Legislature of the State of Florida:
32
33 Section 1. Subsection (4) is added to section 903.02,
34 Florida Statutes, to read:
35 903.02 Actions following ~~with respect to~~ denial; changes
36 in bail ~~or~~ conditions ~~of bail~~ or bond amount; separation by
37 charge or offense ~~of bond prohibited; "court" defined~~.--
38 (4) Any judge setting or granting monetary bail shall set
39 a separate and specific bail amount for each charge or offense.
40 When bail is posted, each charge or offense requires a separate
41 bond.
42 Section 2. Subsection (3) is added to section 903.046,
43 Florida Statutes, to read:
44 903.046 Purpose of and criteria for bail determination.--
45 (3) If a defendant is charged with a second or subsequent
46 felony within 3 years after the date of a prior felony charge,
47 regardless of whether a conviction was entered, the defendant
48 forfeits the right to a presumption in favor of release on
49 nonmonetary conditions as provided in s. 907.041.
50 Section 3. Subsection (1) of section 903.047, Florida
51 Statutes, is amended to read:
52 903.047 Conditions of pretrial release.--
53 (1) As a condition of pretrial release, whether such
54 release is by surety bail bond or recognizance bond or in some
55 other form, the defendant ~~court~~ shall ~~require that~~:
56 (a) ~~The defendant~~ Refrain from criminal activity of any

57 kind.~~; and~~
58 (b) ~~The defendant~~ Refrain from any contact of any type
59 with the victim, except through pretrial discovery pursuant to
60 the Florida Rules of Criminal Procedure.
61 (c) Comply with all conditions of pretrial release.
62 Section 4. Subsections (1) and (5) of section 903.26,
63 Florida Statutes, are amended to read:
64 903.26 Forfeiture of ~~the~~ bond; ~~when and how directed;~~
65 discharge; ~~how and when made;~~ effect of payment.--
66 (1)(a) A bail bond shall not be forfeited unless:
67 1.~~(a)~~ The information, indictment, or affidavit was filed
68 within 6 months from the date of arrest;~~,~~ and
69 2.~~(b)~~ The clerk of court gave the surety at least 72
70 hours' notice, exclusive of Saturdays, Sundays, and holidays,
71 before the time of the required appearance of the defendant.
72 Notice shall not be necessary if the time for appearance is
73 within 72 hours from the time of arrest~~,~~ or if the time is
74 stated on the bond.
75 (b) Instant with any failure to appear by a defendant, the
76 court shall order and issue to the sheriff for execution a
77 capias or arrest warrant for the defendant who has failed to
78 appear. Such capias or warrant shall comply with the
79 requirements of s. 903.046(2)(d) and shall also require
80 extradition of the defendant when arrested in another state if
81 the original charge is a felony and require return
82 transportation of the defendant when arrested in another state
83 to the jurisdiction of the court when arrested on any case
84 within the state. If the court fails or refuses to issue such

85 capias or arrest warrant, the surety shall immediately be
86 exonerated and any bonds deposited shall be discharged by the
87 clerk of the court in compliance with s. 903.31(1).
88 (5)(a) The court shall discharge a forfeiture within 60
89 days upon:
90 1. ~~(a)~~ A determination that it was impossible for the
91 defendant to appear as required due to circumstances beyond the
92 defendant's control. The potential adverse economic consequences
93 of appearing as required shall not be considered as constituting
94 a ground for such a determination;
95 2. ~~(b)~~ A determination that, at the time of the required
96 appearance, the defendant was adjudicated insane and confined in
97 an institution or hospital or was confined in a jail or prison;
98 3. ~~(c)~~ Surrender or arrest of the defendant if the delay
99 has not thwarted the proper prosecution of the defendant. If the
100 forfeiture has been before discharge, the court shall direct
101 remission of the forfeiture. The court shall condition a
102 discharge or remission on the payment of costs and the expenses
103 incurred by an official in returning the defendant to the
104 jurisdiction of the court.
105 (b) Failure of the state attorney to institute extradition
106 proceedings or extradite the principal on a bail bond after the
107 surety has agreed in writing to pay actual transportation costs
108 shall exonerate the surety, and any forfeiture or judgment shall
109 be set aside or vacated and any payment by the surety of a
110 forfeiture or judgment shall be remitted in full.
111 Section 5. Subsection (1) of section 903.27, Florida
112 Statutes, is amended to read:

113 903.27 Forfeiture to judgment.--
114 (1) If the forfeiture is not paid or discharged by order
115 of a court of competent jurisdiction within 60 days and the bond
116 is secured other than by money and bonds authorized in s.
117 903.16, the clerk of the circuit court for the county where the
118 order was made shall enter a judgment against the surety for the
119 amount of the penalty and issue execution. <u>However, in any case</u>
120 <u>in which the bond forfeiture has been discharged by the court of</u>
121 <u>competent jurisdiction conditioned upon the payment by the</u>
122 <u>surety of certain costs or fees as allowed by statute, the</u>
123 <u>amount for which judgment may be entered may not exceed the</u>
124 <u>amount of the unpaid fees or costs upon which the discharge had</u>
125 <u>been conditioned. Judgment for the full amount of the forfeiture</u>
126 <u>shall not be entered if payment of a lesser amount will satisfy</u>
127 <u>the conditions to discharge the forfeiture.</u> Within 10 days, the
128 clerk shall furnish the Department of Financial Services and the
129 Office of Insurance Regulation of the Financial Services
130 Commission with a certified copy of the judgment docket and
131 shall furnish the surety company at its home office a copy of
132 the judgment, which shall include the power of attorney number
133 of the bond and the name of the executing agent. If the judgment
134 is not paid within 35 days, the clerk shall furnish the
135 Department of Financial Services, the Office of Insurance
136 Regulation, and the sheriff of the county in which the bond was
137 executed, or the official responsible for operation of the
138 county jail, if other than the sheriff, two copies of the
139 judgment and a certificate stating that the judgment remains
140 unsatisfied. When and if the judgment is properly paid or an

141 order to vacate the judgment has been entered by a court of
142 competent jurisdiction, the clerk shall immediately notify the
143 sheriff, or the official responsible for the operation of the
144 county jail, if other than the sheriff, and the Department of
145 Financial Services and the Office of Insurance Regulation, if
146 the department and office had been previously notified of
147 nonpayment, of such payment or order to vacate the judgment. The
148 clerk shall also immediately prepare and record in the public
149 records a satisfaction of the judgment or record the order to
150 vacate judgment. If the defendant is returned to the county of
151 jurisdiction of the court, whenever a motion to set aside the
152 judgment is filed, the operation of this section is tolled until
153 the court makes a disposition of the motion.
154 Section 6. Section 903.31, Florida Statutes, is amended to
155 read:
156 903.31 Canceling the bond.--
157 (1) Within 10 business days after the conditions of a bond
158 have been satisfied or the forfeiture discharged or remitted,
159 ~~the court shall order~~ the bond shall be canceled and, if the
160 surety has attached a certificate of cancellation to the
161 original bond, the clerk of the court shall furnish an executed
162 certificate of cancellation to the surety without cost. An
163 adjudication of guilt or innocence of the defendant shall
164 satisfy the conditions of the bond. The original appearance bond
165 shall expire 36 months after such bond has been posted for the
166 release of the defendant from custody. This subsection does not
167 apply to cases in which a bond has been declared forfeited.
168 (2) The original appearance bond does ~~shall~~ not ~~be~~

169 ~~construed to~~ guarantee deferred sentences, appearance during or
170 after a presentence investigation, appearance during or after
171 appeals, ~~conduct during or appearance after admission to a~~
172 ~~pretrial intervention program,~~ payment of fines, or attendance
173 at educational or rehabilitation facilities the court otherwise
174 provides in the judgment. If the original appearance bond has
175 been forfeited or revoked, the bond shall not be reinstated
176 without approval from the surety on the original bond.
177 (3) The original appearance bond does not guarantee the
178 defendant's conduct or appearance in court at any time after:
179 (a) The defendant enters a plea of guilty or nolo
180 contendere;
181 (b) The defendant enters into an agreement for deferred
182 prosecution or agrees to enter a pretrial intervention program;
183 (c) The defendant is acquitted;
184 (d) The defendant is adjudicated guilty;
185 (e) Adjudication of guilt of the defendant is withheld; or
186 (f) The defendant is found guilty by a judge or jury.
187 (4) ~~(3)~~ In any case where no formal charges have been
188 brought against the defendant within 365 days after arrest, the
189 court shall order the bond canceled unless good cause is shown
190 by the state.
191 Section 7. This act shall take effect October 1, 2006.

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Criminal Justice Appropriations
2 Representative Planas offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Subsection (4) is added to section 903.02,
7 Florida Statutes, to read:
8 903.02 Actions following ~~with respect to~~ denial; changes
9 in bail ~~or~~ conditions ~~of bail~~ or bond amount; separation by
10 charge or offense ~~of bond prohibited; "court" defined~~.--
11 (4) Any judge setting or granting monetary bail shall set
12 a separate and specific bail amount for each charge or offense.
13 When bail is posted, each charge or offense requires a separate
14 bond.
15 Section 2. Subsection (1) of section 903.047, Florida
16 Statutes, is amended to read:
17 903.047 Conditions of pretrial release.--
18 (1) As a condition of pretrial release, whether such
19 release is by surety bail bond or recognizance bond or in some
20 other form, the defendant ~~court~~ shall ~~require that~~:
21 (a) ~~The defendant~~ Refrain from criminal activity of any
22 kind.~~; and~~

23 (b) ~~The defendant~~ Refrain from any contact of any type
24 with the victim, except through pretrial discovery pursuant to
25 the Florida Rules of Criminal Procedure.
26 (c) Comply with all conditions of pretrial release.
27 Section 3. Subsection (1) of section 903.27, Florida
28 Statutes, is amended to read:
29 903.27 Forfeiture to judgment.--
30 (1) If the forfeiture is not paid or discharged by order
31 of a court of competent jurisdiction within 60 days and the bond
32 is secured other than by money and bonds authorized in s.
33 903.16, the clerk of the circuit court for the county where the
34 order was made shall enter a judgment against the surety for the
35 amount of the penalty and issue execution. However, in any case
36 in which the bond forfeiture has been discharged by the court of
37 competent jurisdiction conditioned upon the payment by the
38 surety of certain costs or fees as allowed by statute, the
39 amount for which judgment may be entered may not exceed the
40 amount of the unpaid fees or costs upon which the discharge had
41 been conditioned. Judgment for the full amount of the forfeiture
42 shall not be entered if payment of a lesser amount will satisfy
43 the conditions to discharge the forfeiture. Within 10 days, the
44 clerk shall furnish the Department of Financial Services and the
45 Office of Insurance Regulation of the Financial Services
46 Commission with a certified copy of the judgment docket and
47 shall furnish the surety company at its home office a copy of
48 the judgment, which shall include the power of attorney number
49 of the bond and the name of the executing agent. If the judgment
50 is not paid within 35 days, the clerk shall furnish the
51 Department of Financial Services, the Office of Insurance
52 Regulation, and the sheriff of the county in which the bond was
53 executed, or the official responsible for operation of the

54 county jail, if other than the sheriff, two copies of the
55 judgment and a certificate stating that the judgment remains
56 unsatisfied. When and if the judgment is properly paid or an
57 order to vacate the judgment has been entered by a court of
58 competent jurisdiction, the clerk shall immediately notify the
59 sheriff, or the official responsible for the operation of the
60 county jail, if other than the sheriff, and the Department of
61 Financial Services and the Office of Insurance Regulation, if
62 the department and office had been previously notified of
63 nonpayment, of such payment or order to vacate the judgment. The
64 clerk shall also immediately prepare and record in the public
65 records a satisfaction of the judgment or record the order to
66 vacate judgment. If the defendant is returned to the county of
67 jurisdiction of the court, whenever a motion to set aside the
68 judgment is filed, the operation of this section is tolled until
69 the court makes a disposition of the motion.
70 Section 4. Section 903.31, Florida Statutes, is amended to
71 read:
72 903.31 Canceling the bond.--
73 (1) Within 10 business days after the conditions of a bond
74 have been satisfied or the forfeiture discharged or remitted,
75 the court shall order the bond canceled and, if the surety has
76 attached a certificate of cancellation to the original bond, the
77 clerk of the court shall furnish an executed certificate of
78 cancellation to the surety without cost. An adjudication of
79 guilt or innocence, an acquittal, or a withholding of an
80 adjudication of guilt ~~of the defendant~~ shall satisfy the
81 conditions of the bond. The original appearance bond shall
82 expire 36 months after such bond has been posted for the release
83 of the defendant from custody. This subsection does not apply to
84 cases in which a bond has been declared forfeited.

85 (2) The original appearance bond does ~~shall~~ not ~~be~~
86 ~~construed to~~ guarantee deferred sentences, sentencing deferrals,
87 appearance during or after a presentence investigation,
88 appearance during or after appeals, conduct during or appearance
89 after admission to a pretrial intervention program, payment of
90 fines, or attendance at educational or rehabilitation facilities
91 the court otherwise provides in the judgment. If the original
92 appearance bond has been forfeited or revoked, the bond shall
93 not be reinstated without approval from the surety on the
94 original bond.
95 (3) In any case where no formal charges have been brought
96 against the defendant within 365 days after arrest, the court
97 shall order the bond canceled unless good cause is shown by the
98 state.
99 Section 5. This act shall take effect October 1, 2006.
100
101 ========== T I T L E A M E N D M E N T ==========
102 Remove the entire title and insert:
103 An act relating to pretrial release; amending s. 903.02, F.S.;
104 providing that any judge setting or granting bail shall set a
105 separate bail amount for each charge or offense; amending s.
106 903.047, F.S.; requiring a defendant to comply with all
107 conditions of pretrial release; amending s. 903.27, F.S;
108 providing that in cases in which the bond forfeiture has been
109 discharged by the court, the amount of the judgment may not
110 exceed the amount of the unpaid fees or costs upon which the
111 discharge had been conditioned; amending s. 903.31, F.S.;
112 providing that the clerk of court shall furnish an executed
113 certificate of cancellation to the surety; providing that the
114 original appearance bond does not guarantee the defendant's

115 conduct or appearance in court under certain circumstances;
116 providing an effective date.

Bill No. 827

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Criminal Justice Appropriations
2 Representative offered the following:
3
4 **Amendment to Amendment (1) by Representative Planas (with**
5 **title amendment)**
6 Between lines 26 and 27 insert:
7 Section 3. Subsection (5) of section 903.26, Florida
8 Statutes, is amended to read:
9 903.26 Forfeiture of ~~the~~ bond; ~~when and how directed;~~
10 discharge; ~~how and when made;~~ effect of payment.--
11 (5)(a) The court shall discharge a forfeiture within 60
12 days upon:
13 1.~~(a)~~ A determination that it was impossible for the
14 defendant to appear as required due to circumstances beyond the
15 defendant's control. The potential adverse economic consequences
16 of appearing as required shall not be considered as constituting
17 a ground for such a determination;
18 2.~~(b)~~ A determination that, at the time of the required
19 appearance, the defendant was adjudicated insane and confined in
20 an institution or hospital or was confined in a jail or prison;
21 3.~~(c)~~ Surrender or arrest of the defendant if the delay
22 has not thwarted the proper prosecution of the defendant. If the
23 forfeiture has been before discharge, the court shall direct

24 remission of the forfeiture. The court shall condition a
25 discharge or remission on the payment of costs and the expenses
26 incurred by an official in returning the defendant to the
27 jurisdiction of the court.
28 (b) If a corporate surety bond has been forfeited in a
29 felony case and the state attorney chooses to not extradite the
30 defendant if arrested in another state and the surety has agreed
31 in writing to pay actual transportation costs, the court shall
32 exonerate the surety, and any forfeiture or judgment shall be
33 set aside or vacated and any payment by the surety of a
34 forfeiture or judgment shall be remitted in full.
35
36 ========== T I T L E A M E N D M E N T ==========
37 Remove line 107 and insert:
38 conditions of pretrial release; amending s. 903.26, F.S.,
39 providing requirements for bond forfeiture; amending s. 903.27,
40 F.S;

HB 1169

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1169 Vehicular Accidents Involving Death or Personal Injuries
SPONSOR(S): Galvano
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	7 Y, 0 N	Kramer	Kramer
2) Criminal Justice Appropriations Committee		Sneed	DeBeaugrine
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1169 requires the imposition of a two-year minimum mandatory sentence for the offense of leaving the scene of an accident involving death where the offender was driving under the influence. The bill also requires that a judge order an offender to make restitution to the victim upon conviction for the offenses of leaving the scene of an accident involving injury or death. The bill authorizes the imposition of "victim injury points" for these offenses. This would have the effect of significantly increasing the lowest permissible sentence that a judge can impose for the offense of leaving the scene of an accident involving death.

The bill requires the imposition of a four-year minimum mandatory sentence for the offense of DUI manslaughter. Because the lowest permissible sentence for this offense is already greater than 4 years, this provision would not increase the sentence in cases in which the offender is sentenced in excess of the lowest permissible sentence but would have the effect of prohibiting a judge from giving a reduced sentence.

The Criminal Justice Impact Conference met on March 21, 2006 and determined that this bill would have an indeterminate, yet minimal, fiscal impact on the prison bed population in the Department of Corrections.

This bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires the imposition of minimum mandatory terms of imprisonment for certain criminal offenses.

Promote personal responsibility: The bill increases the severity of the sanction for injurious behavior. The bill requires that an offender be required to pay restitution to a victim in certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Leaving the Scene of an Accident Involving Injuries or Death: Section 316.062, F.S. requires a driver of a vehicle involved in a crash resulting in property damage or injury or death to provide certain information to the person who was injured or whose property was damaged or to law enforcement investigating the crash. The driver must provide his or her name, address, vehicle registration number and driver's license. The driver also must render reasonable assistance to the injured person.[1]

Section 316.027(1), F.S. provides that a driver of a vehicle involved in a crash resulting in the injury or death of any person must immediately stop the vehicle at or near the scene of the crash, and must remain at the scene until he or she has complied with the requirements of s. 316.062, F.S., listed above. A willful violation of this provision is a third degree felony where injury occurs and is commonly known as leaving the scene of an accident involving injury. A willful violation of this provision is a second degree felony where death occurs and is commonly known as leaving the scene of an accident involving death. It is not necessary that a person *caused* the accident – merely that he or she willfully left the scene without complying with s. 316.062, F.S. in order to be charged under s. 316.027(1), F.S.

Criminal Punishment Code: The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart"[2] from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are "circumstances or factors that reasonably justify the downward departure."[3] The permissible sentence (absent downward departure) for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years.[4]

Victim injury: For sentencing purposes, victim injury is defined to mean the "physical injury or death suffered by a person as a *direct result*" of the criminal offense.[5] Generally, victim injury points are not assessed for the offense of leaving the scene of an accident involving injury or death because the injury

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[1] A violation of this provision is considered a nonmoving violation punishable by a thirty dollar fine. s. 318.18(2)
[2] s. 921.0022, F.S.
[3] s. 921.0026, F.S.
[4] s. 775.082, F.S.
[5] s. 921.0021(7)(a), F.S.

or death is not a direct result of the offender leaving the scene.[6] There are only two reported decisions affirming an assessment of victim injury points for leaving the scene of an accident involving death. In both cases, there was evidence that the victim was dragged after being hit. In May v. State, 747 So.2d 459 (Fla. 4th DCA 1999) the offender dragged the victim for 500 feet and there was evidence that the dragging was a direct cause of death. In Sims v. State, 869 So.2d 45, 48 (Fla. 5th DCA 2004), the court concluded that because there was evidence that the victim was dragged after being hit by the offender's vehicle, "there was sufficient causal connection between the leaving of the accident scene and the death to justify the imposition of victim injury points."

HB 1169 amends section 921.0021, F.S. to authorize that victim injury points be assessed when a person is convicted of leaving the scene of an accident involving death or injury. In cases where the judge assessed victim injury points, this would have the effect of significantly increasing the lowest permissible sentence for the offense. The offense of leaving the scene of an accident involving injuries is ranked in Level 5 of the ranking chart. The sentence for this offense for a first time offender ranges from any non-state prison sanction to five years in prison. The addition of victim injury points would change the lowest permissible sentence, depending on the severity of the injury. If the victim injury was severe, the lowest permissible sentence would increase to 30 months in prison; if the injury was moderate, the lowest permissible sentence would be increased to13.5 months in prison and if the victim injury was slight, the lowest permissible sentence would remain any non-state prison sanction. The maximum sentence for the offense would still be five years in prison.

The offense of leaving the scene of an accident involving death is a Level 7 felony. The sentence for this offense for a first time offender ranges from 21 months to 15 years in prison. The addition of victim injury points for the death of the victim would greatly increase the lowest permissible sentence for the offense to 111 months (9 years and 3 months) in prison.

Minimum mandatory sentence: HB 1169[7] amends s. 316.027(1)(b), F.S. to provide that a person who commits the offense of leaving the scene of an accident involving death, while driving under the influence, shall be sentenced to a mandatory minimum term of imprisonment of 2 years. Because the lowest permissible sentence for this offense, as a result of the addition of victim injury points as authorized by this bill, would be greater than 2 years, this provision would not increase the sentence in cases in which the offender is sentenced in excess of the lowest permissible sentence but would have the effect of prohibiting a judge from giving a downward departure sentence of less than 2 years in prison in cases in which a defendant is convicted of leaving the scene of an accident while driving under the influence.

Restitution: A judge is required to order a defendant to make restitution to a victim for damage or loss caused directly or indirectly by the defendant's offense and damage or loss related to the defendant's criminal episode unless the judge finds clear and compelling reasons not to order such restitution.[8] Generally, restitution cannot be ordered against a person convicted of the offense of leaving the scene of an accident involving injury or death.[9] HB 1169 provides that if the driver of a vehicle commits the

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[6] Geary v. State, 675 So.2d 625 (Fla. 2nd DCA 1996).

[7] Section 1 of the bill provides that sections 316.027 and 316.193, F.S. may be cited as the "Adam Arnold Act". According to newspaper accounts, Adam Arnold was a 16 year old who was killed in an automobile accident in 1996 where the driver of the other vehicle left the scene of the accident and was apprehended two days later. http://www.bradenton.com/mld/bradenton/13970830.htm

[8] s. 775.089(1), F.S.

[9] In Schuette v. State, 822 So.2d 1275 (Fla 2002), the defendant was charged with and convicted of driving with a suspended license and leaving the scene of an accident involving an injury. Florida Supreme Court held that

> [T]he mere occurrence of an accident, while the defendant is engaged in the criminal offense of driving with a suspended license does not as a matter of law mandate the award of restitution for the damages arising out of the accident. An award of restitution requires the existence of a causal relationship between the criminal offense of driving with a suspended license and the accident that resulted in the damaged or loss."

In the opinion, the Supreme Court relied on State v. Williams, 520 So.2d 276 (Fla. 1988), an earlier opinion which struck an award of restitution for the offense of leaving the scene of an accident and noted the lower court's assertion that it "is undisputed that restitution could not be ordered [based on] the conviction for leaving the scene of an accident." Id. at 1277. See also, Longshore v. State, 655

offense of leaving the scene of an accident involving injury or death, the court must order the driver to make restitution to the victim for any damage or loss unless the court finds clear and convincing reasons not to order the restitution. Consistent with s. 775.089(1)(a), the restitution statute, the bill provides that:

- restitution may be monetary or non-monetary
- the court must make the payment of restitution a condition of probation in accordance with s. 948.03, F.S.
- requiring the court to make restitution to a victim does not remove or diminish the requirement that the court order payment to the Crime Compensation Trust Fund pursuant to chapter 960
- payment of an award by this trust fund creates an order of restition

Driving Under the Influence: The offense of driving under the influence is committed if a person is driving or in the actual physical control of a vehicle within the state and:

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

A person who is in violation of the above provision, who operates a vehicle and who by reason of such operation, causes or contributes to causing the death of any human being commits DUI manslaughter. The offense is a second degree felony. The offense is a first degree felony if at the time of the crash, the person knew or should have known that the crash occurred and failed to give information and render aid as required by s. 316.062, F.S., described above.

The offense of DUI manslaughter (where the offender did not leave the scene) is ranked in level 8 of the offense severity ranking chart. A key factor in calculating the lowest permissible sentence for this offense is the large number of victim injury points that must be scored for the death of the victim. This results in a lowest permissible sentence for a first time offender of 124.5 months (10 years and 4.5 months) in prison. The maximum sentence, based on the fact that the offense is a second degree felony, is 15 years in prison.

HB 1169 provides that a person convicted of DUI manslaughter must be sentenced to a mandatory term of imprisonment of 4 years. Because the lowest permissible sentence for this offense is already greater than 4 years, this provision would not increase the sentence in cases in which the offender is sentenced in excess of the lowest permissible sentence but would have the effect of prohibiting a judge from giving a downward departure sentence of less than 4 years in prison in cases in which a defendant is convicted of DUI manslaughter.

C. SECTION DIRECTORY:

Section 1. Provides that sections 316.027 and 316.193, F.S. may be cited as the "Adam Arnold Act."

Section 2. Amends s. 316.027, F.S., relating to leaving the scene of an accident involving injury or death; requiring minimum mandatory sentence; authorizing imposition of victim injury points; requiring restitution.

Section 3. Amends s. 316.193, F.S., relating to leaving the driving under the influence; requiring minimum mandatory sentence for DUI manslaughter.

So.2d 1139 (Fla. 5th DCA 1995); Triplett v. State, 709 So.2d 107 (Fla. 5th DCA 1998)(court certified question of court may impose restitution for damages which are related to but not caused by the offense for which the defendant pleads guilty; review was denied by Florida Supreme Court, see State v. Triplett, 725 So.2d 1110 (Fla. Sep 25, 1998).

Section 4. Amends s. 921.0021, F.S., relating to restitution for the offense of leaving the scene of an accident.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will require a defendant who commits the offense of leaving the scene of an accident involving injury or death to pay restitution for the victim's injuries.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met on March 21, 2006 and determined that the bill would have an indeterminate, yet minimal, impact on the prison bed population of the Department of Corrections.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to vehicular accidents involving death or
3 personal injuries; providing a short title; amending s.
4 316.027, F.S.; requiring a court to sentence a driver of a
5 vehicle to a minimum term of imprisonment if the person is
6 driving under the influence and leaves the scene of a
7 crash that results in death; requiring a court to order
8 the driver of a vehicle to make restitution to the victim
9 for any damage or loss if a driver leaves the scene of an
10 accident that results in injury or death; requiring a
11 court to make the payment of restitution a condition of
12 probation; providing that an order requiring the defendant
13 to make restitution to a victim does not remove or
14 diminish the requirement that the court order payment to
15 the Crimes Compensation Trust Fund; amending s. 316.193,
16 F.S.; requiring that a person convicted of DUI
17 manslaughter be sentenced to a mandatory minimum term of
18 imprisonment; amending s. 921.0021, F.S.; allowing
19 assessment of victim injury points for certain offenses if
20 the court finds that the offender caused victim injury;
21 providing an effective date.
22
23 Be It Enacted by the Legislature of the State of Florida:
24
25 Section 1. Sections 316.027 and 316.193, Florida Statutes,
26 may be cited as the "Adam Arnold Act."
27 Section 2. Subsection (1) of section 316.027, Florida
28 Statutes, is amended to read:

29 316.027 Crash involving death or personal injuries.--
30 (1)(a) The driver of any vehicle involved in a crash
31 resulting in injury of any person must immediately stop the
32 vehicle at the scene of the crash, or as close thereto as
33 possible, and must remain at the scene of the crash until he or
34 she has fulfilled the requirements of s. 316.062. Any person who
35 willfully violates this paragraph commits ~~is guilty of~~ a felony
36 of the third degree, punishable as provided in s. 775.082, s.
37 775.083, or s. 775.084.
38 (b) The driver of any vehicle involved in a crash
39 resulting in the death of any person must immediately stop the
40 vehicle at the scene of the crash, or as close thereto as
41 possible, and must remain at the scene of the crash until he or
42 she has fulfilled the requirements of s. 316.062. Any person who
43 willfully violates this paragraph commits ~~is guilty of~~ a felony
44 of the second degree, punishable as provided in s. 775.082, s.
45 775.083, or s. 775.084. Any person who willfully violates this
46 paragraph while driving under the influence as set forth in s.
47 316.193(1) shall be sentenced to a mandatory minimum term of
48 imprisonment of 2 years.
49 (c) Notwithstanding s. 775.089(1)(a), if the driver of a
50 vehicle violates paragraph (a) or paragraph (b), the court shall
51 order the driver to make restitution to the victim for any
52 damage or loss unless the court finds clear and compelling
53 reasons not to order the restitution. Restitution may be
54 monetary or nonmonetary restitution. The court shall make the
55 payment of restitution a condition of probation in accordance
56 with s. 948.03. An order requiring the defendant to make

57 restitution to a victim does not remove or diminish the
58 requirement that the court order payment to the Crimes
59 Compensation Trust Fund pursuant to chapter 960. Payment of an
60 award by the Crimes Compensation Trust Fund creates an order of
61 restitution to the Crimes Compensation Trust Fund unless
62 specifically waived in accordance with s. 775.089(1)(b).
63 Section 3. Subsection (3) of section 316.193, Florida
64 Statutes, is amended to read:
65 316.193 Driving under the influence; penalties.--
66 (3) Any person:
67 (a) Who is in violation of subsection (1);
68 (b) Who operates a vehicle; and
69 (c) Who, by reason of such operation, causes or
70 contributes to causing:
71 1. Damage to the property or person of another commits a
72 misdemeanor of the first degree, punishable as provided in s.
73 775.082 or s. 775.083.
74 2. Serious bodily injury to another, as defined in s.
75 316.1933, commits a felony of the third degree, punishable as
76 provided in s. 775.082, s. 775.083, or s. 775.084.
77 3. The death of any human being or unborn quick child
78 commits DUI manslaughter, and commits:
79 a. A felony of the second degree, punishable as provided
80 in s. 775.082, s. 775.083, or s. 775.084.
81 b. A felony of the first degree, punishable as provided in
82 s. 775.082, s. 775.083, or s. 775.084, if:
83 (I) At the time of the crash, the person knew, or should
84 have known, that the crash occurred; and

85 (II) The person failed to give information and render aid
86 as required by s. 316.062.
87
88 For purposes of this subsection, the definition of the term
89 "unborn quick child" shall be determined in accordance with the
90 definition of viable fetus as set forth in s. 782.071. A person
91 who is convicted of DUI manslaughter shall be sentenced to a
92 mandatory minimum term of imprisonment of 4 years.
93 Section 4. Subsection (7) of section 921.0021, Florida
94 Statutes, is amended to read:
95 921.0021 Definitions.--As used in this chapter, for any
96 felony offense, except any capital felony, committed on or after
97 October 1, 1998, the term:
98 (7)(a) "Victim injury" means the physical injury or death
99 suffered by a person as a direct result of the primary offense,
100 or any additional offense, for which an offender is convicted
101 and which is pending before the court for sentencing at the time
102 of the primary offense.
103 (b) Except as provided in paragraph (c) or paragraph (d),
104 1. If the conviction is for an offense involving sexual
105 contact that includes sexual penetration, the sexual penetration
106 must be scored in accordance with the sentence points provided
107 under s. 921.0024 for sexual penetration, regardless of whether
108 there is evidence of any physical injury.
109 2. If the conviction is for an offense involving sexual
110 contact that does not include sexual penetration, the sexual
111 contact must be scored in accordance with the sentence points
112 provided under s. 921.0024 for sexual contact, regardless of

113 whether there is evidence of any physical injury.
114
115 If the victim of an offense involving sexual contact suffers any
116 physical injury as a direct result of the primary offense or any
117 additional offense committed by the offender resulting in
118 conviction, such physical injury must be scored separately and
119 in addition to the points scored for the sexual contact or the
120 sexual penetration.
121 (c) The sentence points provided under s. 921.0024 for
122 sexual contact or sexual penetration may not be assessed for a
123 violation of s. 944.35(3)(b)2.
124 (d) If the conviction is for the offense described in s.
125 872.06, the sentence points provided under s. 921.0024 for
126 sexual contact or sexual penetration may not be assessed.
127 (e) Notwithstanding paragraph (a), if the conviction is
128 for an offense described in s. 316.027 and the court finds that
129 the offender caused victim injury, sentence points for victim
130 injury may be assessed against the offender.
131 Section 5. This act shall take effect July 1, 2006.

HB 1193

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1193 CS Driving Under the Influence
SPONSOR(S): Kottkamp
TIED BILLS: **IDEN./SIM. BILLS:** SB 2468

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	8 Y, 0 N, w/CS	Kramer	Kramer
2) Transportation Committee	13 Y, 1 N	Miller	Miller
3) Criminal Justice Appropriations Committee		Sneed	DeBeaugrine
4) Justice Council			
5)			

SUMMARY ANALYSIS

Currently, a person who operates a vehicle under the influence and who by reason of such operation, causes or contributes to:

- Damage to the property or the person of another commits a first degree misdemeanor.
- Serious bodily injury to another, commits a third degree felony
- The death of any human being or unborn quick child, commits DUI manslaughter, a second degree felony. The offense is a first degree felony if at the time of the crash, the person knew or should have known that the crash occurred and failed to give information and render aid as required by s. 316.062, F.S.

HB 1193 amends this provision to provide that any person who operates a vehicle under the influence creates a rebuttable presumption that he or she caused or contributed to causing damage to the person or property of another, serious bodily injury to another, or death to another human being or unborn quick child.

Vehicular homicide is the killing of a human being caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to another. The bill provides that any person who drives under the influence creates a rebuttable presumption that he or she operated a motor vehicle in a reckless manner likely to cause death or great bodily harm to a human being.

This bill is estimated to have no fiscal impact on state or local government.
This bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government/safeguard individual liberty: The bill amends the DUI and vehicular homicide statutes to create a rebuttable presumption that a person who operated a vehicle under the influence caused damage to property or death.

B. EFFECT OF PROPOSED CHANGES:

Driving Under the Influence: Section 316.193(1), F.S. provides that the offense of driving under the influence is committed if a person is driving or in the actual physical control of a vehicle within the state and:

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

A person who is in violation of the above provision, who operates a vehicle and *who by reason of such operation, causes or contributes to causing*:

1. Damage to the property or the person of another commits a first degree misdemeanor.
2. Serious bodily injury to another, commits a third degree felony
3. The death of any human being or unborn quick child commits DUI manslaughter, a second degree felony. The offense is a first degree felony if at the time of the crash, the person knew or should have known that the crash occurred and failed to give information and render aid as required by s. 316.062, F.S.

HB 1193 amends this provision to provide that any person who drives under the influence as described in s. 316.193(1), F.S. creates a rebuttable presumption that he or she caused or contributed to causing damage to the person or property of another, serious bodily injury to another, or death to another human being or unborn quick child.

Until 1986, the DUI manslaughter statute (previously referred to as "manslaughter by intoxication") was interpreted as not requiring proof of a "causal connection between the manner of operation of the defendant's motor vehicle and the death of the victim". *Magaw v. State*, 537 So.2d 564, 565 (Fla. 1989). The Supreme Court referred to the statute as having "strict liability consequences". *Baker v. State,* 377 So.2d 17 (Fla. 1979)(upholding constitutionality of statute). In 1986 the statute was amended to "introduce causation as an element" of the offense. *Magaw*, 537 So.2d at 567; *State v. Hubbard*, 751 So.2d 552 (Fla. 1999).

Vehicular Homicide*:* Vehicular homicide is the killing of a human being, or the killing of a "viable fetus" by any injury to the mother, caused by the operation of a motor vehicle by another *in a reckless manner likely to cause the death of, or great bodily harm to, another.*[1] The degree of culpability required to prove that a driver was reckless is less than culpable negligence, which is the standard for

[1] § 782.071, F.S.

manslaughter, but more than a mere failure to use ordinary care.[2] The offense is a second degree felony. If at the time of the accident, the person knew or should have known that the accident occurred and the person failed to give information or render aid, the offense is a first degree felony.

The bill provides that for purposes of this section, a person who violates s. 316.193(1), F.S., relating to driving under the influence, creates a rebuttable presumption that he or she operated a motor vehicle in a reckless manner likely to cause death or great bodily harm to a human being.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.193, F.S., relating to driving under the influence; creating rebuttable presumption.

Section 2. Amends s. 782.071, F.S., relating to vehicular homicide; creating rebuttable presumption.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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[2] McCreary v. State, 371 So.2d 1024 (Fla.1979); Michel v. State, 752 So.2d 6, 12 (Fla. 5th DCA 2000)(holding that evidence supported vehicular homicide conviction where defendants had been ordered off the interstate for failing to have the proper equipment on their truck then drove the truck on a dark stretch of highway at night, without any rear warning lights, at a speed of between 22 and 24 m.p.h. and with metals rails hanging out of the back of the truck, which had no bumper)

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

2. Other:

Currently, in order to prove a DUI manslaughter case, in addition to proving the impairment of the driver, the state must prove that by operating the vehicle, the driver caused or contributed to causing the death of a human being. HB 1193 provides that the fact that a person drove under the influence creates a rebuttable presumption that the person caused or contributed to causing the death of another human being. The bill also creates a similar presumption in the vehicular homicide statute. An issue could be raised as to whether this provision violates the Due Process Clause by unconstitutionally shifting the burden of proof to the defendant.

A recent 5th District Court of Appeal case contained a thorough discussion on the issue of presumptions:

> 'Inferences and presumptions are a staple of our adversary system of factfinding.' The ultimate test of the constitutional validity of any such evidentiary device is that it 'must not undermine the factfinder's responsibility at trial, based on evidence adduced by the State, to find the ultimate facts beyond a reasonable doubt.' To satisfy the requirements of due process, all inferences and presumptions must pass the 'rational connection' test, which requires, at minimum, that it must "be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend." In Allen, 442 U.S. 140, 99 S.Ct. 2213, 60 L.Ed.2d 777, the Court had occasion to consider and refine what had been its somewhat confusing past treatment of inferences and presumptions. The Allen Court examined the value of these evidentiary devices and their validity under the due process clauses contained in the Fifth and Fourteenth Amendments to the United States Constitution in light of 'the strength of the connection between the particular basic and elemental facts involved and on the degree to which the device curtails the factfinder's freedom to assess the evidence independently.' The Court used the terms 'permissive inference' and 'mandatory presumption' to describe two types of evidentiary devices that will be subjected to constitutional scrutiny.
>
> A permissive inference allows, but does not require, the trier of fact to infer the elemental fact from proof of a basic fact and does not place any burden on the defendant. In this situation, the basic fact may constitute prima facie evidence of the elemental fact. On the other hand, a mandatory presumption tells a factfinder that he or they must find the elemental fact upon proof of the basic fact, unless the defendant offers evidence that rebuts the presumption created by the connection between the two facts. Because of the differences in the two types of presumptions, the threshold inquiry in analysis of the constitutionality of a statutory presumption is to determine the type of presumption that the statute creates.
>
> If the statute creates a permissive inference, a party challenging it is generally required to demonstrate its invalidity as applied to him. Because a permissive inference allows a trier of fact to reject the inference and does not shift the burden of proof, 'it affects the application of the 'beyond a reasonable doubt' standard only if, under the facts of the case, there is no rational way the trier could make the connection permitted by the inference.' Accordingly, a permissive inference will be valid so long as, under the facts of the case, the presumed fact 'more likely than not' flows from the basic fact and the inference is not the sole basis for a finding of guilt. On the other hand, if, under the facts of the case, it is clear that the inference is the sole basis for a finding of guilt, the fact proved must be sufficient to support the inference of guilt beyond a reasonable doubt.
>
> *If the statute creates a mandatory presumption, the Court has generally examined the presumption on its face to determine the extent to which the basic and elemental facts coincide. Because the jury must accept the mandatory presumption even if it is the sole evidence of an*

element of the offense and because the State bears the burden of establishing guilt, the presumed fact must flow from the basic fact beyond a reasonable doubt.

State v. Rygwelski, 899 So.2d 498, 501 -502 (Fla.2nd DCA. 2005)(citations omitted)(holding that statute that provides that failure to redeliver property within five days after receipt of demand for return "is prima facie evidence of fraudulent intent" creates a permissive inference, not a mandatory presumption).

In *State v. Brake*, 796 So.2d 522 (Fla. 2001), the Florida Supreme Court considered the constitutionality of a statutory presumption that a person who lured or enticed a child under the age of 12 into a dwelling without the consent of the child's parent was doing so for other than a lawful purpose. In striking the presumption, the court analyzed the provision as follows:

> In assessing the constitutionality of such presumptions, the United States Supreme Court "has generally examined the presumption on its face to determine the extent to which the basic and elemental facts coincide." As the Supreme Court [has] explained ..... "a criminal statutory presumption must be regarded as 'irrational' or 'arbitrary,' and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend."
>
> In the instant case, the statute permits the State to prove the mens rea element of the offense ("for other than a lawful purpose") by proving lack of parental consent for the child to enter the structure, dwelling, or conveyance with the defendant. We cannot say with substantial assurance that a defendant's unlawful intent can be so presumed. For example, a neighbor who invites a child into their house for a perfectly innocent reason is not likely to seek parental permission.

According to the language of HB 1193, any person who operates a vehicle under the influence *creates* a "rebuttable presumption " that he or she caused damage or death. This language appears to create a "mandatory presumption" – requiring the factfinder to find that the defendant caused the harm or death unless the presumption is rebutted by the defendant. As a result, it appears that the test to be applied to the presumption is whether the presumed fact (causation of harm or death) must flow from the basic fact (operating a vehicle under the influence) beyond a reasonable doubt.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Criminal Justice Committee adopted two amendments. As filed, the bill amended the vehicular homicide statute to provide that any person who drives under the influence creates a rebuttable presumption that he or she operated a motor vehicle in a reckless manner likely to cause death or *bodily injury* to a human being. However, this statute requires proof that a person operated a motor vehicle in a reckless manner likely to cause the death of or *great bodily harm* to another. The first amendment amended the presumption to include great bodily harm instead of bodily injury to conform the two provisions.

The committee also adopted an amendment which modified the presumption relating to DUI to include damage to the person of another to conform to the rest of the statute.

CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to driving under the influence; amending
7 s. 316.193, F.S.; providing that, if a person drives under
8 the influence of alcohol or a specified chemical or
9 controlled substance and causes damage to property or
10 person, serious bodily injury, or death to another human
11 being or unborn quick child, a rebuttable presumption is
12 created that the person caused or contributed to causing
13 damage to property or person, serious bodily injury, or
14 death to another human being or unborn quick child;
15 amending s. 782.071, F.S.; providing that, if a person
16 drives under the influence of alcohol or a specified
17 chemical or controlled substance, a rebuttable presumption
18 is created that the person operated a motor vehicle in a
19 reckless manner likely to cause death or great bodily harm
20 to another human being; providing an effective date.
21
22 Be It Enacted by the Legislature of the State of Florida:
23

24 Section 1. Subsections (1) and (3) of section 316.193,
25 Florida Statutes, are amended to read:
26 316.193 Driving under the influence; penalties.--
27 (1) A person commits ~~is guilty of~~ the offense of driving
28 under the influence and is subject to punishment as provided in
29 subsection (2) if the person is driving or in actual physical
30 control of a vehicle within this state and:
31 (a) The person is under the influence of alcoholic
32 beverages, any chemical substance set forth in s. 877.111, or
33 any substance controlled under chapter 893, when affected to the
34 extent that the person's normal faculties are impaired;
35 (b) The person has a blood-alcohol level of 0.08 or more
36 grams of alcohol per 100 milliliters of blood; or
37 (c) The person has a breath-alcohol level of 0.08 or more
38 grams of alcohol per 210 liters of breath.
39 (3) Any person:
40 (a) Who is in violation of subsection (1);
41 (b) Who operates a vehicle; and
42 (c) Who, by reason of such operation, causes or
43 contributes to causing:
44 1. Damage to the property or person of another commits a
45 misdemeanor of the first degree, punishable as provided in s.
46 775.082 or s. 775.083.
47 2. Serious bodily injury to another, as defined in s.
48 316.1933, commits a felony of the third degree, punishable as
49 provided in s. 775.082, s. 775.083, or s. 775.084.
50 3. The death of any human being or unborn quick child
51 commits DUI manslaughter, and commits:

52 a. A felony of the second degree, punishable as provided
53 in s. 775.082, s. 775.083, or s. 775.084.
54 b. A felony of the first degree, punishable as provided in
55 s. 775.082, s. 775.083, or s. 775.084, if:
56 (I) At the time of the crash, the person knew, or should
57 have known, that the crash occurred; and
58 (II) The person failed to give information and render aid
59 as required by s. 316.062.
60
61 For purposes of this paragraph, any person who violates
62 subsection (1) creates a rebuttable presumption that he or she
63 caused or contributed to causing damage to the person or
64 property of another, serious bodily injury to another, or death
65 to another human being or unborn quick child.
66
67 For purposes of this subsection, the definition of the term
68 "unborn quick child" shall be determined in accordance with the
69 definition of viable fetus as set forth in s. 782.071.
70 Section 2. Section 782.071, Florida Statutes, is amended
71 to read:
72 782.071 Vehicular homicide.--"Vehicular homicide" is the
73 killing of a human being, or the killing of a viable fetus by
74 any injury to the mother, caused by the operation of a motor
75 vehicle by another in a reckless manner likely to cause the
76 death of, or great bodily harm to, another.
77 (1) Vehicular homicide is:
78 (a) A felony of the second degree, punishable as provided
79 in s. 775.082, s. 775.083, or s. 775.084.

80 (b) A felony of the first degree, punishable as provided
81 in s. 775.082, s. 775.083, or s. 775.084, if:
82 1. At the time of the accident, the person knew, or should
83 have known, that the accident occurred; and
84 2. The person failed to give information and render aid as
85 required by s. 316.062.
86
87 This paragraph does not require that the person knew that the
88 accident resulted in injury or death.
89 (2) For purposes of this section, a fetus is viable when
90 it becomes capable of meaningful life outside the womb through
91 standard medical measures.
92 (3) For purposes of this section, any person who violates
93 s. 316.193(1) creates a rebuttable presumption that he or she
94 operated a motor vehicle in a reckless manner likely to cause
95 death or great bodily harm to a human being.
96 (4) ~~(3)~~ A right of action for civil damages shall exist
97 under s. 768.19, under all circumstances, for all deaths
98 described in this section.
99 (5) ~~(4)~~ In addition to any other punishment, the court may
100 order the person to serve 120 community service hours in a
101 trauma center or hospital that regularly receives victims of
102 vehicle accidents, under the supervision of a registered nurse,
103 an emergency room physician, or an emergency medical technician
104 pursuant to a voluntary community service program operated by
105 the trauma center or hospital.
106 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1457 CS Youth Custody Officers
SPONSOR(S): Lopez-Cantera
TIED BILLS: **IDEN./SIM. BILLS:** SB 1398

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

SUMMARY ANALYSIS

Under current law, a youth custody officer's (YCO's) powers are limited to taking juveniles into custody when the YCO has probable cause to believe that a juvenile has violated conditions of probation, home detention, conditional release, or postcommitment probation, or has failed to appear in court. Thus, if a YCO witnesses any other type of unlawful activity, whether committed by a juvenile in his or her custody or by any other person, the YCO must call a local law enforcement officer (LEO) to address the situation.

The bill amends current law to specify that the aforementioned powers represent the primary duties of a YCO and adds that a YCO, while in the performance of his or her duties, has statewide jurisdiction and the same authority and powers granted to LEOs, except that a YCO may not exercise any authority under the state's uniform traffic control code. Accordingly, under the bill, a YCO may address unlawful activity, other than traffic violations, without contacting a local LEO.

The bill also requires YCOs to be certified as LEOs under ch. 943, F.S.; whereas, under current law, YCOs may also be certified as correctional or correctional probation officers. This change has little practical effect on current practice. According to the Department of Juvenile Justice, all YCOs presently employed are certified as LEOs.

The DJJ states that this bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill expands Youth Custody Officer (YCO) authority by providing that a YCO, while in the performance of his or her duties, has statewide jurisdiction and the same authority and powers granted to law enforcement officers, except that a YCO may not exercise any authority under the state's uniform traffic control code.

B. EFFECT OF PROPOSED CHANGES:

Youth Custody Officers: Section 985.2075, F.S., creates the position of YCO within the Department of Juvenile Justice (DJJ). Subsection (1) authorizes a YCO to take a juvenile into custody if he or she has probable cause to believe that the juvenile has:

- Violated conditions of probation, home detention, conditional release, or postcommitment probation; or
- Failed to appear in court after receiving proper notice.

These are the **only** circumstances under which a YCO is statutorily authorized to take a juvenile into custody. Thus, if a juvenile commits a misdemeanor or felony offense in the officer's presence, he or she may not take the juvenile into custody for the offense or investigate the offense; instead, the YCO must call a law enforcement officer (LEO) from the local jurisdiction to take the juvenile into custody and to conduct the investigation.

Under s. 985.2075(2), F.S., a YCO must:

- Meet minimum qualifications for employment or appointment;
- Be certified under ch. 943, F.S., which provides for correctional, correctional probation, and law enforcement officer certifications; and
- Comply with the continued employment requirements under s. 943.135, F.S., which addresses the continued employment of correctional, correctional probation, and law enforcement officers.

According to data provided by the DJJ, there are 16 YCO positions assigned to nine judicial circuits (the 1st, 4th, 6th, 9th, 11th, 13th, 15th, 17th, and 18th Judicial Circuits). Three of these positions are not presently filled. During Fiscal Year 2004-05, YCOs apprehended 3,801 juveniles, which resulted in the closure of 4,596 cases.

Effect of bill: As discussed above, s. 985.2075, F.S., currently limits a YCO's authority to taking juveniles into custody for probation, home detention, conditional release, or postcommitment probation violations and for failing to appear in court. The bill amends this section to add that a YCO, while in the performance of his or her duties:

- *May file criminal charges and gather evidence for prosecution where the officer has probable cause to believe that a youth, who he or she has taken into custody, has committed violations of criminal law.*
- *Has statewide jurisdiction.*
- *Has the same authority and powers granted to law enforcement officers by law, including the authority to make arrest under ch. 901, F.S.,[1] carry firearms, serve court process, and seize*

[1] Chapter 901, F.S., sets forth Florida's law relating to arrests, including an officer's power to conduct warrantless arrests, "stop and frisk" a person, break into a building, and conduct searches of persons. *See, e.g.,* Section 901.15, F.S. (authorizing an officer to make warrantless arrests under specified circumstances); Section 901.151, F.S. (specifying when an officer may detain a person and search

contraband and the proceeds of illegal activities, except that the YCO may not exercise any power or duty authorized under ch. 316, F.S.,[2] or in s. 901.15, F.S which deal with traffic infractions.[3]

Finally, the bill requires YCOs to be certified as LEOs under ch. 943, F.S.; whereas, under current law, YCOs may also be certified as correctional or correctional probation officers. This change has little practical effect on current practice. According to DJJ, all YCOs presently employed are certified as LEOs..

The bill takes effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 985.2075, F.S., to expand YCO authority to that of a law enforcement officer when the YCO is the performance of his or her duties and to require YCOs to be certified as LEOs.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The DJJ states that this bill will have no fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may generate an indeterminate cost savings to local law enforcement agencies to the extent that the bill's expansion of YCO powers results in fewer calls to local law enforcement.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

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the person for a weapon); Section 901.19, F.S. (specifying when an officer may use necessary and reasonable force to enter a building or property to make an arrest); Section 901.21, F.S. (specifying requirements applicable to the search of an arrested person and surrounding area); and Section 901.211, F.S. (specifying requirements applicable to strip searches of arrested persons).

[2] Ch. 301, F.S., is this state's uniform traffic control code, which sets forth traffic offenses and provides for enforcement by specified law enforcement agencies in s. 316.640, F.S.

[3] Section 901.15(5), F.S., addresses the authority of LEOs to make warrantless arrests subsequent to traffic violations.

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 28, 2006, the Juvenile Justice Committee adopted a committee substitute that: (1) provides that YCOs may only exercise law enforcement powers while in the performance of their duties; (2) prohibits YCOs from exercising authority under the state's uniform traffic control code; (3) requires YCOs to be certified as LEOs under ch. 943, F.S.; and (4) reinstates existing law that requires YCOs to inform local law enforcement agencies of their activities.

CHAMBER ACTION

The Juvenile Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to youth custody officers; amending s. 985.2075, F.S.; providing that youth custody officers may file criminal charges and gather evidence under specified circumstances; providing that youth custody officers have the authority and powers of law enforcement officers, subject to specified exceptions, while in the performance of their duties; requiring youth custody officers to be certified as law enforcement officers; providing an effective date.

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

Section 1. Section 985.2075, Florida Statutes, is amended to read:

985.2075 Youth custody officer.--

(1) There is created within the department ~~of Juvenile Justice~~ the position of youth custody officer. The <u>primary</u> duties of each youth custody officer shall be to take youth into

24 custody if the officer has probable cause to believe that the
25 youth has violated the conditions of probation, home detention,
26 conditional release, or postcommitment probation, or has failed
27 to appear in court after being properly noticed. The authority
28 of the youth custody officer to take youth into custody is
29 specifically limited to these purposes ~~this purpose~~.
30 (2) While in the performance of his or her duties, a youth
31 custody officer:
32 (a) May file criminal charges and gather evidence for
33 prosecution where the officer has probable cause to believe that
34 a youth, who he or she has taken into custody pursuant to
35 subsection (1), has committed violations of criminal law.
36 (b) Has statewide jurisdiction.
37 (c) Has the same authority and powers granted to law
38 enforcement officers by law, including the authority to make
39 arrests under chapter 901, carry firearms, serve court process,
40 and seize contraband and the proceeds of illegal activities,
41 except that a youth custody officer may not exercise any power
42 or duty authorized in chapter 316 or in s. 901.15(5).
43 (3) ~~(2)~~ A youth custody officer must meet the minimum
44 qualifications for employment or appointment, be certified as a
45 law enforcement officer under chapter 943, and comply with the
46 requirements for continued employment required by s. 943.135.
47 The department ~~of Juvenile Justice~~ must comply with the
48 responsibilities provided for an employing agency under s.
49 943.133 for each youth custody officer.

50 (4) ~~(3)~~ A youth custody officer shall inform appropriate
51 local law enforcement agencies of his or her activities under
52 this section.
53 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1577 Personal Identification Information
SPONSOR(S): Brandenburg
TIED BILLS: **IDEN./SIM. BILLS:** SB 1964

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

SUMMARY ANALYSIS

HB 1577 amends s. 817.568 F.S., related to criminal use of personal identification information (a.k.a. identity theft), by broadening the scope of the statute's reach. Specifically, it provides that it is a second degree felony for any person who willfully and fraudulently uses personal identification information of an individual who is 65 years of age or older without first obtaining consent. It further provides second degree felony penalties if the offense was committed using the personal identification information of a person who is 65 years of age or older, over which the offender has custodial authority.

The Criminal Justice Impact Conference met April 3, 2006 and concluded this bill would have an indeterminate, yet minimal, prison bed impact on the Department of Corrections.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government / Promote Personal Responsibility- This bill provides criminal penalties for fraudulent use of personal identification information of a person 65 years of age or older.

B. EFFECT OF PROPOSED CHANGES:

Currently, s. 817.568, F.S., provides that, "[a]ny person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, personal identification information[1] concerning an individual without first obtaining that individual's consent, commits" a third degree felony. This offense is commonly known as "identity theft". This section also provides for enhanced penalties as follows:

- If the value of the pecuniary benefit, services received or injury is $5,000 or more or if the person fraudulently uses the personal identification information of ten or more individuals without their consent, the offense is a second degree felony and the judge must impose a three year minimum mandatory term of imprisonment.

- If the value of the pecuniary benefit, services received or injury is $50,000 or more or if the person uses the personal identification information of 20 or more individuals, the offense is a first degree felony and the judge must impose a five year minimum mandatory sentence.

- If the value of the pecuniary benefit, services received or injury is $100,000 or more or if the person uses the personal identification information of 30 or more individuals, the offense is a first degree felony and the judge must impose of a ten year minimum mandatory sentence.

This section provides penalties for the offense of harassment[2] by use of personal identification information as well as using a public record to commit identity theft.[3] Further, this section also provides penalties if identity theft is committed using the personal identification information of an individual less than eighteen years of age[4]or an individual that is deceased.[5]

HB 1577 amends s. 817.568, F.S., to provide that it is a second degree felony[6] for any person who willfully and without authorization fraudulently uses personal identification information concerning an individual who is 65 years of age or older without first obtaining consent of that individual or of his or her

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[1] S. 817.568(f), F.S., defines "personal identification information" as "any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any: 1) Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food stamp account number, bank account, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card; 2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; 3) Unique electronic identification number, address, or routing code; 4) Medical records; 5) Telecommunication identifying information or access device; or 6) Other number or information that can be used to access a person's financial resources."

[2] The term "harass" means to engage in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose. S. 817.568(1)(c), F.S.

[3] S. 817.568(4) and (5), F.S.

[4] S. 817.568(6) and (7), F.S.

[5] S. 817.568(8), F.S.

[6] Punishable by a term of imprisonment not to exceeding 15 years and a fine of $10,000. ss. 775.082(3)(c) and 775.083(1)(b).

legal guardian. It further provides for second degree felony penalties for a person who is in the relationship of adult child or legal guardian, or who otherwise exercises custodial authority over an individual who is 65 years of age or older, who willfully and fraudulently uses personal identification information of that individual.

HB 1577 also amends the Criminal Punishment Code[7] to reflect these offenses. As such, identity theft of individual who is 65 years of age or older without first obtaining consent is ranked level 8 on the offense severity ranking chart[8], and identity theft of an individual who is 65 years of age or older, over which the offender has custodial authority is ranked level 9 on the offense severity ranking chart[9].

C. SECTION DIRECTORY:

Section 1. Amends s. 817.568, F.S., relating to criminal use of personal identification information.

Section 2. Amends s. 921.0022, F.S., conforming cross-references.

Section 3. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Criminal Justice Impact Conference met April 3, 2006 and concluded this bill would have an indeterminate, yet minimal, prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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[7] S. 921.0022, F.S.
[8] S. 921.0022(3)(h), F.S.
[9] S. 921.0021(3)(i), F.S.

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to personal identification information;
3 amending s. 817.568, F.S.; providing that any person who
4 willfully and without authorization fraudulently uses
5 personal identification information concerning an
6 individual who is 65 years of age or older without first
7 obtaining the consent of the individual or of his or her
8 legal guardian commits a felony of the second degree;
9 providing criminal penalties; providing that a person who
10 is in the relationship of adult child or legal guardian,
11 or who otherwise exercises custodial authority over an
12 individual who is 65 years of age or older, who willfully
13 and fraudulently uses personal identification information
14 of that individual commits a felony of the second degree;
15 providing criminal penalties; amending s. 921.0022, F.S.;
16 conforming cross-references; providing an effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Subsections (6) and (7) of section 817.568,
21 Florida Statutes, are amended to read:
22 817.568 Criminal use of personal identification
23 information.--
24 (6)(a) Any person who willfully and without authorization
25 fraudulently uses personal identification information concerning
26 an individual who is less than 18 years of age without first
27 obtaining the consent of that individual or of his or her legal
28 guardian commits a felony of the second degree, punishable as

29 provided in s. 775.082, s. 775.083, or s. 775.084.
30 (b) Any person who willfully and without authorization
31 fraudulently uses personal identification information concerning
32 an individual who is 65 years of age or older without first
33 obtaining the consent of that individual or of his or her legal
34 guardian commits a felony of the second degree, punishable as
35 provided in s. 775.082, s. 775.083, or s. 775.084.
36 (7)(a) Any person who is in the relationship of parent or
37 legal guardian, or who otherwise exercises custodial authority
38 over an individual who is less than 18 years of age, who
39 willfully and fraudulently uses personal identification
40 information of that individual commits a felony of the second
41 degree, punishable as provided in s. 775.082, s. 775.083, or s.
42 775.084.
43 (b) Any person who is in the relationship of adult child
44 or legal guardian, or who otherwise exercises custodial
45 authority over an individual who is 65 years of age or older,
46 who willfully and fraudulently uses personal identification
47 information of that individual commits a felony of the second
48 degree, punishable as provided in s. 775.082, s. 775.083, or s.
49 775.084.
50 Section 2. Paragraphs (h) and (i) of subsection (3) of
51 section 921.0022, Florida Statutes, are amended to read:
52 921.0022 Criminal Punishment Code; offense severity
53 ranking chart.--
54 (3) OFFENSE SEVERITY RANKING CHART
Florida Felony

Statute	Degree	Description
		(h) LEVEL 8
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
499.0051(7)	1st	Forgery of prescription or legend drug labels.
499.0052	1st	Trafficking in contraband legend drugs.
560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding $20,000, but less than $100,000 by money transmitter.
560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding $20,000, but less than $100,000.

	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding $20,000, but less than $100,000 by financial institutions.
64	777.03(2)(a)	1st	Accessory after the fact, capital felony.
65	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawfully discharging bomb.
66	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
67	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
68	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
69	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property

			damage.
70	794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
71	800.04(4)	2nd	Lewd or lascivious battery.
72	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
73	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
74	810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
75	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or $1,000 or more property damage.
76	812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.
77	812.13(2)(b)	1st	Robbery with a weapon.
78	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
79	817.568(6)(a)	2nd	Fraudulent use of personal

			identification information of an individual under the age of 18.
80	817.568(6)(b)	2nd	Fraudulent use of personal identification information of an individual 65 years of age or older.
81	825.102(2)	2nd	Aggravated abuse of an elderly person or disabled adult.
82	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
83	825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at $100,000 or more.
84	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
85	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
86	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
87	860.16	1st	Aircraft piracy.

88	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
89	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
90	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
91	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
92	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
93	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
94	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
95	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
96	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
97			

98	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
99	893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
100	893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
101	893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
102	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
103	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
104	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
105	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.

	896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $20,000 but less than $100,000.
106			(i) LEVEL 9
107	316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
108	327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
109	499.00535	1st	Sale or purchase of contraband legend drugs resulting in great bodily harm.
110	560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding $100,000 by money transmitter.
111	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding $100,000.
112	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.
113			

	775.0844	1st	Aggravated white collar crime.
114	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
115	782.04(3)	1st,PBL	robbery, burglary, and other specified felonies.
116	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
117	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
118	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
119	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
120	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
121	787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious

			battery, molestation, conduct, or exhibition.
122	790.161	1st	Attempted capital destructive device offense.
123	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
124	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
125	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
126	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
127	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
128	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
129	812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly

			weapon.
130	812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
131	812.135(2)(b)	1st	Home-invasion robbery with weapon.
132	817.568(7)(a)	2nd,PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
133	817.568(7)(b)	2nd	Fraudulent use of personal identification information of an individual 65 years of age or older by his or her adult child, legal guardian, or person exercising custodial authority.
134	827.03(2)	1st	Aggravated child abuse.
135	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
136	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
137	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or

			chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
138	893.135	1st	Attempted capital trafficking offense.
139	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
140	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
141	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
142	893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
143	893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
144	893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
145	893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
146	893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
147	893.135	1st	Trafficking in Phenethylamines, 400

(1)(k)2.c.		grams or more.
896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding $100,000.
896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $100,000.

Section 3. This act shall take effect July 1, 2006.

HB 7021

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7021 (PCB CRJU 06-02) Stolen Property
SPONSOR(S): Criminal Justice Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee	6 Y, 0 N	Cunningham	Kramer
1) Criminal Justice Appropriations Committee		DeBeaugrine	DeBeaugrine
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 7021 provides that proof that a person was in possession of a stolen motor vehicle and that the ignition mechanism of the motor vehicle had been bypassed or the steering wheel locking mechanism had been broken or bypassed gives rise to an inference that the person in possession of the stolen motor vehicle knew or should have known that the motor vehicle had been stolen.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – The bill provides that certain evidence creates an inference of proof relating to theft of a motor vehicle.

B. EFFECT OF PROPOSED CHANGES:

Theft → Section 812.014, F.S., provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

1. Deprive the other person of a right to the property or a benefit from the property, or
2. Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.[1]

Section 812.014, F.S., provides in part that, except as provided for in s. 812.014(2)(a), F.S.,[2] it is grand theft of the third degree and a third degree felony if the property stolen is a motor vehicle.

Dealing in Stolen Property → Section 812.019, F.S., provides that any person who traffics[3] in, or endeavors to traffic in, property that he or she knows or should know was stolen commits a second degree felony. Any person who initiates, organizes, plans, finances, directs, manages, or supervises the theft of property and traffics in such stolen property commits a first degree felony.

An offender can be charged, when appropriate, with theft and dealing in stolen property in connection with the same property but cannot be convicted of both offenses.[4]

Inferences → Section 812.022, F.S. provides several inferences relating to evidence of theft or dealing in stolen property such as:

- Except as provided in s. 812.022(5), F.S., proof of possession of property recently stolen, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen.
- Proof of the purchase or sale of stolen property at a price substantially below the fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that the property had been stolen.
- Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business or without the usual indicia of ownership other than mere possession, unless satisfactorily

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[1] Section 812.012, F.S. contains definitions of the terms "obtains or uses", "property". The section also defines the term "property of another" to mean "property in which a person has an interest upon which another person is not priviledged to infringe without consent, whether or not the other person also has an interest in the property."

[2] Section 812.014(2)(a), F.S., provides that an offender commits grand theft of the first degree and a first degree felony if:

1. the property stolen is valued at $100,000 or more; or
2. the property stolen is cargo valued at $50,000 or more that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or
3. the offender commits any grand theft and:
   a. In the course of committing the offense the offender uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense and thereby damages the real property of another; or
   b. In the course of committing the offense the offender causes damage to the real or personal property of another in excess of $1,000.

[3] Section 812.012(8), F.S. contains a definition of the term "traffic".

[4] s. 812.025, F.S.

explained, gives rise to an inference that the person buying or selling the property knew or should have known that it had been stolen.

In *Edwards v. State*, 381 So.2d 696 (Fla. 1980), the court considered whether the inference relating to proof of possession of recently stolen property violated a defendant's due process rights. The court held that "[s]ince there is a rational connection between the fact proven (the defendant possessed stolen goods) and the fact presumed (the defendant knew the goods were stolen), the inference created by section 812.022(2) does not violate [a defendant's] due process rights." *See also*, *Walker v. State*, 896 So.2d 712 (Fla. 2005).

Effect of HB 7021 → HB 7021 amends section 812.022, F.S. to provide that proof that a person was in possession of a stolen motor vehicle and that the ignition mechanism of the motor vehicle had been bypassed or the steering wheel locking mechanism had been broken or bypassed gives rise to an inference that the person in possession of the stolen motor vehicle knew or should have known that the motor vehicle had been stolen.

C. SECTION DIRECTORY:

Section 1. Amends s. 812.022, F.S., to create an inference relating to stolen vehicles.

Section 2. This acts takes effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to stolen property; amending s. 812.022,
3 F.S.; providing that specified circumstances give rise to
4 an inference that the person in possession of a stolen
5 motor vehicle knew or should have known that the motor
6 vehicle had been stolen; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsection (6) is added to section 812.022,
11 Florida Statutes, to read:
12 812.022 Evidence of theft or dealing in stolen property.--
13 (6) Proof that a person was in possession of a stolen
14 motor vehicle and that the ignition mechanism of the motor
15 vehicle had been bypassed or the steering wheel locking
16 mechanism had been broken or bypassed gives rise to an inference
17 that the person in possession of the stolen motor vehicle knew
18 or should have known that the motor vehicle had been stolen.
19 Section 2. This act shall take effect July 1, 2006.

HB 7135

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7135 PCB CRJU 06-04 Youthful Offenders
SPONSOR(S): Criminal Justice Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee	7 Y, 0 N	Cunningham	Kramer
1) Criminal Justice Appropriations Committee		Sneed	DeBeaugrine
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Youthful Offender Act provides a sentencing alternative for an offender guilty of a non-capital or non-life felony that was committed before his or her 21st birthday. If classified as a youthful offender, the offender may only receive one of the following four types of sanctions: (1) probation or community control; (2) incarceration for up to 364 days, as a condition of probation or community control; (3) a split sentence that provides for incarceration followed by probation or community control; or (4) commitment to the custody of the Department of Corrections. The total sanction may not exceed six years.

The Department of Corrections must offer a basic training program for youthful offenders. If an offender successfully completes basic training, the court must place the offender on probation. If the offender later violates that probation, the court is limited to sentencing the offender to no more than 364 days in jail, rather than choosing one of the other sanctions originally available to the court in the youthful offender's case.

This bill amends s. 958.045(5)(c), F.S., to remove the phrase "as a condition of probation." This amendment will have the effect of removing the 364-day jail limit found to exist by Florida courts and will permit the court to sentence a youthful offender who has violated probation after completing basic training to any of the four sanctions that it could have originally imposed.

The Criminal Justice Impact Conference met on February 28, 2006 and determined that SB 1386, an identical bill, would have an indeterminate, yet minimal, fiscal impact on the prison bed population in the Department of Corrections. This bill might result in more probation violators being sentenced to longer sentences which would be served in prison rather than jail. Accordingly, prisons would experience an increase in their populations while jails might experience a decrease.

The bill takes effect on July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promotes Personal Responsibility → Under the bill, sanctions greater than those authorized in current law may be imposed by a trial court for an offender who has violated his or her probation following the completion of the Department of Correction's (DOC's) basic training program.

B. EFFECT OF PROPOSED CHANGES:

Youthful Offenders

The purpose of Florida's Youthful Offender Act is to provide a sentencing alternative[1] that will improve the chances for rehabilitation of an offender who: (1) is at least 18 years of age or has been transferred for criminal prosecution pursuant to ch. 985, F.S.; (2) has entered a plea to, or has been found guilty of, a felony, other than a capital or life felony, that was committed before the offender's 21st birthday; and (3) has not been previously sentenced as a youthful offender by a court.[2]

Section 958.04, F.S., provides that courts who elect to adjudicate and sentence a defendant as a youthful offender may: (1) impose probation or community control; (2) impose incarceration for up to 364 days, as a condition of probation or community control; (3) impose a split sentence that provides for incarceration followed by probation or community control; or (4) commit the youthful offender to the custody of the DOC.[3] These sentencing options are the exclusive sanctions that may be imposed for a court-adjudicated youthful offender[4], and, in general, the total sentence (probation or community control and incarceration) length may be no longer than six years.[5]

In cases where the court has elected adult, rather than youthful offender, adjudication and sentencing, the DOC may administratively classify a defendant as a youthful offender if that person: (1) is at least 18 years of age or has been transferred for criminal prosecution pursuant to ch. 985, F.S.; (2) has not been previously sentenced as a youthful offender by a court; (3) is less than 24 years old; and (4) has received a sentence that does not exceed 10 years.[6] Unlike court youthful offender adjudication, which results in a limited sentence length and the sealing of court records, DOC youthful offender classification only determines the programs and institutions in which youthful offenders may be placed.[7] Such DOC classification does not affect the original sentence imposed by the court.[8]

Basic Training

Section 958.045, F.S., requires the DOC to create a basic training program for youthful offenders (both those adjudicated as such by the court and those classified as such by the DOC), which lasts at least 120 days and includes marching drills, calisthenics, a rigid dress code, manual labor assignments, physical training, personal development training, general education and adult basic education courses, and drug counseling and other rehabilitation programs.[9] In determining eligibility for the basic training program, the DOC must find that a youthful offender: (1) has no physical limitations that preclude strenuous activity; (2) is not impaired; and (3) has not previously been incarcerated in a federal or state

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[1] In *Allen v. State*, 526 So.2d 69, 70 (Fla. 1988), the Court explained that youthful offender sentencing is more stringent than that of the juvenile system, but less harsh than the adult system.
[2] ss. 958.021, 958.04(1), F.S.
[3] s. 958.04(2), F.S.
[4] *Whitlock v. State*, 404 So.2d 795 (Fla. 3rd DCA 1981).
[5] s. 958.04(2), F.S.
[6] ss. 958.03(5), 958.11(4), F.S.; *Thomas v. State*, 825 So.2d 1032 (Fla. 1st DCA 2002).
[7] *Lezcano v. State*, 586 So.2d 1287 (Fla. 3rd DCA 1991).
[8] *Johnson v. State*, 586 So.2d 1322, 1324-1325 (Fla. 2nd DCA 1991).
[9] s. 958.045, F.S.

correctional facility.[10] Additionally, the DOC must consider the offender's criminal history and potential rehabilitative benefits of "shock" incarceration.[11] If the statutory criteria are satisfied and space is available, the DOC must submit a written request to the sentencing court seeking approval for placement of the youthful offender in a basic training program.[12] If a youthful offender satisfactorily completes basic training: (1) the court must issue an order modifying the offender's sentence and placing the offender on probation; and (2) the releasing authority must establish a release date for the offender within 30 days following program completion.[13]

In the event a youthful offender subsequently violates his or her probation after completing basic training, the court, pursuant to s. 958.045(5)(c), F.S., may " . . . revoke probation and impose any sentence that it might have originally imposed ***as a condition of probation***." (emphasis added). Section 958.04(2)(b), F.S., provides that one of the sentencing options that a court may originally impose is, "... a period of incarceration ***as a condition of probation*** ...," for up to 364 days. (emphasis added).[14] The Fourth District Court of Appeals has explained that, "Read together, these two [sections of] statutes have been consistently construed as limiting to 364 days the period of incarceration which may be imposed following successful completion of basic training."[15] In March 2004, the Third District Court of Appeals stated:

> The language of section 958.045(5)(c) may warrant further review by the legislature. We doubt that the legislature actually intended the result this language has created. We are inclined to believe that the legislature intended to permit the court to impose any sentence "that it might have originally imposed." Indeed, a judge may be hesitant to recommend boot camp in an effort to rehabilitate a youth if the judge realizes that the youth's sentence upon a future violation of probation will be limited to such a short term of incarceration. Nevertheless, the legislature has not amended the statutes since our opinion in *Bloodworth*, 769 So.2d 1117, and we are constrained by the plain language of the statutes.[16]

Effect of Bill

This bill amends s. 958.045(5)(c), F.S., to remove the phrase "as a condition of probation." This amendment will have the effect of removing the 364-day jail limit found to exist by Florida courts and will permit the court to sentence a youthful offender who has violated probation after completing basic training to any of the four sentencing alternatives that were originally available to the judge under s. 958.04(2), F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 958.045, F.S., deleting a provision limiting certain sentencing options available to the court following a violation of the conditions of probation by a youthful offender.

Section 2. This act takes effect July 1, 2006.

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[10] s. 958.045(2), F.S.
[11] *Id.*
[12] *Id.*
[13] ss. 958.045(5)(c) and (8)(d), F.S.
[14] *Bloodworth v. State*, 769 So.2d 1117 (Fla. 2nd DCA 2000); *Burkett v. State*, 816 So.2d 767 (Fla. 1st DCA 2002).
[15] *Lee v. State*, 884 So.2d 460, 461 (Fla. 4th DCA 2004).
[16] *Blaxton v. State*, 868 So.2d 620, 621 (Fla. 2nd DCA 2004).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Criminal Justice Impact Conference met February 28, 2006 and concluded that Senate Bill 1386, an identical bill, would have an indeterminate, yet minimal, prison bed impact on the Department of Corrections. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Because youthful offenders who have violated probation following completion of DOC's basic training program may be sentenced to prison rather than jail, the bill may result in an indeterminate decrease in jail capacity requirements. See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Corrections states that approximately 200 youthful offenders successfully complete basic training each year and are released on supervision. Of these, approximately 22 percent violate the conditions of their supervision. In most instances, pursuant to current law, violators are sentenced to up to 364 days in county jail. This bill may have a prison bed impact in that it will permit youthful offenders who have violated probation following completion of DOC's basic training program to be sentenced to prison rather than jail.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Art. I, s. 10, Fla. Const., prohibits passage of an ex post facto law. Accordingly, the portion of this bill increasing the possible penalty for violation of probation or community control by a basic training program graduate may only apply to an offender who committed his or her offense on or after the effective date of the bill.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A 2005, Senate Criminal Justice staff survey of circuit court judges revealed that the vast majority of judges want greater discretion in sentencing youthful offenders who violate probation following completion of DOC's basic training program. The survey further revealed that, as a result of the sentencing limitation, many judges are reluctant to sentence defendants as youthful offenders or to approve a youthful offender's placement in basic training. After reviewing the statutes, caselaw, and survey responses, the Senate Criminal Justice Committee concluded that s. 958.045(5)(c), F.S., be amended to remove the language limiting the trial court's discretion to sentence a youthful offender who violates the terms of his or her probation after completing basic training.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to youthful offenders; amending s.
3 958.045, F.S.; deleting a provision limiting certain
4 sentencing options available to the court following a
5 violation of the conditions of probation by a youthful
6 offender; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Paragraph (c) of subsection (5) of section
11 958.045, Florida Statutes, is amended to read:
12 958.045 Youthful offender basic training program.--
13 (5)
14 (c) The portion of the sentence served prior to placement
15 in the basic training program may not be counted toward program
16 completion. Upon the offender's completion of the basic training
17 program, the department shall submit a report to the court that
18 describes the offender's performance. If the offender's
19 performance has been satisfactory, the court shall issue an
20 order modifying the sentence imposed and placing the offender on
21 probation. The term of probation may include placement in a
22 community residential program. If the offender violates the
23 conditions of probation, the court may revoke probation and
24 impose any sentence that it might have originally imposed ~~as a~~
25 ~~condition of probation~~.
26 Section 2. This act shall take effect July 1, 2006.

HB 7137

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7137 CS PCB CRJU 06-06 DOC Random Drug Testing
SPONSOR(S): Criminal Justice Committee, Kravitz
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1736

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee	8 Y, 0 N	Cunningham	Kramer
1) Governmental Operations Committee	6 Y, 0 N, w/CS	Mitchell	Williamson
2) Criminal Justice Appropriations Committee		Sneed	DeBeaugrine
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

The Department of Corrections is authorized to test its employees for the illegal use of controlled substances, including anabolic steroids, using *random* drug testing. The department is, however, precluded from testing its employees for the illegal use of steroids using *reasonable suspicion* drug testing under the Drug-Free Workplace Act because anabolic steroids are not included in the definition of "drugs."

This bill authorizes the Department of Corrections to develop a program to test employees in safety-sensitive and special risk positions for anabolic steroids using *reasonable suspicion* drug testing. The *reasonable suspicion* drug testing must be conducted in accordance with the Drug-Free Workplace Act, but may also be conducted based on violent acts or violent behavior committed on or off duty.

This bill requires the Department of Corrections to adopt necessary rules.

The Department of Corrections expects the fiscal impact of implementing this bill to be minimal, and will absorb these costs within its existing budget. This bill does not have a fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill authorizes the Department of Corrections to conduct reasonable suspicion drug testing of certain employees for the illegal use of steroids. This bill increases the rulemaking authority of the Department of Corrections.

B. EFFECT OF PROPOSED CHANGES:

Drug Free-Workplace Act: Generally

Section 112.0455, Florida Statutes, is the Drug-Free Workplace Act. The Drug-Free Workplace Act authorizes[1] employers to conduct four types of drug tests: job applicant, reasonable suspicion, routine fitness for duty,[2] and follow-up.[3] The Drug-Free Workplace Act sets forth procedures for the collection of all specimens[4] and standards for laboratories.[5] The Drug-Free Workplace Act also provides employee protections[6] and confidentiality.[7]

Drug Free-Workplace Act: Reasonable Suspicion Drug Testing

Under the Drug-Free Workplace Act, *reasonable suspicion* drug testing is based on a belief that an employee is using or has used drugs in violation of the employer's policy and is drawn from specific, objective, and articulable facts and reasonable inferences from those facts in light of experience.[8] Among the facts and inferences permitted by the Drug-Free Workplace Act:

- observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of a drug;
- abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;
- a report of drug use, provided by a reliable and credible source, which has been independently corroborated;
- evidence that an individual has tampered with a drug test during employment with the current employer;
- information that an employee has caused, or contributed to, an accident while at work; or
- evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

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[1] Fla. Stat. § 112.0455(4) (2005) (employers do not have a legal duty to request that an employee undergo drug testing).
[2] Fla. Stat. § 112.0455(7)(c) (2005) (testing conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group.).
[3] Fla. Stat. § 112.0455(7)(d) (2005) (testing which the employer may conduct for up to 2 years after an employee enters an employee assistance program for drug-related problems, or an alcohol and drug rehabilitation program.).
[4] Fla. Stat. § 112.0455(8) (2005).
[5] Fla. Stat. § 112.0455(12) (2005).
[6] Fla. Stat. § 112.0455(8) (2005).
[7] Fla. Stat. § 112.0455(11) (2005).
[8] Fla. Stat. § 112.0455(5)(j) (2005) (The DFWA provides that reasonable suspicion drug testing shall not be required except upon the recommendation of a supervisor who is at least one level of supervision higher than the immediate supervisor of the employee in question.).

Drug Free-Workplace Act: Steroids Not Tested

The drugs and metabolites tested by the Drug-Free Workplace Act do not include steroids.[9] Thus, state agencies are precluded from testing employees for steroids through *reasonable suspicion* drug testing under the Drug-Free Workplace Act.

Random Drug Testing: Department of Corrections

Section 944.474, Florida Statutes, prohibits employees of the Department of Corrections from testing positive for the illegal use of controlled substances and authorizes the Department of Corrections to develop a program for the *random* drug testing of all employees. Section 944.474, Florida Statutes, does not, however, define controlled substances or random drug testing.

Yet, the Department of Corrections, by rule, defines "random drug testing" as "a drug test conducted based on a computer generated random sampling in positions identified as being subject to random testing, administered for purposes of determining the presence of drugs or their metabolites."[10] Relying on the definition for "controlled substances" in section 893.02(4), Florida Statutes,[11] which includes steroids, the Department of Corrections tests employees for steroids through *random* drug testing.

Effect of the Bill

This bill authorizes the Department of Corrections to conduct *reasonable suspicion* drug testing of employees in safety-sensitive and special risk positions for anabolic steroids[12]. A safety-sensitive position is any position in which drug impairment would constitute an immediate and direct threat to public health or safety.[13] A special risk position is any position which is required to be certified under chapter 633 or chapter 943, Florida Statutes, as a condition of employment.[14] The *reasonable suspicion* drug testing must be conducted in accordance with section 112.0455, Florida Statutes, but may also be conducted based on violent acts or violent behavior committed on or off duty.

C. SECTION DIRECTORY:

Section 1: Amends s. 944.474, F.S., to authorize the Department of Corrections to conduct *reasonable suspicion* drug testing of employees in safety sensitive or special risk positions for steroids.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

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[9] Fla. Stat. § 112.0455(13) (2005).
[10] Rule 33-208.403, F.A.C.
[11] Fla. Stat. § 893.02(4) (2005) (means any substance named or described in Schedules I-V of section 893.03, Florida Statutes).
[12] Fla. Stat. § 893.03(3)(d) (2005) (An anabolic steroid is any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth and includes 48 listed substances).
[13] Fla. Stat. § 112.0455(5)(m) (2005).
[14] Fla. Stat. § 112.0455(5)(n) (2005).

The Department of Corrections expects the fiscal impact of implementing this bill to be minimal, and will absorb these costs within its existing budget.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Fourth Amendment

The primary issues raised by employee drug testing policies revolve around Fourth Amendment rights against unlawful search and seizure. In general, the courts have upheld reasonable suspicion drug testing policies based upon *on-duty* drug use or impairment.[15] Courts have been divided, however, on the issue of whether *off-duty* drug use or impairment can form a legitimate basis for reasonable suspicion drug testing without falling afoul of the Fourth Amendment. The distinguishing factor seems to be whether the employee is in a safety-sensitive position.

For example, in *Benavidez v. Albuquerque*,[16] the court indicated that "information which would lead a reasonable person to suspect non safety sensitive employees . . . of on-the job drug use, possession, or impairment" would provide a sufficient basis for reasonable suspicion drug testing. Additionally, in *American Federation of Government Employees v. Roberts*,[17] the court found that employees of a correctional institution were primary law enforcement officers and therefore could be subjected to reasonable suspicion drug testing based upon either on or off duty conduct. Moreover, in *American Federation of Government Employees v. Martin*,[18] the court held that reasonable suspicion of safety sensitive employees could be conducted based on off-duty drug use or impairment.

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[15] *See e.g., Saavedra v. Albuquerque*, 73 F.3d 1525 (10th Cir. 1996); *Garrison v. Department of Justice*, 72 F.3d 1566 (Fed. Cir. 1995).
[16] 101 F. 3d 620 (10th Cir. 1996)
[17] 9 F.3d at 1468 (9th Cir. 1993)
[18] 969 F. 2d 788, 792-93 (9th Cir. 1992)

Conversely, in *National Treasury Employees v. Yeutter*,[19] the court held that a reasonable suspicion drug testing program that tested non-safety sensitive employees for off duty drug use was unconstitutional. Similarly, in *Rutherford v. Albuquerque*,[20] the court found drug testing unreasonable, in part, because it screened for off-duty drug use which was wholly unrelated to employer's asserted interest in on the job safety.

By limiting reasonable suspicion drug testing to employees in safety-sensitive and special risk positions, this bill is consistent with the line of authorities which support testing employees in safety-sensitive positions.

B. RULE-MAKING AUTHORITY:

This bill requires the Department of Corrections to adopt necessary rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006, the Governmental Operations Committee adopted a "strike-everything" amendment and reported the bill favorably with a committee substitute:

- Amendment 1 defined safety-sensitive and special risk positions. The amendment also required the *reasonable suspicion* drug testing to be conducted in accordance with the Drug-Free Workplace Act.

[19] 918 F. 2d 968 (D.C. Cir. 1990)
[20] 77 F. 3d 1258, 1263 (10th Cir. 1996)

CHAMBER ACTION

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1 The Governmental Operations Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to drug testing within the Department of
7 Corrections; amending s. 944.474, F.S.; authorizing the
8 department to develop a program for testing employees who
9 are in safety-sensitive and special risk positions for
10 certain controlled substances based upon a reasonable
11 suspicion; providing for the reasonable suspicion to
12 include violent acts or behavior of an employee while on
13 or off duty; requiring the department to adopt rules;
14 providing an effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Subsection (2) of section 944.474, Florida
19 Statutes, is amended to read:
20 944.474 Legislative intent; employee wellness program;
21 drug and alcohol testing.--
22 (2) Under no circumstances shall employees of the
23 department test positive for illegal use of controlled

24 substances. An employee of the department may not be under the
25 influence of alcohol while on duty. In order to ensure that
26 these prohibitions are adhered to by all employees of the
27 department and notwithstanding s. 112.0455, the department may
28 develop a program for the random drug testing of all employees.
29 The department may randomly evaluate employees for the
30 contemporaneous use or influence of alcohol through the use of
31 alcohol tests and observation methods. Notwithstanding s.
32 112.0455(5)(a), the department may develop a program for the
33 reasonable suspicion drug testing of employees who are in
34 safety-sensitive or special risk positions, as defined in s.
35 112.0455(5), for the controlled substances listed in s.
36 893.03(3)(d). The reasonable suspicion drug testing authorized
37 by this subsection shall be conducted in accordance with s.
38 112.0455, but may also include testing upon reasonable suspicion
39 based on violent acts or violent behavior of an employee who is
40 on or off duty. The department shall adopt rules pursuant to ss.
41 120.536(1) and 120.54 that are necessary to administer this
42 subsection.
43 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7187 PCB CRJU 06-08 Sexual Offenders
SPONSOR(S): Criminal Justice Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

This bill refines certain provisions of the Jessica Lunsford Act (JLA), which the Legislature approved in 2005. Some of the amendments to the JLA are the result of findings and recommendations of the Jessica Lunsford Task Force, which was created by the JLA.

[Note: This bill does not relate to background screening requirements of contractual school personnel. That is the subject of HB 7117.] This bill:

- Ranks in the offense severity ranking chart of the Criminal Punishment Code several offenses involving non-compliance with sexual offender and sexual predator requirements, which were not ranked in the JLA.
- Requires that the names or identifying information of certain applicants for governmental appointment or employment who work or volunteer in places where children regularly congregate be checked against the new National Sex Offender Public Registry.
- Provides that the Legislature intended a provision of the JLA requiring electronic monitoring of designated sexual offenders and sexual offenders who are on probation or community control following the revocation of probation or community control to only apply if the probation or community control for any *felony* offense is revoked.
- Provides that the Legislature intended a provision requiring electronic monitoring of certain sex offenders on probation and community control to only apply to those sex offenders on probation or community control whose *felony* offense was committed on or after September 1, 2005.
- Expands the list of qualifying offenses under the conditional release statute to include sexual performance by a child and selling or buying of minors. As a result, the Parole Commission will have the authority to order electronic monitoring of these releasees as required by the JLA.

The Criminal Justice Impact Conference has not yet met to provide an official estimate of the prison bed impact of this bill. However, a preliminary estimate of the prison bed impact provided by the Legislature's Office of Economic and Demographic Research is that the bill is not likely to have a significant prison bed impact.

This bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: This bill expands the list of qualifying offenses under the conditional release statute to include sexual performance by a child and selling or buying of minors. As a result, the Parole Commission will have the authority to order electronic monitoring of these releasees as required by the JLA.

The bill clarifies that certain provisions of the Jessica Lunsford Act apply only to felony offenses – not to misdemeanor offenses.

Promote personal responsibility: The bill increases the penalty for certain offenses relating to failing to comply with the requirements of sexual predator or sexual offender registration.

B. EFFECT OF PROPOSED CHANGES:

Sexual Predator/Offender Registration: There are more than 5,500 sexual predators and more than 30,000 sexual offenders in the state registry which is maintained by the Florida Department of Law Enforcement. In very general terms, the distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense and the date the offense occurred. A sexual predator or sexual offender is required to comply with a number of statutory requirements.[1] Failure to comply with these requirements is a third or second degree felony, depending on the offense.

The United States Department of Justice has recently developed the "National Sex Offender Public Registry" - a website that can be used to search the sexual offender registries of all participating states at the same time by entering an individual's name.[2] According to the website, by the end of 2006, the registries of all 50 states and the District of Columbia will be searchable in this manner.

Jessica Lunsford Act: During the 2005 session, HB 1877, known as the Jessica Lunsford Act or the "JLA", passed the legislature and was signed by the Governor on May 2, 2005. [Ch. 2005-28, Laws of Fla.] The bill had an effective date of September 1, 2005.

The bill amended several statutes relating to sexual predators and sexual offenders, required electronic monitoring of certain probationers who had committed a sexual offense and mandated lifetime imprisonment or lifetime supervision with electronic monitoring for persons convicted of lewd and lascivious molestation of a child under the age of 12.

Offense ranking chart: The JLA ranked several offenses relating to compliance with sexual predator and sexual offender registration requirements in level 7 of the Offense Severity Ranking Chart of the Criminal Punishment Code. The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; the injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. Offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. The points are added in order to determine the "lowest permissible sentence" for the offense. This is the minimum sentence that a judge may impose. The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory

[1] See ss. 775.21, 943.0435 and 944.607, F.S.
[2] http://www.nsopr.gov/

maximum for the primary offense. The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years per s. 775.082, F.S.

A Level 7 offense, absent other factors such as prior record or victim injury, results in a lowest permissible sentence of 21 months in state prison.

The following offenses were not ranked by the Jessica Lunsford Act:

- Section 775.21(6)(g)3., F.S. Sexual predator vacating permanent residence; failure to comply with reporting requirements (second degree felony).
- Section 775.21(6)(i), F.S. Sexual predator intending to establish residence in another state; failure to comply with reporting requirements (third degree felony).
- Section 775.21(6)(j), F.S. Sexual predator remains in state after indicating intent to leave; failure to comply with reporting requirements (second degree felony).
- Section 943.0435(7), F.S. Sexual offender intending to establish residence in another state; failure to comply with reporting requirements (third degree felony).

Because these offenses were not given a specific ranking in the offense severity ranking chart they were subject to s. 921.0023, F.S., a "default" provision which ranks offenses not ranked in the chart. Pursuant to s. 921.0023, F.S., the third degree felony offenses previously described defaulted to a Level 1 ranking and the second degree felony offenses previously described defaulted to a Level 4 ranking. The effect of these defaults is that, unlike the offenses ranked in the JLA, which score a lowest permissible sentence of imprisonment by virtue of their ranking, the defaulted offenses, which are comparable in seriousness to the offenses ranked by the JLA, will generally not score a lowest permissible sentence of imprisonment.

This bill ranks these offenses in Level 7 of the Offense Severity Ranking Chart.

Conditional release program: Section 947.1405, F.S., creates the conditional release program. This program requires certain inmates that are nearing the end of their sentence to be released under close supervision.[3] Inmates who qualify for conditional release include: 1) those who have previously served time in a correctional institution and are currently incarcerated for one of a list of offenses[4] including murder, sexual battery, robbery, assault or battery; 2) inmates sentenced as a habitual offender, a violent habitual offender or a violent career criminal; 3) inmates who were found to be a sexual predator. The Parole Commission sets the length and conditions of release after reviewing information provided by the Department of Corrections.[5] The Department of Corrections supervises the offender while on conditional release.

Section 12 of the Jessica Lunsford Act created s. 947.1405(10), F.S., to provide that, effective for a conditional releasee whose crime was committed on or after September 1, 2005, in violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S., and the unlawful activity involved a victim who was 15 years of age or younger and the offender is 18 years of age or older or for a conditional releasee who is designated as a sexual predator pursuant to s. 775.21, F.S., in addition to any other provision of this section, the Florida Parole Commission must order electronic monitoring for the duration of the conditional releasee's supervision.

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[3]. s. 947.1405(2), F.S

[4] The relevant offenses are listed in categories 1, 2, 3 and 4 of Rule 3.701 of the Florida Rules of Criminal Procedure. Included in these categories are the offenses of murder, DUI and BUI manslaughter, sexual battery, lewd or lascivious offenses, incest, sexual misconduct by a psychotherapist, robbery, carjacking, home invasion robbery, aggravated assault, aggravated battery, aggravated stalking and resisting an officer with violence

[5] The length of supervision cannot exceed the maximum penalty imposed by the court. (see s. 947.1405(6)).

The Jessica Lunsford Task Force,[6] which was created by the JLA, and which was required by the JLA to examine the collection and dissemination of offender information within the criminal justice system and community, released its findings and recommendations on February 6, 2006.[7] The task force noted that while Section 12 of the JLA included sexual performance by a child (s. 827.071, F.S.) and selling or buying of minors (s. 847.0145, F.S.) as offenses requiring electronic monitoring if "the activity involved a victim who was 15 years of age or younger and the offender is 18 years of age or older," these are not offenses subject to conditional release supervision under the law. The task force recommended amending s. 947.1405(2), F.S. to list sexual performance, selling or buying of minors, and some other serious offenses in the eligibility criteria for conditional release.

This bill expands the list of qualifying offenses under the conditional release statute to include sexual performance by a child and selling or buying of minors. As a result, the Parole Commission will have the authority to order electronic monitoring of these releasees as required by the JLA.

Electronic monitoring/supervision: Section 17 of the JLA created s. 948.063, F.S. which provided that if probation or community control is revoked by the court and the offender is designated as a sexual offender or sexual predator for unlawful sexual activity involving a victim 15 years of age or younger and the offender is 18 or older, and if the court imposes a subsequent term of supervision following the revocation of probation or community control, the court is required to order electronic monitoring as a condition of the subsequent term of probation or community control.

Questions have been raised as to whether the Legislature intended to apply the amendment to s. 948.063, F.S., to misdemeanors. In its "Finding #5, the Jessica Lunsford Task Force found that "[c]onfusion exists as to whether this [Section 17 of the JLA] includes persons who commit a misdemeanor offense and are placed on county probation or if it only applies to probation at the state level."

The bill amends s. 948.063, F.S., to provide that this section applies specifically to revocations of probation or community control for any *felony* offense. It also clarifies what is meant by a "designated sexual offender" by adding the language "pursuant to s. 943.0435, F.S. or s. 944.607, F.S.," which are the sections of the Florida Statutes relevant to registration requirements for sexual offenders.

Section 20 of the Jessica Lunsford Act created s. 948.30(3), F.S., to provide that, effective for a probationer or community controllee whose *crime* was committed on or after September 1, 2005, the court must order, in addition to any other provision of this section, mandatory electronic monitoring as a condition of the probation or community control supervision if the probationer or community controllee:

- Is placed on probation or community control for a violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S., and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older;
- Is designated a sexual predator pursuant to s. 775.21; or
- Has previously been convicted of a violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S., and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

Similar to Section 17 of the JLA, questions have been raised as whether the Legislature intended this electronic monitoring requirement to apply to misdemeanors. This bill revises s. 948.30(3), F.S., by replacing the word "crime" with the words "felony offense" to clarify this section applies to probationers or community controllees who have committed certain *felony* offenses.

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[6] The task force was composed of the members of the Criminal and Juvenile Justice Information Systems Council.

[7] All discussion in this analysis of the task force and its findings and recommendations is from *Jessica Lunsford Task Force*, Criminal and Juvenile Justice Information Systems Council (February 6, 2005).

Registry check prior to appointment or employment by governmental entity: Section 943.04351, F.S. requires a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, to search that person's name against FDLE's sexual offender registry. This bill requires the state agency or governmental subdivision to also check the person's name against the registration information regarding sex offenders maintained by the FBI in the National Sex Offender Public Registry.

C. SECTION DIRECTORY:

Section 1. Amends s. 921.0022, F.S., to rank in the offense severity ranking chart of the Criminal Punishment Code, several offenses relating to failure by a sexual predator or sexual offender to comply with certain reporting requirements.

Section 2. Amends s. 943.04351, F.S., to require a search of the National Sex Offender Public Registry in certain circumstances.

Section 3. Amends s. 948.063, F.S., to require that court order electronic monitoring upon revocation of probation or community control for a felony offense in certain circumstances.

Section 4. Amends s. 948.30, F.S., to require that the court order electronic monitoring as a condition of supervision in certain felony cases.

Section 5. Amends s. 947.1405, F.S. to expand the eligibility criteria for the conditional release program.

Section 6. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Criminal Justice Impact Conference has not yet met to provide an official estimate of the prison bed impact of this bill. However, a preliminary estimate of the prison bed impact provided by the Legislature's Office of Economic and Demographic Research is that the bill is not likely to have a significant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   This bill clarifies that the requirement of electronic monitoring does not apply to a person on misdemeanor probation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to criminal justice; amending s. 921.0022,
3 F.S.; ranking in the offense severity ranking chart of the
4 Criminal Punishment Code several offenses relating to
5 failure by a sexual predator or sexual offender to comply
6 with certain reporting requirements; amending s.
7 943.04351, F.S.; requiring a search of the National Sex
8 Offender Public Registry before a person may work or
9 volunteer at a place where children regularly congregate;
10 amending s. 948.063, F.S.; requiring that the court order
11 electronic monitoring as a condition of probation or
12 community control following a violation of probation or
13 community control by certain offenders who are designated
14 as sexual offenders or sexual predators; amending s.
15 948.30, F.S.; requiring that the court order mandatory
16 electronic monitoring as a condition of probation or
17 community control supervision for certain sex offenders
18 whose crimes involved young children; amending s.
19 947.1405, F.S.; expanding the eligibility criteria for the
20 conditional release program; providing an effective date.
21
22 Be It Enacted by the Legislature of the State of Florida:
23
24 Section 1. Paragraph (g) of subsection (3) of section
25 921.0022, Florida Statutes, is amended to read:
26 921.0022 Criminal Punishment Code; offense severity
27 ranking chart.--
28 (3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
		(g) LEVEL 7
316.027(1)(b)	2nd	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920(2)	3rd	Medicaid provider fraud.

36	456.065(2)	3rd	Practicing a health care profession without a license.
37	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
38	458.327(1)	3rd	Practicing medicine without a license.
39	459.013(1)	3rd	Practicing osteopathic medicine without a license.
40	460.411(1)	3rd	Practicing chiropractic medicine without a license.
41	461.012(1)	3rd	Practicing podiatric medicine without a license.
42	462.17	3rd	Practicing naturopathy without a license.
43	463.015(1)	3rd	Practicing optometry without a license.
44	464.016(1)	3rd	Practicing nursing without a license.
45	465.015(2)	3rd	Practicing pharmacy without a

			license.
46	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
47	467.201	3rd	Practicing midwifery without a license.
48	468.366	3rd	Delivering respiratory care services without a license.
49	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
50	483.901(9)	3rd	Practicing medical physics without a license.
51	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
52	484.053	3rd	Dispensing hearing aids without a license.
53	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
54			

	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by money transmitter.
55	560.125(5)(a)	3rd	Money transmitter business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
56	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
57	775.21(6)(g)3.	2nd	Sexual predator remaining at permanent residence after reporting intent to vacate; failure to comply with reporting requirements.
58	775.21(6)(i)	3rd	Sexual predator intending to establish residence in another state; failure to comply with reporting requirements.
59	775.21(6)(j)	2nd	Sexual predator; remains in state after indicating intent to leave; failure to comply with reporting

			requirements.
60	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
61	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
62	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
63	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
64	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
65	782.071	2nd	Killing of human being or viable fetus by the operation of a motor vehicle in a reckless manner

			(vehicular homicide).
66	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
67	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
68	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
69	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
70	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
71	784.048(7)	3rd	Aggravated stalking; violation of court order.
72	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
73	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
74	784.08(2)(a)	1st	Aggravated battery on a person 65

			years of age or older.
75	784.081(1)	1st	Aggravated battery on specified official or employee.
76	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
77	784.083(1)	1st	Aggravated battery on code inspector.
78	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
79	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
80	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
81	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
82	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.

83	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
84	796.03	2nd	Procuring any person under 16 years for prostitution.
85	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
86	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
87	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
88	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
89	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
90	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.

91	812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more; property stolen while causing other property damage; 1st degree grand theft.
92	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
93	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
94	812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
95	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
96	812.131(2)(a)	2nd	Robbery by sudden snatching.
97	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
98	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.

99	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
100	817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
101	817.2341(2)(b)& (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
102	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
103	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $20,000 or more, but less than $100,000.
104	827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
105			

827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or

			state, county, or municipal park or publicly owned recreational facility or community center.
114	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
115	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
116	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
117	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
118	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
119			

	893.135 (1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
120	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
121	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
122	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
123	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
124	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
125	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
126	896.101(5)(a)	3rd	Money laundering, financial

			transactions exceeding $300 but less than $20,000.
127	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
128	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
129	943.0435(7)	3rd	Sexual offender intending to establish residence in another state; failure to comply with reporting requirements.
130	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
131	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
132	943.0435(13)	3rd	Failure to report or providing

		false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

Section 2. Section 943.04351, Florida Statutes, is amended to read:

943.04351 Search of registration information regarding sexual predators and sexual offenders required prior to

143 appointment or employment.--A state agency or governmental
144 subdivision, prior to making any decision to appoint or employ a
145 person to work, whether for compensation or as a volunteer, at
146 any park, playground, day care center, or other place where
147 children regularly congregate, must conduct a search of that
148 person's name or other identifying information against the
149 registration information regarding sexual predators and sexual
150 offenders maintained by the Department of Law Enforcement under
151 s. 943.043 and against the registration information regarding
152 sex offenders maintained by the Federal Bureau of Investigation
153 in the National Sex Offender Public Registry. The agency or
154 governmental subdivision may conduct the search using the
155 Internet site maintained by the Department of Law Enforcement.
156 This section does not apply to those positions or appointments
157 within a state agency or governmental subdivision for which a
158 state and national criminal history background check is
159 conducted.
160 Section 3. Section 948.063, Florida Statutes, is amended
161 to read:
162 948.063 Violations of probation or community control by
163 designated sexual offenders and sexual predators.--If probation
164 or community control for any felony offense is revoked by the
165 court pursuant to s. 948.06(2)(e) and the offender is designated
166 as a sexual offender pursuant to s. 943.0435 or s. 944.607 or as
167 a sexual predator pursuant to s. 775.21 for unlawful sexual
168 activity involving a victim 15 years of age or younger and the
169 offender is 18 years of age or older, and if the court imposes a
170 subsequent term of supervision following the revocation of

171 probation or community control, the court must order electronic
172 monitoring as a condition of the subsequent term of probation or
173 community control.
174 Section 4. Subsection (3) of section 948.30, Florida
175 Statutes, is amended to read:
176 948.30 Additional terms and conditions of probation or
177 community control for certain sex offenses.--Conditions imposed
178 pursuant to this section do not require oral pronouncement at
179 the time of sentencing and shall be considered standard
180 conditions of probation or community control for offenders
181 specified in this section.
182 (3) Effective for a probationer or community controllee
183 whose felony offense ~~crime~~ was committed on or after September
184 1, 2005, and who:
185 (a) Is placed on probation or community control for a
186 violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071,
187 or s. 847.0145 and the unlawful sexual activity involved a
188 victim 15 years of age or younger and the offender is 18 years
189 of age or older;
190 (b) Is designated as a sexual predator pursuant to s.
191 775.21; or
192 (c) Has previously been convicted of a violation of
193 chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s.
194 847.0145 and the unlawful sexual activity involved a victim 15
195 years of age or younger and the offender is 18 years of age or
196 older,
197
198 the court must order, in addition to any other provision of this

199 section, mandatory electronic monitoring as a condition of the
200 probation or community control supervision.
201 Section 5. Subsection (2) of section 947.1405, Florida
202 Statutes, is amended to read:
203 947.1405 Conditional release program.--
204 (2) Any inmate who:
205 (a) Is convicted of a crime committed on or after October
206 1, 1988, and before January 1, 1994, and any inmate who is
207 convicted of a crime committed on or after January 1, 1994,
208 which crime is or was contained in category 1, category 2,
209 category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida
210 Rules of Criminal Procedure (1993), <u>or is convicted of any</u>
211 <u>offense under the following statutory provisions committed on or</u>
212 <u>after July 1, 2006:</u>
213 <u>1. Sexual performance by a child under s. 827.071; or</u>
214 <u>2. Selling or buying of minors under s. 847.0145,</u>
215
216 and who has served at least one prior felony commitment at a
217 state or federal correctional institution;
218 (b) Is sentenced as a habitual or violent habitual
219 offender or a violent career criminal pursuant to s. 775.084; or
220 (c) Is found to be a sexual predator under s. 775.21 or
221 former s. 775.23,
222
223 shall, upon reaching the tentative release date or provisional
224 release date, whichever is earlier, as established by the
225 Department of Corrections, be released under supervision subject
226 to specified terms and conditions, including payment of the cost

227 of supervision pursuant to s. 948.09. Such supervision shall be
228 applicable to all sentences within the overall term of sentences
229 if an inmate's overall term of sentences includes one or more
230 sentences that are eligible for conditional release supervision
231 as provided herein. Effective July 1, 1994, and applicable for
232 offenses committed on or after that date, the commission may
233 require, as a condition of conditional release, that the
234 releasee make payment of the debt due and owing to a county or
235 municipal detention facility under s. 951.032 for medical care,
236 treatment, hospitalization, or transportation received by the
237 releasee while in that detention facility. The commission, in
238 determining whether to order such repayment and the amount of
239 such repayment, shall consider the amount of the debt, whether
240 there was any fault of the institution for the medical expenses
241 incurred, the financial resources of the releasee, the present
242 and potential future financial needs and earning ability of the
243 releasee, and dependents, and other appropriate factors. If any
244 inmate placed on conditional release supervision is also subject
245 to probation or community control, resulting from a probationary
246 or community control split sentence within the overall term of
247 sentences, the Department of Corrections shall supervise such
248 person according to the conditions imposed by the court and the
249 commission shall defer to such supervision. If the court
250 revokes probation or community control and resentences the
251 offender to a term of incarceration, such revocation also
252 constitutes a sufficient basis for the revocation of the
253 conditional release supervision on any nonprobationary or
254 noncommunity control sentence without further hearing by the

255 commission. If any such supervision on any nonprobationary or
256 noncommunity control sentence is revoked, such revocation may
257 result in a forfeiture of all gain-time, and the commission may
258 revoke the resulting deferred conditional release supervision or
259 take other action it considers appropriate. If the term of
260 conditional release supervision exceeds that of the probation or
261 community control, then, upon expiration of the probation or
262 community control, authority for the supervision shall revert to
263 the commission and the supervision shall be subject to the
264 conditions imposed by the commission. A panel of no fewer than
265 two commissioners shall establish the terms and conditions of
266 any such release. If the offense was a controlled substance
267 violation, the conditions shall include a requirement that the
268 offender submit to random substance abuse testing intermittently
269 throughout the term of conditional release supervision, upon the
270 direction of the correctional probation officer as defined in s.
271 943.10(3). The commission shall also determine whether the terms
272 and conditions of such release have been violated and whether
273 such violation warrants revocation of the conditional release.
274 Section 6. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

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

B. EFFECT OF PROPOSED CHANGES:

DUI

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

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

The offense is punishable as follows[2]:

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

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

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

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

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

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

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

BUI

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

Effect of Bill

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

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

regardless of when a prior conviction occurred. The bill further provides that there shall be no substitution of this minimum mandatory term of imprisonment with treatment alternatives but the court may, with the consent of the state, order the defendant to serve a minimum mandatory sentence of 1 year of incarceration followed by a period of probation during which the defendant must attend and successfully complete a residential alcohol treatment program, a residential drug abuse treatment program or be placed on community control.

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

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

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

C. SECTION DIRECTORY:

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

None.

2. Expenditures:

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

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

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

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

beds. They do not take into account existing or planned capacity that would enable the state to absorb the impact within current appropriations.

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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

CHAMBER ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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