COMMITTEE ON HOMELAND SECURITY & PUBLIC SAFETY

COMMITTEE MEETING

Wednesday, March 7, 2007
9:00 a.m. - 11:00 a.m.
Reed Hall
(102 HOB)

MEETING PACKET

Marco Rubio
Speaker

Sandra "Sandy" Adams
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on Homeland Security & Public Safety

Start Date and Time:	Wednesday, March 07, 2007 09:00 am
End Date and Time:	Wednesday, March 07, 2007 11:00 am
Location:	Reed Hall (102 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 71 Offenses Against Unborn Children by Poppell
HB 123 Investigations of Law Enforcement and Correctional Officers by Gibson, H.
HB 413 Theft of Property by Garcia, L.
HB 449 Criminal Acts Committed During State of Emergency by Snyder
HB 723 Correctional and Law Enforcement Officer Discipline by Thompson, N.
HB 807 Domestic Violence by Hooper

Presentation on Domestic Security Oversight Council funding recommendations.

Presentation by Division of Emergency Management on weather warnings.

NOTICE FINALIZED on 03/05/2007 15:53 by SPT

The Florida House of Representatives

Safety & Security Council

Committee on Homeland Security & Public Safety

Marco Rubio
Speaker

Sandra Adams
Chair

AGENDA

Wednesday
March 7, 2007
9:00 a.m. – 11:00 a.m.
Reed Hall
(Room 102)

I. Opening remarks by Chair Adams

II. Roll call by Sonja Thompson, CAA

III. Consideration of the following bills:

- HB 71 Offenses Against Unborn Children by Poppell
- HB 123 Investigations of Law Enforcement and Correctional Officers by Gibson, H.
- HB 413 Theft of Property by Garcia, L.
- HB 449 Criminal Acts Committed During State of Emergency by Snyder

Marco Rubio
Speaker

Sandra Adam
C.

- **HB 723 Correctional and Law Enforcement Officer Discipline by Thompson, N.**

- **HB 807 Domestic Violence by Hooper**

IV. Presentation on Domestic Security Oversight Council funding recommendations.

V. Presentation by Division of Emergency Management on weather warnings.

VI. Closing Remarks

VII. Meeting Adjourned

HB 71

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 71 Offenses Against Unborn Children
SPONSOR(S): Poppell and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 234

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Homeland Security & Public Safety		Cunningham	Kramer
2) Safety & Security Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Currently, s. 782.09, F.S., provides that the unlawful killing of an unborn quick child, by any injury to the mother of such child which would be murder if it resulted in the death of such mother, shall be deemed murder in the same degree as that which would have been committed against the mother. The term "unborn quick child" is defined in accordance with the definition of "viable fetus" set forth in s. 782.071, F.S., which provides that a "fetus is viable when it becomes capable of meaningful life outside the womb through standard medical procedures."

HB 71 amends s. 782.09, F.S., by replacing the term "unborn quick child" with "unborn child." The bill mirrors a recently-passed federal law by defining the term "unborn child" as "a member of the species homo sapiens, at any stage of development, who is carried in the womb." The bill conforms terminology in the vehicular homicide and DUI manslaughter statutes to refer to "unborn child."

HB 71 also amends s. 782.09, F.S., to specify that the offense does not require proof that the defendant knew or should have known that the victim of the underlying offense was pregnant, or that the defendant intended to cause the death of, or bodily injury to, the unborn child.

This bill takes effect October 1. 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty – This bill defines the term "unborn child" as a "member of the species homo sapiens, at any stage of development, who is carried in the womb," and revises terminology in various criminal statutes to refer to an "unborn child" rather than an "unborn quick child."

B. EFFECT OF PROPOSED CHANGES:

Federal Law:
In 2004, the Unborn Victims of Violence Act (UVVA) was enacted. The UVVA amends title 18 of the U.S. Code and the Uniform Code of Military Justice[1] to add new sections for the "protection of unborn children." Under the act, any person who injures or kills a "child in utero" during the commission of certain specified crimes is guilty of an offense separate from one involving the pregnant woman. Punishment for the separate offense is the same as if the offense had been committed against the pregnant woman. In addition, an offense does not require proof that the person engaging in the misconduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant, or that the defendant intended to cause the death of, or bodily injury to, the child in utero. The phrase "child in utero" is defined by the act to mean "a member of the species homo sapiens, at any stage of development, who is carried in the womb."

State Law:
At least twenty-nine states have statutes that criminalize the killing of a fetus or "unborn child."[2] These statutes vary with respect to the point at which criminal liability will attach; that is, the states identify different gestational stages at which the killing of an embryo or fetus will result in criminal liability.[3] Florida Statutes currently criminalize the killing of an "unborn quick child." Specifically, s. 782.09, F.S., provides that the unlawful killing of an unborn quick child, by any injury to the mother of such child which would be murder if it resulted in the death of such mother, shall be deemed murder in the same degree as that which would have been committed against the mother. This section of statute does not authorize the prosecution of any person in connection with a termination of pregnancy pursuant to ch. 390, F.S.[4] Currently, the term "unborn quick child" is defined in accordance with the definition of "viable fetus" set forth in s. 782.071, F.S., which provides that a "fetus is viable when it becomes capable of meaningful life outside the womb through standard medical procedures."

Florida defines vehicular homicide is defined as "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."[5]

In order to prove a DUI manslaughter case, the state must establish the following elements:
- The defendant operated a vehicle.
- The defendant, by reason of such operation, caused or contributed to the cause of the death of any human being or unborn *quick* child[6].

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[1] The Uniform Code of Military Justice is codified in chapter 47 U.S.C. 10.
[2] *See* "The Unborn Victims of Violence Act" CRS Report for Congress, Jon O. Shimabukuro.
[3] *Id.*
[4] s. 782.09(4), F.S.
[5] s. 782.071, F.S.
[6] The term "unborn quick child" is defined as a "viable fetus" which is defined as a "fetus is viable when it becomes capable of meaningful life outside the womb through standard medical procedures." *See* s. 782.071, F.S.

- At the time of such operation, the defendant was under the influence of alcoholic beverages or a controlled substance to the extent that the defendant's normal faculties were impaired or the defendant had a blood alcohol level of .08 or higher.[7]

Effect of the Bill:

HB 71 amends s. 782.09, F.S., by replacing the term "unborn quick child" with "unborn child." The bill mirrors federal law by defining the term "unborn child" as "a member of the species homo sapiens, at any stage of development, who is carried in the womb." HB 71 also amends this statute to specify that the offense does not require proof that the defendant knew or should have known that the victim of the underlying offense was pregnant, or that the defendant intended to cause the death of, or bodily injury to, the unborn child.

HB 71 amends the vehicular homicide statute by replacing the term "viable fetus" with "unborn child." The bill amends the DUI manslaughter statutes by replacing the term "unborn quick child" with "unborn child."

HB 71 also amends ss. 435.03 and 435.04, F.S., relating to employment screening standards, and s. 921.0022, F.S, the offense severity ranking chart of the Criminal Punishment Code, to conform terminology.

C. SECTION DIRECTORY:

Section 1. Cites the act as the "Florida Unborn Victims of Violence Act."

Section 2. Amends s. 782.071, F.S, revising terminology to refer to "unborn child" rather than "viable fetus" and defining the term "unborn child."

Section 3. Amends s. 782.09, F.S., revising terminology to refer to "unborn child" rather than "viable fetus" and providing that certain offenses relating to the killing of an unborn child by injury to the mother do not require specified knowledge or intent.

Section 4. Amends s. 316.193, F.S., revising terminology to refer to "unborn child" rather than "viable fetus."

Section 5. Amends s. 435.03, F.S., revising terminology to refer to "unborn child" rather than "unborn quick child."

Section 6. Amends s. 435.04, F.S., revising terminology to refer to "unborn child" rather than "unborn quick child."

Section 7. Amends s. 921.0022, F.S., revising terminology to refer to "unborn child" rather than "viable fetus."

Section 8. This bill takes effect October 1. 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

[7] s. 316.193, F.S.

The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of this bill. However, to the extent that this bill allows persons to be prosecuted for the death of a fetus at an earlier stage of development than currently provided by law, there may be an additional prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

While there is little Florida caselaw on point, an examination of cases from other states reveals that courts have declined to invalidate state fetal homicide statutes. In *State v. Merrill*, the Minnesota Supreme Court concluded that the state's unborn child homicide statutes did not violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and were not unconstitutionally vague.[8] Merrill shot a woman who was pregnant with a twenty-seven or twenty-eight-day-old embryo. With respect to his equal protection claim, Merrill argued that the statutes subjected him to prosecution for ending a pregnancy while allowing a pregnant woman to terminate a nonviable fetus or embryo without criminal consequences.[9] Merrill contended that the statutes treated similarly situated persons differently.

The court rejected Merrill's equal protection claim on the grounds that the defendant and a pregnant woman are not similarly situated: "The defendant who assaults a pregnant woman causing the death of the fetus she is carrying destroys the fetus without the consent of the woman. This is not the same as the woman who elects to have her pregnancy terminated by one legally authorized to perform the act."[10] Unlike the assailant who has no right to kill a fetus, the pregnant woman has a right to decide to terminate her pregnancy. The actions of the woman's doctor are based on the woman's constitutionally protected rights under *Roe v. Wade*.[11]

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[8] *See* "The Unborn Victims of Violence Act" CRS Report for Congress, Jon O. Shimabukuro, *citing* 450 N.W.2d 318 (Minn. 1990).
[9] *Id.*
[10] *Id.*
[11] *See* "The Unborn Victims of Violence Act" CRS Report for Congress, Jon O. Shimabukuro, *citing* 410 U.S. 113 (1973).

Merrill advanced two arguments for finding the statutes to be unconstitutionally vague. First, he contended that the statutes failed to give fair warning of the prohibited conduct. Merrill maintained that it was unfair to punish an assailant for the murder of an unborn child when neither he nor the pregnant woman may be aware of the pregnancy. However, the court found that the statutes provided fair warning based on the doctrine of transferred intent. The court noted that even if the offender did not intend to kill a particular victim, he should have fair warning that he would be held criminally accountable given that the same type of harm would result if another victim was killed.

Merrill's second argument was that the statutes encouraged arbitrary and discriminatory enforcement by using the phrase "cause the death of an unborn child"[12] to identify prohibited conduct without actually defining when death may occur. Merrill believed that the failure to identify when death occurs for the unborn child would result in judges and juries providing their own definitions. Moreover, Merrill asserted that because an embryo is not alive, it could not experience death.

The court determined that to have life means "to have the property of all living things to grow, to become." The court avoided the question of whether the unborn child should be considered a person or human being. Instead, the court observed that criminal liability "requires only that the embryo be a living organism that is growing into a human being. Death occurs when the embryo is no longer living, when it ceases to have the properties of life." Thus, the trier of fact would simply have to determine whether an assailant's acts caused the embryo or unborn child to stop growing or stop showing the properties of life.

In *People v. Ford*, the Appellate Court of Illinois concluded similarly that the state's fetal homicide statute did not violate the Equal Protection Clause of the Fourteenth Amendment and was not unconstitutionally vague.[13] Like Merrill, Ford argued that the statute treated similarly situated people differently. While a pregnant woman could terminate her nonviable fetus without punishment, an assailant would face criminal penalties for killing such a fetus. Following the Minnesota Supreme Court, the Illinois court found that the defendant and a pregnant woman are not similarly situated.[14] In addition, the court determined that the statute could be upheld as rationally related to a legitimate governmental purpose. Because the statute did not affect a fundamental right held by the defendant, and because it did not discriminate against a suspect class, the validity of the statute could be considered under the rational basis standard of review. The court concluded that the statute was rationally related to a legitimate governmental interest in protecting the potentiality of human life.[15]

Ford's vagueness argument focused on the statute's use of the phrase "cause the death of an unborn child."[16] Ford contended that the absence of statutory definitions for when life begins and death occurs would result in the application of subjective definitions by the trier of fact, and lead to the arbitrary and discriminatory enforcement of the statute.[17] Citing *Merrill*, the court maintained that the trier of fact would be required only to determine whether there was an embryo or fetus that was growing into a human being, and whether because of the acts of an assailant, that growing was stopped. The statute did not require the trier of fact to apply its subjective views.

B. RULE-MAKING AUTHORITY:

None.

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[12] Minnesota statute 609.266, defines "unborn child" as "the unborn offspring of a human being conceived, but not yet born."
[13] *See* "The Unborn Victims of Violence Act" CRS Report for Congress, Jon O. Shimabukuro, *citing* 581 N.E.2d 1189 (Ill.1991).
[14] *Id.*
[15] *Id.*
[16] Illinois defines "unborn child" as "any individual of the human species from fertilization until birth." Ch. 38 12-3.1.
[17] *See* "The Unborn Victims of Violence Act" CRS Report for Congress, Jon O. Shimabukuro, *citing* 581 N.E.2d 1189 (Ill.1991).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No comment submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to offenses against unborn children;
3 providing a short title; amending s. 782.071, F.S.;
4 defining the term "unborn child" for purposes of vehicular
5 homicide; revising terminology to refer to "unborn child"
6 rather than "viable fetus"; amending s. 782.09, F.S.;
7 revising terminology; providing that certain offenses
8 relating to the killing of an unborn child by injury to
9 the mother do not require specified knowledge or intent;
10 amending ss. 316.193, 435.03, 435.04, and 921.0022, F.S.;
11 conforming terminology; providing an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. This act may be cited as the "Florida Unborn
16 Victims of Violence Act."
17 Section 2. Section 782.071, Florida Statutes, is amended
18 to read:
19 782.071 Vehicular homicide.--"Vehicular homicide" is the
20 killing of a human being, or the killing of an unborn child ~~a~~
21 ~~viable fetus~~ by any injury to the mother, caused by the
22 operation of a motor vehicle by another in a reckless manner
23 likely to cause the death of, or great bodily harm to, another.
24 (1) Vehicular homicide is:
25 (a) A felony of the second degree, punishable as provided
26 in s. 775.082, s. 775.083, or s. 775.084.
27 (b) A felony of the first degree, punishable as provided
28 in s. 775.082, s. 775.083, or s. 775.084, if:

29 1. At the time of the accident, the person knew, or should
30 have known, that the accident occurred; and
31 2. The person failed to give information and render aid as
32 required by s. 316.062.
33
34 This paragraph does not require that the person knew that the
35 accident resulted in injury or death.
36 (2) For purposes of this section, the term "unborn child"
37 means a member of the species homo sapiens, at any stage of
38 development, who is carried in the womb ~~a fetus is viable when~~
39 ~~it becomes capable of meaningful life outside the womb through~~
40 ~~standard medical measures~~.
41 (3) A right of action for civil damages shall exist under
42 s. 768.19, under all circumstances, for all deaths described in
43 this section.
44 (4) In addition to any other punishment, the court may
45 order the person to serve 120 community service hours in a
46 trauma center or hospital that regularly receives victims of
47 vehicle accidents, under the supervision of a registered nurse,
48 an emergency room physician, or an emergency medical technician
49 pursuant to a voluntary community service program operated by
50 the trauma center or hospital.
51 Section 3. Section 782.09, Florida Statutes, is amended to
52 read:
53 782.09 Killing of unborn ~~quick~~ child by injury to
54 mother.--
55 (1) The unlawful killing of an unborn ~~quick~~ child, by any
56 injury to the mother of such child which would be murder if it

57 resulted in the death of such mother, shall be deemed murder in
58 the same degree as that which would have been committed against
59 the mother. Any person, other than the mother, who unlawfully
60 kills an unborn ~~quick~~ child by any injury to the mother:
61 (a) Which would be murder in the first degree constituting
62 a capital felony if it resulted in the mother's death commits
63 murder in the first degree constituting a capital felony,
64 punishable as provided in s. 775.082.
65 (b) Which would be murder in the second degree if it
66 resulted in the mother's death commits murder in the second
67 degree, a felony of the first degree, punishable as provided in
68 s. 775.082, s. 775.083, or s. 775.084.
69 (c) Which would be murder in the third degree if it
70 resulted in the mother's death commits murder in the third
71 degree, a felony of the second degree, punishable as provided in
72 s. 775.082, s. 775.083, or s. 775.084.
73 (2) The unlawful killing of an unborn ~~quick~~ child by any
74 injury to the mother of such child which would be manslaughter
75 if it resulted in the death of such mother shall be deemed
76 manslaughter. A person who unlawfully kills an unborn ~~quick~~
77 child by any injury to the mother which would be manslaughter if
78 it resulted in the mother's death commits manslaughter, a felony
79 of the second degree, punishable as provided in s. 775.082, s.
80 775.083, or s. 775.084.
81 (3) The death of the mother resulting from the same act or
82 criminal episode that caused the death of the unborn ~~quick~~ child
83 does not bar prosecution under this section.

84 (4) This section does not authorize the prosecution of any
85 person in connection with a termination of pregnancy pursuant to
86 chapter 390.
87 (5) For purposes of this section, the definition of the
88 term "unborn ~~quick~~ child" shall be determined in accordance with
89 the definition of an unborn child ~~viable fetus~~ as set forth in
90 s. 782.071.
91 (6) An offense under this section does not require that
92 the person engaging in the conduct:
93 (a) Had knowledge or should have had knowledge that the
94 victim of the underlying offense was pregnant; or
95 (b) Intended to cause the death of, or bodily injury to,
96 the unborn child.
97 Section 4. Subsection (3) of section 316.193, Florida
98 Statutes, is amended to read:
99 316.193 Driving under the influence; penalties.--
100 (3) Any person:
101 (a) Who is in violation of subsection (1);
102 (b) Who operates a vehicle; and
103 (c) Who, by reason of such operation, causes or
104 contributes to causing:
105 1. Damage to the property or person of another commits a
106 misdemeanor of the first degree, punishable as provided in s.
107 775.082 or s. 775.083.
108 2. Serious bodily injury to another, as defined in s.
109 316.1933, commits a felony of the third degree, punishable as
110 provided in s. 775.082, s. 775.083, or s. 775.084.

111 3. The death of any human being or unborn ~~quick~~ child
112 commits DUI manslaughter, and commits:
113 a. A felony of the second degree, punishable as provided
114 in s. 775.082, s. 775.083, or s. 775.084.
115 b. A felony of the first degree, punishable as provided in
116 s. 775.082, s. 775.083, or s. 775.084, if:
117 (I) At the time of the crash, the person knew, or should
118 have known, that the crash occurred; and
119 (II) The person failed to give information and render aid
120 as required by s. 316.062.
121
122 For purposes of this subsection, the definition of the term
123 "unborn ~~quick~~ child" shall be determined in accordance with the
124 definition of <u>an unborn child</u> ~~viable fetus~~ as set forth in s.
125 782.071.
126 Section 5. Paragraph (g) of subsection (2) of section
127 435.03, Florida Statutes, is amended to read:
128 435.03 Level 1 screening standards.--
129 (2) Any person for whom employment screening is required
130 by statute must not have been found guilty of, regardless of
131 adjudication, or entered a plea of nolo contendere or guilty to,
132 any offense prohibited under any of the following provisions of
133 the Florida Statutes or under any similar statute of another
134 jurisdiction:
135 (g) Section 782.09, relating to killing of an unborn ~~quick~~
136 child by injury to the mother.
137 Section 6. Paragraph (g) of subsection (2) of section
138 435.04, Florida Statutes, is amended to read:

139 435.04 Level 2 screening standards.--
140 (2) The security background investigations under this
141 section must ensure that no persons subject to the provisions of
142 this section have been found guilty of, regardless of
143 adjudication, or entered a plea of nolo contendere or guilty to,
144 any offense prohibited under any of the following provisions of
145 the Florida Statutes or under any similar statute of another
146 jurisdiction:
147 (g) Section 782.09, relating to killing of an unborn ~~quick~~
148 child by injury to the mother.
149 Section 7. Paragraph (g) of subsection (3) of section
150 921.0022, Florida Statutes, is amended to read:
151 921.0022 Criminal Punishment Code; offense severity
152 ranking chart.--
153 (3) OFFENSE SEVERITY RANKING CHART
154

Florida Statute	Felony Degree	Description
155		
		(g) LEVEL 7
156		
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
157		
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
158		
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.
159	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
160	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
161	409.920(2)	3rd	Medicaid provider fraud.
162	456.065(2)	3rd	Practicing a health care profession without a license.
163	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
164	458.327(1)	3rd	Practicing medicine without a

			license.
165	459.013(1)	3rd	Practicing osteopathic medicine without a license.
166	460.411(1)	3rd	Practicing chiropractic medicine without a license.
167	461.012(1)	3rd	Practicing podiatric medicine without a license.
168	462.17	3rd	Practicing naturopathy without a license.
169	463.015(1)	3rd	Practicing optometry without a license.
170	464.016(1)	3rd	Practicing nursing without a license.
171	465.015(2)	3rd	Practicing pharmacy without a license.
172	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
173	467.201	3rd	Practicing midwifery without a license.

174	468.366	3rd	Delivering respiratory care services without a license.
175	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
176	483.901(9)	3rd	Practicing medical physics without a license.
177	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
178	484.053	3rd	Dispensing hearing aids without a license.
179	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.
180	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by money transmitter.

181	560.125(5)(a)	3rd	Money transmitter business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
182	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
183	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
184	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
185	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
186	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the

			perpetrator of an attempted felony.
187	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
188	782.071	2nd	Killing of human being or unborn child ~~viable fetus~~ by the operation of a motor vehicle in a reckless manner (vehicular homicide).
189	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
190	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
191	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
192	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.

193	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
194	784.048(7)	3rd	Aggravated stalking; violation of court order.
195	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
196	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
197	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
198	784.081(1)	1st	Aggravated battery on specified official or employee.
199	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
200	784.083(1)	1st	Aggravated battery on code inspector.
201	790.07(4)	1st	Specified weapons violation

			subsequent to previous conviction of s. 790.07(1) or (2).
202			
	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
203			
	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
204			
	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
205			
	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
206			
	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
207			
	796.03	2nd	Procuring any person under 16 years for prostitution.
208			

	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
209			
	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.
210			
	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
211			
	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
212			
	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
213			
	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
214			
	812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree

			grand theft.
215	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
216	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
217	812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
218	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
219	812.131(2)(a)	2nd	Robbery by sudden snatching.
220	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
221	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
222	817.234(9)	2nd	Organizing, planning, or

			participating in an intentional motor vehicle collision.
223			
	817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
224			
	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.
225			
	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
226			
	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.
227			
	827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
228			

	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
229			
	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
230			
	838.015	2nd	Bribery.
231			
	838.016	2nd	Unlawful compensation or reward for official behavior.
232			
	838.021(3)(a)	2nd	Unlawful harm to a public servant.
233			
	838.22	2nd	Bid tampering.
234			
	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
235			
	872.06	2nd	Abuse of a dead human body.
236			
	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.
237	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.
238	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).
239	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
240	893.135(1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.

241	893.135(1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
242	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
243	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
244	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
245	893.135(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
246	893.135(1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
247	893.135(1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5

			kilograms.
248	893.135(1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
249	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
250	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
251	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
252	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
253	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting

			requirements.
254	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
255	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
256	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
257	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
258	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
259	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address

verification.

260

261 Section 8. This act shall take effect October 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 123 Investigations of Law Enforcement and Correctional Officers
SPONSOR(S): Gibson
TIED BILLS: **IDEN./SIM. BILLS:** SB 492

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Homeland Security & Public Safety		Cunningham	Kramer
2) Safety & Security Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Florida statutes grant law enforcement officers and correctional officers certain rights when the officer is being investigated by his or her employing agency. HB 125 provides that, whenever possible, a law enforcement or correctional agency must interview all identifiable witnesses prior to the beginning of an investigative interview of an accused officer. Further, the bill provides that the accused officer must be given a copy of the complaint and all witness statements prior to the investigative interview of the accused officer.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill impacts the discretion of a law enforcement or correctional agency who is conducting an investigation of an officer by providing that an agency, whenever possible, must interview all witnesses prior to the beginning of an investigative interview of an officer.

Safeguard individual liberty - The bill will require an accused officer to be given a copy of the statements of all identifiable witnesses prior to the officer being interviewed.

B. EFFECT OF PROPOSED CHANGES:

Part VI of chapter 112, commonly referred to as the "Law Enforcement Officers' Bill of Rights," grants law enforcement officers[1] and correctional officers[2] specific rights when the officer is under investigation and subject to interrogation by members of his or her agency for any reason which could lead to disciplinary action, demotion or dismissal. The section places conditions on certain aspects of an interrogation of an accused officer relating to time, place and method of interrogation (e.g. paragraph (1)(d) provides that an accused officer must be informed of the nature of the investigation and the name of all complainants prior to any interrogation of the officer). [3]

Complaints filed against law enforcement officers and correctional officers who are employed by an agency, and all information obtained pursuant to the investigation of the complaint are confidential and exempt from public records laws until the investigation ceases to be active or the investigation is otherwise concluded.[4] However, the officer who is the subject of the complaint, and his or her chosen representative, is permitted to review the complaint and all statements made by the complainant and witnesses immediately prior to the beginning of an investigative interview.[5] Additionally, officers subject to disciplinary action[6] must, upon request, be provided with a complete copy of the investigative report and supporting documents prior to the imposition of disciplinary action.[7]

HB 123 amends s. 112.532, F.S. to provide that all identifiable witnesses shall be interviewed, whenever possible, prior to the beginning of an investigative interview of an accused officer. The bill also provides that a copy of the complaint and all witness statements must be provided to the officer who is the subject of the complaint prior to the beginning of any investigative interview.

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[1] Section 112.531(1), F.S., defines "law enforcement officer" as "any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07."

[2] Section 112.531(1), F.S., defines "correctional officer" as "any person, other than a warden, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution; and includes correctional probation officers, as defined in s. 943.10(3). However, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel." s. 112.531(2), F.S.

[3] Section 112.534, F.S., provides that if an agency fails to comply with the provisions of the Law Enforcement Officers' Bill of Rights, an officer who is personally injured by such failure to comply may file a civil suit for damages, and/or apply directly to the circuit court of the county where the agency is headquartered for an injunction to restrain and enjoin the violation and to compel performance of the agency's duties.

[4] s. 112.533, F.S.

[5] This provision does not apply to any public record that is exempt from disclosure if it is active criminal intelligence or criminal investigative information. *See* ss. 112.533 and 119.071, F.S.

[6] Disciplinary action consists of a suspension with loss of pay, demotion, or dismissal. *See* s. 112.532(4)(b), F.S.

[7] *Id.*

C. SECTION DIRECTORY:

Section 1. Amends s. 112.532, F.S.; providing that all identifiable witnesses to a complaint against a law enforcement or correctional officer must be interviewed, whenever possible, prior to the investigative interview of the accused officer.

Section 2. This bill takes effect July 1, 2007.

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:

This bill does not appear to have any fiscal impact on state or local government or on the private sector.

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:

   A substantively identical bill was vetoed by Governor Bush in 2005. The Governor's veto letter cited two reasons for vetoing the bill. First, the bill afforded law enforcement officers rights that are not afforded to other state employees and limited the ability of investigators to determine whether the trust that the public places in law enforcement officers has been breached. Second, because the bill required all witnesses to be interviewed prior to the investigative interview of the accused officer, the bill might have had a significant impact on the time it takes to bring an investigation to a conclusion (e.g. witnesses may be difficult to locate or unable to provide information that would have a

significant impact on the investigation). The veto letter stated that the bill's restrictions "eliminate needed flexibility and place an undue burden on the conduct of internal investigations."

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No comment submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to the investigations of law enforcement
3 and correctional officers; amending s. 112.532, F.S.;
4 requiring that all identifiable witnesses to a complaint
5 against a law enforcement or correctional officer be
6 interviewed, whenever possible, prior to the investigative
7 interview of the accused officer; requires that the
8 accused officer be furnished with the complaint and
9 witness statements prior to any investigative interview of
10 that officer; providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Paragraph (d) of subsection (1) of section
15 112.532, Florida Statutes, is amended to read:
16 112.532 Law enforcement officers' and correctional
17 officers' rights.--All law enforcement officers and correctional
18 officers employed by or appointed to a law enforcement agency or
19 a correctional agency shall have the following rights and
20 privileges:
21 (1) RIGHTS OF LAW ENFORCEMENT OFFICERS AND CORRECTIONAL
22 OFFICERS WHILE UNDER INVESTIGATION.--Whenever a law enforcement
23 officer or correctional officer is under investigation and
24 subject to interrogation by members of his or her agency for any
25 reason which could lead to disciplinary action, demotion, or
26 dismissal, such interrogation shall be conducted under the
27 following conditions:

28 (d) The law enforcement officer or correctional officer
29 under investigation shall be informed of the nature of the
30 investigation prior to any interrogation, and he or she shall be
31 informed of the names ~~name~~ of all complainants. All identifiable
32 witnesses shall be interviewed, whenever possible, prior to the
33 beginning of the investigative interview of the accused officer.
34 The complaint and all witness statements shall be provided to
35 the officer who is the subject of the complaint prior to the
36 beginning of any investigative interview of that officer.
37 Section 2. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 413 Theft of Property
SPONSOR(S): Garcia
TIED BILLS: **IDEN./SIM. BILLS:** SB 658

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Homeland Security & Public Safety		Cunningham	Kramer
2) Safety & Security Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

Currently, committing a robbery while using a firearm or weapon is a first-degree felony. However, courts have held that where a defendant threatens to use a firearm or weapon during the commission of a robbery, but no evidence is introduced to prove that the defendant was actually in possession of a firearm or weapon, the defendant may not be convicted of a first-degree felony under the robbery statute. This bill makes committing a robbery while threatening to use a firearm or weapon a first-degree felony, even if no evidence is introduced to prove that the defendant was actually in possession of a firearm or weapon.

The effective date of this bill is October 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility - This bill makes robbery while threatening to use a firearm or weapon a first-degree felony.

B. EFFECT OF PROPOSED CHANGES:

Current Situation
Section 812.13, F.S., defines the term "robbery" as:

> The taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear.

Robbery *while carrying a firearm*[1] *or other deadly weapon*[2] is a first-degree felony punishable by imprisonment for a term of years not exceeding life imprisonment and a fine of up to $10,000.[3]

Robbery *while carrying a weapon*[4] (non-deadly) is a first-degree felony. A first-degree felony generally is punishable by up to 30 years imprisonment and a fine of up to $10,000.[5]

Robbery *without a firearm, deadly weapon, or other weapon* is a second-degree felony. A second-degree felony is generally punishable by up to 15 years imprisonment and a fine of up to $10,000.[6]

Courts have held that where a defendant threatens to use a firearm or weapon during the commission of a robbery, but no evidence is introduced to prove that the defendant was actually in possession of a firearm or weapon, the defendant may not be convicted of a first-degree felony under the robbery statute.[7] Such act is instead a second-degree felony under the robbery statute.[8]

Effect of the Bill
This bill makes robbery while threatening to use a weapon (non-deadly) or a firearm a first-degree felony. The potential incarceration for a first-degree felony is generally up to 30 years imprisonment. Under existing law, the robbery is a second-degree felony if actual possession of a weapon or firearm cannot be proven. The potential incarceration for a second-degree felony is generally up to 15 years imprisonment. This bill will reverse case law holding that the state must prove a defendant was actually in possession of a firearm or weapon to convict a person of a first-degree felony robbery.

C. SECTION DIRECTORY:

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[1] Florida Standard Jury Instruction 15.1 references the definition of firearm contained in s. 790.001, F.S., which defines the term "firearm" as "any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime."
[2] Florida Standard Jury Instruction 15.1 provides that a weapon is a "deadly weapon" if "it is used or threatened to be used in a way likely to produce death or great bodily harm."
[3] *See* ss. 812.13(2)(a), 775.082, and 775.083, F.S.
[4] Florida Standard Jury Instruction 15.1 provides that a "weapon" is legally defined to mean "any object that could be used to cause death or inflict serious bodily harm."
[5] *See* ss. 812.13(2)(b), 775.082, and 775.083, F.S.
[6] *See* ss. 812.13(2)(c), 775.082 and 775.083, F.S.
[7] *See, e.g., Johnson v. State*, 560 So.2d 1379 (Fla. 5th DCA 1990), *Spellman v. State*, 529 So.2d 305 (Fla. 1st DCA 1988), *Hamilton v. State*, 494 So.2d 505 (Fla. 2nd DCA 1986).
[8] *Id.*

Section 1. Amends s. 812.13, F.S., providing that threatening to use a weapon or firearm during the course of a robbery is a first-degree felony.

Section 2. Reenacts s. 921.0022(3)(f), (h) and (i), F.S., relating to the offense severity ranking chart of the Criminal Punishment Code.

Section 3. Provides an effective date of October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   On February 16, 2007, the Criminal Justice Impact Conference determined that the prison bed impact of this bill is indeterminate. This bill makes committing a robbery while threatening to use a firearm or weapon a first-degree felony, even if no evidence is introduced to prove that the defendant was actually in possession of a firearm or weapon. No data exist to indicate how many such crimes have been committed in the past.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill 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.

D. STATEMENT OF THE SPONSOR

No comment submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to theft of property; amending s. 812.13,
3 F.S.; providing that if an offender threatens to use a
4 weapon or firearm during the course of a robbery, the
5 offender commits a felony of the first degree; providing
6 for penalties; reenacting s. 921.0022(3)(f), (h), and (i),
7 F.S., relating to the offense severity ranking chart of
8 the Criminal Punishment Code, to incorporate the amendment
9 to s. 812.13, F.S., in references thereto; providing an
10 effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Section 812.13, Florida Statutes, is amended to
15 read:
16 812.13 Robbery.--
17 (1) "Robbery" means the taking of money or other property
18 that ~~which~~ may be the subject of larceny from the person or
19 custody of another, with intent to either permanently or
20 temporarily deprive the person or the owner of the money or
21 other property, when in the course of the taking there is the
22 use of force, violence, assault, or putting in fear.
23 (2)(a) If in the course of committing the robbery the
24 offender carried a firearm or other deadly weapon, then the
25 robbery is a felony of the first degree, punishable by
26 imprisonment for a term of years not exceeding life imprisonment
27 or as provided in s. 775.082, s. 775.083, or s. 775.084.
28 (b) If in the course of committing the robbery the

29 offender carried a weapon, or threatened to use a weapon or
30 firearm, then the robbery is a felony of the first degree,
31 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
32 (c) If in the course of committing the robbery the
33 offender carried no firearm, deadly weapon, or other weapon, or
34 did not threaten to use any weapon or firearm, then the robbery
35 is a felony of the second degree, punishable as provided in s.
36 775.082, s. 775.083, or s. 775.084.
37 (3)(a) An act shall be deemed "in the course of committing
38 the robbery" if it occurs in an attempt to commit robbery or in
39 flight after the attempt or commission.
40 (b) An act shall be deemed "in the course of the taking"
41 if it occurs before ~~either prior to~~, contemporaneous with, or
42 after ~~subsequent to~~ the taking of the property and if it and the
43 act of taking constitute a continuous series of acts or events.
44 Section 2. For the purpose of incorporating the amendment
45 made by this act to section 812.13, Florida Statutes, in
46 reference thereto, paragraphs (f), (h), and (i) of subsection
47 (3) of section 921.0022, Florida Statutes, are reenacted to
48 read:
49 921.0022 Criminal Punishment Code; offense severity
50 ranking chart.--
51 (3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
	(f) LEVEL 6	
316.193(2)(b)	3rd	Felony DUI, 4th or

			subsequent conviction.
54	499.0051(3)	2nd	Forgery of pedigree papers.
55	499.0051(4)	2nd	Purchase or receipt of legend drug from unauthorized person.
56	499.0051(5)	2nd	Sale of legend drug to unauthorized person.
57	775.0875(1)	3rd	Taking firearm from law enforcement officer.
58	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
59	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
60	784.041	3rd	Felony battery.

61	784.048(3)	3rd	Aggravated stalking; credible threat.
62	784.048(5)	3rd	Aggravated stalking of person under 16.
63	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
64	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
65	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
66	784.081(2)	2nd	Aggravated assault on specified official or employee.
67	784.082(2)	2nd	Aggravated assault by detained person on visitor or other

			detainee.
68	784.083(2)	2nd	Aggravated assault on code inspector.
69	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
70	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
71	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
72	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
73	790.19	2nd	Shooting or throwing

			deadly missiles into dwellings, vessels, or vehicles.
74	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
75	794.05(1)	2nd	Unlawful sexual activity with specified minor.
76	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
77	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
78	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any

			other person.
79			
	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
80			
	812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
81			
	812.015(9)	2nd	Retail theft; property stolen $300 or more; second or subsequent conviction.
82			
	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
83			
	817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
84			

85	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
86	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
87	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
88	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
89	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $20,000.
90	827.03(1)	3rd	Abuse of a child.

91	827.03(3)(c)	3rd	Neglect of a child.
92	827.071(2)&(3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
93	836.05	2nd	Threats; extortion.
94	836.10	2nd	Written threats to kill or do bodily injury.
95	843.12	3rd	Aids or assists person to escape.
96	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
97	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.

944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

102 (h) LEVEL 8

103

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.
109	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.
110	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding $20,000, but less than $100,000 by financial institutions.
111	777.03(2)(a)	1st	Accessory after the fact, capital felony.
112	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.
113			
	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s.782.04(3).
114			
	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
115			
	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
116			

	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
117			
	794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
118			
	800.04(4)	2nd	Lewd or lascivious battery.
119			
	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
120			
	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
121			
	810.02(2)(b)	1st,PBL	Burglary; armed with explosives or

			dangerous weapon.
122	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or $1,000 or more property damage.
123	812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.
124	812.13(2)(b)	1st	Robbery with a weapon.
125	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
126	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the

127			age of 18.
128	825.102(2)	2nd	Aggravated abuse of an elderly person or disabled adult.
129	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
130	825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at $100,000 or more.
131	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.

132	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
133	860.16	1st	Aircraft piracy.
134	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).
135	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
136	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
137	893.135(1)(a)2.	1st	Trafficking in

			cannabis, more than 2,000 lbs., less than 10,000 lbs.
138	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
139	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
140	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
141	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
142	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less

			than 200 grams.
143	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
144	893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
145	893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
146	893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
147	895.03(1)	1st	Use or invest proceeds derived from pattern of

			racketeering activity.
148	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
149	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
150	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.
151	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.
152		
	(i) LEVEL 9	
153		
316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
154		
327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
155		
499.00535	1st	Sale or purchase of contraband legend drugs resulting in great bodily harm.
156		
560.123(8)(b)3.	1st	Failure to report

			currency or payment instruments totaling or exceeding $100,000 by money transmitter.
157	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding $100,000.
158	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.
159	775.0844	1st	Aggravated white collar crime.
160	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.

161	782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.
162	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
163	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
164	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
165	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or

			facilitate commission of any felony.
166	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
167	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.
168	790.161	1st	Attempted capital destructive device offense.
169	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of

			mass destruction.
170	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
171	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
172	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
173	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
174	800.04(5)(b)	Life	Lewd or lascivious

			molestation; victim less than 12 years; offender 18 years or older.
175	812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
176	812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
177	812.135(2)(b)	1st	Home-invasion robbery with weapon.
178	817.568(7)	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.
179	827.03(2)	1st	Aggravated child

			abuse.
180			
	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
181			
	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
182			
	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.
183			
	893.135	1st	Attempted capital trafficking offense.
184			

	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
185			
	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
186			
	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
187			
	893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
188			
	893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
189			
	893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
190			
	893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric

		acid (GHB), 10 kilograms or more.
893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 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 October 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 449 Criminal Acts Committed During State of Emergency
SPONSOR(S): Snyder
TIED BILLS: **IDEN./SIM. BILLS:** SB 214

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Homeland Security & Public Safety		Kramer	Kramer
2) Safety & Security Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

The bill reclassifies the felony degree of certain burglary and theft offenses if any of them were committed within a county that is subject to a state of emergency declared by the Governor under ch. 252, F.S., after the declaration of emergency is made, and the perpetration of the offense was facilitated by conditions arising from the emergency. The term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel.

The offense severity ranking level of the burglary and theft offenses is increased by one level if the offenses are reclassified.

A person arrested for committing any of these offenses within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first-appearance hearing.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases criminal penalties for certain acts committed during a state of emergency.

Promote personal responsibility -- This bill seeks to deter wrongful conduct by increasing criminal penalties for certain acts committed after a state of emergency.

B. EFFECT OF PROPOSED CHANGES:

Burglary
Section 810.02(1)(b)1., F.S., defines "burglary" as:

- Entering a dwelling, a structure, or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter; or
- Notwithstanding a licensed or invited entry, remaining in a dwelling, structure, or conveyance:
    - Surreptitiously, with the intent to commit an offense therein;
    - After permission to remain therein has been withdrawn, with the intent to commit an offense therein; or
    - To commit or attempt to commit a forcible felony.

Burglary is a second degree felony[1], punishable by up to fifteen years in prison,[2] if in the course of committing the offense, he or she does not commit an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the person enters or remains in a:

- Dwelling, and there is another person in the dwelling at the time the offender enters or remains;
- Dwelling, and there is not another person in the dwelling at the time the offender enters or remains;
- Structure, and there is another person in the structure at the time the offender enters or remains; or
- Conveyance, and there is another person in the conveyance at the time the offender enters or remains.

Burglary is a third degree felony,[3] punishable by up to five years in prison[4] if, in the course of committing the offense, the offender does not commit an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the person enters or remains in a:

- Structure, and there is not another person in the structure at the time the offender enters or remains; or
- Conveyance, and there is not another person in the conveyance at the time the offender enters or remains.

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[1] s. 810.02(3), F.S
[2] s. 775.082(3)(c), F.S
[3] s. 810.02(4)
[4] s. 775.082(3)(d), F.S.

Grand theft
Section 812.014(1), F.S., states that a person commits "theft" if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property.
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

Under s. 812.014(2)(b), F.S., a person commits grand theft of the second degree, which is a second degree felony, if:

- The property stolen is valued at $20,000 or more, but less than $100,000;
- The property stolen is cargo valued at less than $50,000 that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or
- The property stolen is emergency medical equipment, valued at $300 or more, that is taken from a facility licensed under ch. 395, F.S., or from an aircraft or vehicle permitted under ch. 401, F.S.

Under s. 812.014(2)(c), F.S., a person commits grand theft of the third degree, which is a third degree felony, if the property stolen is:

- Valued at $300 or more, but less than $5,000;
- Valued at $5,000 or more, but less than $10,000;
- Valued at $10,000 or more, but less than $20,000;
- A will, codicil, or other testamentary instrument;
- A firearm;
- A motor vehicle, except as provided in s. 812.014(2)(a), F.S.;
- Any commercially farmed animal, including any animal of the equine, bovine, or swine class, or other grazing animal, and including aquaculture species raised at a certified aquaculture facility;
- Any fire extinguisher;
- Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit;
- Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d), F.S.;
- Any stop sign; or
- Anhydrous ammonia.

In terms of the maximum penalty, all of the criminal acts of theft are indistinguishable since they are all third degree felonies. However, the Legislature has distinguished some of these acts as being more serious than others by ranking some of these acts higher in the Criminal Punishment Code's offense severity ranking chart (s. 921.0022, F.S.) than other acts. For example, theft of property valued at $5,000 or more, but less than $10,000, is a Level 3 offense; theft of property valued at $10,000 or more, but less than $20,000, is a Level 4 offense. Each level accrues a specific number of sentencing points; the greater the ranking level, the greater the number of points. Assuming the theft is the primary offense, the sentencing points accrued for the offense's level as a primary offense, combined with any sentencing points that may be accrued for other factors, such as additional offenses and prior offenses, determine total sentencing points, which when entered into a mathematical formula, determine the lowest permissible sentence that can be imposed for the offense.

Emergency declaration by the Governor under ch. 252, F.S.
Section 252.36(1)(a), F.S., provides, in part, that, in the event of an emergency beyond local control, the Governor, or, in the Governor's absence, her or his successor as provided by law, may assume direct operational control over all or any part of the emergency management functions within this state,

and she or he shall have the power through proper process of law to carry out the provisions of this section.

Section 252.36(1)(b), F.S., provides that, pursuant to the authority vested in her or him under paragraph (a), the Governor may issue executive orders, proclamations, and rules and may amend or rescind them. Such executive orders, proclamations, and rules shall have the force and effect of law.

Section 252.36(2), F.S., provides that a state of emergency shall be declared by executive order or proclamation of the Governor if she or he finds an emergency has occurred or that the occurrence or the threat thereof is imminent. The state of emergency shall continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and she or he terminates the state of emergency by executive order or proclamation, but no state of emergency may continue for longer than 60 days unless renewed by the Governor.

The Legislature by concurrent resolution may terminate a state of emergency at any time. Thereupon, the Governor shall issue an executive order or proclamation ending the state of emergency. All executive orders or proclamations issued under this section shall indicate the nature of the emergency, the area or areas threatened, and the conditions which have brought the emergency about or which make possible its termination. An executive order or proclamation shall be promptly disseminated by means calculated to bring its contents to the attention of the general public; and, unless the circumstances attendant upon the emergency prevent or impede such filing, the order or proclamation shall be filed promptly with the Department of State and in the offices of the county commissioners in the counties to which the order or proclamation applies.

Examples of enhanced penalties for unlawful acts committed during a declared state of emergency

Section 501.160(2), F.S., provides that, upon a declaration of a state of emergency by the Governor, it is unlawful and a violation of s. 501.204, F.S., for a person or her or his agent or employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared, any essential commodity including, but not limited to, supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency. Section 501.160(3), F.S., provides that it is likewise a violation of s. 501.204, F.S., for any person to impose unconscionable prices for lease or rental of a dwelling or storage unit during a declared state of emergency. These prohibitions remain in effect until the declaration expires or is terminated.

Section 501.204(1), F.S., states that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. This section is in Part II of ch. 501, F.S. (the Florida Deceptive and Unfair Trade Practices Act). Section 501.160(8), F.S., provides that any violation of the section may be enforced by the Department of Agriculture and Consumer Services, the office of the state attorney, or the Department of Legal Affairs.

2005 legislation providing for reclassification of certain felonies committed during a declared state of emergency

In 2005, the Legislature passed HB 207. The House bill would have reclassified the felony degree of burglary and theft offenses contained in that subsection burglary or theft was committed within an area subject to a state of emergency declared by the Governor under ch. 252, F.S. The offense severity ranking level of the burglary or theft offense would have been increased by one level if reclassified.

The bill also would have required that a person arrested for committing a burglary within a declared state of emergency area not be released before appearing before a committing magistrate at a first-appearance hearing.[5]

[5] Rule 3.130, Florida Rules of Criminal Procedure, address first appearance hearings. It provides, in part, that "[e]xcept when previously released in a lawful manner, every arrested person shall be taken before a judicial officer, either in person or by electronic audiovisual device in the discretion of the court, within 24 hours of arrest."

Governor Bush vetoed HB 207. The Governor's reasons for vetoing the bill, as expressed in his veto message, were as follows:

> I am vetoing the bill because I am concerned that the scope of the bill is overly broad. The enhanced penalties would have application beyond just looting[6] in the days following a disaster. House Bill 207, as worded, would increase burglary and theft penalties at any time a state of emergency exists anywhere in the state. The consequences of this wording are sweeping, considering that states of emergency can last for months following a disaster. To this day, for example -- almost eight months after last summer's hurricanes ceased -- the State of Florida continues under a limited state of emergency (see Executive Order 05-103). Although this bill is well intended, it creates a significant unintended consequence, therefore: enhanced penalties for looting would carry on long beyond the existence of a disaster-induced "looting" scenario.
>
> For this reason, I withhold my approval of House Bill 207, and do hereby veto the same.[7]

Provisions of HB 449

The bill amends s.810.02, F.S. (burglary), and s. 812.014, F.S. (theft), to reclassify the felony degree of certain burglary and theft offenses if any of them were committed within a county that is subject to a state of emergency declared by the Governor under ch. 252, F.S., after the declaration of emergency is made, and the perpetration of the offense was facilitated by conditions arising from the emergency. The term "conditions arising from the emergency" is defined to mean civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel.

The offense severity ranking level of the burglary and theft offenses is increased by one level if the offenses are reclassified. The following chart summarizes all of the offenses reclassified by this bill and the increased ranking:

Looting Offenses		Reclassification if committed during a state of emergency
Description of Offense	Current Penalty	
Burglary of a dwelling, whether occupied or not, if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. ss. 810.02(3)(a)-(b), F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Burglary of an occupied structure if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. s. 810.02(3)(c), F.S.	2nd degree felony, Level 6	1st degree felony, Level 7
Burglary of an occupied conveyance if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. s. 810.02(3)(d), F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Burglary of an unoccupied structure if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. s. 810.02(4)(a), F.S.	3rd degree felony, Level 4	2nd degree felony, Level 5

[6] Looting is not a statutory term nor is it a crime *per se*. Looting is a word that is descriptive of crimes such as burglary and theft that occur during a riot or civil emergency. Florida law currently punishes burglary and theft without regard to whether such crimes occur during a riot or civil emergency.

[7] Governor's Veto Message (letter from Governor Jeb Bush to Secretary of State Glenda Hood, dated June 2, 2005).

Looting Offenses		Reclassification if committed during a state of emergency
Description of Offense	Current Penalty	
Burglary of an unoccupied conveyance if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. s. 810.02(4)(b), F.S.	3rd degree felony, Level 4	2nd degree felony, Level 5
Theft of property valued between $20,000 and $100,000. s. 812.014(2)(b)1., F.S.	2nd degree felony, Level 6	1st degree felony, Level 7
Theft of cargo that has entered the stream of commerce and is valued less than $50,000. s. 812.014(2)(b)2., F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Theft of certain emergency medical equipment valued in excess of $300. s. 812.014(2)(b)3., F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Theft of property valued between $10,000 and $20,000. s. 812.014(2)(c)3., F.S.	3rd degree felony, Level 4	2nd degree felony, Level 5
Theft of property valued between $5,000 and $10,000. s. 812.014(2)(c)2., F.S.	3rd degree felony, Level 3	2nd degree felony, Level 4

The bill responds to concern's expressed in Governor Bush's veto message for HB 207 that enhanced penalties for looting "would carry on long beyond the existence of a disaster-induced 'looting' scenario" by limiting the application of felony reclassification and ranking enhancement provisions to burglaries and thefts that occur during a declared state of emergency and that are "facilitated by conditions arising from the emergency." Such "conditions" are limited to "civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel."

The bill also provides that a person arrested for committing any of these offenses within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first-appearance hearing.

C. SECTION DIRECTORY:

Section 1. Amends s. 810.02, F.S. relating to burglary.

Section 2. Amends s. 812.014, F.S. relating to theft.

Section 3. Provides effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   On February 16, 2007, the Criminal Justice Impact Conference classified the prison bed impact of this bill as indeterminate. It is not possible to predict the number and duration of declarations of state of emergencies that will occur in the future.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Provisions requiring a person to be held pending first appearance may increase local government expenditures due to increased jail bed utilization.

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.

D. STATEMENT OF THE SPONSOR

The bill sponsor submitted the following statement:

This bill, if enacted, will protect property owners during a most vulnerable time following a natural disaster, such as a hurricane or tornado. It provides law enforcement a much needed tool in protecting personal property left exposed after disasters.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to criminal acts committed during a state
3 of emergency; amending s. 810.02, F.S.; providing enhanced
4 penalties for specified burglaries that are committed
5 during a state of emergency declared by the Governor and
6 facilitated by conditions arising from the emergency;
7 prohibiting the release of a person arrested for
8 committing a burglary during such a state of emergency
9 until that person appears before a magistrate at a first-
10 appearance hearing; requiring that a felony burglary
11 committed during a state of emergency declared by the
12 Governor be reclassified one level above the current
13 ranking of the offense committed; amending s. 812.014,
14 F.S.; providing enhanced penalties for the theft of
15 certain property stolen during a state of emergency
16 declared by the Governor and facilitated by conditions
17 arising from the emergency; requiring that a felony theft
18 committed during such a state of emergency be reclassified
19 one level above the current ranking of the offense
20 committed; providing an effective date.
21
22 Be It Enacted by the Legislature of the State of Florida:
23
24 Section 1. Subsections (3) and (4) of section 810.02,
25 Florida Statutes, are amended to read:
26 810.02 Burglary.--
27 (3) Burglary is a felony of the second degree, punishable
28 as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the

29 course of committing the offense, the offender does not make an
30 assault or battery and is not and does not become armed with a
31 dangerous weapon or explosive, and the offender enters or
32 remains in a:
33 (a) Dwelling, and there is another person in the dwelling
34 at the time the offender enters or remains;
35 (b) Dwelling, and there is not another person in the
36 dwelling at the time the offender enters or remains;
37 (c) Structure, and there is another person in the
38 structure at the time the offender enters or remains; or
39 (d) Conveyance, and there is another person in the
40 conveyance at the time the offender enters or remains.
41
42 <u>However, if the burglary is committed within a county that is</u>
43 <u>subject to a state of emergency declared by the Governor under</u>
44 <u>chapter 252 after the declaration of emergency is made and the</u>
45 <u>perpetration of the burglary is facilitated by conditions</u>
46 <u>arising from the emergency, the burglary is a felony of the</u>
47 <u>first degree, punishable as provided in s. 775.082, s. 775.083,</u>
48 <u>or s. 775.084. As used in this subsection, the term "conditions</u>
49 <u>arising from the emergency" means civil unrest, power outages,</u>
50 <u>curfews, voluntary or mandatory evacuations, or a reduction in</u>
51 <u>the presence of or response time for first responders or</u>
52 <u>homeland security personnel. A person arrested for committing a</u>
53 <u>burglary within a county that is subject to such a state of</u>
54 <u>emergency may not be released until the person appears before a</u>
55 <u>committing magistrate at a first-appearance hearing. For</u>
56 <u>purposes of sentencing under chapter 921, a felony offense that</u>

57 is reclassified under this subsection is ranked one level above
58 the ranking under s. 921.0022 or s. 921.0023 of the offense
59 committed.
60 (4) Burglary is a felony of the third degree, punishable
61 as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the
62 course of committing the offense, the offender does not make an
63 assault or battery and is not and does not become armed with a
64 dangerous weapon or explosive, and the offender enters or
65 remains in a:
66 (a) Structure, and there is not another person in the
67 structure at the time the offender enters or remains; or
68 (b) Conveyance, and there is not another person in the
69 conveyance at the time the offender enters or remains.
70
71 However, if the burglary is committed within a county that is
72 subject to a state of emergency declared by the Governor under
73 chapter 252 after the declaration of emergency is made and the
74 perpetration of the burglary is facilitated by conditions
75 arising from the emergency, the burglary is a felony of the
76 second degree, punishable as provided in s. 775.082, s. 775.083,
77 or s. 775.084. As used in this subsection, the term "conditions
78 arising from the emergency" means civil unrest, power outages,
79 curfews, voluntary or mandatory evacuations, or a reduction in
80 the presence of or response time for first responders or
81 homeland security personnel. A person arrested for committing a
82 burglary within a county that is subject to such a state of
83 emergency may not be released until the person appears before a
84 committing magistrate at a first-appearance hearing. For

85 purposes of sentencing under chapter 921, a felony offense that
86 is reclassified under this subsection is ranked one level above
87 the ranking under s. 921.0022 or s. 921.0023 of the offense
88 committed.
89 Section 2. Paragraphs (b) and (c) of subsection (2) of
90 section 812.014, Florida Statutes, are amended to read:
91 812.014 Theft.--
92 (2)
93 (b)1. If the property stolen is valued at $20,000 or more,
94 but less than $100,000;
95 2. The property stolen is cargo valued at less than
96 $50,000 that has entered the stream of interstate or intrastate
97 commerce from the shipper's loading platform to the consignee's
98 receiving dock; or
99 3. The property stolen is emergency medical equipment,
100 valued at $300 or more, that is taken from a facility licensed
101 under chapter 395 or from an aircraft or vehicle permitted under
102 chapter 401,
103
104 the offender commits grand theft in the second degree,
105 punishable as a felony of the second degree, as provided in s.
106 775.082, s. 775.083, or s. 775.084. Emergency medical equipment
107 means mechanical or electronic apparatus used to provide
108 emergency services and care as defined in s. 395.002(10) or to
109 treat medical emergencies. However, if the property is stolen
110 within a county that is subject to a state of emergency declared
111 by the Governor under chapter 252, the theft is committed after
112 the declaration of emergency is made, and the perpetration of

113 the theft is facilitated by conditions arising from the
114 emergency, the theft is a felony of the first degree, punishable
115 as provided in s. 775.082, s. 775.083, or s. 775.084. As used in
116 this paragraph, the term "conditions arising from the emergency"
117 means civil unrest, power outages, curfews, voluntary or
118 mandatory evacuations, or a reduction in the presence of or
119 response time for first responders or homeland security
120 personnel. For purposes of sentencing under chapter 921, a
121 felony offense that is reclassified under this paragraph is
122 ranked one level above the ranking under s. 921.0022 or s.
123 921.0023 of the offense committed.
124 (c) It is grand theft of the third degree and a felony of
125 the third degree, punishable as provided in s. 775.082, s.
126 775.083, or s. 775.084, if the property stolen is:
127 1. Valued at $300 or more, but less than $5,000.
128 2. Valued at $5,000 or more, but less than $10,000.
129 3. Valued at $10,000 or more, but less than $20,000.
130 4. A will, codicil, or other testamentary instrument.
131 5. A firearm.
132 6. A motor vehicle, except as provided in paragraph
133 (2)(a).
134 7. Any commercially farmed animal, including any animal of
135 the equine, bovine, or swine class, or other grazing animal, and
136 including aquaculture species raised at a certified aquaculture
137 facility. If the property stolen is aquaculture species raised
138 at a certified aquaculture facility, then a $10,000 fine shall
139 be imposed.
140 8. Any fire extinguisher.

141 9. Any amount of citrus fruit consisting of 2,000 or more
142 individual pieces of fruit.
143 10. Taken from a designated construction site identified
144 by the posting of a sign as provided for in s. 810.09(2)(d).
145 11. Any stop sign.
146 12. Anhydrous ammonia.
147
148 However, if the property is stolen within a county that is
149 subject to a state of emergency declared by the Governor under
150 chapter 252, the property is stolen after the declaration of
151 emergency is made, and the perpetration of the theft is
152 facilitated by conditions arising from the emergency, the
153 offender commits a felony of the second degree, punishable as
154 provided in s. 775.082, s. 775.083, or s. 775.084, if the
155 property is valued at $5,000 or more, but less than $10,000, as
156 provided under subparagraph 2., or if the property is valued at
157 $10,000 or more, but less than $20,000, as provided under
158 subparagraph 3. As used in this paragraph, the term "conditions
159 arising from the emergency" means civil unrest, power outages,
160 curfews, voluntary or mandatory evacuations, or a reduction in
161 the presence of or the response time for first responders or
162 homeland security personnel. For purposes of sentencing under
163 chapter 921, a felony offense that is reclassified under this
164 paragraph is ranked one level above the ranking under s.
165 921.0022 or s. 921.0023 of the offense committed.
166 Section 3. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 723 Correctional and Law Enforcement Officer Discipline
SPONSOR(S): Thompson
TIED BILLS: **IDEN./SIM. BILLS:** SB 690

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Homeland Security & Public Safety		Cunningham	Kramer
2) Safety & Security Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Section 112.533, F.S., currently requires law enforcement and correctional agencies to establish procedures for the receipt, investigation, and determination of complaints against law enforcement and correctional officers. Although these procedures vary from agency to agency, most agencies generate investigative reports summarizing the agency's findings. This bill requires law enforcement or correctional agency personnel who are investigating a complaint against an officer and who are preparing an investigative report or summary regarding such complaint to:

- Verify pursuant to s. 92.525, F.S., that the contents of the report are true and accurate based upon the officer's information and belief; and
- Include the following statement:

> "I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss. 112.532 and 112.533, Florida Statutes"

The bill further specifies that the verifications be completed prior to the determination as to whether to proceed with disciplinary action or to file disciplinary charges.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill requires law enforcement and correctional agencies to verify that the contents of investigative reports relating to complaints against officers are true and accurate, and to include in the report a statement relating to compliance with the Law Enforcement Officer's Bill of Rights.

B. EFFECT OF PROPOSED CHANGES:

Law Enforcement Officer's Bill of Rights

Law enforcement[1] and correctional officers[2] have certain statutory rights and privileges while under investigation. Currently, Part VI of Chapter 112, commonly known as the "Law Enforcement Officers' Bill of Rights," grants law enforcement officers and correctional officers specific rights when the officer is under investigation and subject to interrogation by members or his or her agency for any reason which could lead to disciplinary action, demotion or dismissal.

Currently, if an agency fails to comply with the provisions of the Law Enforcement Officers' Bill of Rights, an officer who is personally injured by such failure to comply may apply directly to the circuit court of the county where the agency is headquartered for an injunction to restrain and enjoin the violation and to compel performance of the agency's duties.[3] Such officer may also file a civil suit for damages.[4]

Investigative Reports

Section 112.533, F.S., currently requires law enforcement and correctional agencies to establish procedures for the receipt, investigation, and determination of complaints against law enforcement and correctional officers. These procedures vary from agency to agency. However, in most instances when a complaint against an officer is filed, agencies investigate the complaint and generate investigative reports that summarize the agency's findings.

Currently, Florida law provides criminal penalties for making false investigative reports.[5] However, there is no law specifically requiring that the person preparing an investigative report verify pursuant to s. 92.525, F.S., that the contents of the report are true and accurate based upon the preparer's information and belief.[6] Nor is there a current statutory requirement that a person preparing an investigative report include any type of statement regarding compliance with the Law Enforcement Officer's Bill of Rights.

---

[1] The term "law enforcement officer" is defined as follows: "any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07." s. 112.531(1), F.S.

[2] The term "correctional officer" is defined as follows: "any person, other than a warden, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution; and includes correctional probation officers, as defined in s. 943.10(3). However, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel." s. 112.531(2), F.S.

[3] s. 112.534, F.S.

[4] s. 112.532(3), F.S.

[5] *See* s. 837.06, F.S., (whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his/her official duties is guilty of a second degree misdemeanor); s. 838.022, F.S., (It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another, to falsify, or cause another person to falsify, any official record or official document); s. 944.33, F.S., (If any prison inspector knowingly makes a false report of his/ her findings, he/she shall is guilty of a third degree felony).

[6] Section 92.525, F.S., provides two methods of document verification (by oath or affirmation or by the signing of a written declaration) and provides that it is a third degree felony to knowingly make a false declaration.

Effect of the Bill

This bill requires law enforcement or correctional agency personnel who are investigating a complaint against an officer and who are preparing an investigative report or summary regarding such complaint to:

- Verify pursuant to s. 92.525, F.S., that the contents of the report are true and accurate based upon the officer's information and belief; and
- Include the following statement in the report or summary:

  "I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss. 112.532 and 112.533, Florida Statutes"

The bill further specifies that the verifications be completed prior to the determination as to whether to proceed with disciplinary action or to file disciplinary charges.

C. SECTION DIRECTORY:

Section 1. Amends s. 112.533, F.S., requiring certain investigative reports to include a statement relating to compliance with s. 112.532, F.S., and be verified.

Section 2. This act takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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 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.

D. STATEMENT OF THE SPONSOR

No comment submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to correctional and law enforcement
3 officer discipline; amending s. 112.533, F.S.; requiring
4 that certain investigative reports include a statement
5 relating to compliance with ss. 112.532 and 112.533, F.S.,
6 and that these reports be verified; requiring that certain
7 statements be made under oath and subject to prosecution
8 for perjury; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Subsection (1) and paragraph (a) of subsection
13 (2) of section 112.533, Florida Statutes, are amended to read:
14 112.533 Receipt and processing of complaints.--
15 (1) Every law enforcement agency and correctional agency
16 shall establish and put into operation a system for the receipt,
17 investigation, and determination of complaints received by such
18 agency from any person, which shall be the procedure for
19 investigating a complaint against a law enforcement and
20 correctional officer and for determining whether to proceed with
21 disciplinary action or to file disciplinary charges,
22 notwithstanding any other law or ordinance to the contrary. <u>When</u>
23 <u>law enforcement or correctional agency personnel assigned the</u>
24 <u>responsibility of investigating the complaint prepare an</u>
25 <u>investigative report or summary, regardless of form, the person</u>
26 <u>preparing the report shall, at the time the report is completed:</u>
27 <u>(a) Verify pursuant to s. 92.525 that the contents of the</u>
28 <u>report are true and accurate based upon the person's personal</u>

29 knowledge, information, and belief.
30 (b) Include the following statement, sworn and subscribed
31 to pursuant to s. 92.525:
32
33 "I, the undersigned, do hereby swear, under penalty of perjury,
34 that, to the best of my personal knowledge, information, and
35 belief, I have not knowingly or willfully deprived, or allowed
36 another to deprive, the subject of the investigation of any of
37 the rights contained in ss. 112.532 and 112.533, Florida
38 Statutes."
39
40 The requirements of paragraphs (a) and (b) shall be completed
41 prior to the determination as to whether to proceed with
42 disciplinary action or to file disciplinary charges. This
43 subsection does not preclude the Criminal Justice Standards and
44 Training Commission from exercising its authority under chapter
45 943.
46 (2)(a) A complaint filed against a law enforcement officer
47 or correctional officer with a law enforcement agency or
48 correctional agency and all information obtained pursuant to the
49 investigation by the agency of such complaint shall be
50 confidential and exempt from the provisions of s. 119.07(1)
51 until the investigation ceases to be active, or until the agency
52 head or the agency head's designee provides written notice to
53 the officer who is the subject of the complaint, either
54 personally or by mail, that the agency has either:
55 1. Concluded the investigation with a finding not to
56 proceed with disciplinary action or to file charges; or

57 2. Concluded the investigation with a finding to proceed
58 with disciplinary action or to file charges.
59
60 Notwithstanding the foregoing provisions, the officer who is the
61 subject of the complaint, along with legal counsel or any other
62 representative of his or her choice, may review the complaint
63 and all statements regardless of form made by the complainant
64 and witnesses immediately prior to the beginning of the
65 investigative interview. All statements, regardless of form,
66 provided by a law enforcement officer or correctional officer
67 during the course of a complaint investigation of that officer
68 shall be made under oath pursuant to s. 92.525. Knowingly false
69 statements given by a law enforcement officer or correctional
70 officer under investigation may subject the law enforcement
71 officer or correctional officer to prosecution for perjury. If a
72 witness to a complaint is incarcerated in a correctional
73 facility and may be under the supervision of, or have contact
74 with, the officer under investigation, only the names and
75 written statements of the complainant and nonincarcerated
76 witnesses may be reviewed by the officer under investigation
77 immediately prior to the beginning of the investigative
78 interview.
79 Section 2. This act shall take effect upon becoming a law.

HB 807

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 807 Domestic Violence
SPONSOR(S): Hooper
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Homeland Security & Public Safety		Cunningham	Kramer
2) Safety & Security Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

The bill creates the offense of "domestic battery by strangulation" and provides that a person commits domestic battery by strangulation, a Level 6 third degree felony, if the person actually and intentionally, against the will of another:

- Impedes the normal breathing or circulation of the blood of a family or household member or of a person with whom he or she is in a dating relationship, so as to create a risk of great bodily harm; or
- Causes great bodily harm by applying pressure on the throat or neck of the other person or by blocking the other person's nose or mouth.

The bill defines "family or household member" and "persons in a dating relationship."

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – This bill creates the offense of "domestic battery by strangulation" and makes it a third degree felony.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 784.03, F.S., provides that the offense of a battery, which is generally a first degree misdemeanor[1], occurs when a person actually and intentionally touches or strikes another person against the will of the other; or intentionally causes bodily harm to another person. However, while battery is generally a first degree misdemeanor, battery is a third degree felony[2] if a person who has one prior conviction for battery, aggravated battery, or felony battery commits any second or subsequent battery.

Section 784.041, F.S., provides that a person commits felony battery, a third degree felony, if the person actually and intentionally touches or strikes another person against the will of the other and causes great bodily harm, permanent disability, or permanent disfigurement.

Section 784.045, F.S., provides that a person commits aggravated battery, a second degree felony,[3] if:

- In committing battery, the offender intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement;
- In committing battery, the offender uses a deadly weapon; or
- The person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant.

Currently, Florida does not have a statute that specifically addresses strangulation as do, for example, North Carolina, Nebraska and Missouri.[4] Non-fatal strangulations may not cause visible injuries, and therefore, may end up having to be charged as a simple battery, a first degree misdemeanor, because the prosecutor cannot establish great bodily harm, permanent disability, or permanent disfigurement.

Effect of the Bill

The bill provides that a person commits domestic battery by strangulation, a Level 6 third degree felony, if the person actually and intentionally, against the will of another:

- Impedes the normal breathing or circulation of the blood of a family or household member or of a person with whom he or she is in a dating relationship, so as to create a risk of great bodily harm; or
- Causes great bodily harm by applying pressure on the throat or neck of the other person or by blocking the other person's nose or mouth.

The bill defines "family or household member" by reference to the definition of the term in s. 741.28, F.S. Subsection (3) of s. 741.28, F.S., defines "family or household member" as "spouses, former

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[1] A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a $1,000 fine. *See* ss. 775.082 and 775.083.

[2] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. ss. 775.082, 775.083, and s. 775.084, F.S.

[3] A second-degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

[4] *See* North Carolina State Statute § 14-32.4; State of Nebraska Statutes § 28-310.01; Missouri Revised Statutes § 565.073.

spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit."

The bill defines "persons in a dating relationship" by reference to the definition of the term in s. 784.046(1)(d), F.S. However, it should be noted that this subsection defines the term "dating violence" rather than "dating relationship." "Dating violence" is defined, in part, as "violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature."

C. SECTION DIRECTORY:

Section 1. Amends s. 784.041, F.S., creating the offense of "domestic battery by strangulation."

Section 2. Amends s. 921.0022, F.S., conforming the offense severity ranking chart of the Criminal Punishment Code.

Section 3. This bill takes effect October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Criminal Justice Impact Conference (CJIC) has not yet met to determine the prison bed impact of this bill. However, on February 16, 2007, the CJIC determined that Senate Bill 184, which is similar to this bill, would have an insignificant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill 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:

As noted above, the bill defines "persons in a dating relationship" by reference to the definition of the term in s. 784.046(1)(d), F.S. However, this subsection defines the term "dating violence" rather than "persons in a dating relationship." The term "persons in a dating relationship" is not currently defined by statute. A definition of such term could be created using language similar to that found in s. 784.046(1)(d), F.S. (e.g. "Dating relationship" means "a continuing and significant relationship of a romantic or intimate nature.")

A number of procedures that are routinely used in the rendering of emergency care and treatment by both laypersons and emergency medical services personnel and that are authorized under Florida law would impede the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck or by blocking the nose or mouth of the other person. This bill does not provide an exception for such procedures.

Section 741.28, F.S., defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." This bill provides that a person commits domestic battery by strangulation if they cause great bodily harm to "a person." However, the bill does not specify that "a person" must be a "family or household member" or "a person with whom he or she is in a dating relationship." Without this specification, it would appear that the offense does not relate to "domestic violence" but would instead fall within the current definition of aggravated battery.

D. STATEMENT OF THE SPONSOR

No comment submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to domestic violence; amending s. 784.041,
3 F.S.; creating the offense of domestic battery by
4 strangulation; providing criminal penalties; amending s.
5 921.0022, F.S.; conforming the offense severity ranking
6 chart of the Criminal Punishment Code; providing an
7 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; domestic battery by
14 strangulation.--
15 (1) A person who ~~commits felony battery if he or she~~:
16 (a) Actually and intentionally touches or strikes another
17 person against the will of the other; and
18 (b) Causes great bodily harm, permanent disability, or
19 permanent disfigurement,~~.~~
20
21 ~~(2) A person who~~ commits felony battery, ~~commits~~ a felony of
22 the third degree, punishable as provided in s. 775.082, s.
23 775.083, or s. 775.084.
24 (2)(a) For purposes of this subsection, the term:
25 1. "Family or household member" has the meaning provided
26 in s. 741.28.
27 2. "Persons in a dating relationship" has the same meaning
28 as used in s. 784.046(1)(d).

29 (b) A person who actually and intentionally, against the
30 will of the other:
31 1. Impedes the normal breathing or circulation of the
32 blood of a family or household member or of a person with whom
33 he or she is in a dating relationship so as to create a risk of
34 great bodily harm; or
35 2. Causes great bodily harm by:
36 a. Applying pressure on the throat or neck of the other
37 person; or
38 b. Blocking the nose or mouth of the other person,
39
40 commits domestic battery by strangulation, a felony of the third
41 degree, punishable as provided in s. 775.082, s. 775.083, or s.
42 775.084.
43 Section 2. Paragraph (f) of subsection (3) of section
44 921.0022, Florida Statutes, is amended to read:
45 921.0022 Criminal Punishment Code; offense severity
46 ranking chart.--
47 (3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
48		(f) LEVEL 6
49 316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
50 499.0051(3)	2nd	Forgery of pedigree papers.

51

	499.0051(4)	2nd	Purchase or receipt of legend drug from unauthorized person.
52	499.0051(5)	2nd	Sale of legend drug to unauthorized person.
53	775.0875(1)	3rd	Taking firearm from law enforcement officer.
54	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
55	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
56	784.041(1)	3rd	Felony battery.
57	784.041(2)	3rd	Domestic battery by strangulation.
58	784.048(3)	3rd	Aggravated stalking; credible threat.
59	784.048(5)	3rd	Aggravated stalking of person under 16.
60	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
61	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility

			staff.
62	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
63	784.081(2)	2nd	Aggravated assault on specified official or employee.
64	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
65	784.083(2)	2nd	Aggravated assault on code inspector.
66	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
67	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
68	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
69	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or

			violence to state property.
70	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
71	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
72	794.05(1)	2nd	Unlawful sexual activity with specified minor.
73	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
74	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
75	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
76	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
77	812.014(2)(b)1.	2nd	Property stolen $20,000 or more,

			but less than $100,000, grand theft in 2nd degree.
78	812.015(9)	2nd	Retail theft; property stolen $300 or more; second or subsequent conviction.
79	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
80	817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
81	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
82	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
83	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
84	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
85	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $20,000.

86	827.03(1)	3rd	Abuse of a child.
87	827.03(3)(c)	3rd	Neglect of a child.
88	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
89	836.05	2nd	Threats; extortion.
90	836.10	2nd	Written threats to kill or do bodily injury.
91	843.12	3rd	Aids or assists person to escape.
92	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
93	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
94	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great

		bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

Section 3. This act shall take effect October 1, 2007.

DOMESTIC SECURITY OVERSIGHT COUNCIL FUNDING RECOMMENDATIONS

DOMESTIC SECURITY IN FLORIDA

2007 FEDERAL FUNDING RECOMMENDATIONS

Prepared by the
Florida Department of Law Enforcement
Office of Domestic Security
March 2007

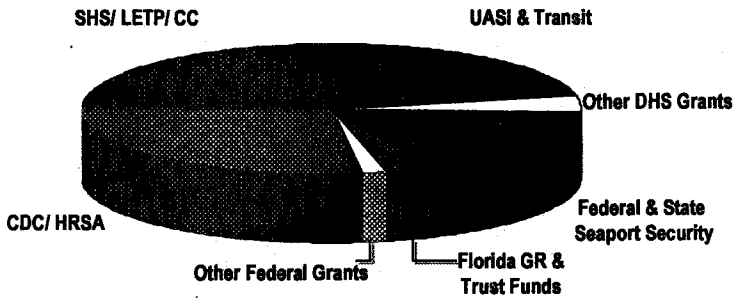
1

FLORIDA'S DOMESTIC SECURITY

2007 Funding Process

2

Funds that Support Florida's Domestic Security Strategy



Legend

- State Homeland Security, Law Enforcement Terrorism Prevention, Citizen Corps
- Urban Area Security Initiative, Metropolitan Transit
- Metropolitan Medical Response, Buffer Zone Protection, Liberty Shield, Fire Administration
- Florida Seaport Transportation and Economic Development, Federal Department of Transportation Seaport Security
- Florida General Revenue and Trust Funds
- Edward Byrne, Local Law Enforcement Block Grants, Others
- Center for Disease Control and Prevention, Human Resources and Services Administration

3

Homeland Security Grant Program

- State Homeland Security Program (SHSP) – provides funds to build capabilities at the State and local levels through *planning, equipment, training, and exercise activities.* SHSP also supports the implementation of State homeland security strategies and key elements of the national preparedness architecture, including the National Preparedness Goal (NPG), the National Incident Management System (NIMS) and the National Response Plan (NRP).

- Law Enforcement Terrorism Prevention Program (LETPP) – provides resources to law enforcement and public safety communities to support critical terrorism *prevention activities*, including *establishing and enhancing fusion centers and collaborating with non-law enforcement partners*, other government agencies and the private sector.

4

FY2007 HSGP Funding Request

Program	06/07 Funding Requested	06/07 Funding Awarded	07/08 Funding Requested
State Homeland Security Program[1]	**$64,151,547**	**$25,590,000**	**$37,920,823**
Law Enforcement Terrorism Prevention Program[2]	**$19,279,862**	**$18,610,000**	**$18,358,733**
Urban Areas Security Initiative Program	$136,774,069	$53,470,000	$104,033,359
Metropolitan Medical Response System[3]	$1,626,310	$1,626,310	$1,807,016
Citizen Corps Program[3]	$825,770	$825,770	$625,584
Transit Security Grant Program	$2,592,140	$1,776,140	$7,263,445
Grant Total	$225,249,698	$101,898,220	$170,224,883

[1]USA PATRIOT Act Allocation $3,819,375

[2]USA PATRIOT Act Allocation $2,728,125

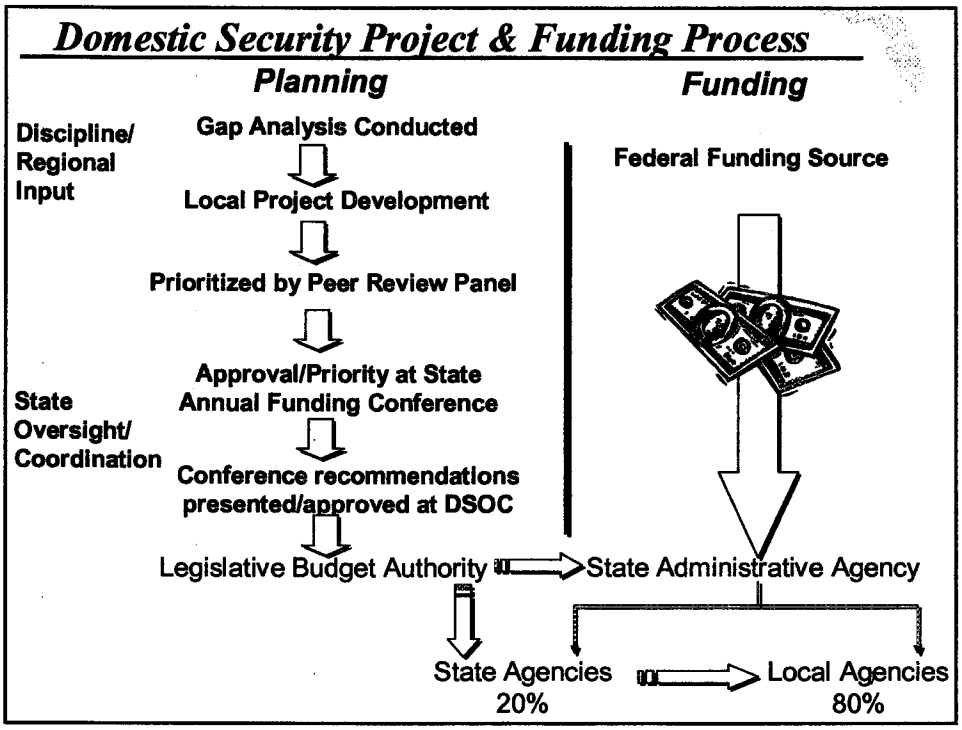
[3]Non-competitive funding sources from DHS

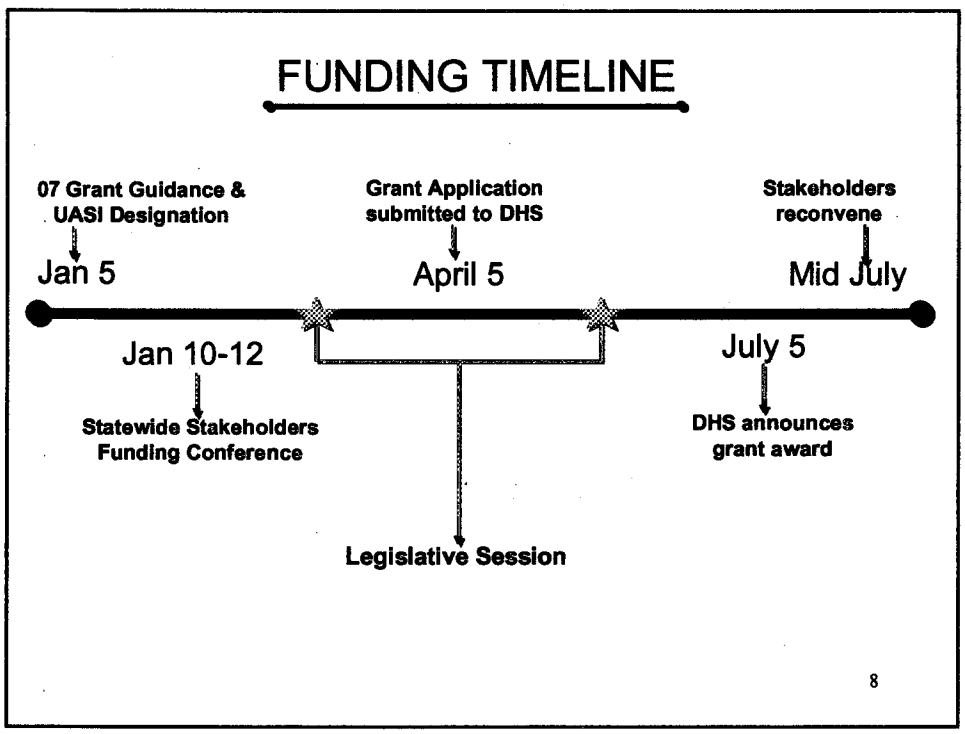
5

Funding Committees
(Regional and State Representation)

- Agriculture/Environment
- Education
- Fire Rescue
- Community Health Surge
- Emergency Management
- Interoperable Communications
- Law Enforcement Prevention
- Law Enforcement Response
- Medical Surge
- Public Information

6


Domestic Security Project & Funding Process
Planning
Funding
Discipline/ Regional Input
Gap Analysis Conducted
Local Project Development
Prioritized by Peer Review Panel
Approval/Priority at State Annual Funding Conference
State Oversight/ Coordination
Conference recommendations presented/approved at DSOC
Legislative Budget Authority
Federal Funding Source
State Administrative Agency
State Agencies 20%
Local Agencies 80%


FUNDING TIMELINE
07 Grant Guidance & UASI Designation
Jan 5
Grant Application submitted to DHS
April 5
Stakeholders reconvene
Mid July
Jan 10-12
Statewide Stakeholders Funding Conference
July 5
DHS announces grant award
Legislative Session
8

FLORIDA'S DOMESTIC SECURITY

2007 Funding Priorities

9

FY 07/08 State Homeland Security Program Funding Recommendations

Florida Interoperability Network (FIN) – Operations and Maintenance (DMS)	$3,789,201
Sustain Regional Domestic Security Task Force Planners (DEM/FDLE)	$1,200,000
Sustainment for Type I, II, and III Incident Management Teams (IMTs) (DOACS)	$275,500
USAR and Hazmat Sustainment (DFS/DFM)	$1,408,010
Expanding Hospital Surge Capacity (DOH)	$721,000
Geospatial Data Integration Initiative (DOACS)	$350,000
Forensic Response Team – Gap (FDLE)	$1,186,271

10

FY 07/08 State Homeland Security Program Funding Recommendations (Cont'd)

SWAT and EOD Sustainment (FDLE)	$1,287,042
Mutual Aid Radio Cache (MARC) Unit Sustainment and Maintenance (DFS/DFM)	$330,874
Sustain Planning, Training, and Exercise – Local (DEM)	$3,846,450
Enhancement of Radiological Response and Capabilities (DOH)	$655,389
FDACS Laboratory Equipment (DOACS)	$180,000
FEMORS DPMU X-Ray Equipment (DOH)	$181,159

11

FY 07/08 State Homeland Security Program Funding Recommendations (Cont'd)

State Agriculture Response Team (SART) Sustainment (DOACS)	$231,750
EMS Chemical Antidote Cache Sustainment (DOH)	$1,885,525
USAR and HazMat Specialized Training (DFS/DFM)	$1,912,776
Emergency Deployable Interoperable Communications Systems (EDICS) Units Sustainment and Maintenance (DEM)	$196,002
Sustain Planning, Training, and Exercise – State (DEM)	$1,205,000
Statewide Waterborne Response Teams (WRT) Equipment Build out (FWCC)	$838,884

12

FY 07/08 State Homeland Security Program Funding Recommendations (Cont'd)

SWAT and EOD – Gap (FDLE)	$3,487,811
Mobile Joint Information Centers (JIC) Completion/Build out (FDLE)	$344,200

If the 2007 allocation is the equivalent of the 2006 award ($25,590,000) projects could be funded to this priority level.

13

FY 07/08 State Homeland Security Program Funding Recommendations (Cont'd)

K-12 Education – Communications (DOE)	$1,079,582
Perimeter Security Team – Sustainment (FDLE)	$607,700
HazMat Infrared Spectroscopy (DFS/DFM)	$669,500
Hospital Hazard Vulnerability Assessment Project (DOH)	$865,200
Technology for Aviation Equipment – Gap (FDLE)	$2,015,094
Mobile Command Post – Standardization of Radios (DMS)	$803,709

14

FY 07/08 State Homeland Security Program Funding Recommendations (Cont'd)

Exercises to Validate School District Safety Plans (DOE)	$630,000
Sustainment and Maintenance of SEOC Mapper (DEM)	$60,000
Critical Equipment Needs for USAR and HazMat (DFS)	$784,889
Agriculture, Food, Water and Environment Terrorism Awareness Campaign (DOACS)	$121,128
Basic Search and Rescue Training Program (DFS/DFM)	$257,500
Public Information Planning Sessions (FDLE)	$150,000

15

FY 07/08 State Homeland Security Program Funding Recommendations (Cont'd)

Build-out of Multi-Day Logistical Support Unit (DFS/DFM)	$412,000
HazMat RAMAN Spectroscopy (DFS/DFM)	$412,000
USAR HazMat Planning (DFS/DFM)	$41,200
HazMat Sampling Kits (DFS/DFM)	$205,485
Public Information Campaign for Hard to Reach Population (FDLE)	$572,000
USAR Communications Equipment	$360,442

16

FY 07/08 State Homeland Security Program Funding Recommendations (Cont'd)

USAR Equipment Enhancement – Federal Teams (DFS/DFM)	$618,000
10 TAC PAKs (FDLE)	$166,550
Build-Out of Emergency Alert/Communications at all Florida Universities and Community Colleges (DOE)	$826,000

17

FY 07/08 Law Enforcement Terrorism Prevention Program Funding Recommendations

Maintain the ThreatNet Module within InSite (FDLE)	$50,000
Statewide Connectivity for the Regional Data Sharing Projects (FDLE)	$2,512,763
Maintain ThreatCom, the RDSTF's threat communication tool	$51,193
Maintain Florida Critical Infrastructure Database (FDLE)	$32,000
Software maintenance fees for 21 existing RDSTF Analyst Notebook licenses & 1 bridge license (FDLE)	$29,130
8 Meta Data Managers for Regional Sharing Projects (FDLE)	$800,000

18

FY 07/08 Law Enforcement Terrorism Prevention Program Funding Recommendations (Cont'd)

Maintenance for Analyst Notebook licenses for the Regional Intelligence Support Team (FDLE)	$4,830
Maintain and enhance a query application (FDLE)	$840,000
FLEX Architecture (FDLE)	$1,598,000
Maintenance of mobile VACIS (DOACS)	$470,000
Basic Law Enforcement Analyst Training and Computer Applications & Analytical Techniques Training (FDLE)	$125,000
Law Enforcement Analyst Academies (FDLE)	$256,905

19

FY 07/08 Law Enforcement Terrorism Prevention Program Funding Recommendations (Cont'd)

Browser based FCIC/NCIC Validation Software (FDLE)	$26,250
Camera maintenance @ inspection stations (DOACS)	$92,565
Seaport Security – Document Authentication & Facial Recognition (DHSMV)	$750,000
RDSTF LE Investigative & Intelligence Planning Sessions (FDLE)	$175,000
Video maintenance @ weigh stations (DOT)	$102,050
Maintain FDLE/OSI Secure Room (FDLE)	$8,600

20

FY 07/08 Law Enforcement Terrorism Prevention Program Funding Recommendations (Cont'd)

Maintain and enhance ISYS, a searchable document storage application (FDLE)	$4,600
Capitol Complex Bollards (FDLE)	$875,000
Central FL Intelligence Exchange Contractual Services (FDLE)	$319,000
Sustainment of Monitoring Center and Security Tools at DMS (DMS)	$109,464
Seaport Security (DHSMV)	$1,750,000
Utilize Critical Infrastructure Planners (FDLE)	$600,000

21

FY 07/08 Law Enforcement Terrorism Prevention Program Funding Recommendations (Cont'd)

Additional Desert Snow Training (DOT)	$615,420
Time Lapse Video Monitoring Equipment – Containers (DOACS)	$436,380
CI Protection Plan for Tampa (FDLE)	$275,490
Under Surveillance Maintenance for Capitol Complex (FDLE)	$10,500
Region 3 Intelligence Fusion Center (FDLE)	$331,800
FAST – Future Analytical Strategies Today (FDLE)	$100,000

22

FY 07/08 Law Enforcement Terrorism Prevention Program Funding Recommendations (Cont'd)

Region 1 Fusion Center (FDLE)	$151,800
Computer Forensic Equipment (FDLE)	$122,807
Digital Surveillance for Southwest Florida International Airport (FDLE)	$500,000
Information Security Planning Sessions (DMS)	$85,000
Video Surveillance Equipment for the Pensacola Airport (FDLE)	$75,000
Surveillance Platform (DHSMV)	$84,412

23

FY 07/08 Law Enforcement Terrorism Prevention Program Funding Recommendations (Cont'd)

Expansion of Public Information Campaign (FDLE)	$140,000
Critical Infrastructure Protection (FDLE)	$3,400,000

24

Homeland Security Grant Program

- Urban Areas Security Initiatives (UASI) Program – The UASI program focuses on the unique planning, equipment, training and exercise needs of high-threat, high-density urban areas. It assists them in building sustainable capability to prevent, protect, respond, and recover from acts of terrorism.

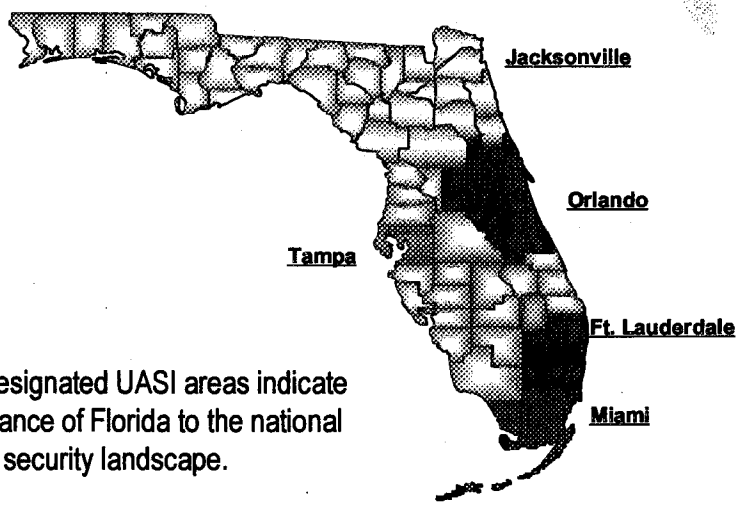
25

DHS Urban Area Security Initiative - UASI

- ✓ 45 urban areas eligible to apply for and receive UASI funds nationwide
- ✓ 6 of the 45 are designated as highest risk UASI jurisdictions (Tier 1)
  - Tier 1 to receive 55% of total UASI allocation
- ✓ The remaining 39 UASI areas will compete for the remaining 45% UASI allocation (Tier II)
  - Florida's five UASIs are classified as Tier II
- ✓ Funds will be allocated based on analysis of risk and the effectiveness of proposed investments by the applicants.
- ✓ Risk for UASI jurisdictions is evaluated using a consistent methodology of threat, vulnerability, and consequences.

26

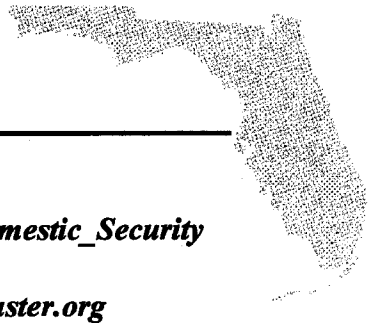
Florida Urban Area Security Initiatives



5 federally designated UASI areas indicate the importance of Florida to the national homeland security landscape.

27

DOMESTIC SECURITY IN FLORIDA



www.fdle.state.fl.us/Domestic_Security

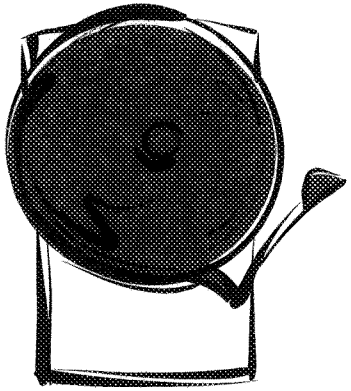
www.floridadisaster.org

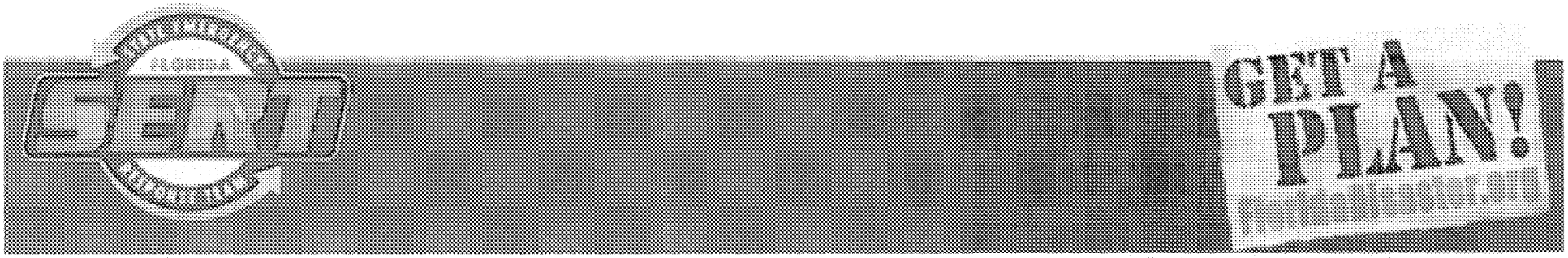
28

DIVISION OF
EMERGENCY MGT.
WEATHER WARNINGS

Public Warning

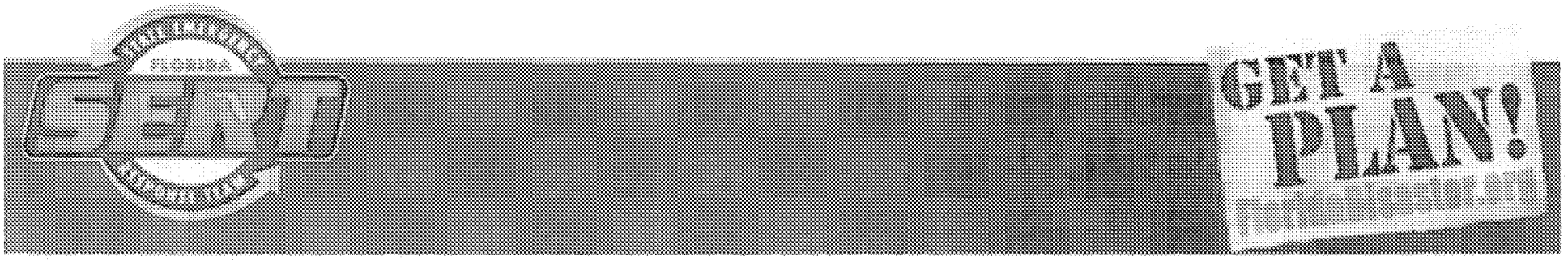
David Halstead, Bureau Chief
Division of Emergency Management





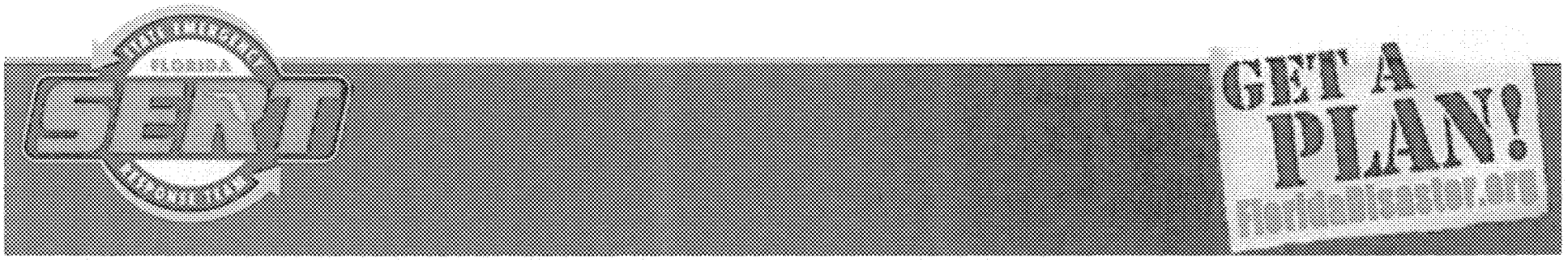
Public Warning

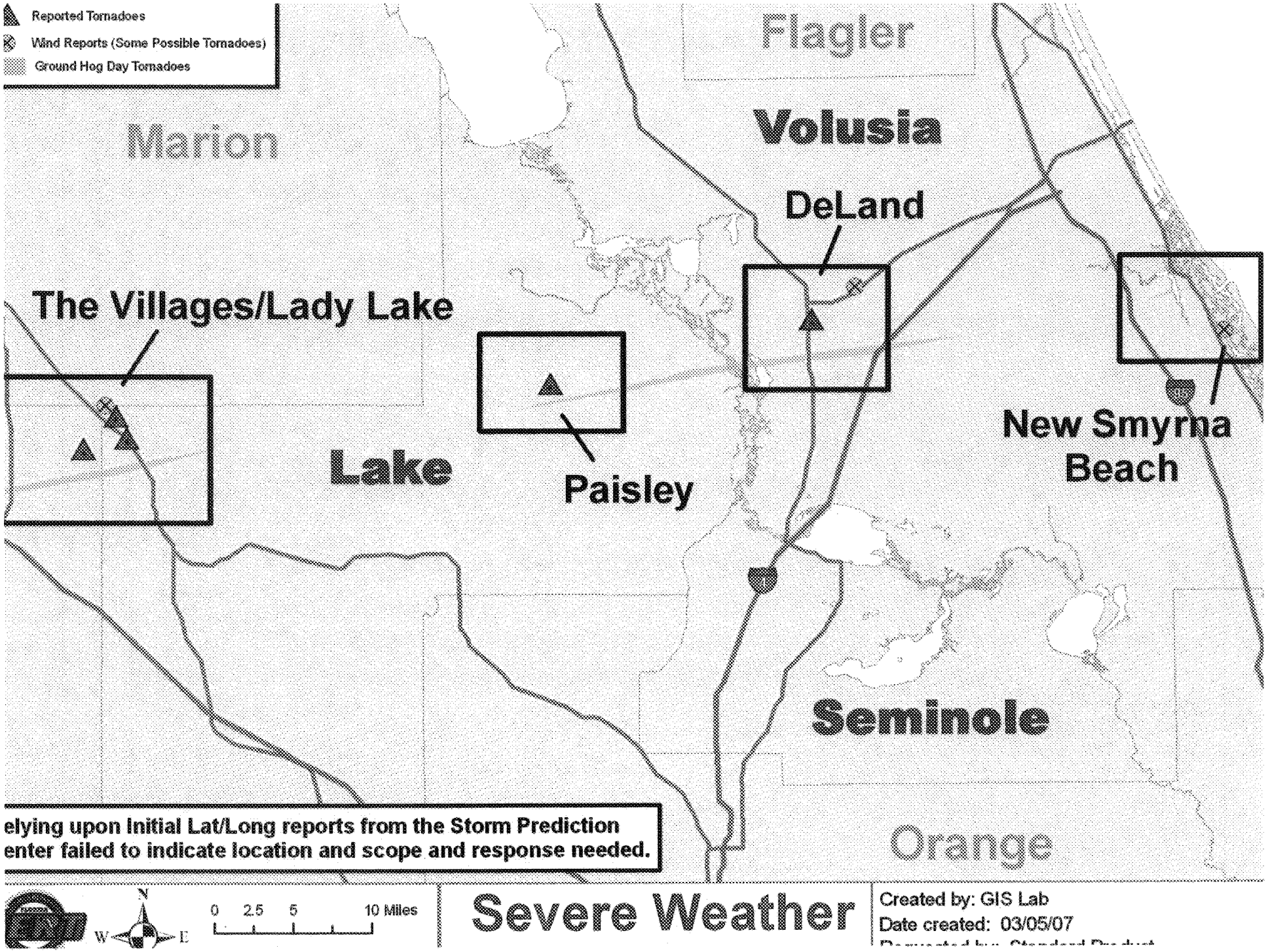
- Public Warning is a Local Responsibility
- Effective Warning Requires a Partnership
- Public Warning is a System, Not a Technology



Warning Saves Lives

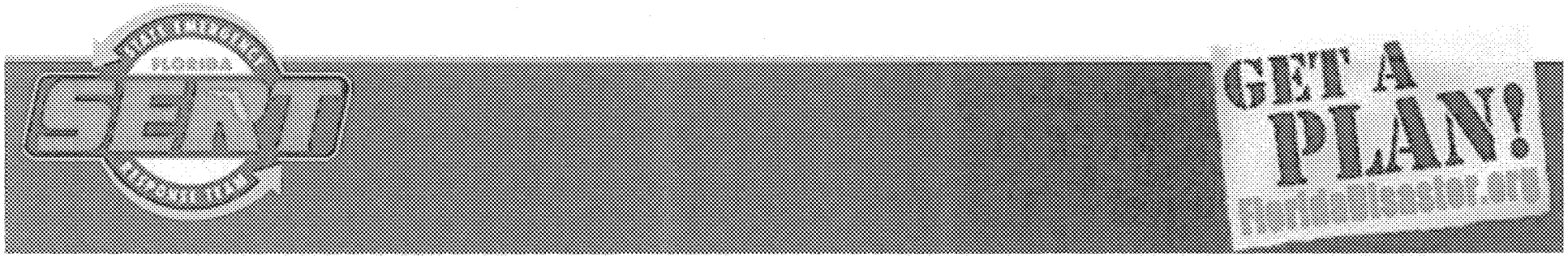
- Timely and effective warnings save lives, reduce property losses and speed economic recovery.
- Public warning empowers citizens
- Success is measured by the actions people take




Reported Tornadoes
Wind Reports (Some Possible Tornadoes)
Ground Hog Day Tornadoes
Flagler
Volusia
Marion
DeLand
The Villages/Lady Lake
Lake
Paisley
New Smyrna Beach
Seminole
Orange
elying upon Initial Lat/Long reports from the Storm Prediction
enter failed to indicate location and scope and response needed.
N
W
E
0 2.5 5 10 Miles
Severe Weather
Created by: GIS Lab
Date created: 03/05/07

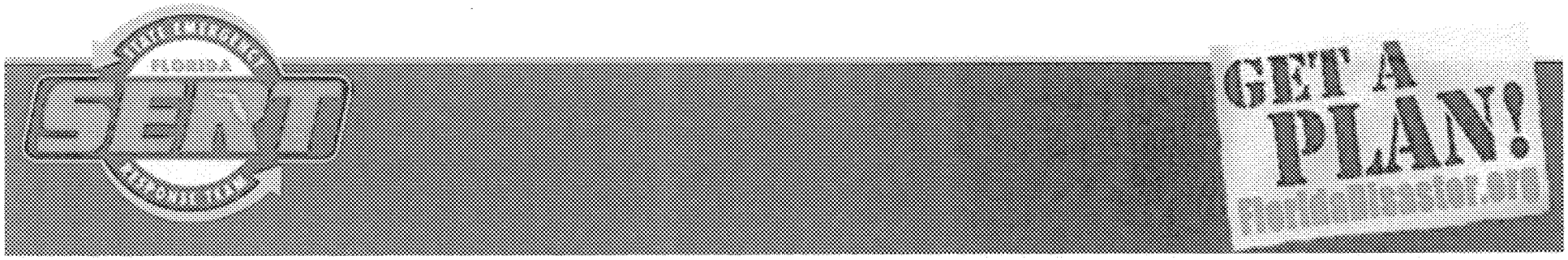
Florida Statutes and Rules

Public Warning



Florida Division of Emergency Management

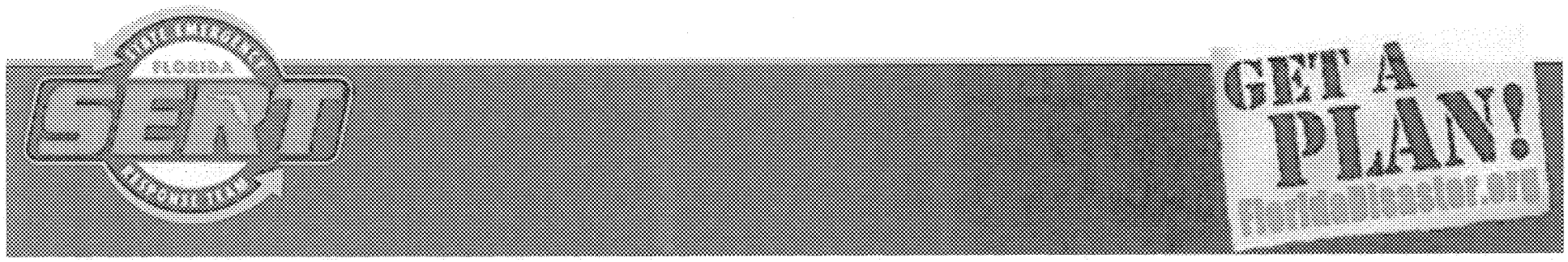
- F.S. Chapter 252.35 Emergency management powers; Division of Emergency Management.–
  - Establish a system of communications and warning to ensure that the state's population and emergency management agencies are warned of developing emergency situations and can communicate emergency response decisions.



Rule 9G-6.0023

County Comprehensive Emergency Management Plans

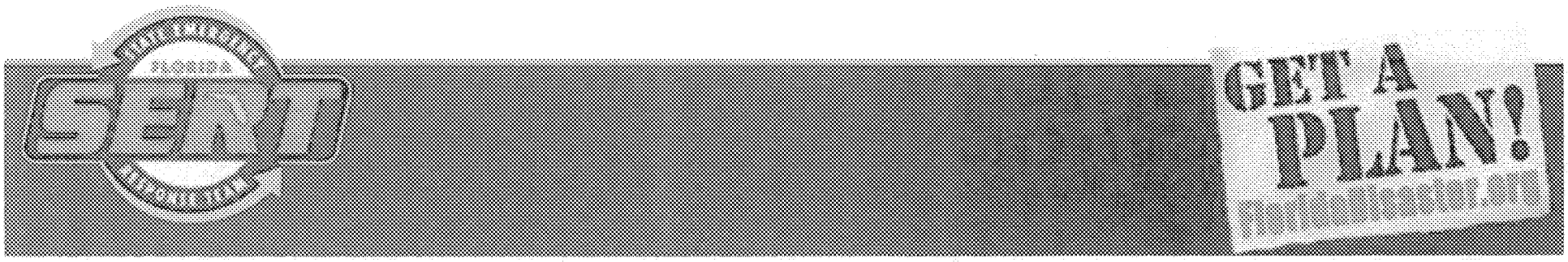
- (6) The County Comprehensive Emergency Management Plan or supporting operating procedures referred to in the plan shall provide a detailed description of the process to be followed at the local level whenever an emergency or disaster occurs **...The plan shall identify and describe pre-emergency warning systems...**



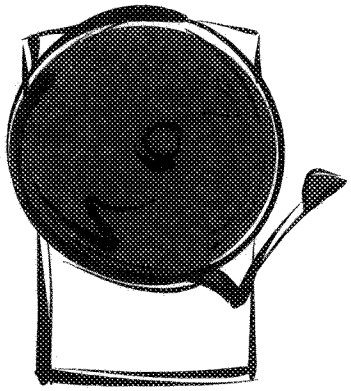
Public

Notifications, Alerts, Warnings

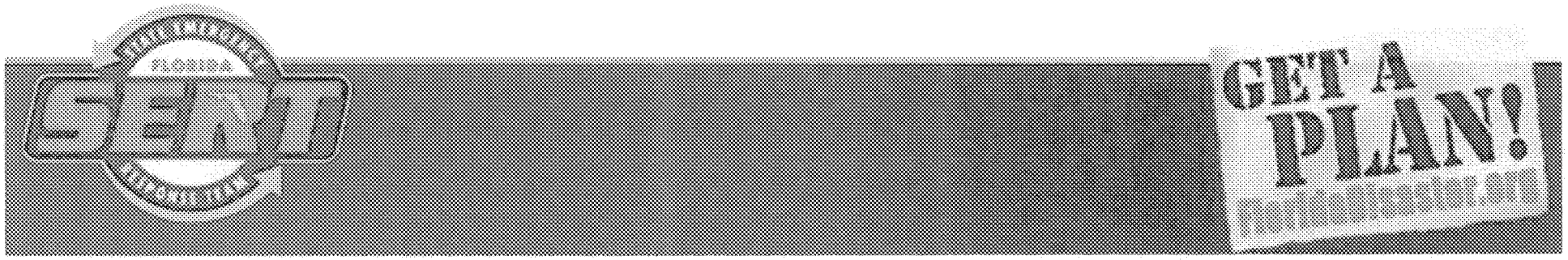
- Notification – Provides information, but does not require public action
- Alert – Highlights a hazard, but does not provide specific recommended actions
- Warning – Requires action



Warning Basics

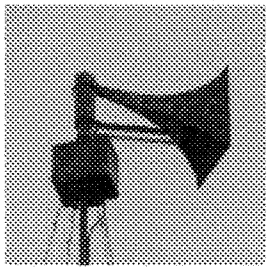


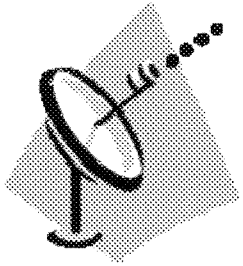
- The event must be detected
- The decision to warn the public must be made
- Issue the Warning
- The public must receive the warning
- The public must know what to do and act
- (Tornadoes) The public must have somewhere safe to go (Safe Rooms)

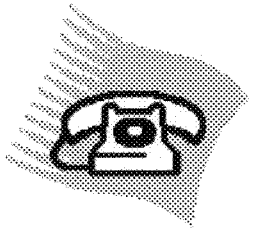


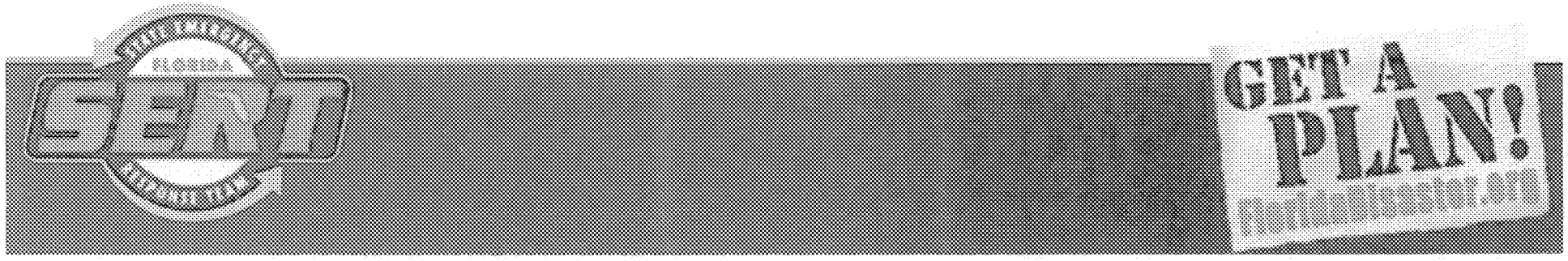
Public Warning Elements

- Warning System Design



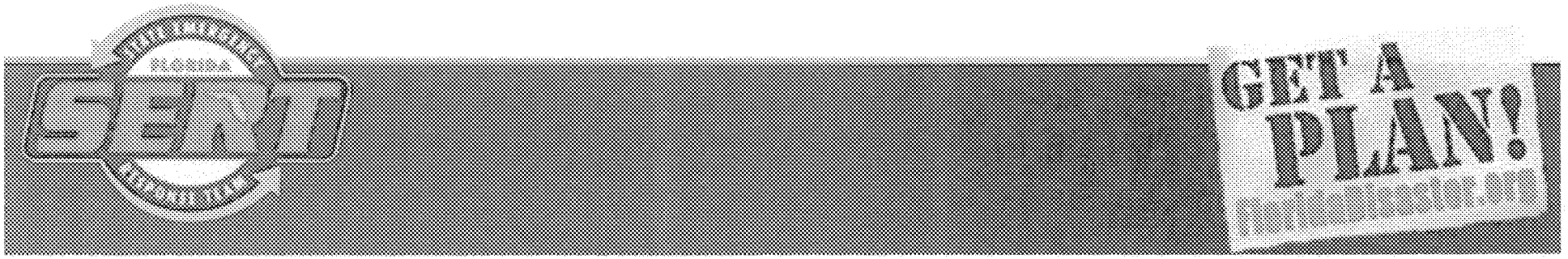






National Warning System (NAWAS)

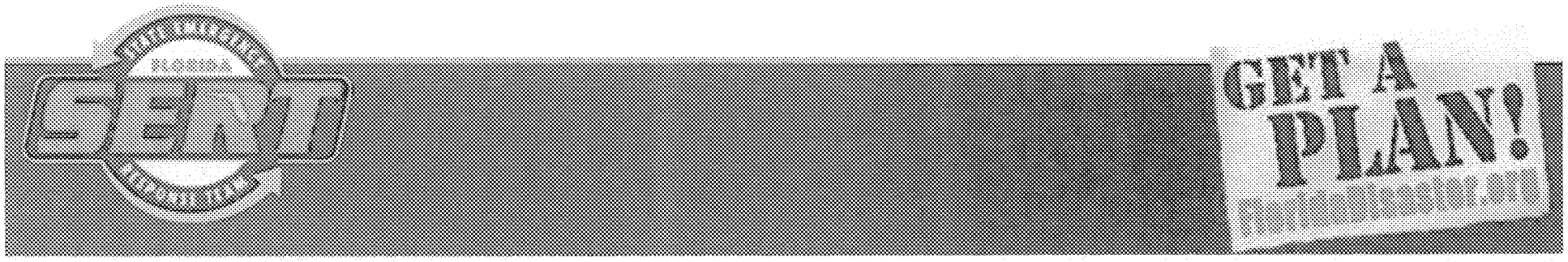
- NAWAS is a dedicated, nationwide, party line telephone warning system operated on a 24 hour basis. It is used for the dissemination of warning and other emergency information from federal and state warning points to county warning points.



ESATCOM

Emergency Satellite Communications

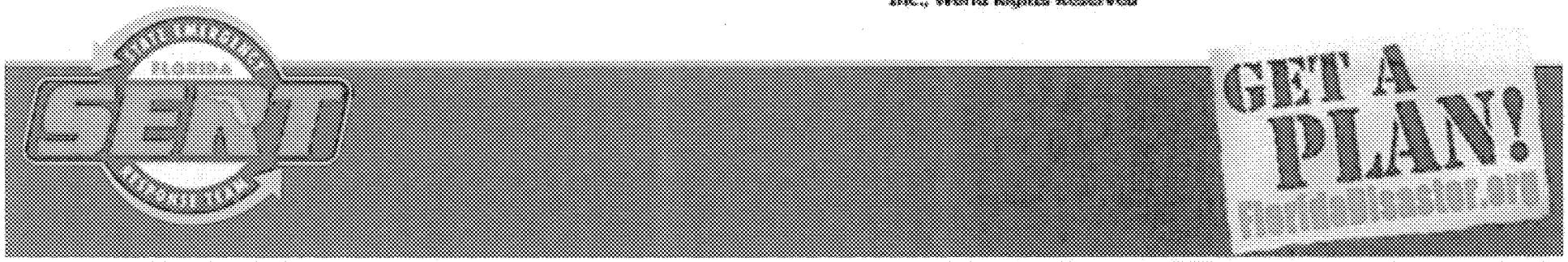
- Florida's Satellite network that links County Warning Points, NWS Forecast Offices, and EAS LP1's and LP2's to the State Warning Point
- Also serves as the backbone for Florida's Amber Alert System

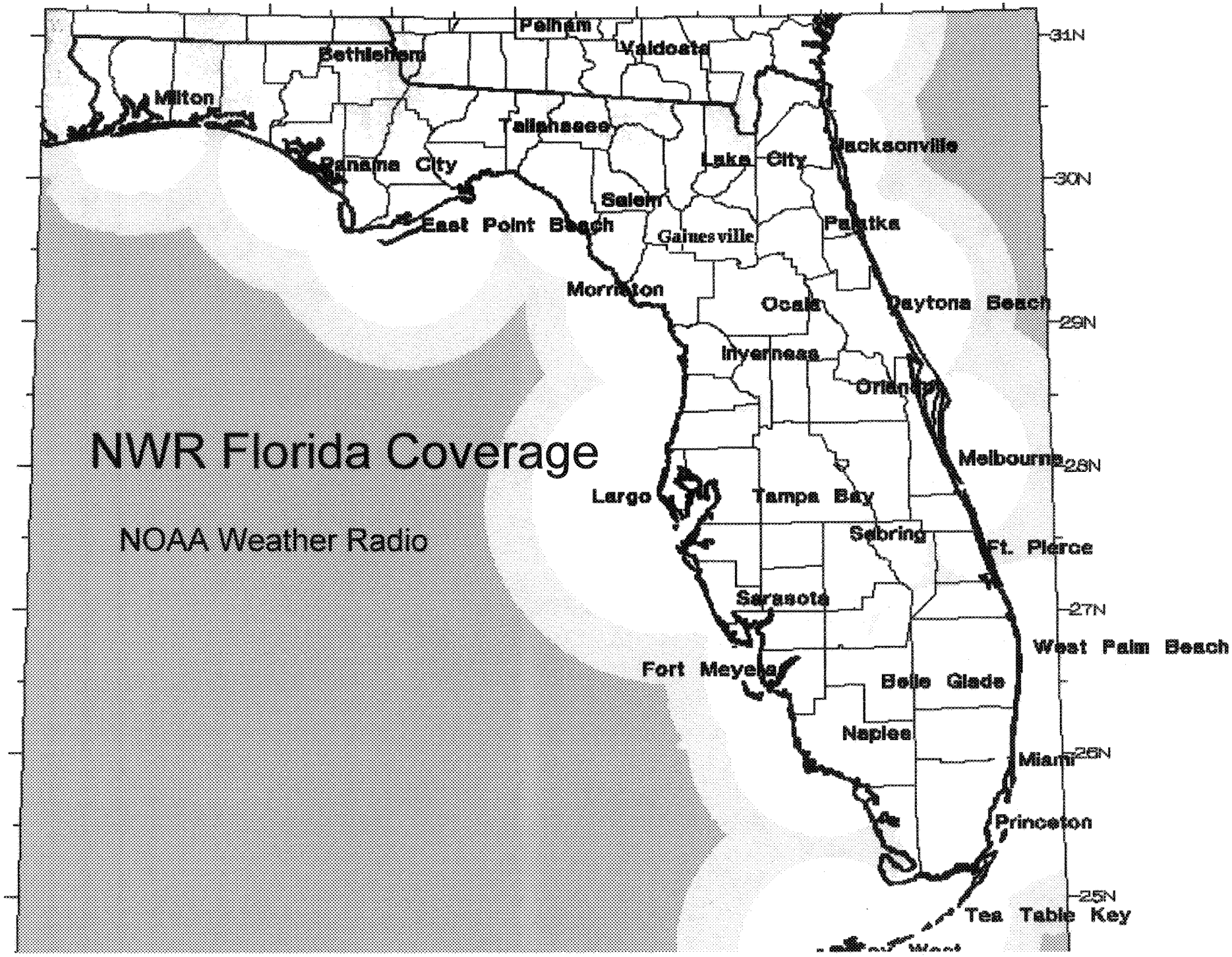


NOAA Weather Radio

- **NOAA Weather Radio** (NWR) is a nationwide network of radio stations broadcasting continuous weather information direct from a nearby National Weather Service office. NWR broadcasts National Weather Service warnings, watches, forecasts and other hazard information 24 hours a day.

Mark Trail image courtesy of North America Syndicate, Inc., World Rights Reserved

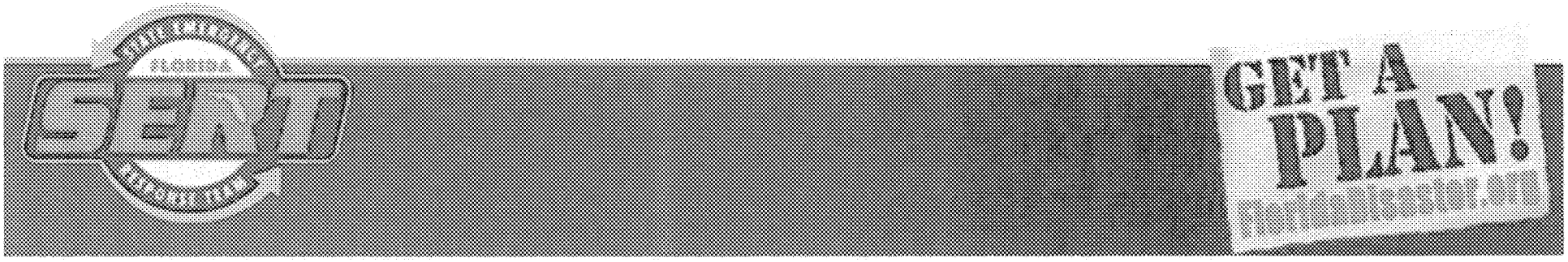



NWR Florida Coverage
NOAA Weather Radio
Pelham
Bethlehem
Valdosta
Milton
Tallahassee
Jacksonville
Panama City
Lake City
Salem
East Point Beach
Gainesville
Palatka
Morriston
Ocala
Daytona Beach
Inverness
Orlando
Melbourne
Largo
Tampa Bay
Sebring
Ft. Pierce
Sarasota
Fort Meyers
West Palm Beach
Belle Glade
Naples
Miami
Princeton
Tea Table Key
31N
30N
29N
28N
27N
26N
25N

But Remember, NOAA Weather Radio is not a warning system

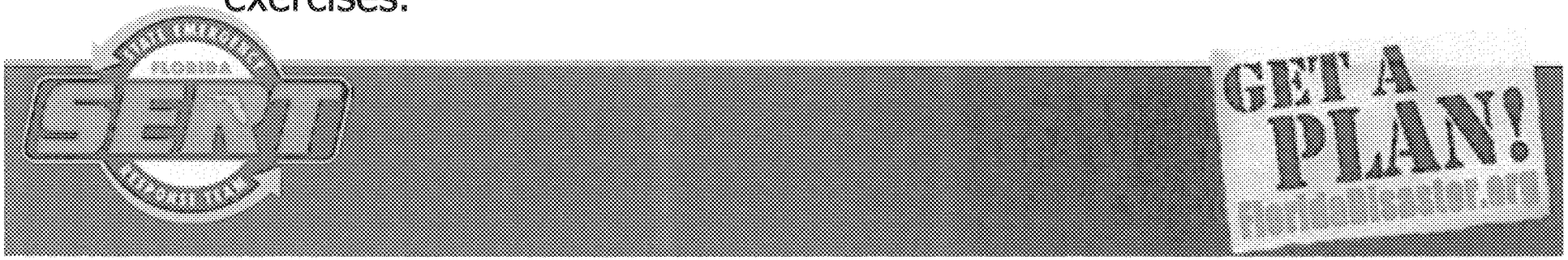
- Unless there is detection, no warning
- Unless there is education, no understanding
- Unless there is system, no action

- Storm Ready builds a warning system…



StormReady
NATIONAL WEATHER SERVICE

- To be officially StormReady, a community must:
  - Establish a 24-hour warning point and emergency operations center
  - Have more than one way to receive severe weather warnings and forecasts and to alert the public
  - Create a system that monitors weather conditions locally
  - Promote the importance of public readiness through community seminars
  - Develop a formal hazardous weather plan, which includes training severe weather spotters and holding emergency exercises.



StormReady
NATIONAL WEATHER SERVICE

Florida: All 67 Counties StormReady!

71 StormReady Designations: 67 Counties, 4 Communities

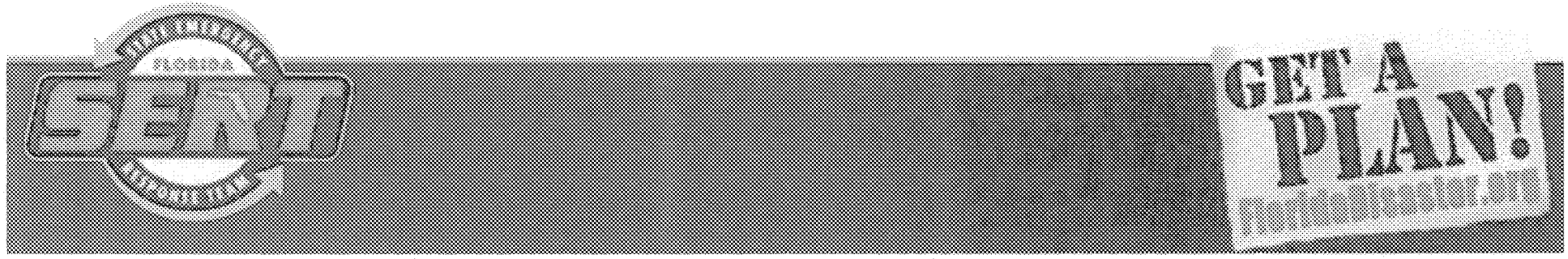
1 Commercial Site

4 StormReady Supporters

GET A PLAN!

Emergency Alert System

- **FCC** provides information to broadcasters, cable system operators, and other participants in the EAS regarding the requirements of this emergency system. Additionally, the FCC will ensure that EAS state and local plans developed by industry conform to the FCC EAS rules and regulations and enhance the national level EAS structure.
- **National Weather Service (NWS)** provides emergency weather information used to alert the public of dangerous conditions. Over seventy percent of all EAS and EBS activations were a result of natural disasters and were weather related. Linking NOAA Weather Radio digital signaling with the EAS digital signaling will help NWS save lives by reaching more people with timely, site-specific weather warnings.
- **FEMA** provides direction for state and local emergency planning officials to plan and implement their roles in the EAS.



Emergency Alert System

Florida's Plan

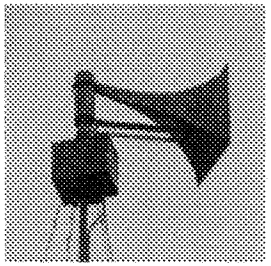
FLORIDA ASSOCIATION OF
BROADCASTERS INC.

STATE EMERGENCY RESPONSE TEAM
FLORIDA
SERT

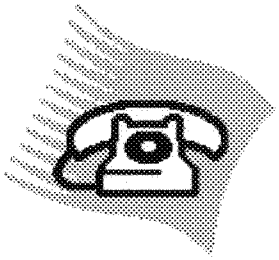
NATIONAL WEATHER SERVICE

STATE EMERGENCY RESPONSE TEAM
FLORIDA
SERT

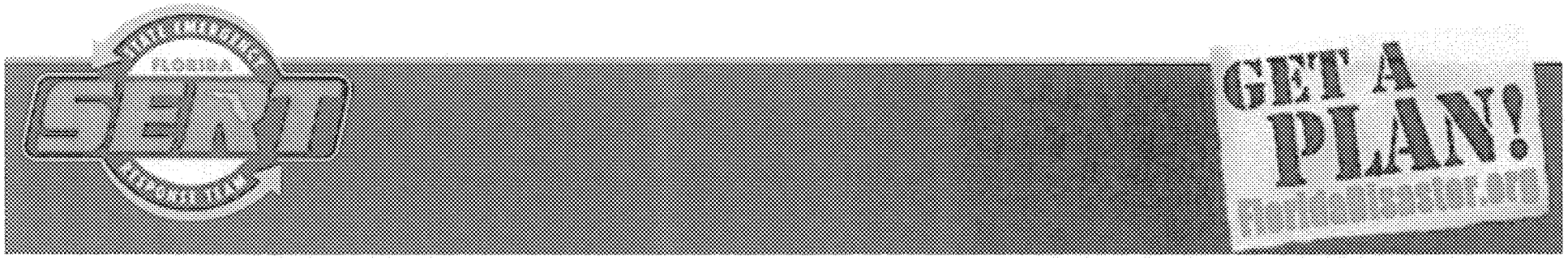
GET A PLAN!

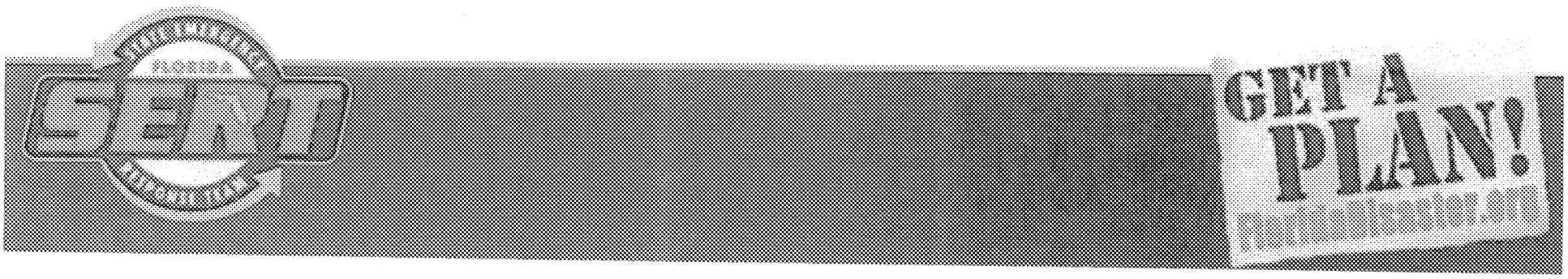


Other Warning Systems



- Outdoor Systems
  - Siren
  - Public Address
  - Message Boards
  - Flags
- Phone Notification Systems (Reverse 9-1-1)
- Subscriber Notification Systems
  - PDA/Cell/Wireless/E-mail/Pager....



www.FloridaDisaster.org

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