

Committee on Criminal Justice

CS/HB 3 — Assault or Battery of a Law Enforcement Officer

by Criminal Justice Subcommittee and Rep. Nehr and others (SB 464 by Senator Latvala)

The bill creates s. 784.071, F.S., which codifies an existing alert program that was created by executive order in 2008. This type of program often goes by the name “blue alert,” though the precise name of the current Florida program is the Florida Law Enforcement Officer (LEO) Alert Plan.

The bill provides that, at the request of an authorized person employed at a law enforcement agency, the Florida Department of Law Enforcement, in cooperation with the Department of Highway Safety and Motor Vehicles and the Department of Transportation, shall activate the emergency alert system and issue a blue alert if:

- A law enforcement officer has been killed, has suffered serious bodily injury, or has been assaulted with a deadly weapon; or a law enforcement officer is missing while in the line of duty evidencing concern for the officer’s safety.
- The suspect has fled the scene of the offense.
- The law enforcement agency investigating the offense determines that the suspect poses an imminent threat to the public or to other law enforcement officers.
- A detailed description of the suspect’s vehicle, or other means of escape, or the license plate of the suspect’s vehicle is available for broadcasting.
- Dissemination of available information to the public may help avert further harm or assist in the apprehension of the suspect.
- If the law enforcement officer is missing, there is sufficient information available relating to the officer’s last known location and physical description, and the description of any vehicle involved, including the license plate number or other identifying information, to be broadcast to the public and other law enforcement agencies, which could assist in locating the missing officer.

The bill also requires that a blue alert be immediately disseminated to the public through the emergency alert system by broadcasting the alert on television, radio, and the dynamic message signs that are located along the state’s highways. If a traffic emergency arises requiring that information pertaining to the traffic emergency be displayed on a highway message sign in lieu of the blue alert information, the agency responsible for displaying information on the highway message sign is not in violation of this new section.

If approved by the Governor, these provisions take effect October 1, 2011.

Vote: Senate 37-0; House 117-0

Committee on Criminal Justice

CS/CS/HB 39 — Controlled Substances

by Judiciary Committee; Criminal Justice Subcommittee; and Rep. Adkins and others
(CS/CS/SB 204 by Health Regulation Committee; Criminal Justice Committee; and Senators
Wise and Dockery)

The bill amends ss. 893.02, 893.03, and 893.13, F.S., in order to schedule several synthetic cannabinoids or synthetic cannabinoid-mimicking compounds in Schedule I of Florida's controlled substance schedules. Because of this scheduling, Florida law enforcement officials and prosecutors will be able arrest and prosecute the possession and sale of these substances under Florida law. Possession of 3 grams or less of the scheduled substances, which is not in powdered form, is a first degree misdemeanor.

If approved by the Governor, these provisions take effect July 1, 2011.

Vote: Senate 38-0; House 105-13

Committee on Criminal Justice

CS/CS/CS/HB 45 — Regulation of Firearms and Ammunition

by Judiciary Committee; Community and Military Affairs Subcommittee; Criminal Justice Subcommittee and Rep. Gaetz (Rules Committee; Community Affairs Committee; Criminal Justice Committee; and Senator Negron)

This bill expands and clarifies state preemption of the regulation of firearms and ammunition. Section 790.33, F.S., is also reorganized.

The bill expands “the whole field of regulation of firearms and ammunition” (including administrative regulations or rules adopted by local or state governments) to include the storage of those items.

Subsection (2) of s. 790.33, F.S., is stricken by the bill. This is the subsection of the Joe Carlucci Act that allows a county the option to adopt a waiting period, not exceeding three days, for the purchase of a handgun. It pre-dates the constitutional amendment and constitutionally required statutory enactment. Eliminating this subsection of the Act merely clarifies the current state of the law regarding the three-day waiting period, which is found in the Florida Constitution and s. 790.0655, F.S.

The bill retains the policy and intent language from the original Act, currently found in subsection (3) of s. 790.33, F.S. It also adds language setting forth the 2011 Legislature’s intent to deter and prevent the violation of the preemption law.

Any person, county, agency, municipality, district, or other entity that enacts or causes to be enforced any local ordinance or administrative rule or regulation faces a civil fine of up to \$5,000 if the violation is knowing and willful. Any such violation is cause for termination of employment or contract or for removal from office by the Governor.

Except as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have committed a knowing and willful violation of this section.

Civil actions are also provided for in the bill. A person or organization whose membership is adversely affected by an alleged violation of the preemption law may seek declaratory and injunctive relief. The bill also provides for the assessment of actual damages up to \$100,000. The court is required to award a prevailing plaintiff’s attorney fees, including a contingency fee multiplier, as well as related costs. Additionally, the bill provides that interest shall accrue on the fees, costs, and damages awarded the plaintiff, retroactive to the date the suit is filed.

In subsection (4) of s. 790.33, F.S., as created by the bill, a provision excepting certain zoning ordinances in the original Carlucci Act has been relocated and other exceptions to the prohibitions are set forth in the bill. Specifically, the bill does not prohibit:

- Law enforcement agencies from enacting and enforcing firearm-related regulations within their agencies;
- The entities listed in paragraphs (2)(a)-(i) from regulating or prohibiting employees from carrying firearms or ammunition during the course of their official duties, except as provided in s. 790.251, F.S.;
- A court or administrative law judge from resolving a case or issuing an order or opinion on any matter within the court or judge's jurisdiction; or
- The Fish and Wildlife Conservation Commission from regulating the use of firearms or ammunition as a method of taking wildlife and regulating the shooting ranges managed by the commission.

If approved by the Governor, these provisions take effect October 1, 2011.

Vote: Senate 30-8; House 85-33

Committee on Criminal Justice

CS/CS/HB 75 — Offense of Sexting

by Judiciary Committee; Criminal Justice Subcommittee; and Rep. Abruzzo and others (CS/CS/SB 888 by Communications, Energy, and Public Utilities Committee; Judiciary Committee; and Senator Dean)

The bill provides a lesser-penalty alternative to punish “sexting” committed by a minor. Under the bill, a minor commits the offense of “sexting” if the minor knowingly:

- Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity and is harmful to minors; or
- Possesses a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity and is harmful to minors.

A first sexting violation is a noncriminal violation punishable as provided in the bill. A sexting violation committed after a non criminal violation is a first degree misdemeanor. A sexting violation committed after a first degree misdemeanor violation is a third degree felony. The bill also specifies conditions in which the sexting offense does not apply.

The new section does not prohibit the prosecution of a minor for a violation of any law of this state if the photograph or video that depicts nudity also includes the depiction of sexual conduct or sexual excitement, and does not prohibit the prosecution of a minor for stalking.

If approved by the Governor, these provisions take effect October 1, 2011.

Vote: Senate 39-0; House 117-0

Committee on Criminal Justice

CS/CS/HB 155 — Privacy of Firearm Owners

by Health and Human Services Committee; Criminal Justice Subcommittee; and Rep. Brodeur and others (CS/CS/CS/SB 432 by Judiciary Committee; Health Regulation Committee; Criminal Justice Committee; and Senator Evers)

This bill creates s. 790.338, F.S., entitled “Medical privacy concerning firearms.” The violation of certain provisions of the new law constitute grounds for disciplinary actions. The new law prohibits a licensed health care practitioner or licensed health care facility from intentionally entering any disclosed information concerning firearm ownership into a patient’s health record if the information is not relevant to the patient’s medical care or safety, or the safety of others. Additionally, licensed health care providers and health care facilities are:

- Prohibited from inquiring, whether oral or written, about the ownership of firearms or ammunition unless the information is relevant to the patient’s medical care or safety, or the safety of others;
- Prohibited from discriminating against a patient based upon whether a patient exercises his or her constitutional right to own and possess firearms or ammunition; and
- Mandated to respect a patient’s right to own or possess a firearm and refrain from harassing a patient about firearm ownership during an examination.

Patients are permitted to decline to answer or provide any information concerning the ownership of a firearm and a decision not to answer does not alter existing law regarding a physician’s authority to choose patients.

The bill provides an emergency medical technician (EMT) or paramedic the authority to inquire in good faith, about the possession or presence of a firearm if they believe that it is relevant to the treatment of a patient during the course and scope of a medical emergency or if the presence or possession of a firearm poses a threat of imminent danger to the patient or others.

The bill provides for certain patient’s rights concerning the ownership of firearms or ammunition under the Florida Patient’s Bill of Rights and Responsibilities. The bill provides for disciplinary action for non-compliance by licensed health care practitioners and health care facilities.

The bill provides that insurers issuing the types of policies regulated pursuant to ch. 627, F.S., are prohibited from discriminating, denying coverage, or increasing premiums on the basis that an insured or applicant possesses or owns a firearm or ammunition. However, insurers are allowed to consider the fair market value of firearms or ammunition when setting premiums for scheduled personal property coverage.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 27-10; House 88-30

Committee on Criminal Justice

CS/CS/SB 234 — Firearms

by Rules Committee; Criminal Justice Committee; and Senators Evers, Dockery, Lynn, Hays, Norman, Negron, Garcia, and Altman

This bill modifies s. 790.053, F.S., the provision that prohibits carrying a firearm openly, to eliminate the violation of this law for persons who are lawfully carrying a concealed firearm which is briefly displayed, openly, to the ordinary sight of another person.

However, if the firearm is displayed in an angry or threatening manner, not in necessary self-defense, this would still constitute a violation of s. 790.053, F.S., which is a second degree misdemeanor.

The bill allows the Division of Licensing of the Department of Agriculture to administer the fingerprinting of applicants for licenses to carry concealed weapons or firearms.

The bill also clarifies s. 790.06, F.S., by stating that persons licensed to carry a concealed firearm are not prohibited from carrying or storing a firearm in a vehicle for lawful purposes. The bill specifies that the section of law that allows the prohibition of firearms on the properties listed in s. 790.251(7), F.S., is not modified by s. 790.06, F.S. These properties are listed in s. 790.251(7)(a)-(g), F.S., as follows:

- Any school property as defined and regulated under s. 790.115, F.S.
- Any correctional institution regulated under s. 944.47, F.S., or chapter 957, F.S.
- Any property where a nuclear-powered electricity generation facility is located.
- Property owned or leased by a public or private employer or the landlord of a public or private employer upon which are conducted substantial activities involving national defense, aerospace, or homeland security.
- Property owned or leased by a public or private employer or the landlord of a public or private employer upon which the primary business conducted is the manufacture, use, storage, or transportation of combustible or explosive materials regulated under state or federal law, or property owned or leased by an employer who has obtained a permit required under 18 U.S.C. s. 842 to engage in the business of importing, manufacturing, or dealing in explosive materials on such property.
- A motor vehicle owned, leased, or rented by a public or private employer or the landlord of a public or private employer.
- Any other property owned or leased by a public or private employer or the landlord of a public or private employer upon which possession of a firearm or other legal product by a customer, employee, or invitee is prohibited pursuant to any federal law, contract with a federal government entity, or general law of this state.

Finally, the bill amends s. 790.065, F.S., to clarify that residents of Florida can lawfully purchase, trade, or transfer a rifle or shotgun in another state. Florida residents have been limited

to the purchase, trade, or transfer of those types of firearms in states that are contiguous to Florida.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 26-11; House 99-17

THE FLORIDA SENATE
2011 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

SB 240 — Violations of Injunctions for Protection

by Senator Joyner

This bill creates additional ways a person can violate an injunction for protection against repeat violence, sexual violence, or dating violence by making it identical to the ways a person can violate an injunction for protection against domestic violence. Specifically, the bill provides the following additional violations:

- Being within 500 feet of the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member (currently there is no distance limitation; rather the violation is based solely on going to those places);
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.

If approved by the Governor, these provisions take effect July 1, 2011.

Vote: Senate 39-0; House 112-0

Committee on Criminal Justice

CS/CS/CS/HB 251 — Sexual Offenses

by Judiciary Committee; Appropriations Committee; Criminal Justice Subcommittee; and Rep. Dorworth and others (CS/CS/SB 488 by Judiciary Committee; Criminal Justice Committee; and Senators Fasano, Benacquisto, and Gaetz)

This bill addresses several issues relating to sexual violence and the legal proceedings relating to such offenses.

The bill amends the Evidence Code to expand the admissibility of collateral crime or “similar fact” evidence in criminal prosecutions of child molestation. It creates admissibility for similar fact evidence in the Evidence Code in the prosecution of sexual offenses. The definition of child molestation is expanded and sexual offense is defined.

The bill provides that the court may set any appropriate conditions on the taking of testimony by children, including the use of a registered service or therapy animal in any proceeding involving a sexual offense.

The bill prohibits a court from granting a request of a defendant in a criminal proceeding for permission to duplicate or copy material depicting sexual performance by a child or child pornography as long as the state attorney makes the material reasonably available to the defendant for inspection.

The bill requires licensed facilities providing emergency room services to gather forensic medical evidence from victims who have reported a sexual battery to a law enforcement agency or upon their request for purposes of filing a report in the future. It requires law enforcement to provide transportation for the victim of an alleged sexual battery to medical treatment, a forensic examination, and a certified rape crisis center, as appropriate. The bill provides that, prior to the investigating officer filing his or her final report, the victim shall be permitted to review it and provide a statement as to the accuracy of the report.

The bill also extends the statute of limitations for video voyeurism beyond the applicable two- and three-year limits to authorize commencement of prosecutions within one year from either the date upon which the victim learns of the existence of the video recording or from the date the recording is confiscated by law enforcement, whichever occurs first.

The bill adds crimes to the list of offenses for which an additional \$151 dollar surcharge will be assessed against a defendant in order to fund the Rape Crisis Program Trust Fund.

Further, the bill requires the court, upon a victim’s request, to order a defendant to undergo HIV and hepatitis testing within 48 hours of the filing of an indictment or information or, if later, within 48 hours after the victim’s request. The court is required to order testing pursuant to the victim’s request under this provision when the defendant is charged with: 1) a specified sexual offense and the victim is a minor, or an elderly person or disabled adult, regardless of whether it involved the transmission of body fluids; or 2) a specified crime that involves the transmission of

body fluids from one person to another. Follow-up testing is also required as determined by a physician.

The bill extends the prohibitions against child pornography to include controlling or intentionally viewing child pornography. The bill specifically adds an “image,” “data,” and “computer depiction” to the enumeration of the items that cannot be possessed, controlled, or viewed. The bill defines “intentionally view” to mean to deliberately, purposefully, and voluntarily view. It specifies that proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time. The bill amends the level-five offenses in the offense severity ranking chart to add the offenses of controlling or intentionally viewing child pornography to that list.

Finally, the bill authorizes the Department of Legal Affairs to fund a nonprofit organization to educate adults and children about sexual abuse and provide other services, with a nonrecurring sum of \$1.5 million in fiscal year 2011-2012 from the General Revenue Fund.

If approved by the Governor, these provisions take effect July 1, 2011.

Vote: Senate 39-0; House 116-0

Committee on Criminal Justice

CS/CS/HB 339 — Possession of Stolen Credit or Debit Cards

by Judiciary Committee; Criminal Justice Subcommittee; and Rep. Perman and others (CS/SB 920 by Criminal Justice Committee and Senator Ring)

The bill amends s. 817.60, F.S., to create a new offense relating to credit cards: A person commits unlawful possession of a stolen credit or debit card when the person knowingly possesses, receives, or retains custody of a credit or debit card that has been taken from the possession, custody, or control of another person without the cardholder's consent and with the intent to impede recovery of the card by the cardholder.

The new possession offense is a third degree felony (pursuant to s. 817.67(2), F.S.).

The new possession offense does not apply to a retailer or retail employee who, in the ordinary course of business, possesses, receives, or returns a credit card or debit card that the retailer or retail employee does not know was stolen or possesses, receives, or retains a credit card or debit card that the retailer or retail employee knows is stolen for the purpose of an investigation into the circumstances regarding the theft of the card or its possible unlawful use.

If approved by the Governor, these provisions take effect October 1, 2011.

Vote: Senate 38-0; House 110-5

THE FLORIDA SENATE
2011 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

SB 344 — Animal Cruelty

by Senator Rich

The bill creates s. 828.126, F.S.

The bill prohibits, as a first-degree misdemeanor, knowingly engaging in sexual conduct or contact with an animal. Sexual conduct and sexual contact are defined in the bill. It also prohibits, with the same penalty, knowingly:

- aiding or abetting another in committing the conduct or contact;
- permitting the acts to be conducted on one's premises; or
- organizing, promoting, participating as an observer in, or performing services to facilitate the acts for commercial or recreational purposes.

Accepted animal husbandry practices, conformation judging practices, and accepted veterinary medical practices are specifically exempted from prosecution under the bill.

If approved by the Governor, these provisions take effect October 1, 2011.

Vote: Senate 38-0; House 115-0

THE FLORIDA SENATE
2011 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

HB 347 — Vehicle Crashes Involving Death

by Rep. Diaz and others (SB 514 by Senators Garcia and Diaz de la Portilla)

The bill provides that a person who is arrested for failure to stop a vehicle at the scene of an accident involving the death of any person and who has previously been convicted of leaving the scene of an accident, racing on highways, driving under the influence, or felony driving while license suspended, revoked, canceled, or disqualified must be held in custody until first appearance for a bail determination. This change prevents judges who issue warrants for failure to stop a vehicle at the scene of an accident involving death from setting a predetermined bond amount in an arrest warrant. It also prevents local jurisdictions from placing the offense on a bond schedule with predetermined bond amounts.

If approved by the Governor, these provisions take effect October 1, 2011.

Vote: Senate 38-0; House 116-0

Committee on Criminal Justice

CS/CS/CS/CS/HB 353 — Drug Screening/Beneficiaries of TANF

by Health and Human Services Committee; Judiciary Committee; Rulemaking and Regulation Subcommittee; Health and Human Services Access Subcommittee; and Rep. Smith and others (CS/CS/SB 556 by Budget Committee; Criminal Justice Committee; and Senators Oelrich, Dockery, Garcia, and Gaetz)

The bill creates s. 414.0652, F.S., requiring the Department of Children and Families (DCF) to perform a drug screening for temporary cash assistance applicants as a condition of eligibility. The bill provides the following:

- DCF shall require a drug test consistent with s. 112.0455, F.S.
- All applicants for Temporary Assistance to Needy Families (TANF) shall be drug screened as a condition of eligibility to receive cash assistance benefits.
- Applicants who test positive for controlled substances will be disqualified from receiving temporary cash assistance for 1 year, unless the individual chooses to seek substance abuse treatment. If the individual chooses to seek treatment, he or she can reapply for TANF funds within a 6-month time frame. This is a one-time option.
- DCF must inform applicants who test positive of the ability to apply again one year from the date of the positive test, or within 6 months upon completion of a substance abuse program. Applicants who test positive again will be ineligible to receive TANF benefits for 3 years from the date of the second positive test.
- If a parent tests positive for controlled substances, DCF may designate a “protective payee” to receive the cash assistance benefits on behalf of a dependent child. Alternatively, the parent may choose an immediate family member to receive benefits on behalf of the child or DCF may approve another individual to receive the benefits; a person so designated by the parent or approved by DCF also must undergo drug testing.
- The cost of drug testing will be paid by the individual applicant.
- DCF will be required to provide any individual who tests positive for controlled substances with information concerning drug abuse and treatment programs in the area in which he or she resides. The bill specifies that neither DCF nor the state is responsible for providing or paying for substance abuse treatment as part of screening under this section.
- DCF is authorized to adopt rules as necessary to implement the law.

If approved by the Governor, these provisions take effect July 1, 2011.

Vote: Senate 26-11; House 78-38

Committee on Criminal Justice

CS/CS/HB 369 — Faith- and Character-Based Correctional Programs

by Judiciary Committee; Criminal Justice Subcommittee; and Rep. Rouson and others (CS/SB 2010 by Criminal Justice Committee and Senator Braynon)

This bill amends s. 944.803, F.S., which governs faith-based programs in state correctional institutions. Because some existing programs are not based on religious principles, the bill adds references to “character-based programs” and “secular institutions.” The bill also clarifies that the statute’s requirements are applicable to institution-wide programs as well as dormitory-based programs. Additionally, the bill: (1) removes the requirement that 80 percent of the inmates in a dormitory-based program must be within 36 months of release; (2) eliminates the statutory preference for admitting inmates who have a substance abuse issue; and (3) provides that peer-to-peer programs, such as Alcoholics Anonymous and literacy instruction, must be allowed within faith and character-based institutions of the state correctional system.

The bill also expresses legislative intent for the Department of Corrections to expand the use of faith- and character-based institutions and encourages the phasing-out of dormitory-based programs.

If approved by the Governor, these provisions take effect on July 1, 2011.

Vote: Senate 36-0; House 117-0

Committee on Criminal Justice

CS/SB 400 — Treatment-based Drug Court Programs

by Criminal Justice Committee and Senators Wise, Fasano, Latvala, and Joyner

This bill provides for additional sentencing options for a statutorily restricted population of defendants and community supervision offenders who might successfully, and safely, be diverted from the prison system into existing postadjudicatory drug court programs. The target population consists of offenders who have a substance abuse or addiction problem that is amenable to treatment and who are currently in the criminal justice system because of a nonviolent felony offense.

Entry into the postadjudicatory drug court program is also expanded to include offenders who violate their probation or community control for any reason.

Whether having violated community supervision or before the court for sentencing on a substantive law violation, the candidate for a postadjudicatory drug court program may not score more than 60 sentencing points, shall be before the court for sentencing on a nonviolent felony, and must show by a drug screening and the court's assessment that he or she is amenable to substance abuse or addiction treatment. The defendant or offender must agree to enter the program. The state attorney and victim, if any, must be consulted. Successful completion of the program is a condition of a probation or community control sentence.

If approved by the Governor, these provisions take effect July 1, 2011.

Vote: Senate 39-0; House 117-1

Committee on Criminal Justice

CS/HB 409 — Public Records/Intelligence/Investigative Information

by Government Operations Subcommittee and Rep. Perry (CS/SB 1168 by Criminal Justice Committee and Senators Oelrich and Lynn)

The bill amends s. 119.071, F.S., to expand the current public-records exemption in that section for any criminal intelligence information or criminal investigative information that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses, regardless of whether it identifies the victim. Specifically, the bill expands the exemption to include that same information in the case of a victim of the sexual offense of video voyeurism under s. 810.145, F.S.

The bill provides that the exemption stands repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity for the expansion of the exemption as required by the Florida Constitution.

The bill also reenacts sections of law pertaining to judicial proceedings and court records to incorporate the changes made by the bill, thereby ensuring the exemption applies to judicial proceedings and court records involving a victim of the sexual offense of video voyeurism.

If approved by the Governor, these provisions take effect July 1, 2011.

Vote: Senate 39-0; House 116-0

Committee on Criminal Justice

CS/HB 411 — Public Records/Photos and Recordings/Killing of Person

by State Affairs Committee and Rep. Burgin (CS/CS/SB 416 by Judiciary Committee; Criminal Justice Committee; and Senator Bogdanoff)

This bill creates an exemption from public records requirements for photographs and video and audio recordings that depict or record the killing of a person. (The exemption is comparable to the public records exemption in s. 406.135, F.S., relating to photographs and video and audio recordings of an autopsy held by a medical examiner.) The exemption is subject to the Open Government Sunset Review Act and as such, will be repealed on October 2, 2016, unless reviewed and reenacted by the Legislature.

The exemption permits a surviving spouse to view, listen, and copy these photographs and video and audio recordings that depict or record the killing of a person. If there is no surviving spouse, then the deceased's surviving parents may view and copy them. If there are no surviving parents, then an adult child of the deceased may view and copy them. The surviving relative who has the authority to view and copy these records is authorized to designate in writing an agent to obtain the exempted records.

Additionally, federal, state, and local governmental agencies, upon written request, may have access to these records in the performance of their duties. Other than these exceptions, the custodian is prohibited from releasing the records to any other person not authorized under the exemption without a court order. Knowingly violating these provisions is a third degree felony.

The public records exemption created in the bill is given retroactive application, with exceptions. The public records exemption created in the bill does not apply to any order in effect on July 1, 2011, which was duly entered by a court of this state and which restricts or limits access to any photograph or video or audio recording that depicts or records the killing of a person.

If approved by the Governor, these provisions take effect July 1, 2011.

Vote: Senate 34-4; House 111-6

Committee on Criminal Justice

CS/CS/HB 563 — Injunctions for Protection Against Violence

by Judiciary Committee; Criminal Justice Subcommittee; and Rep. Jones and others (CS/SB 438 by Criminal Justice Committee and Senator Hill)

This bill requires (in addition to the notice requirements on law enforcement for serving an injunction for protection) that the Florida Association of Court Clerks and Comptrollers, subject to available funding, develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence, as well as other court actions related to the injunction. The association may apply for any available grants to help fund the notification system. Notification must be made within 12 hours after the sheriff or other law enforcement officer has served the protective injunction. The notification must include, at a minimum, the location, date, and time that the protective injunction was served.

If approved by the Governor, these provisions take effect July 1, 2011.

Vote: Senate 39-0; House 119-0

THE FLORIDA SENATE
2011 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

CS/SB 618 — Juvenile Justice

by Criminal Justice Committee and Senator Evers

The bill repeals numerous sections and provisions containing obsolete language in ch. 985, F.S., to more accurately reflect current practices within the Department of Juvenile Justice (DJJ). The specific provisions which the bill deletes include the following:

- Serious or habitual juvenile offender programs and intensive residential treatment programs for offenders under 13 which are underutilized and not needed anymore;
- Sheriff's Training and Respect programs which have not been operational since 2008;
- Inspectors within the Inspector General's Office being sworn law enforcement officers when deemed necessary by the Secretary of DJJ (DJJ has never had sworn law enforcement officers); and
- Juvenile Justice Standards and Training Commission which provided staff development and training, except that since it expired in 2001, the department has taken over its training duties.

If approved by the Governor, these provisions take effect July 1, 2011.

Vote: Senate 38-0; House 114-0

Committee on Criminal Justice

CS/SB 664 — Missing Person Investigations/Silver Alert

by Judiciary Committee and Senators Benacquisto, Negron, Margolis, Smith, Dockery, Evers, and Dean

The bill amends ss. 937.0201, 937.02, and 937.022, F.S., to codify Florida's Silver Alert Plan, which was created by a 2008 executive order. This plan provides for alerts regarding a missing person age 60 or older where there is a clear indication that the person has an irreversible deterioration of intellectual faculties and a missing person age 18 to 59 who has irreversible deterioration of intellectual faculties and law enforcement has determined the person lacks the capacity to consent.

Under the bill, upon receiving a request from the law enforcement agency having jurisdiction over the missing person, the Florida Department of Law Enforcement, other agencies, and specified entities who are responsible for complying with the request are immune from civil liability for damages for complying in good faith with the request and are presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing Silver Alert information pertaining to the missing person.

The bill also makes clarifying definitional and referencing changes to effectuate Florida's Silver Alert Plan and specifies that only a law enforcement agency having jurisdiction over the case may make a request to the Missing Endangered Persons Information Clearinghouse for the activation of a state Silver Alert involving a missing adult if circumstances regarding the disappearance have met the criteria for activation.

If approved by the Governor, these provisions take effect July 1, 2011.

Vote: Senate 37-0; House 118-0

Committee on Criminal Justice

CS/SB 844 — Violations/Probation/Community Control/Widman Act

by Budget Committee and Senators Benacquisto, Richter, Gaetz, Fasano, Norman, Diaz de la Portilla, Hays, Lynn, Altman, Bennett, Montford, Bogdanoff, Thrasher, Detert, Latvala, Bullard, and Storms

The bill provides that a First Appearance court may reach beyond the matter of pretrial release or detention on a new law violation arrest under certain circumstances.

If the court has reasonable grounds to believe that the offender appearing before the court at First Appearance on the new law violation is under community supervision and has violated the terms of supervision in a material respect by committing the new law violation, the court may order the arrest of the offender for the violation at that time.

The bill, therefore, should allow the court to expedite the arrest of an offender whose terms of community supervision have been violated due to the alleged new law violation, if he or she has not already been arrested on the violation by law enforcement under the provisions of s. 948.06(1)(a), F.S.

The court must inform the offender of the violation of community supervision. If he or she admits the violation, the court may order that the offender be brought before the court that granted the community supervision.

If the offender does not admit the violation of community supervision, the court may either commit the offender or release him or her with or without bail to await further hearing on the matter, or simply order that the offender be brought before the court that granted the community supervision.

Should the court reach the question of releasing the offender on the violation of community supervision, the court may consider, specifically, whether it is more likely than not that a prison sanction would be handed down by the original sentencing court for a violation of community supervision based upon the new arrest.

The bill does not apply to those offenders who are subject to the “danger to the community” hearings required by s. 948.06(4), F.S., or the “violent felony offender of special concern” hearings required by s. 948.06(8)(e), F.S.

If approved by the Governor, these provisions take effect October 1, 2011.

Vote: Senate 38-0; House 115-1

Committee on Criminal Justice

CS/HB 997 — Juvenile Civil Citations

by Justice Appropriations Subcommittee and Rep. Pilon and others (CS/SB 1300 by Criminal Justice Committee and Senator Storms)

This bill requires juvenile civil citation programs or other similar diversion programs to be established at the local level. Currently, these local diversion programs are discretionary. The bill specifies that they may be operated by any number of entities, including law enforcement, the Department of Juvenile Justice (DJJ), a juvenile assessment center, the county or city, or an entity selected by the county or city. Unlike current law, only first-time juvenile misdemeanants will be eligible to participate in a civil citation program. (Current law allows second-time juvenile misdemeanants to participate.) The bill also provides that intervention services will be required during the civil citation program if a needs assessment determines such services are necessary.

Finally, the DJJ is required to encourage and assist with the implementation and improvement of civil citation programs or other similar diversion programs around the state. The DJJ must also develop guidelines for the civil citation program which include intervention services. The guidelines must be based on proven civil citation programs or other similar diversion programs within Florida.

If approved by the Governor, these provisions take effect July 1, 2011.

Vote: Senate 38-0; House 119-0

Committee on Criminal Justice

HB 1029 — Interstate Compact for Juveniles

by Rep. Brodeur (SB 1494 by Senator Evers)

The bill reenacts the statutes relating to the Interstate Compact for Juveniles (compact) and the State Council for Interstate Juvenile Offender Supervision (council) that expired by operation of law on August 26, 2010. The compact governs interstate movement of juveniles on probation and parole as well as extradition across state lines of runaways, escapees, absconders, and juveniles charged as delinquent. The bill reenacts the compact to do the following:

- Creates the Interstate Commission, which is an independent compact administrative agency with the authority to administer ongoing compact activity;
- Provides rule making authority for the Interstate Commission;
- Establishes a mechanism for all states to collect standardized information and information systems;
- Provides for sanctions against states that do not follow compact rules and regulations;
- Provides for gubernatorial appointments of representatives from member states to the Interstate Commission;
- Provides a mandatory funding mechanism sufficient to support essential compact operations;
- Provides for coordination and cooperation with other interstate compacts; and
- Requires the creation of state councils.

The bill also reenacts the Interstate Juvenile Offender Supervision Council (council) to do the following:

- Requires that the council consist of seven members comprised of the Secretary of the Department of Juvenile Justice (DJJ), the compact administrator or his or her designee, the Executive Director of the Florida Department of Law Enforcement (FDLE) or his or her designee, and four remaining members to be appointed by the Governor, who may delegate this appointment power to the Secretary of DJJ in writing on an individual basis;
- Provides that appointees may include one victim's advocate, employees of the Department of Children and Family Services, employees of the FDLE who work with missing or exploited children, and a parent;
- Applies provisions of public records/open meetings requirements to the council's proceedings and records;
- Supplies terms of office, record storage, property transfer, and reimbursement for travel and per diem expenses; and
- Creates additional duties and responsibilities for the compact administrator.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 39-0; House 118-0

THE FLORIDA SENATE
2011 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

CS/HB 1039 — Controlled Substances

by Justice Appropriations Subcommittee and Rep. Patronis and others (CS/SB 1886 by Budget Committee and Senators Wise and Oelrich)

The bill amends s. 893.13(1)(c), F.S., to schedule in Schedule I of Florida's controlled substance schedules several psychoactive substances or "designer drugs" that have been sold in Florida as "bath salts" but are actually drugs of abuse. These substances are:

- 3,4-Methylenedioxymethcathinone.
- 3,4-Methylenedioxypyrovalerone (MDPV).
- Methylenedioxymethcathinone.
- Methoxymethcathinone.
- Fluoromethcathinone.
- Methylethcathinone.

The effect of the scheduling of these substances is that offenses relating to possession, sale, etc., of Schedule I controlled substances will apply to these substances.

If approved by the Governor, these provisions take effect July 1, 2011.

Vote: Senate 39-0; House 116-0

THE FLORIDA SENATE
2011 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

HB 4159 — State Attorneys

by Rep. Ray (CS/SB 1092 by Judiciary Committee and Senator Wise)

The bill eliminates the current reporting required of state attorneys in “10-20-Life” cases, prison releasee reoffender cases, habitual felony offender and habitual violent felony offender cases, and juvenile direct-file cases.

The bill further eliminates the requirement that the state attorney submit quarterly reports to the Legislature and the Governor regarding the prosecution and sentencing of offenders under the 10-20-Life law, with a copy being retained for 10 years by the Florida Prosecuting Attorneys Association, Inc. (FPAA), and made available to the public upon request. The prosecutor will maintain an explanation of the sentencing deviation in the prosecutor’s file.

For those cases in which the defendant meets the criteria for being sentenced as a “prison releasee reoffender” but does not receive the mandatory minimum sentence, the bill eliminates the requirement for the state attorney to transmit these memoranda to the FPAA. The prosecutor will maintain an explanation of the sentencing deviation in the prosecutor’s file.

The bill repeals the statute requiring the state attorney in each judicial circuit to adopt uniform criteria for determining when to pursue habitual felony offender and habitual violent felony offender sanctions. The requirement that any deviation from the criteria must be explained in writing and placed in the court file is also eliminated in the repeal.

The bill repeals the requirement that the state attorneys in each judicial circuit develop policies and guidelines for filing juvenile cases in adult court, as well as the requirement that these policies and guidelines be submitted to the Legislature and the Governor no later than January 1 of each year.

The bill deletes a cross-reference to s. 775.08401, F.S., relating to the establishment of criteria for prosecution of habitual offenders and habitual violent felony offenders, which is repealed under the bill.

If approved by the Governor, these provisions take effect July 1, 2011.

Vote: Senate 36-3; House 93-21

Committee on Criminal Justice

HB 7075 — OGSR/DJJ Employees and Family Members

by Government Operations Subcommittee and Rep. Ahern (CS/SB 600 by Governmental Oversight and Accountability Committee and Criminal Justice Committee)

The bill reenacts the public record exemption in s. 119.071(4)(d)1.i., F.S., which provides that certain personal information of current or former specified direct care employees of the Department of Juvenile Justice, their spouses, and children are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The personal information covers home addresses, telephone numbers, photographs, spouse's places of employment, and children's schools and daycare locations.

The covered direct care employees include the following: juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, social service counselors, and rehabilitation therapists.

If approved by the Governor, these provisions take effect October 1, 2011.

Vote: Senate 36-3; House 113-1

THE FLORIDA SENATE
2011 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

HB 7077 — OGSR/Biometric Identification Information

by Government Operations Subcommittee and Rep. Logan (SB 602 by Criminal Justice Committee)

The bill reenacts s. 119.071(5)(g), F.S., which exempts from public inspection or copying biometric identification information held by an agency before, on, or after the effective date of the exemption. Biometric identification information consists of any record of friction ridge detail, fingerprints, palm prints, and footprints.

If approved by the Governor, these provisions take effect October 1, 2011.

Vote: Senate 39-0; House 114-0

Committee on Criminal Justice

HB 7161 — OGSR/Concealed Weapons or Firearms

by Government Operations Subcommittee and Rep. Patronis (SB 604 by Criminal Justice Committee)

Current law provides that personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S., held by the Division of Licensing of the Department of Agriculture and Consumer Services, is confidential and exempt from s. 119.071(1), F.S., and s. 24(a), Art. I of the State Constitution.

There is no other governmental agency that collects this particular information from applicants, and it cannot be obtained by the public from another source. The information is not protected by another exemption, nor do multiple exemptions for the same type of information exist.

An applicant for such license must submit to the department a completed application, a nonrefundable license fee, a full set of fingerprints, a photocopy of a certificate or an affidavit attesting to the applicant's completion of a firearms course, and a full frontal view color photograph of the applicant. The application must include:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with licensure requirements;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents; and,
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.

The exemption applies to such information held by the division before, on, or after the effective date of the exemption. Such information may be released only:

- With the express written consent of the applicant or licensee or his or her legally authorized representative;
- By court order upon a showing of good cause; or
- Upon request by a law enforcement agency in connection with the performance of lawful duties, which includes access to any automated database containing such information maintained by the Department of Agriculture and Consumer Services.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2011, unless reenacted by the Legislature. This bill reenacts the public records exemption in s. 790.0601, F.S.

If approved by the Governor, these provisions take effect October 1, 2011.

Vote: Senate 36-2; House 98-12