The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Dean, Vice Chair

MEETING DATE: Tuesday, February 22, 2011
TIME: 9:00 a.m.—12:00 noon
PLACE: *Mallory Horne Committee Room,* 37 Senate Office Building

MEMBERS: Senator Evers, Chair; Senator Dean, Vice Chair; Senators Dockery, Margolis, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 234** Evers (Similar H 517, Compare H 4069, S 956)	Firearms; Provides that a person in compliance with the terms of a concealed carry license may carry openly notwithstanding specified provisions. Allows the Division of Licensing of the Department of Agriculture and Consumer Services to take fingerprints from concealed carry license applicants. Limits a prohibition on carrying a concealed weapon or firearm into an elementary or secondary school facility, career center, or college or university facility to include only a public elementary or secondary school facility or administration building, etc. CJ 02/22/2011 JU RC	
2	**SB 432** Evers (Identical H 155)	Privacy of Firearms Owners; Provides that inquiries by physicians or other medical personnel concerning the ownership of a firearm by a patient or the family of a patient or the presence of a firearm in a private home or other domicile of a patient or the family of a patient violates the privacy of the patient or the patient's family members, respectively, etc. CJ 02/22/2011 HR JU BC	
3	**SB 138** Bennett (Identical H 17)	Military Veterans Convicted of Criminal Offenses; Provides that persons convicted of criminal offenses who allege that the offenses resulted from posttraumatic stress disorder, substance abuse, or psychological problems stemming from service in a combat theater in the United States military may have a hearing on that issue before sentencing. Provides that defendants found to have committed offenses due to such causes and who are otherwise eligible for probation or community control may be placed in treatment programs for an equal period of time in certain circumstances, etc. CJ 02/22/2011 CF BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 344** Rich (Identical H 125)	Sexual Activities Involving Animals; Provides definitions. Prohibits knowing sexual conduct or sexual contact with an animal. Prohibits specified related activities. Provides penalties. Provides that the act does not apply to certain husbandry, conformation judging, and veterinary practices. CJ 02/22/2011 AG JU	
5	**SB 144** Smith	Elderly Inmates; Creates the Elderly Rehabilitated Inmate Supervision Program to authorize the Parole Commission to approve the early release of certain elderly inmates. Provides eligibility requirements for an inmate to participate in the program. Authorizes members of the public to be present at meetings of the commission held to determine an inmate's eligibility for the program. Authorizes a victim to make an oral statement or provide a written statement regarding the granting, denying, or revoking of an inmate's supervised release under the program, etc. CJ 02/22/2011 JU BC	
6	**SB 238** Altman (Similar H 11)	Child Safety Devices in Motor Vehicles; Provides child-restraint requirements for children ages 4 through 7 years of age who are less than a specified height. Provides certain exceptions. Redefines the term "motor vehicle" to exclude certain vehicles from such requirements. Provides a grace period. TR 02/07/2011 Favorable CJ 02/22/2011 BC	
7	**SB 400** Wise (Identical H 81)	Treatment-based Drug Court Programs; Provides that a court has the discretion to allow offenders with prior violent felony offenses into postadjudicatory treatment-based drug court programs on a case-by-case basis. Increases the number of Criminal Punishment Code scoresheet total sentence points that a defendant may have and be eligible for such a program. Makes defendants other than those who have violated probation or community control by a failed or suspect substance abuse test eligible for such programs, etc. CJ 02/22/2011 JU BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8		Continued discussion and public testimony on Privatization of State Prisons	

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 234
INTRODUCER:	Senators Evers and Dockery
SUBJECT:	Firearms - Open Carry
DATE:	February 10, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Pre-meeting**
2.			JU	
3.			RC	
4.				
5.				
6.				

I. Summary:

Senate Bill 234 amends the concealed weapons license law to provide that a person who is in compliance with the concealed carry license requirements and limitations may carry such weapon openly in addition to carrying it in a concealed manner.

It also revises the definitions of places where a person may lawfully carry a weapon by deleting the prohibition against carrying a weapon on the property of colleges, universities, career centers and certain elementary and secondary schools.

The bill provides that a person who is licensed to carry a weapon or firearm shall not be prohibited from carrying it in or storing it in a vehicle for lawful purposes.

The bill allows the Department of Agricultural and Consumer Services to take the fingerprints that license applicants submit with their applications for licensure. This will provide applicants with an additional location where their prints can be taken.

The bill also amends Florida law regarding the transfer of firearms by Florida residents which occur in other states.

This bill substantially amends sections 790.06 and 790.065 and repeals section 790.28 of the Florida Statutes.

II. Present Situation:

Under current Florida law, it is lawful for a person to carry a *concealed* weapon without a concealed weapon license for purposes of lawful self-defense, so long as the weapon is limited to self-defense chemical spray, a nonlethal stun gun, a dart-firing stun gun, or other nonlethal electric weapon or device that is designed solely for defensive purposes.[1]

However, without licensure, carrying a different type of concealed weapon[2], electric weapon, or device other than one designed solely for defensive purposes is a first degree misdemeanor.[3] Carrying a concealed firearm without proper licensure is a third degree felony offense.[4]

It is lawful for a person to *openly* carry a self-defense chemical spray, nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.[5]

Certain persons under particular circumstances are exempt from the limitations on the open carry of weapons in s. 790.053, F.S., and the concealed firearm carry licensure requirements in s. 790.06, F.S., when the weapons and firearms are lawfully owned, possessed and used. These persons and circumstances include:

- Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization;
- Citizens of this state subject to duty in the Armed Forces under s. 2, Art. X of the State Constitution, under chs. 250 and 251, F.S., and under federal laws, when on duty or when training or preparing themselves for military duty;
- Persons carrying out or training for emergency management duties under ch. 252, F.S.;
- Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of ch. 354, F.S., and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state;
- Officers or employees of the state or United States duly authorized to carry a concealed weapon;
- Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state;

[1] s. 790.01(4), F.S.
[2] A concealed weapon, under s. 790.001(3)(a), F.S., means any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person. The weapons listed in this definition require licensure to carry them in a concealed manner.
[3] s. 790.01(1), F.S.
[4] s. 790.01(2), F.S.
[5] s. 790.053, F.S.

- Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits;
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition;
- A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business;
- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place;
- A person firing weapons in a safe and secure indoor range for testing and target practice;
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession;
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business;
- A person possessing arms at his or her home or place of business; and
- Investigators employed by the public defenders and capital collateral regional counsel of the state, while actually carrying out official duties.[6]

Concealed Weapons Licensure

The Department of Agriculture and Consumer Services (DACS) is authorized to issue concealed weapon licenses to those applicants that qualify.[7] Concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie but not a machine gun for purposes of the licensure law.[8]

According to the FY 2009-2010 statistics, the DACS received 167,240 new licensure applications and 91,963 requests for licensure renewal during that time period.[9]

To obtain a concealed weapons license, a person must complete, under oath, an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days;
- 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;

[6] s. 790.25(3), F.S.
[7] s. 790.06(1), F.S.
[8] *Id.*
[9] http://licgweb.doacs.state.fl.us/stats/07012009_06302010_cw_annual.pdf ; last visited February 11, 2011.

- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense;
- A full set of fingerprints;
- Documented proof of completion of a firearms safety and training course; and
- A nonrefundable license fee.[10]

Additionally, the applicant must attest that he or she is in compliance with the criteria contained in subsections (2) and (3) of s. 790.06, F.S.

Subsection (2) of s. 790.06, F.S., requires the DACS to issue the license to carry a concealed weapon, if all other requirements are met, and the applicant:

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm pursuant to s. 790.23, F.S., by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or

[10] s. 790.06(1)-(5), F.S.

any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.[11]

The DACS must deny the application if the applicant has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence constituting a misdemeanor, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged.[12]

The DACS shall revoke a license if the licensee has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence within the preceding 3 years.[13]

The DACS shall, upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license under this section, until final disposition of the case.[14] The DACS shall suspend a license or the processing of an application for a license if the licensee or applicant is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.[15]

In addition, the DACS is required to suspend or revoke a concealed weapons license if the licensee:

- Is found to be ineligible under the criteria set forth in subsection (2);
- Develops or sustains a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is convicted of a felony which would make the licensee ineligible to possess a firearm pursuant to s. 790.23, F.S.;
- Is found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state, relating to controlled substances;
- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is convicted of a second violation of s. 316.193, F.S., or a similar law of another state, within 3 years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;

[11] s. 790.06(2), F.S.
[12] s. 790.06(3), F.S.
[13] *Id.*
[14] *Id.*
[15] *Id.*

- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of any other state.[16]

Licensees must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer.[17] Failure to have proper documentation and display it upon demand is a second degree misdemeanor.[18]

A concealed weapon or firearms license does not authorize a person to carry a weapon or firearm in a concealed manner into:

- any place of nuisance as defined in s. 823.05, F.S.;
- any police, sheriff, or highway patrol station;
- any detention facility, prison, or jail;
- any courthouse;
- any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;
- any polling place;
- any meeting of the governing body of a county, public school district, municipality, or special district;
- any meeting of the Legislature or a committee thereof;
- any school, college, or professional athletic event not related to firearms;
- any school administration building;
- any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
- any elementary or secondary school facility;
- any career center;
- any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;
- inside the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
- any place where the carrying of firearms is prohibited by federal law.

Any person who willfully violates any of the above-listed provisions commits a misdemeanor of the second degree.[19]

[16] s. 790.06(10), F.S.
[17] s. 790.790.06(1), F.S.
[18] s. 790.06(1), F.S.
[19] s. 790.06(12), F.S.

Firearms in Vehicles

It is lawful for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use. The same is true for a legal long gun, without the need for encasement, when it is carried in the private conveyance for a lawful purpose.[20]

"Securely encased" means in a glove compartment, whether or not locked; snapped in a holster; in a gun case, whether or not locked; in a zippered gun case; or in a closed box or container which requires a lid or cover to be opened for access.[21] The term "readily accessible for immediate use" means that a firearm or other weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as easily and quickly as if carried on the person.[22]

Section 790.251, F.S., became law in 2008. It addressed the lawful possession of firearms in vehicles within the parking lots of businesses, and was commonly known as the "Guns at Work" law. The law was challenged quickly after its passage. The court recognized the Legislature's authority to protect an *employee* from employment discrimination where the employee had a concealed carry license and kept a firearm in a vehicle at work. However, because of the statutory definitions of employer and employee, the court found a problem in the application of the law to *customers*.

The court's reading of the statutory definitions led to this conclusion: a business which happened to employ a person with a concealed weapon license (who kept a firearm secured in his or her vehicle in the parking lot at work) would have been prohibited from expelling a customer who had a firearm in his or her car; a business without such an employee would have been free to expel such a customer. The court found that there was no rational basis for treating two similarly situated businesses differently just because one happened to employ someone with a concealed weapons license, therefore the state was enjoined from enforcing the part of the law that applied to customers.[23]

Florida Residents Purchasing Shotguns and Rifles in Other States

In 1968, the Federal Gun Control Act (GCA) was enacted.[24] Among its many provisions was a section that made it unlawful for a licensed importer, manufacturer, dealer, or collector[25] to sell

[20] s. 790.25(5), F.S.
[21] s. 790.001(17), F.S.
[22] s. 790.001(16), F.S.
[23] *Florida Retail Federation v. Attorney General*, 576 F.Supp.2d 1281 (N.D.Fla. 2008).
[24] Pub. L. No. 90-618 (codified at 18 U.S.C. §§ 921-928).
[25] The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution. The term "manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution. The term "dealer" means any person engaged in the business of selling firearms at wholesale or retail; any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or any person who is a pawnbroker. The term "collector" means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define. To be "licensed," an entity listed above must be licensed under the provisions of 18 U.S.C. Ch. 44. *See* 18.U.S.C. § 921.

or deliver any firearm[26] to any person who the licensee knew or had reasonable cause to believe did not reside in the state in which the licensee's place of business was located.[27] The GCA specified that this prohibition did not apply to the sale or delivery of a rifle[28] or shotgun[29] to a resident of a state contiguous to the state in which the licensee's place of business was located if:

- The purchaser's state of residence permitted such sale or delivery by law;
- The sale fully complied with the legal conditions of sale in both such contiguous states; and
- The purchaser and the licensee had, prior to the sale of the rifle or shotgun, complied with federal requirements applicable to intrastate firearm transactions that took place at a location other than at the licensee's premises.[30]

Subsequent to the enactment of the GCA, several states, including Florida, enacted statutes that mirrored the GCA's provisions that allowed a licensee to sell a rifle or a shotgun to a resident of a state contiguous to the state in which the licensee's place of business was located.[31] Florida's statute, s. 790.28, F.S., entitled "Purchase of rifles and shotguns in contiguous states," was enacted in 1979, and currently provides the following:

> A resident of this state may purchase a rifle or shotgun in any state contiguous to this state if he or she conforms to applicable laws and regulations of the United States, of the state where the purchase is made, and of this state.

In 1986, the Firearm Owners' Protection Act (FOPA) was enacted.[32] FOPA amended the GCA's "contiguous state" requirement to allow licensees to sell or deliver a rifle or shotgun to a resident of any state (not just contiguous states) if:

- The transferee meets in person with the transferor to accomplish the transfer; and
- The sale, delivery, and receipt fully comply with the legal conditions of sale in both such states.[33]

Subsequent to the enactment of FOPA, many states revised or repealed their statutes that imposed a "contiguous state" requirement on the interstate purchase of rifles and shotguns. Florida has not revised or repealed its statute.

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[26] 18 U.S.C. § 921 defines the term "firearm" as any weapon (including a starter gun) which will or 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; or any destructive device. Such term does not include an antique firearm.
[27] 18 U.S.C. § 922(b)(3) (1968).
[28] 18 U.S.C. § 921 defines the term "rifle" as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.
[29] 18 U.S.C. § 921 defines the term "shotgun" as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.
[30] 18 U.S.C. § 922(b)(3) (1968).
[31] *See, e.g.,* O.C.G.A. § 10-1-100 (2011), specifying that residents of the state of Georgia may purchase rifles and shotguns in any state of the United States, provided such residents conform to applicable provisions of statutes and regulations of the United States, of the state of Georgia, and of the state in which the purchase is made.
[32] Pub. L. No. 99-308.
[33] 18 U.S.C. §922(b)(3) (1986).

It should be noted federal-licensed firearms dealers, importers and manufacturers are required by the federal government to collect and submit identifying information from prospective firearm purchasers to the National Instant Criminal Background Check System before transferring the firearm.

III. Effect of Proposed Changes:

Senate Bill 234 provides that a person who holds a valid concealed weapon or firearm license, issued by the Department of Agriculture and Consumer Affairs (DACS) under s. 790.06, F.S., may carry a weapon or firearm openly.

The bill specifically amends the definitions and limitations, found in s. 790.06(12), F.S., on where weapons or firearms can be carried by allowing a license-holder to carry a weapon or firearm within a career center, a college or university, and nonpublic elementary or secondary school facilities.

Also, the bill inserts a provision in s. 790.06(12), F.S., that specifically protects a licensed person from being prohibited from carrying or storing a firearm in a vehicle for lawful purposes.

A person who carries a weapon or firearm into one of the prohibited locations set forth in subsection (12) of s. 790.06, F.S., or a person who prohibits a licensee from carrying or storing a firearm in a vehicle for lawful purposes, commits a second degree misdemeanor if they do so knowingly and willfully under the provisions of the bill.

The bill also authorizes the DACS to take fingerprints from a license-applicant for inclusion with the application packet. This provides the applicant with an additional place to have their prints taken.

Section 790.28, F.S., is repealed by the bill. It is the provision that limits Florida residents to the purchase of rifles and shotguns in contiguous states. A paragraph is added by the bill to s. 790.065, F.S., in order to clarify that a licensed dealer's shotgun or rifle sale to a Florida resident in another state is subject only to the federal law and the law of the state wherein the transfer is made.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Criminal Justice (Evers) recommended the following:

Senate Amendment (with title amendment)

Delete lines 91 - 167
and insert:

(b) A person licensed under this section shall not be prohibited from carrying or storing a firearm in a vehicle for lawful purposes.

(c) This subsection does not modify the terms or conditions of s. 790.251(7).

(d) Any person who knowingly and willfully violates any provision of this subsection commits a misdemeanor of the second

degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Section 790.115, Florida Statutes, is amended to read:

790.115 Possessing or discharging weapons or firearms at a school-sponsored event or on school property prohibited; penalties; exceptions.—

(1) A person who exhibits any sword, sword cane, firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade, box cutter, or common pocketknife, except as authorized in support of school-sanctioned activities, in the presence of one or more persons in a rude, careless, angry, or threatening manner and not in lawful self-defense, at a school-sponsored event or on the grounds or facilities of any school, school bus, or school bus stop, or within 1,000 feet of the real property that comprises a public or private elementary school, middle school, or secondary school, during school hours or during the time of a sanctioned school activity, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This subsection does not apply to the exhibition of a firearm or weapon on private real property within 1,000 feet of a school by the owner of such property or by a person whose presence on such property has been authorized, licensed, or invited by the owner.

(2)(a) A person may ~~shall~~ not possess any firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade or box cutter, except as authorized in support of school-sanctioned activities, at a school-sponsored event or on the property of any school, school

bus, or school bus stop; however, a person may carry a firearm:

1. In a case to a firearms program, class, or function that ~~which~~ has been approved in advance by the principal or chief administrative officer of the school as a program or class to which firearms could be carried;

2. In a case to a career center having a firearms training range; or

3. In a vehicle pursuant to s. 790.25(5); except that school districts may adopt written and published policies that waive the exception in this subparagraph for purposes of student and campus parking privileges.

For the purposes of this section, the term "school" means any preschool, elementary school, middle school, junior high school, or secondary school, ~~career center, or postsecondary school,~~ whether public or nonpublic.

(b) A person who willfully and knowingly possesses any electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade or box cutter, except as authorized in support of school-sanctioned activities, in violation of this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c)1. A person who willfully and knowingly possesses any firearm in violation of this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A person who stores or leaves a loaded firearm within the reach or easy access of a minor who obtains the firearm and

commits a violation of subparagraph 1. commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; except that this does not apply if the firearm was stored or left in a securely locked box or container or in a location which a reasonable person would have believed to be secure, or was securely locked with a firearm-mounted push-button combination lock or a trigger lock; if the minor obtains the firearm as a result of an unlawful entry by any person; or to members of the Armed Forces, National Guard, or State Militia, or to police or other law enforcement officers, with respect to firearm possession by a minor which occurs during or incidental to the performance of their official duties.

(d) A person who discharges any weapon or firearm while in violation of paragraph (a), unless discharged for lawful defense of himself or herself or another or for a lawful purpose, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) The penalties of this subsection do ~~shall~~ not apply to persons licensed under s. 790.06. Persons licensed under s. 790.06 shall be punished as provided in s. 790.06(12), except that a licenseholder who unlawfully discharges a weapon or firearm on school property as prohibited by this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) This section does not apply to any law enforcement officer as defined in s. 943.10(1), (2), (3), (4), (6), (7), (8), (9), or (14).

(4) Notwithstanding s. 985.24, s. 985.245, or s. 985.25(1), any minor under 18 years of age who is charged under this

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section with possessing or discharging a firearm on school property shall be detained in secure detention, unless the state attorney authorizes the release of the minor, and shall be given a probable cause hearing within 24 hours after being taken into custody. At the hearing, the court may order that the minor continue to be held in secure detention for a period of 21 days, during which time the minor shall receive medical, psychiatric, psychological, or substance abuse examinations pursuant to s. 985.18, and a written report shall be completed.

Section 3. Section 790.28, Florida Statutes, is repealed.

Section 4. Subsection (1) of section 790.065, Florida Statutes, is amended to read:

790.065 Sale and delivery of firearms.—

(1)(a) A licensed importer, licensed manufacturer, or licensed dealer may not sell or deliver from her or his inventory at her or his licensed premises any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, until she or he has:

1.~~(a)~~ Obtained a completed form from the potential buyer or transferee, which form shall have been promulgated by the Department of Law Enforcement and provided by the licensed importer, licensed manufacturer, or licensed dealer, which shall include the name, date of birth, gender, race, and social security number or other identification number of such potential buyer or transferee and has inspected proper identification including an identification containing a photograph of the potential buyer or transferee.

2.~~(b)~~ Collected a fee from the potential buyer for processing the criminal history check of the potential buyer.

The fee shall be established by the Department of Law Enforcement and may not exceed $8 per transaction. The Department of Law Enforcement may reduce, or suspend collection of, the fee to reflect payment received from the Federal Government applied to the cost of maintaining the criminal history check system established by this section as a means of facilitating or supplementing the National Instant Criminal Background Check System. The Department of Law Enforcement shall, by rule, establish procedures for the fees to be transmitted by the licensee to the Department of Law Enforcement. All such fees shall be deposited into the Department of Law Enforcement Operating Trust Fund, but shall be segregated from all other funds deposited into such trust fund and must be accounted for separately. Such segregated funds must not be used for any purpose other than the operation of the criminal history checks required by this section. The Department of Law Enforcement, each year prior to February 1, shall make a full accounting of all receipts and expenditures of such funds to the President of the Senate, the Speaker of the House of Representatives, the majority and minority leaders of each house of the Legislature, and the chairs of the appropriations committees of each house of the Legislature. In the event that the cumulative amount of funds collected exceeds the cumulative amount of expenditures by more than $2.5 million, excess funds may be used for the purpose of purchasing soft body armor for law enforcement officers.

3.~~(c)~~ Requested, by means of a toll-free telephone call, the Department of Law Enforcement to conduct a check of the information as reported and reflected in the Florida Crime

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Information Center and National Crime Information Center systems as of the date of the request.

4.~~(d)~~ Received a unique approval number for that inquiry from the Department of Law Enforcement, and recorded the date and such number on the consent form.

(b) However, if the person purchasing, or receiving delivery of, the firearm is a holder of a valid concealed weapons or firearms license pursuant to the provisions of s. 790.06 or holds an active certification from the Criminal Justice Standards and Training Commission as a "law enforcement officer," a "correctional officer," or a "correctional probation officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), ~~the provisions of~~ this subsection does ~~do~~ not apply.

(c) This subsection does not apply to the purchase, trade, or transfer of rifles or shotguns by a resident of this state when the resident makes such purchase, trade, or transfer from a licensed importer, licensed manufacturer, or licensed dealer in another state.

Section 5. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete lines 16 - 23

and insert:

purposes; providing that a provision limiting the scope of a license to carry a concealed weapon or firearm does not modify certain exceptions to prohibited acts with respect to a person's right to keep and bear arms in motor vehicles for certain

purposes; amending s. 790.115, F.S., relating to the prohibition against possessing or discharging weapons or firearms at a school-sponsored event or on school property; revising the definition of the term "school"; repealing s. 790.28, F.S., relating to the purchase of rifles and shotguns in contiguous states; amending s. 790.065, F.S.; providing that specified provisions do not apply to certain firearms transactions by a resident of this state which take place in another state; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 432
INTRODUCER:	Senator Evers
SUBJECT:	Privacy of Firearm Owners
DATE:	February 12, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Pre-meeting**
2.			HR	
3.			JU	
4.			BC	
5.				
6.				

I. Summary:

Senate Bill 432 creates a new third degree felony in circumstances where a public or private physician, nurse, or other medical staff person conditions receipt of medical treatment or care on a person's willingness or refusal to disclose "personal and private information unrelated to medical treatment" in violation of the privacy right created by the bill regarding ownership or possession of firearms.

Additionally, the bill creates a third degree felony where a public or private physician, nurse, or other medical staff person enters information concerning firearms into any record or otherwise discloses such information to any other source, whether intentionally, inadvertently or accidentally.

The bill states that an inquiry of a patient or his or her family regarding the ownership or possession of firearms in the home by a public or private physician, nurse, or other medical staff person constitutes an invasion of privacy.

The state attorney is given responsibility for investigating and prosecuting the felony offenses.

The defendant may be assessed up to a $5 million fine if found guilty. The Attorney General is charged with filing suit to collect any fine that remains unpaid after 90 days.

This bill creates a new section of the Florida Statutes: 790.338.

II. Present Situation:

Physicians Inquiring About Firearms

In recent months, there has been media attention surrounding an incident in Ocala, Florida, where, during a routine doctor's visit, an Ocala pediatrician asked a patient's mother whether there were firearms in the home. When the mother refused to answer, the doctor advised her that she had 30 days to find a new pediatrician.[1] The doctor stated that he asked all of his patients the same question in an effort to provide safety advice in the event there was a firearm in the home.[2] He further stated that he asked similar questions about whether there was a pool at the home, and whether teenage drivers use their cell phone while driving for similar reasons – to give safety advice to patients. The mother, however, felt that the question invaded her privacy.[3] This incident has led many to question whether it should be an accepted practice for a doctor to inquire about a patient's firearm ownership.

Various professional medical groups have adopted policies that encourage or recommend that physicians ask patients about the presence of a firearm in the home. For example, the American Medical Association (AMA) encourages its members to inquire as to the presence of household firearms as a part of childproofing the home and to educate patients to the dangers of firearms to children.[4]

Additionally, the American Academy of Pediatrics (AAP) recommends that pediatricians incorporate questions about guns into their patient history taking.[5]

Florida law contains numerous provisions relating to the regulation of the medical profession, regulation of medical professionals, and the sale, purchase, possession, and carrying of firearms.[6] However, Florida law does not contain any provision that prohibits physicians or other medical staff from asking a patient whether he or she owns a firearm or whether there is a firearm in the patient's home.

Terminating the Doctor - Patient Relationship

The relationship between a physician and a patient is generally considered a private relationship and contractual in nature. According to the AMA, both the patient and the physician are free to enter into or decline the relationship.[7] Once a physician-patient relationship has been established,

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[1] Family and pediatrician tangle over gun question, http://www.ocala.com/article/20100723/news/100729867/1402/news?p=1&tc=pg (last accessed January 27, 2011).
[2] *Id*.
[3] *Id*.
[4] H-145.990 Prevention of Firearm Accidents in Children https://ssl3.ama-assn.org/apps/ecomm/PolicyFinderForm.pl?site=www.ama-assn.org&uri=%2fama1%2fpub%2fupload%2fmm%2fPolicyFinder%2fpolicyfiles%2fHnE%2fH-145.990.HTM (last accessed January 28, 2011).
[5] American Academy of Pediatrics: Firearm-Related Injuries Affecting the Pediatric Population. Pediatrics Vol. 105 No. 4 April 2000, pp. 888-895. http://aappolicy.aappublications.org/cgi/content/full/pediatrics;105/4/888 (last accessed January 28, 2011). See also American Academy of Pediatrics, Committee on Injury, Violence, and Poison Prevention, "TIIP (The Injury Prevention Program), A Guide to Safety Counseling in Office Practice", 1994.
[6] *See, e.g.*, Chapters 456, 458, 790, F.S.
[7] AMA Code of Medical Ethics, Opinion 9.12, *Patient-Physician Relationship: Respect for Law and Human Rights*, http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion912.shtml (last accessed

patients are free to terminate the relationship at any time.[8] Generally, doctors can only terminate existing relationships after giving the patient notice and a reasonable opportunity to obtain the services of another physician.[9] Florida's statutes do not currently contain any provisions that dictate when physicians and patients can terminate a doctor-patient relationship.

III. Effect of Proposed Changes:

Senate Bill 432 creates s. 790.338, F.S., entitled "Medical privacy concerning firearms." The bill specifies that a verbal or written inquiry by a public or private physician, nurse, or other medical staff person regarding the ownership of a firearm by a patient or the family of a patient or the presence of a firearm in a private home or other domicile of a patient or the family of a patient violates the privacy of the patient or the patient's family members. The bill does not clearly make it a crime for a doctor to ask a patient about firearms because it does not specify that such conduct is prohibited or is a criminal act, but it does provide that doing so is an invasion of a patient's privacy.[10]

The bill clearly does, however, create a 3rd degree felony[11] if a public or private physician, nurse, or other medical staff :

- Conditions receipt of medical treatment or care on a person's willingness or refusal to disclose personal and private information unrelated to medical treatment in violation of an individual's privacy, as specified in the bill.

February 7, 2011). Doctors who offer their services to the public may not decline to accept patients because of race, color, religion, national origin, sexual orientation, gender identity, or any other basis that would constitute invidious discrimination.

[8] AMA's Code of Medical Ethics, Opinion 9.06 *Free Choice. http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion906.shtml* (last accessed February 7, 2011).

[9] A health care provider owes a duty to the patient to provide the necessary and appropriate medical care to the patient with due diligence and to continue providing those services until: 1) they are no longer needed by the patient; 2) the relationship is ended with the consent of or at the request of the patient; or 3) the health care provider withdraws from the relationship after giving the patient notice and a reasonable opportunity to obtain the services of another health care provider. The relationship typically terminates when the patient's medical condition is cured or resolved, and this often occurs at the last visit when the health care provider notes in his records that the patient is to return as needed. *See Saunders v. Lischkoff*, 188 So. 815 (Fla. 1939). *See also*, *Ending the Patient-Physician Relationship*, AMA White Paper http://www.ama-assn.org/ama/pub/physician-resources/legal-topics/patient-physician-relationship-topics/ending-patient-physician-relationship.shtml (last accessed February 7, 2011); AMA's Code of Medical Ethics, Opinion 8.115 *Termination of the Physician-Patient Relationship. http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion8115.shtml* (last accessed February 7, 2011).

[10] Invading someone's privacy is not a criminal act. However, there is a common law tort claim of invasion of privacy. *See Allstate Insurance Company v. Ginsberg*, 863 So.2d 156 (Fla. 2003) where the Florida Supreme Court reaffirms the four types of claims of invasion of privacy recognized by Florida courts: "As recognized in *Agency for Health Care Administration v. Associated Industries of Florida, Inc.*, 678 So.2d 1239, 1252 n. 20 (Fla.1996) (hereinafter *AHCA*), the four categories are: (1) appropriation-the unauthorized use of a person's name or likeness to obtain some benefit; (2) intrusion-physically or electronically intruding into one's private quarters; (3) public disclosure of private facts-the dissemination of truthful private information which a reasonable person would find objectionable; and (4) false light in the public eye-publication of facts which place a person in a false light even though the facts themselves may not be defamatory." As the dissenting opinion notes, the common law tort of invasion of privacy, or any common law tort is an area of the law that is subject to evolution. It would appear that SB 432 creates a new statutory category in the area of invasion of privacy torts.

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

- Enters any intentionally, accidentally, or inadvertently disclosed information concerning firearms into any record, whether written or electronic, or discloses such information to any other source.

The bill also provides that a person who violates s. 790.338, F.S., may be assessed a fine of no more than $5 million if the court determines that the person knew or reasonably should have known that the conduct was unlawful.

The bill requires the state attorney with jurisdiction to investigate complaints of criminal violations of s. 790.338, F.S., and, if there is probable cause to indicate that a person may have committed a violation, to prosecute the violator and notify the Attorney General of the prosecution. The bill requires the Attorney General to bring a civil action to enforce any fine assessed if such fine is not paid after 90 days.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Although this bill states that inquiries by certain medical professionals about the ownership of a firearm or presence of a firearm in the home of a patient or his or her family violates the patient's or the family's privacy, it should not be forgotten that the individual's right to exercise free speech is only regulated in the most egregious of circumstances. If subsection (1)(a) of s. 790.338, F.S., as created by the bill is treated as a criminal law violation, it could be said that the State of Florida is attempting to punish the exercise of free speech by one citizen while protecting the general law-created privacy rights of another. It is highly likely that such a prosecution will result in litigation between the State and the health care professional who is prosecuted based at least in part on the constitutional issues raised by such a State action.

It should also be noted that any civil action that might ensue will likely raise issues surrounding personal, professional, and contractual obligations between the parties, and the weight given to a constitutionally-protected right (free speech) versus a right to privacy created by general law by the courts, as between the two parties.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A public or private physician, nurse, or other medical staff person who is convicted under the law created by the bill could be assessed up to a $5 million fine.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet considered the potential prison bed impact of this bill.

VI. Technical Deficiencies:

The language in s. 790.338(1)(a), F.S., as created by the bill should be amended to clarify that not only is the verbal or written inquiry an invasion of privacy, but that if the inquiry is made it will be a criminal act punishable as a third degree felony, if that is the bill's intent.

The bill creates s. 790.338, F.S., to make it a crime for a *public or private physician, nurse, or other medical staff* to do certain acts. The bill does not define these terms, nor are they defined in ch. 790, F.S. Defining these terms, or using a term already defined in Florida law such as "healthcare practitioner," would clarify who the bill's penalties apply to.

Also, the term "unrelated to medical treatment" on line 38 of the bill may create a loophole to prosecution in that the term invites challenge and argument as to what is or is not "unrelated."

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Criminal Justice (Evers) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 790.338, Florida Statutes, is created to read:

790.338 Medical privacy concerning firearms; prohibitions; penalties; exceptions.—

(1)(a) A verbal or written inquiry by a public or private physician, nurse, or other medical staff person regarding the ownership of a firearm by a patient or the family of a patient or the presence of a firearm in a private home or other domicile

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of a patient or the family of a patient violates the privacy of the patient or the patient's family members, respectively.

(b) A public or private physician, nurse, or other medical staff person may not condition receipt of medical treatment or medical care on a person's willingness or refusal to disclose personal and private information unrelated to medical treatment in violation of an individual's privacy as specified in this section.

(c) A public or private physician, nurse, or other medical staff person may not intentionally, accidentally, nor inadvertently enter any disclosed information concerning firearms into any record, whether written or electronic, or disclose such information to any other source.

(2)(a) A person who violates a provision of this section commits a noncriminal violation as defined in s. 775.08 and punishable as provided in s. 775.082 and s. 775.083.

(b) If the court determines that the violation was knowing and willful or in the exercise of ordinary care the person should have known the act was a violation, the court shall access a fine of not less than $10,000 for the first offense; not less than $25,000 for the second offense; and not less than $100,000 for the third and subsequent offenses. The person found to have committed the violation shall be personally liable for the payment of all fines, costs, and fees assessed by the court for the noncriminal violation.

(c) The state attorney in the jurisdiction shall investigate complaints of noncriminal violations of this section and, where the state attorney determines probable cause that a violation exists, shall prosecute violators in the circuit court

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where the complaint arose. Any state attorney who fails to execute his or her duties under this section may be held accountable under the appropriate Florida rules of professional conduct.

(d) The state attorney shall notify the Attorney General of any fines accessed under this section and notwithstanding s. 28.246(6), and if a fine for a violation of this section remains unpaid after 90 days, the Attorney General shall bring a civil action to enforce the fine.

(e) Except as required by s. 16, Art. I of the State Constitution or the Sixth Amendment to the United States Constitution, public funds may not be used to defend the unlawful conduct of any person charged with a knowing and willful violation of this section.

(f) Notwithstanding any other provision of this section:

1. a psychiatrist as defined in s. 394.455, psychologist as defined in s. 490.003, school psychologist as defined in s. 490.003, or clinical social worker as defined in s. 491.003, may make an inquiry reasonably necessary when the person making the inquiry in good faith believes that the possession or control of a firearm or ammunition by the patient would pose an imminent threat to himself, herself, or others; and

2. a public or private physician, nurse, or other medical personnel may make an inquiry reasonably necessary for the treatment of a patient during the course and scope of a medical emergency which shall specifically include, but not be limited to, a mental health or psychotic episode where the patient's conduct or symptoms reasonably indicate that the patient has the capacity of causing harm to himself, herself, or others;

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However, a patient's response to any inquiry permissible under this subsection shall be private and shall not be disclosed to any third party not participating in the treatment of the patient other than a law enforcement officer conducting an active investigation involving the patient or the events giving rise to a medical emergency. This subsection shall not apply to a person's general belief that firearms or ammunition are harmful to health or safety.

(3) Medical records created on or before the effective date of this Act are not a violation of the Act. Such records, when tranferred to another health care provider, are not subject to the prohibitions or penalties of this Act.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the privacy of firearms owners; creating s. 790.338, F.S.; providing that inquiries by physicians or other medical personnel concerning the ownership of a firearm by a patient or the family of a patient or the presence of a firearm in a private home or other domicile of a patient or the family of a patient violates the privacy of the patient or the patient’s family members, respectively; prohibits conditioning the receipt of medical treatment or care

on a person's willingness or refusal to disclose personal and private information unrelated to medical treatment in violation of an individual's privacy contrary to specified provisions; prohibiting entry of certain information concerning firearms into medical records or disclosure of such information by specified individuals; providing noncriminal penalties; providing for prosecution of violations; requiring informing the Attorney General of prosecution of violations; providing for collection of fines by the Attorney General in certain circumstances; providing exemptions; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 138
INTRODUCER:	Senators Bennett, Gaetz, and Dockery
SUBJECT:	Military Veterans Convicted of Criminal Offenses
DATE:	February 15, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Pre-meeting**
2.			CF	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill creates a framework for sentencing courts to consider diverting veterans who are convicted of criminal offenses from incarceration into treatment programs for posttraumatic stress disorder (PTSD), substance abuse, or psychological problems that stem from their military service. If a convicted defendant claims before sentencing that his or her crime resulted from one of the conditions that resulted from service in a combat zone, the court would be required to hold a hearing to determine whether the defendant is in fact a veteran who suffers from one of the conditions as a result of that service. If the claim is verified, and if the veteran is otherwise eligible to be placed on community supervision, the court may place a veteran defendant who is otherwise eligible for community supervision into a treatment program for the length of the sentence if the veteran agrees to participate. Veterans who participate in a residential treatment program would receive sentence credits for the time actually spent in the program if they are later incarcerated as a result of a violation of supervision.

The court is required to give preference to established treatment programs that have a history of successfully treating combat veterans with a history of PTSD, substance abuse, or psychological problems resulting from their service.

This bill creates section 921.00242 of the Florida Statutes:

II. Present Situation:

The Department of Corrections does not have statistics of how many of the 152,000 offenders on community supervision are military veterans. However, it reports that 6,864 state prison inmates (approximately 6.7% of the total prison population) identified themselves as a military veteran as

of December 20, 2010. This claim of veteran status was verified for 1,273 of these inmates by submission of a Certificate of Release or Discharge from Active Duty (Department of Defense Form 214). The types of offenses for which these veterans are incarcerated are reflected in the following table:[1]

Primary Offense	Claimed Veteran Status	%	Verified Veteran Status	%
Murder/Manslaughter	1,079	15.7%	353	27.7%
Sexual/Lewd Behavior	1,773	25.8%	501	39.4%
Robbery	593	8.6%	97	7.6%
Aggravated Battery/ Assault, Kidnapping, Other Violent Crimes	747	10.9%	84	6.6%
Burglary	677	9.9%	98	7.7%
Property Theft/Fraud/Damage	579	8.4%	36	2.8%
Drugs	860	12.5%	62	4.9%
Weapons	165	2.4%	17	1.3%
Other	391	5.7%	25	2.0%
Total	**6,864**		**1,273**	

The table indicates that a majority of veteran inmates in Florida are incarcerated for violent crimes and a lesser number for property and drug offenses. This is in contrast to the findings of the American Bar Association's Commission on Homelessness and Poverty (ABA), which cited national statistics that 70 percent of incarcerated veterans are in jail for non-violent offenses.[2] However, the ABA statistic apparently relates to veterans in local jails. There is no comprehensive data on the number of veterans among the approximately 59,000 persons either serving sentences or awaiting trial or hearing in county jails throughout Florida.

One Florida county judge who regularly deals with veterans has observed that the most frequent offenses committed by veterans are trespass, possession of an open container, obstructing traffic, possession of marijuana, loitering, worthless checks, disorderly conduct, domestic violence, resisting an officer and petit theft.[3] A detailed report of veterans' involvement in the criminal judicial system in Travis County, Texas, reflects that the majority of misdemeanor charges against veterans were for non-violent offenses, while the majority of felony charges were for violent offenses.[4]

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[1] Department of Corrections Analysis of House Bill 17 – Military Veterans Convicted of Criminal Offenses, December 21, 2010, p. 1.

[2] ABA Commission on Homelessness and Poverty, Resolution 105A, February 10, 2010 at http://www.americanbar.org/content/dam/aba/migrated/homeless/PublicDocuments/ABA_Policy_on_Vets_Treatment_Courts_FINAL.authcheckdam.pdf, last viewed on February 17, 2011. The ABA report indicates that the statistics come from a 2002 report by the Department of Justice Bureau of Justice Statistics, but staff could not locate the underlying report.

[3] Email from Okaloosa County Judge Pat Maney to legislative staff dated February 11, 2011.

[4] *Report of Veterans Arrested and Booked Into the Travis County Jail, July 2009,* http://www.nadcp.org/sites/default/files/nadcp/Texas%20Veterans%20Justice%20Research.pdf, last viewed on February 17, 2011.

In 2008, the Florida Department of Veterans' Affairs and the Florida Office of Drug Control issued a paper examining the issue of mental health and substance abuse needs of returning veterans and their families.[5] The study noted that combat medical advances are enabling veterans of Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) to survive wounds that would have been fatal in previous conflicts, and thus some are returning with "more complex physical and emotional disorders, such as Traumatic Brain Injuries and Post-Traumatic Stress Disorder, substance abuse and depression."[6] The study also estimated at that time that approximately 29,000 returning veterans residing in Florida may suffer from PTSD or some form of major depression.[7]

A Rand Center report in 2008 indicated that preliminary studies showed that 5 to 15 percent of OIF and OEF service members are returning with PTSD, 2 to 10 percent with depression, and an unknown number with Traumatic Brain Injury (TBI).[8] A person with any of these disorders also has a greater likelihood of experiencing other psychiatric diagnoses than do other persons.[9]

A report by the Center for Mental Health Services National GAINS Center of the federal Substance Abuse and Mental Health Services Administration (SAMHSA) noted that many veterans coming into contact with the criminal justice system may have unmet treatment needs.[10] Veterans courts have arisen across the country as some judges have begun to recognize a correlation among veterans appearing before them between the commission of offenses, substance abuse issues, mental health issues, and cognitive functioning problems. The judges concluded that in many cases, inadequate ability to deal with these conditions on their own contributed to the veterans' encounters with the legal system.

Typically, veterans' courts are patterned after successful specialty courts such as drug courts and mental health courts, and have the goal of identifying veterans who would benefit from a treatment program instead of incarceration or other sanctions. Since 2008, legislation authorizing the establishment of veterans' courts has been adopted or at least considered in California, Colorado, Texas, Nevada, Illinois, Connecticut, New Mexico, New York, Minnesota, and Oklahoma.[11] The National Association of Drug Court Professionals website indicates that there are veterans' courts in 47 cities or counties nationwide.[12]

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[5] Florida Department of Veterans' Affairs and Florida Office of Drug Control Green Paper, *Returning Veterans and Their Families with Substance Abuse and Mental Health Needs: Florida's Action Plan*, January 2009, page 5.
[6] Ibid, p. 5.
[7] Ibid, p. 5.
[8] Rand Center for Military Health Policy Research, Benjamin R. Karney, Rajeev Ramchand, Karen Chan Osilla, Leah B. Caldarone, and Rachel M. Burns, *Invisible Wounds, Predicting the Immediate and Long-Term Consequences of Mental Health Problems in Veterans of Operation Enduring Freedom and Operation Iraqi Freedom,* April 2008, page xxi.
[9] Ibid, p. 127.
[10] GAINS Center, *Responding to the Needs of Justice-Involved Combat Veterans with Service-Related Trauma and Mental Health Conditions*, August 2008, page 6, at www.gainscenter.samhsa.gov/pdfs/veterans/CVTJS_Report.pdf last viewed on 17 February 2011. The observation was based upon information provided by the VA.
[11] Interim Report 2011-131, Veterans' Courts, Florida Senate Committee on Military Affairs and Domestic Security, October 2011, p. 1. In addition, much of the information in this portion of the analysis is derived from the Interim Report.
[12] National Association of Drug Court Professionals website at http://www.nadcp.org/JusticeForVets , last viewed on February 17, 2011.

One advantage that veterans' courts have over drug and mental health courts is that the majority of veterans who have committed criminal offenses are likely eligible for treatment services provided and funded by the United States Department of Veterans Affairs (VA). The previously-cited ABA study indicates that 82 percent of veterans in jail nationwide are eligible for services from the VA based on the character of their discharge.[13]

Florida has experience with drug courts and mental health courts. Section 397.334, F.S., authorizes the establishment of drug courts that divert eligible persons to county-funded treatment programs in lieu of adjudication. The Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program in s. 394.658, F.S., calls for award of a 1-year planning grant and a 3-year implementation or expansion grant to identify and treat individuals who have mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders who are in or at risk of entering the criminal or juvenile justice systems.

Veterans Courts in Florida: There are several veterans' court and veterans' jail diversion initiatives around the state. Okaloosa County has begun referring veterans' cases to a court docket with special knowledge of veterans and veterans' issues. This has been possible through the cooperation of the local State's Attorney's Office, the court, and local treatment professionals. To determine eligibility, offenders are asked at initial booking if they have ever served in the military and what type of discharge they received. Veterans are further asked if they will sign a release in order to share information with the VA. Further screening is conducted through the Pre-Trial Services Office, and the program uses drug court case managers to monitor participants. Access to VA treatment facilities is being sought for eligible veterans in the program.

As noted previously, the bulk of Okaloosa County veterans' cases involve substance abuse, related domestic violence, and some theft related cases including worthless check charges that may be related to lost cognitive ability to do math. Successful completion of the program is defined as completion of a treatment program and avoiding additional legal problems.

Palm Beach County has established a veterans' court that began operating in December 2010. A feature of the program is assignment of a VA social worker supervisor to act as the court's VA liaison. This VA employee has oversight of screening and case management services for eligible veterans. In addition to receiving any needed mental health and substance abuse treatment, participating veterans also have access to VA programs that address homelessness and unemployment. This is compatible with the VA's national Veteran's Justice Outreach Initiative that will assign staff and trained volunteer resources to facilitate veterans' court programs.[14]

In October 2009, the Department of Children and Families Mental Health Program Office was awarded over $1.8 million from SAMHSA over the next five years to provide services and support for Florida's returning veterans who served in Iraq and Afghanistan and who suffer with Post-Traumatic Stress Disorder and other behavioral health disorders. The department describes the grant and the project as follows:

[13] ABA Commission on Homelessness and Poverty, Resolution 105A, at February 10, 201, p. 4.
[14] The Veteran's Justice Outreach Initiative website is http://www.va.gov/HOMELESS/VJO.asp , last viewed on February 17, 2011.

The project will redesign the state's response to the needs of veterans and their family members by helping returning veterans learn to cope with the trauma of war and the adjustments of coming home and avoiding unnecessary involvement with the criminal justice system. Florida's project is based on a foundation of evidence-based screening, assessment, treatment and recovery practices. The grant will enable the Department to implement two veteran's jail diversion pilot projects for 240 veterans over the next five years. This grant will expand the Department's existing jail diversion programs by identifying veterans who have an initial contact with the criminal justice system, helping them enroll in Veteran's Administration benefits for those who are eligible, providing trauma-related treatment services, linking them with support services in their community, and providing specialized peer support services. Additionally, this grant enables the Department to include family members as recipients of services. One unique aspect of this grant is Florida's creation and implementation of a new state-level Veteran Peer Support Specialist credential, possible through the Department's ongoing partnership with the Florida Certification Board. Certification of trained veterans will professionalize what we know works - trained veterans who've been there helping other returning veterans adjust to their home and community. In the first year, the grant from the federal Substance Abuse and Mental Health Services Administration (SAMHSA) will provide DCF with $268,849. Hillsborough County is one of two sites that will launch Florida's Jail Diversion and Trauma Recovery Program. The location of the other pilot project has not yet been determined.[15]

III. Effect of Proposed Changes:

The bill requires a sentencing court to hold a special pre-sentencing hearing for a convicted veteran when: (1) the defendant is facing incarceration in county jail or state prison; and (2) the defendant alleges that he or she committed the offense because of PTSD, substance abuse, or psychological problems stemming from service with the United States military in a combat theater. If these prerequisites are met, the court must hold a hearing to: (1) determine whether the defendant was a member of the United States military who served in combat; and (2) assess whether the defendant suffers from PTSD, substance abuse, or psychological problems as a result of that service.

If the court verifies the defendant's claim and the defendant is eligible for probation or community control, the court can place the defendant on probation or community control. As a condition of community supervision, the court can order the defendant to participate in a local, state, federal, or private non-profit treatment program, for a period that is no more than the length of time which they would have been incarcerated. In order for the court to exercise this option, the defendant must agree to participate and the court must determine that there is an appropriate treatment program. The court is required to give preference to a treatment program that has had success in treating veterans who suffer from PTSD, substance abuse problems, or psychological problems relating to their military service.

[15] Florida Department of Children and Families' description of the Veterans Jail Diversion Grant at http://www.dcf.state.fl.us/programs/samh/mentalhealth/consumerfamilyaffairs/currinitiatives.shtml , last viewed on February 17, 2011.

A veteran who is ordered into a residential treatment program as a result of the hearing will earn sentence credits for the time he or she actually serves in the treatment program. These credits would be applied to reduce any remaining sentence in the event that the veteran is committed to jail or prison as a result of violating the terms of community supervision. Under current law, an offender cannot receive credit against prison sentence for any time served in a treatment or rehabilitation program prior to a violation of community supervision. *See State v. Cregan*, 908 So.2d 387 (Fla. 2005).

Current law allows a court to require an offender to participate in treatment as a special condition of probation or community control. However, the bill expands upon current law by: (1) focusing attention on the offender's veteran status by requiring the court to hold a hearing to consider the offender's veteran status and condition; (2) providing for sentencing credit for time that the offender who is a veteran spends in an inpatient treatment program; and (3) requiring the court to give preference to placing the offender who is a veteran into a treatment program that has a history of dealing with veterans' issues.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill would have an impact on the private sector to the extent that participants are diverted from incarceration into private treatment programs.

C. Government Sector Impact:

This bill has not been considered by the Criminal Justice Estimating Conference. However, it appears that it could result in some savings since it is would divert defendants from incarceration to community-based treatment programs. Additionally, it is anticipated that much of the programming for diverted defendants could be provided by the VA.

VI. Technical Deficiencies:

In new s. 921.00242(a), F.S., (lines 27 through 37), the veteran must claim that he or she performed military service in a combat theater but requires the court to determine whether the defendant served in combat. These are not equivalent terms and there is therefore some ambiguity as to what type of service is required.

Also in s. 921.00242(a), F.S., eligible persons include those who are "convicted of a criminal offense." This would require that the individual be adjudicated guilty and would not include those for whom adjudication is withheld.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 344
INTRODUCER:	Senator Rich
SUBJECT:	Sexual Activities Involving Animals
DATE:	February 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Pre-meeting**
2.			AG	
3.			JU	
4.				
5.				
6.				

I. Summary:

The bill creates a new section of law which prohibits, as a first degree misdemeanor, sexual conduct, or contact for the purpose of sexual gratification, with animals, and other acts related to the prohibited behavior. The bill provides a way for law enforcement and prosecutors to more accurately charge and prosecute the deviant behaviors described therein.

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

This bill creates section 828.126 of the Florida Statutes.

II. Present Situation:

Despite the efforts of prosecutors in the State of Florida, persons who are actually caught in the act of sexual intercourse with an animal cannot generally be charged with or convicted of a sex-related crime. There have been several reported incidents of the abuse of animals in this particular way.

Reported incidents in Florida include:

- In Leon County, in 2005, a man was convicted of a misdemeanor disorderly conduct charge for sexually battering his own Guide Dog.
- In April of 2004 a Marion County man pled no contest to animal cruelty after his fiancé caught him sexually battering her 1-year old female dog. The dog was physically injured in

the process. The Sheriff's Office reports indicated that the man told deputies that this type of behavior had been a "life-long problem." (Ocala Star Banner, April 15, 2004)

- A West Palm Beach man was caught sexually battering a neighbor's dog in January of 2004. The dog was alleged to have been yelping in pain. The man was charged with animal cruelty and indecent exposure. The perpetrator is a registered sex offender.
- A family's pregnant goat was sexually battered and asphyxiated in January of 2008 in a small panhandle town. Although there was a suspect in the case, prosecutors were unable to charge him in the mistreatment and death of the goat because DNA tests were inconclusive. (Miami Herald, January 4, 2008)
- Martin County Sheriff's deputies were called to investigate an animal in distress and found a man sexually battering a four-month old puppy. Reports indicate that when the deputy approached the man, she saw him in the act as the puppy whined and tried to break free.

Since there are no sex crime statutes in existence in Florida that would seem to apply in cases like those mentioned above, law enforcement officers and prosecutors must charge defendants with far less serious crimes like disorderly conduct, or crimes like indecent exposure, that don't seem to tell the "whole story." Also, because of the elements of animal cruelty offenses these acts and behaviors cannot always be prosecuted as such. There must be evidence of injury or evidence of excessive or repeated infliction of pain to the animal in order to prove felony animal cruelty.[1]

In other states, situations like those set forth above have resulted in the passage of laws designed to more accurately capture the particularized crimes within the criminal law. Georgia, Louisiana, Mississippi, North Carolina, Virginia, Oklahoma, and South Carolina are among the states in the southeast that currently have felony bestiality statutes.

III. Effect of Proposed Changes:

The bill creates a misdemeanor offense for knowingly engaging in sexual conduct or sexual contact with an animal, as defined in the newly created section of law. It also prohibits aiding or abetting another in committing those acts, in permitting such acts to be conducted, and in organizing, promoting, or performing acts in furtherance of such acts.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[1] Section 828.12, F.S., subsection (2) is the felony animal cruelty statute. It states: "A person who intentionally commits an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or by a fine of not more than $10,000, or both."

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 144
INTRODUCER:	Senator Smith
SUBJECT:	Elderly Inmates
DATE:	February 17, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Pre-meeting**
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill creates the Elderly Rehabilitated Inmate Program to provide a means for the release of inmates who are at least 50 years old and who have demonstrated that they have been rehabilitated while incarcerated for at least 25 years and have met certain other criteria. The program would be administered by the Florida Parole Commission. The bill also requires the Department of Corrections (DOC) to develop a pilot program based upon restorative justice that includes classes on the effect of crime on crime victims.

This bill amends s. 947.141 and creates sections 947.148 and 947.1481 of the Florida Statutes.

II. Present Situation:

Elderly Inmates

Florida considers an inmate who is 50 years old or older to be "aging or elderly."[1] The age when an inmate is considered to be elderly is far lower than in the general population because of generally poorer health. This may be due to life experiences before and during incarceration that contribute to lower life expectancy.[2] Section 944.804, F.S., (the Elderly Offenders' Correctional Facilities Program of 2000), reflected the Legislature's concern that the population of elderly inmates was increasing then and would continue to increase. Because on average it costs approximately three times more to incarcerate an elderly offender as it does to incarcerate a younger inmate, the statute required exploration of alternatives to the current approaches to

[1] Chapter 33-601.217, Florida Administrative Code.
[2] State of Florida Correctional Medical Authority 2008-2009 Annual Report, p. 51.

housing, programming, and treating the medical needs of elderly offenders.[3] There were no specific geriatric facilities at the time the law was passed, but the new statute specifically required the department to establish River Junction Correctional Institution (RJCI) as a geriatric facility and to establish rules for which offenders are eligible to be housed there.

The elderly population has continued to increase since RJCI was opened as a geriatric facility. On June 30, 2010, 16,386 inmates in the department's custody fit into the elderly or aging classification. This represents approximately 16 percent of the entire inmate population.[4]

Section 944.8041, F.S, requires the department and the Correctional Medical Authority to each submit an annual report on the status and treatment of elderly offenders in the state-administered and private state correctional systems, as well as specific information on RJCI. The report must also include an examination of promising geriatric policies, practices, and programs currently implemented in other correctional systems within the United States.

Parole

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission. Eligibility for parole has been abolished in Florida, but approximately 5500 inmates are still eligible for parole consideration.[5] These are inmates who:

- Committed an offense other than capital felony murder or capital felony sexual battery prior to October 1, 1983;
- Committed capital felony murder prior to May 25, 1994; or
- Committed capital felony sexual battery prior to October 1, 1995.

An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Parolees are supervised by Department of Corrections' (department) probation officers. As of November 30, 2010, 365 offenders were actively supervised on parole from Florida sentences.[6]

Conditional Medical Release

Section 947.149, F.S., provides for conditional medical release of inmates who are "permanently incapacitated" or "terminally ill." If an inmate's health deteriorates to the point that conditional medical release might be appropriate, the department's institutional health service staff reviews the case and provides medical information to the commission for consideration of release. If the inmate is granted conditional medical release and his or her medical condition improves, or if he/she violates the conditions of the release, the inmate can be returned to prison to resume service of the original sentence. If return is due to improved health, there is no penalty for having been on the program.

[3] Section 944.804(1), F.S.
[4] Department of Corrections Analysis of Senate Bill 144, p. 1.
[5] Florida Parole Commission Analysis of Senate Bill 160, March 3, 2010, page 2.
[6] Community Supervision Population Monthly Status Report, December 2009, Florida Department of Corrections, p. 3.

III. Effect of Proposed Changes:

The bill creates the Elderly Rehabilitated Inmate Supervision Program. Basic eligibility requirements for the program would be that the inmate:

(1) is at least 50 years of age;
(2) has served at least 25 consecutive years of incarceration;
(3) has not been sentenced for a capital felony;
(4) is not eligible for parole or conditional medical release;
(5) is not serving a minimum mandatory sentence; and
(6) has not received a disciplinary report within the previous 6 months.

Assuming that the bill applies retroactively to inmates who are already in prison, DOC identified 91 inmates who will meet the eligibility criteria over the next 5 years. As indicated by the table below, most of the inmates are incarcerated for a violent offense.[7]

Primary Offense	Number
Murder	14
Kidnapping	5
Sexual Battery	15
Robbery/Robbery with Deadly Weapon	40
Aggravated Battery	3
Burglary (Armed and Assaults included)	11
Drugs, including Trafficking	2
Possession of Firearm by Felon	1
Total	**91**

An inmate who meets the basic eligibility requirements can petition the commission one time to participate in supervised release under the program. The petition must include:

(1) A proposed release plan;
(2) Documentation of the inmate's relevant medical history, including current prognosis;
(3) The inmate's prison experience and criminal history. The criminal history must include any claim of innocence, the degree to which the inmate accepts responsibility for his or her acts leading to the conviction of the crime, and how the claim of responsibility has affected the inmate's feelings of remorse;
(4) Documentation of the inmate's history of substance abuse and mental health;
(5) Documentation of any disciplinary action taken against the inmate while in prison;
(6) Documentation of the inmate's participation in prison work and programs; and
(7) Documentation of the inmate's renunciation of gang activity.

Consideration of the Petition

The procedure for considering the inmate's petition to participate in the program is similar to the process used to consider an application for parole. The commission must notify the victim, a lawful representative of the victim, or the victim's next of kin if the victim is deceased within 30

[7] Department of Corrections Analysis of Senate Bill 144, p. 6. The data reflects the inmate population as of January 21, 2011.

days of receipt of the petition. An examiner must meet with the inmate within 90 days after the petition is filed. This meeting may be postponed for up to 90 days from the originally scheduled date for good cause. At the meeting, the examiner explains the program to the inmate and reviews the information contained in the petition. Within 10 days, the examiner must make a written recommendation of a release date to a panel of at least two commissioners.

The commission's decision as to whether to grant or deny supervised release must be made at a meeting that is open to the public. The victim, the victim's parents or guardian if the victim was a minor, a lawful representative of the victim (or of the parents or guardian if the victim was a minor), or a homicide victim's next of kin may make an oral or written statement regarding his or her views on granting or denying the petition.[8] If the chairman of the commission approves, these persons and any other person who is not a member or employee of the commission can participate in the deliberations as to whether the petition is granted. One of the persons who is authorized to receive notice of filing of the petition must be given at least 30 days notice in advance of the meeting, and must be notified of the commission's decision within 30 days from when it is made.

In making its determination as to whether the inmate will be allowed to participate in the program, the commission must review and consider the inmate's:

- Entire criminal history and record;
- Complete medical history including substance abuse and mental health history, and current medical prognosis;
- Prison disciplinary record;
- Work record;
- Program participation;
- Gang affiliation, if any; and
- Responsibility for the acts leading to the conviction, including any prior and continued statements of innocence and the inmate's feelings of remorse.

As is the case with parole, an inmate cannot be placed in the program solely as a reward for good conduct or efficient performance of assigned duties. The commission must find that there is a reasonable probability that the inmate would live and conduct himself or herself as a respectable and law-abiding person. It also must find that release would be compatible with the inmate's own welfare and the welfare of society. The inmate must demonstrate:

- Successful participation in programs designed to restore him or her as a useful and productive person in the community upon release;
- Genuine reform and changed behavior over a period of years;
- Remorse for actions that have caused pain or suffering to his or her victims;
- A renunciation of criminal activity and gang affiliation if the inmate was a member of a gang.

[8] It is not clear why the bill limits the right to make a statement to the next of kin of a homicide victim rather than the next of kin of a deceased victim, as is the case for the notification requirements.

If the inmate is approved for release[9], a panel of at least two commissioners must set the terms and conditions of supervision. The length of supervision would be the remaining time of the inmate's sentence, including gain-time credit as determined by the department. A certified copy of these terms and conditions must be provided to the inmate, and the bill provides a process for an inmate to request that the commission review and modify the terms and conditions. Three conditions are required unless the commission finds reasons not to impose them:

- Participation in 10 hours of community service for each year served in prison;
- Electronic monitoring for at least one year; and
- Reparation or restitution to the victim for any damage or loss caused by the offense.

In addition, the commission may impose any special conditions that it considers to be warranted. The bill sets out four specific special conditions that may be considered, although the commission may impose others. The enumerated special conditions require the inmate to:

- Pay any debt due to the state under s. 960.17, F.S. or any attorney's fees and costs owed to the state under s. 938.29, F.S.;
- Not leave the state or a definite area within the state without the commission's consent;
- Not associate with persons engaged in criminal activity; and
- Carry out the instructions of his or her supervising correctional probation officer.

As is the case for all types of community supervision, the released inmate will be supervised by a DOC correctional probation officer. Section 4 of the bill amends s. 947.141, F.S., to include inmates released under the program in the current statutory process for addressing violations of the release conditions. The bill also adds a new subsection that authorizes a law enforcement officer to arrest a program participant without warrant if the officer has reasonable grounds to believe that the releasee has violated the terms and conditions of supervision in a material respect.

Restorative Justice Pilot Program

Section 3 of the bill requires the department to develop a pilot program patterned after the Neighborhood Restorative Justice Centers established under s. 985.155, F.S. This pilot program must be implemented at one maximum security prison for women and two maximum security prisons for men and be available to inmates on a voluntary basis. Inmates who are eligible to participate in the Elderly Rehabilitated Inmate Program must be given priority for participation in the restorative justice programs.[10]

[9] The bill also creates a process for the sentencing court to retain jurisdiction over the offender to review a release order. This retention of jurisdiction is patterned after the retention of jurisdiction language in s. 947.16, F.S., that is applicable to inmates who are eligible for parole consideration. The court may retain jurisdiction for the first third of the sentence, so the retention provisions would only come into consideration for inmates whose sentence exceeds 75 years.

[10] In its analysis of the bill, the department indicates that only 3 institutions house maximum security inmates, who are inmates under a sentence of death. One of these facilities (Florida State Prison) does not have beds that are designated for elderly offenders.

The bill requires that any proposed program or strategy must be developed based upon a finding of need for such program in the community after consulting with the public, judges, law enforcement agencies, state attorneys, and defense attorneys.

The department is authorized to either use its own staff or to contract with other public or private agencies to deliver services related to programs created by the bill. It is also authorized to adopt rules to administer the provisions of the bill.

Effective Date
The bill has an effective date of July 1, 2011.

Other Potential Implications:

Although it is not explicitly stated, it appears that the bill would permit discretionary release of some inmates who would otherwise be required to complete 85 percent of their sentence as required by s. 921.002(e), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None, except to the extent that the Restorative Justice Pilot Program may be administered by a private contractor.

C. Government Sector Impact:

Elderly Rehabilitated Inmate Program
Due to the Parole Commissions' discretion in release decisions, there is no way to predict in advance how many inmates will actually be released to supervision under the program. Because the great majority of the inmates are violent offenders, the percentage of eligible inmates who are actually released may be low. Medical costs for inmates tends to rise

with age, so inmates released under the program may have higher medical costs than the general inmate population.[11]

Assuming that the bill is intended to apply retroactively, the department estimates that 91 inmates will meet the basic eligibility requirements and be considered for possible release over the next 5 years:[12]

FY 2011-2012	27
FY 2012-2013	8
FY 2013-2014	11
FY 2014-2015	19
FT 2015-2016	26
5 Year Total	**91**

Savings from Releases and Costs of Supervision
The department has noted the following with regard to costs of incarceration that are saved by releasing an inmate:

> While the department uses the full per diem of $53.34 for estimating cost avoidance for future inmates, two lesser per diems are used for impacts resulting from relatively small releases. If the projected change to the inmate population is less than a full facility but such that one or more dormitories could be closed, the dorm per diem including security staff of $33.26 is used. If the projected change to the inmate population is small and implementation does not facilitate the closure of at least a dorm, the inmate variable per diem of $14.01 is used. [13]

The department's assessment is that the smaller per diem cost of $14.01 is the most appropriate for estimating the bill's reduction in incarceration costs.

The bill also requires that offenders be on electronic monitoring for at least the first year of release. Supervising an offender who is on electronic monitoring increases the workload for a correctional probation officer. Also, participants in the program are unlikely to have the financial ability to pay the costs of monitoring. The cost of supervision plus electronic monitoring of an average probationer is $13.78 per day. However, in its analysis of the bill the department notes that supervision of inmates released under the program is likely to be particularly labor intensive. Because of their lengthy incarceration, they are less likely to have support from family or friends and will need significant assistance in readjusting to society. Also, they are likely to be in a high risk category that requires close supervision.

[11] However, the department notes that the program excludes inmates who are eligible for conditional medical release and therefore does not target those who are currently the most expensive to care for in the prison population.
[12] Department of Corrections Analysis, p. 6.
[13] Department of Corrections Analysis, p. 9.

Restorative Justice Pilot Program
The department indicates that it would require one additional staff member at each of the 3 institutions that would have a Restorative Justice Pilot Program. The cost of this position for Fiscal Year 2011-2012 is $72,796, and the total cost for 3 positions would be $218,388.

The commission would also have a cost to administer the Elderly Rehabilitated Inmate Program. The amount is dependent upon the number of eligible inmates who petition to participate.

VI. Technical Deficiencies:

The following changes are recommended:

- It appears that the bill is intended to apply retroactively to inmates who are sentenced for offenses that occur before the effective date, but it should be amended to clearly state whether or not it is intended to be applied retroactively.
- Inconsistencies regarding whether the 25 year eligibility period is to be cumulative or consecutive should be resolved.
- Subsections (15) and (16) of Section 2 do not appear to relate to that section and are duplicative of language in Section 3 of the bill and should be deleted.
- The language in subsection (11) of Section 2 should be clarified to remove an ambiguity as to whether the commission can find "reasons to the contrary" not to impose any of the three mandatory conditions, or whether only victim restitution can be excepted from the conditions.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

630324

LEGISLATIVE ACTION

Senate . House

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The Committee on Criminal Justice (Evers) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. The Legislature recognizes the need to provide a means for the release of older inmates who have demonstrated that they have been rehabilitated while incarcerated. It is the intent of the Legislature to address this issue by establishing a conditional extension of the limits of confinement by providing a mechanism for determining eligibility for early release and supervising inmates who have been incarcerated for at least 25 consecutive years and are 60 years of age or older.

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It is the Legislature's intent that the provisions of this bill be applied to include inmates who have previously been sentences as well as those who will be sentenced in the future. The Legislature intends to provide for victim input and the enforcement of penalties for those who fail to comply with supervision while outside a prison facility. The Legislature also intends that a pilot program patterned after the program offered by Neighborhood Restorative Justice Centers be implemented and offered to inmates who are eligible for release under the Elderly Rehabilitated Inmate Supervision Program.

Section 2. Section 947.148, Florida Statutes, is created to read:

947.148 Elderly Rehabilitated Inmate Supervision Program.—

(1) This section may be cited as the "Elderly Rehabilitated Inmate Supervision Program Act."

(2) As used in this section, the term "program" means the Elderly Rehabilitated Inmate Supervision Program unless the context indicates otherwise.

(3) An inmate may petition the commission for supervised release under the program if the inmate:

(a) Is 60 years of age or older;

(b) Has been convicted of a felony and served at least 25 consecutive years of incarceration;

(c) Is not eligible for parole or conditional medical release;

(d) Has not been sentenced for a capital felony;

(e) Is not serving a minimum mandatory sentence; and

(f) Has not received a disciplinary report within the previous 6 months.

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(4) Each petition filed on behalf of an inmate to participate in the program must contain:

(a) A proposed release plan;

(b) Documentation of the inmate's relevant medical history, including current medical prognosis;

(c) The inmate's prison experience and criminal history. The criminal history must include any claim of innocence, the degree to which the inmate accepts responsibility for his or her acts leading to the conviction of the crime, and how the claim of responsibility has affected the inmate's feelings of remorse;

(d) Documentation of the inmate's history of substance abuse and mental health;

(e) Documentation of any disciplinary action taken against the inmate while in prison;

(f) Documentation of the inmate's participation in prison work and programs; and

(g) Documentation of the inmate's renunciation of gang affiliation.

(5) An inmate may not file a new petition within one year of receiving notification of denial of his or her petition to participate in the program. Any petition that is filed prior to the one year period will be returned to the inmate with a notation indicating the date when a petition can be refiled.

(6) All matters relating to the granting, denying, or revoking of an inmate's supervised release in the program shall be decided in a meeting at which the public may be present. A victim of the crime committed by the inmate, a victim's parent or guardian if the victim is a minor, a lawful representative of the victim or of the victim's parent or guardian if the victim

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is a minor, or a homicide victim's next of kin may make an oral statement or submit a written statement regarding his or her views as to the granting, denying, or revoking of supervision. A person who is not a member or employee of the commission, the victim of the crime committed by the inmate, the victim's parent or guardian if the victim is a minor, a lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, or a homicide victim's next of kin may participate in deliberations concerning the granting and revoking of an inmate's supervised release in the program only upon the prior written approval of the chair of the commission. The commission shall notify the victim, the victim's parent or guardian if the victim is a minor, a lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, or the victim's next of kin if the victim is deceased no later than 30 days after the petition is received by the commission, no later than 30 days before the commission's meeting, and no later than 30 days after the commission's decision.

(7) The commission may approve an inmate for participation in the program if the inmate demonstrates:

(a) Successful participation in programs designed to restore the inmate as a useful and productive person in the community upon release;

(b) Genuine reform and changed behavior over a period of years;

(c) Remorse for actions that have caused pain and suffering to the victims of his or her offenses; and

(d) A renunciation of criminal activity and gang affiliation if the inmate was a member of a gang.

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(8) In considering eligibility for participation in the program, the commission shall review the inmate's:

(a) Entire criminal history and record;

(b) Complete medical history, including history of substance abuse, mental health, and current medical prognosis;

(c) Prison disciplinary record;

(d) Work record;

(e) Program participation; and

(f) Gang affiliation, if any.

The commission shall consider the inmate's responsibility for the acts leading to the conviction, including any prior and continued statements of innocence and the inmate's feelings of remorse.

(9)(a) An examiner shall interview the inmate within 90 days after a petition is filed on behalf of the inmate. An interview may be postponed for a period not to exceed 90 days. Such postponement must be for good cause, which includes, but need not be limited to, the need for the commission to obtain a presentence or postsentence investigation report or a violation report. The reason for postponement shall be noted in writing and included in the official record. A postponement for good cause may not result in an interview being conducted later than 90 days after the inmate's initial scheduled interview.

(b) During the interview, the examiner shall explain the program to the inmate and review the inmate's institutional conduct record, criminal history, medical history, work records, program participation, gang affiliation, and satisfactory release plan for supervision under the program.

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(c) Within 10 days after the interview, the examiner shall recommend in writing to a panel of no fewer than two commissioners appointed by the chair a release date for the inmate. The commissioners are not bound by the examiner's recommended release date.

(10) An inmate may not be placed in the program merely as a reward for good conduct or efficient performance of duties assigned in prison. An inmate may not be placed in the program unless the commission finds that there is reasonable probability that, if the inmate is placed in the program, he or she will live and conduct himself or herself as a respectable and law-abiding person and that the inmate's release will be compatible with his or her own welfare and the welfare of society.

(11) When the commission has accepted the petition, approved the proposed release plan, and determined that the inmate is eligible for the program, a panel of no fewer than two commissioners shall establish the terms and conditions of the supervision. When granting supervised release under the program, the commission shall require the inmate to participate in 10 hours of community service for each year served in prison, require that the inmate be subject to electronic monitoring for at least 1 year, and require that reparation or restitution be paid to the victim for the damage or loss caused by the offense for which the inmate was imprisoned. The commission may elect not to impose any or all of the conditions if it finds reasons that it should not do so. If the commission does not order restitution or orders only partial restitution, the commission must state on the record the reasons for its decision. The amount of such reparation or restitution shall be determined by

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the commission.

(12) The commission may impose any special conditions it considers warranted from its review of the release plan and inmate's record, including, but not limited to, a requirement that the inmate:

(a) Pay any debt due and owing to the state under s. 960.17 or pay attorney's fees and costs that are owed to the state under s. 938.29;

(b) Not leave the state or any definite physical area within the state without the consent of the commission;

(c) Not associate with persons engaged in criminal activity; and

(d) Carry out the instructions of her or his supervising correctional probation officer.

(13)(a) An inmate may request a review of the terms and conditions of his or her supervised release under the program. A panel of at least two commissioners appointed by the chair shall consider the inmate's request, render a written decision and the reasons for the decision to continue or to modify the terms and conditions of the program supervision, and inform the inmate of the decision in writing within 30 days after the date of receipt of the request for review. During any period of review of the terms and conditions of supervision, the inmate shall be subject to the authorized terms and conditions of supervision until such time that a decision is made to continue or modify the terms and conditions of supervision.

(b) The length of supervision shall be the remaining amount of time the inmate has yet to serve, including calculations for gain-time credit, as determined by the department.

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(c) An inmate's participation in the program is voluntary, and the inmate must agree to abide by all conditions of release. The commission, upon authorizing a supervision release date, shall specify in writing the terms and conditions of the program supervision and provide a certified copy of these terms and conditions to the inmate.

(14)(a) At the time of sentencing, the trial court judge may enter an order retaining jurisdiction over the offender for review of a release order by the commission under this section. This jurisdiction of the trial court judge is limited to the first one-third of the maximum sentence imposed. When a person is convicted of two or more felonies and concurrent sentences are imposed, the jurisdiction of the trial court applies to the first one-third of the maximum sentence imposed for the highest felony of which the person was convicted. When any person is convicted of two or more felonies and consecutive sentences are imposed, the jurisdiction of the trial court judge applies to one-third of the total consecutive sentences imposed.

(b) In retaining jurisdiction for purposes of this subsection, the trial court must state the justification with individual particularity, and such justification shall be made a part of the court record. A copy of the justification and the uniform commitment form issued by the court pursuant to s. 944.17 shall be delivered together to the department.

(c) Gain-time as provided for by law shall accrue, except that an offender over whom the trial court has retained jurisdiction as provided in this subsection may not be released during the first one-third of her or his sentence by reason of gain-time.

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(d) In such a case of retained jurisdiction, the commission, within 30 days after the entry of its release order, shall send notice of its release order to the original sentencing judge and to the appropriate state attorney. The release order shall be made contingent upon entry of an order by the appropriate circuit judge relinquishing jurisdiction as provided for in paragraph (e). If the original sentencing judge is no longer in service, such notice shall be sent to the chief judge of the circuit in which the offender was sentenced. The chief judge may designate any circuit judge within the circuit to act in the place of the original sentencing judge.

(e) The original sentencing judge or her or his replacement shall notify the commission within 10 days after receipt of the notice provided for in paragraph (d) as to whether the court desires to retain jurisdiction. If the original sentencing judge or her or his replacement does not so notify the commission within the 10-day period or notifies the commission that the court does not desire to retain jurisdiction, the commission may dispose of the matter as it sees fit.

(f) Upon receipt of notice of intent to retain jurisdiction from the original sentencing judge or her or his replacement, the commission shall, within 10 days, forward to the court its release order, the examiner’s report and recommendation, and all supporting information upon which its release order was based.

(g) Within 30 days after receipt of the items listed in paragraph (f), the original sentencing judge or her or his replacement shall review the order, findings, and evidence. If the judge finds that the order of the commission is not based on competent, substantial evidence or that participation in the

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program is not in the best interest of the community or the inmate, the court may vacate the release order. The judge or her or his replacement shall notify the commission of the decision of the court, and, if the release order is vacated, such notification must contain the evidence relied on and the reasons for denial. A copy of the notice shall be sent to the inmate.

(15) A correctional probation officer as defined in s. 943.10 shall supervise the inmate released under this program.

(16) The department and commission shall adopt rules to administer this section.

Section 3. Section 947.1481, Florida Statutes, is created to read:

947.1481 Restorative Justice Pilot Program.—

(1) As used in this section, the term "pilot program" means the Restorative Justice Pilot Program.

(2) The department shall develop the pilot program that is patterned after the program offered by the Neighborhood Restorative Justice Centers established under s. 985.155. The pilot program shall be implemented at one prison for women and at two prisons for men. The portion of the pilot program which include classes on the effect that crime has on victims shall be made available on a voluntary basis. Inmates who are eligible to participate in the Elderly Rehabilitated Inmate Supervision Program shall be given priority for participation in the pilot program.

(3) The pilot program created under this section shall be developed after identifying a need in the community for the pilot program through consultation with representatives of the public, members of the judiciary, law enforcement agencies,

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state attorneys, and defense attorneys.

(4) The department may provide departmental staff to conduct the pilot program or may contract with other public or private agencies for the delivery of services related to the pilot program.

(5) The department shall adopt rules to administer this section.

Section 4. Section 947.141, Florida Statutes, is amended to read:

947.141 Violations of conditional release, control release, ~~or~~ conditional medical release, ~~or~~ addiction-recovery supervision, or elderly rehabilitated inmate supervision.—

(1) If a member of the commission or a duly authorized representative of the commission has reasonable grounds to believe that an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731 has violated the terms and conditions of the release in a material respect, such member or representative may cause a warrant to be issued for the arrest of the releasee; if the offender was found to be a sexual predator, the warrant must be issued.

(2) Upon the arrest on a felony charge of an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731, the offender must be detained without bond until the initial appearance of the offender at which a judicial determination of probable cause is made. If the trial court judge determines that there was no probable cause for the arrest, the offender may be released. If the trial court judge determines that there was probable cause for the arrest, such determination also constitutes reasonable

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grounds to believe that the offender violated the conditions of the release. Within 24 hours after the trial court judge's finding of probable cause, the detention facility administrator or designee shall notify the commission and the department of the finding and transmit to each a facsimile copy of the probable cause affidavit or the sworn offense report upon which the trial court judge's probable cause determination is based. The offender must continue to be detained without bond for a period not exceeding 72 hours excluding weekends and holidays after the date of the probable cause determination, pending a decision by the commission whether to issue a warrant charging the offender with violation of the conditions of release. Upon the issuance of the commission's warrant, the offender must continue to be held in custody pending a revocation hearing held in accordance with this section.

(3) Within 45 days after notice to the Parole Commission of the arrest of a releasee charged with a violation of the terms and conditions of conditional release, control release, conditional medical release, ~~or~~ addiction-recovery supervision, or elderly rehabilitated inmate supervision, the releasee must be afforded a hearing conducted by a commissioner or a duly authorized representative thereof. If the releasee elects to proceed with a hearing, the releasee must be informed orally and in writing of the following:

(a) The alleged violation with which the releasee is charged.

(b) The releasee's right to be represented by counsel.

(c) The releasee's right to be heard in person.

(d) The releasee's right to secure, present, and compel the


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attendance of witnesses relevant to the proceeding.

(e) The releasee's right to produce documents on the releasee's own behalf.

(f) The releasee's right of access to all evidence used against the releasee and to confront and cross-examine adverse witnesses.

(g) The releasee's right to waive the hearing.

(4) Within a reasonable time following the hearing, the commissioner or the commissioner's duly authorized representative who conducted the hearing shall make findings of fact in regard to the alleged violation. A panel of no fewer than two commissioners shall enter an order determining whether the charge of violation of conditional release, control release, conditional medical release, ~~or~~ addiction-recovery supervision, or elderly rehabilitated inmate supervision has been sustained based upon the findings of fact presented by the hearing commissioner or authorized representative. By such order, the panel may revoke conditional release, control release, conditional medical release, ~~or~~ addiction-recovery supervision, or elderly rehabilitated inmate supervision and thereby return the releasee to prison to serve the sentence imposed, reinstate the original order granting the release, or enter such other order as it considers proper. Effective for inmates whose offenses were committed on or after July 1, 1995, the panel may order the placement of a releasee, upon a finding of violation pursuant to this subsection, into a local detention facility as a condition of supervision.

(5) Effective for inmates whose offenses were committed on or after July 1, 1995, notwithstanding the provisions of ss.

775.08, former 921.001, 921.002, 921.187, 921.188, 944.02, and 951.23, or any other law to the contrary, by such order as provided in subsection (4), the panel, upon a finding of guilt, may, as a condition of continued supervision, place the releasee in a local detention facility for a period of incarceration not to exceed 22 months. Prior to the expiration of the term of incarceration, or upon recommendation of the chief correctional officer of that county, the commission shall cause inquiry into the inmate's release plan and custody status in the detention facility and consider whether to restore the inmate to supervision, modify the conditions of supervision, or enter an order of revocation, thereby causing the return of the inmate to prison to serve the sentence imposed. The provisions of this section do not prohibit the panel from entering such other order or conducting any investigation that it deems proper. The commission may only place a person in a local detention facility pursuant to this section if there is a contractual agreement between the chief correctional officer of that county and the Department of Corrections. The agreement must provide for a per diem reimbursement for each person placed under this section, which is payable by the Department of Corrections for the duration of the offender's placement in the facility. This section does not limit the commission's ability to place a person in a local detention facility for less than 1 year.

(6) Whenever a conditional release, control release, conditional medical release, ~~or~~ addiction-recovery supervision, or elderly rehabilitated inmate supervision is revoked by a panel of no fewer than two commissioners and the releasee is ordered to be returned to prison, the releasee, by reason of the

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misconduct, shall be deemed to have forfeited all gain-time or commutation of time for good conduct, as provided for by law, earned up to the date of release. However, if a conditional medical release is revoked due to the improved medical or physical condition of the releasee, the releasee shall not forfeit gain-time accrued before the date of conditional medical release. This subsection does not deprive the prisoner of the right to gain-time or commutation of time for good conduct, as provided by law, from the date of return to prison.

(7) If a law enforcement officer has probable cause to believe that an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731 has violated the terms and conditions of his or her release by committing a felony offense, the officer shall arrest the offender without a warrant, and a warrant need not be issued in the case.

(8) When a law enforcement officer or a correctional probation officer has reasonable grounds to believe that an offender who is supervised under the Elderly Rehabilitated Inmate Supervision Program has violated the terms and conditions of her or his supervision in a material respect, the officer may arrest the offender without warrant and bring her or him before one or more commissioners or a duly authorized representative of the commission. Proceedings shall take place when a warrant has been issued by a member of the commission or a duly authorized representative of the commission.

Section 5. This act shall take effect July 1, 2011.

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

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And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to elderly inmates; providing legislative intent; creating s. 947.148, F.S.; providing a short title; creating the Elderly Rehabilitated Inmate Supervision Program to authorize the Parole Commission to approve the early release of certain elderly inmates; providing eligibility requirements for an inmate to participate in the program; requiring that the petition to participate in the program include certain documents; authorizing members of the public to be present at meetings of the commission held to determine an inmate's eligibility for the program; authorizing a victim to make an oral statement or provide a written statement regarding the granting, denying, or revoking of an inmate's supervised release under the program; requiring that the commission notify the victim or the victim's family within a specified period regarding the filing of a petition, the date of the commission's meeting, and the commission's decision; authorizing the commission to approve an inmate's participation in the program under certain conditions; providing eligibility requirements that the commission must review; requiring an examiner to interview within a specified time an inmate who has filed a petition for supervised release under the program; authorizing the

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postponement of the interview; requiring the examiner to explain and review certain criteria during the interview; requiring that the examiner recommend a release date for the inmate; providing certain conditions under which an inmate may not be released; requiring a panel of commissioners to establish terms and conditions of the supervised release under certain circumstances; requiring that the inmate participate in community service, submit to electronic monitoring, and provide restitution to victims as a condition for participating in the program; authorizing the commission to impose special conditions of supervision; authorizing the inmate to request a review of the terms and conditions of his or her program supervision; requiring a panel of commissioners to render a decision within a specified period regarding a request to modify or continue the supervised release; providing that participation in the program is voluntary; requiring the commission to specify in writing the terms and conditions of supervision and provide a certified copy to the inmate; authorizing the trial court judge to enter an order to retain jurisdiction over the offender; providing a limitation of the trial court's jurisdiction; providing for gain-time to accrue; providing procedures if the trial court retains jurisdiction of the inmate; requiring a correctional probation officer to supervise an inmate who is released under the program; authorizing the Department

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of Corrections to conduct the program using departmental employees or private agencies; requiring the department and commission to adopt rules; creating s. 947.1481, F.S.; creating the Restorative Justice Pilot Program; requiring the Department of Corrections to develop a pilot program patterned after the juvenile justice program offered by Neighborhood Restorative Justice Centers; requiring that inmates who are eligible to participate in the Elderly Rehabilitated Inmate Supervision Program be given priority for participating in the pilot program; providing that the pilot program be developed after consultation with specified persons; authorizing the department to conduct the pilot program using departmental employees or private agencies; requiring the department to adopt rules; amending s. 947.141, F.S.; conforming provisions to changes made by the act; authorizing a law enforcement officer or correctional probation officer to arrest an inmate under certain circumstances who has been released under the Elderly Rehabilitated Inmate Supervision Program; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 238
INTRODUCER:	Senators Altman, Benacquisto, and Latvala
SUBJECT:	Child Safety Devices in Motor Vehicles
DATE:	February 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Spalla	TR	**Favorable**
2.	Dugger	Cannon	CJ	**Pre-Meeting**
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill revises child restraint requirements for children passengers in motor vehicles. Current law requires certain child restraint devices for children through age 5 years, although for ages 4 through 5 years, a seat belt may be used in lieu of a specialized device. Under the bill's provisions, the upper age is raised to 7 years if the child is less than 4 feet 9 inches in height. A seat belt alone will no longer legally provide sufficient protection for children aged 4 through 7 years if they are less than 4 feet 9 inches in height. The infraction is a moving violation punishable by a fine of $60 plus court costs and add-ons and by the assessment of 3 points against the driver's license of the motor vehicle operator.

The bill provides exceptions to the new child restraint requirements for children aged 4 through 7 who are less than 4 feet 9 inches in height when a person is:

- Transporting the child gratuitously and in good faith in response to a declared emergency situation or an immediate emergency involving the child; or
- Transporting a child whose medical condition necessitates an exception as evidenced by appropriate documentation from a health professional.

The court may dismiss a first violation if the operator produces proof of purchase of a federally approved child restraint device. The revised provisions take effect January 1, 2012. Beginning July 1, 2011, law enforcement officers may issue verbal warnings and educational literature to those persons who are in compliance with existing law, but who are violating the provisions which take effect in 2012.

This bill substantially amends s. 316.613 of the Florida Statutes.

II. Present Situation:

Currently, s. 316.613, F.S., requires every motor vehicle operator to properly use a crash-tested, federally approved child restraint device when transporting a child 5 years of age or younger. For children 3 years of age or younger, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat. For children aged 4 through 5 years, a separate carrier, an integrated child seat, or a seat belt may be used. These requirements apply to motor vehicles operated on the roadways, streets, and highways of this state. The requirements do not apply to a school bus; a bus used to transport persons for compensation; a farm tractor; a truck of net weight of more than 26,000 pounds; or a motorcycle, moped, or bicycle.[1] A driver who violates this requirement is subject to a $60 fine, court costs and add-ons, and having 3 points assessed against their driver's license.

A driver who violates this requirement may elect, with the court's approval, to participate in a child restraint safety program. Upon completing such program the above penalties may be waived at the court's discretion and the assessment of points waived. The child restraint safety program must use a course approved by the Department of Highway Safety and Motor Vehicles (DHSMV), and the fee for the course must bear a reasonable relationship to the cost of providing the course.

Section 316.613(4), F.S., provides it is legislative intent that all state, county, and local law enforcement agencies, and safety councils, conduct a continuing safety and public awareness campaign as to the magnitude of the problem with child death and injury from unrestrained occupancy in motor vehicles.

Florida's "$2 Difference Child Safety Seat Program"
The 1995 Legislature enacted legislation allowing vehicle owners to donate money to help purchase child safety seats for other Floridians who cannot afford them for their children. Vehicle owners have the opportunity to donate $2 or more to the Highway Safety Operating Trust Fund's $2 Difference Child Safety Seat Program to help needy residents living in their own county obtain car seats for their children. All monies donated to and collected in a given county are returned to that county in the form of child safety seats. The child safety seats are then distributed in a manner determined by the local tax collector's office.

According to the DHSMV, during the first year of the $2 Difference Program in 1996, a total of $37,760 in donations was collected. By early 1999, $175,000 had been collected for the growing program. The donations for this program have remained steady each year. As of January 2010, the $2 Difference Child Safety Seat Program has collected a total of $877,015 in donations from which 19,779 car seats have been purchased for distribution to low-income children and needy families across the state.

[1] s. 316.613(2)(a-e), F.S.

Other States
As of February 2011, 47 States and the District of Columbia have enacted provisions in their child restraint laws mandating booster seat or other appropriate restraint use by children who have outgrown their forward-facing child safety seats, but who are still too small to be appropriately restrained by an adult safety belt system.[2] Only Arizona, Florida, and South Dakota have yet to enact booster seat use requirements.

III. Effect of Proposed Changes:

The bill amends s. 316.613, F.S., requiring an operator of a motor vehicle who is transporting a child 7 years of age or younger when that child is less than 4 feet 9 inches in height, to provide for the protection of the child by properly using a crash-tested, federally approved child restraint device. The bill specifies the device must be appropriate for the height and weight of the child, and provides such devices may include:

- A vehicle manufacturer's integrated child seat;
- A separate child safety seat; or
- A child booster seat that displays the child's weight and height specifications for the seat on the attached manufacturer's label as required by Federal Motor Vehicle Safety Standard No. 213.

Any such device must comply with the standards of the United States Department of Transportation and be secured in the vehicle in accordance with instructions of the manufacturer.

Children through 3 years of age must be transported in an integrated or separate child safety seat, and children aged 4 through 7 years who are less than 4 feet 9 inches in height must be transported in a separate carrier, integrated child seat, or booster seat. Under the provisions of this bill, motorists will no longer be permitted to transport children aged 4 to 7 years who are less than 4 feet 9 inches in height with only a safety belt used as protection.

The bill also provides the term "motor vehicle" as used in s. 316.613, F.S., does not include a passenger vehicle designed to accommodate ten or more persons used for the transportation of persons for compensation, and therefore, exempts such vehicle from the child-restraint requirements for children ages 4 through 7 years.

The infraction is a moving violation punishable by a fine of $60 plus court costs and add-ons, and by assessment of 3 points against the driver's license. The requirement to use a booster seat does not apply to a person who is transporting a child aged 4 to 7 years who is less than 4 feet 9 inches in height if the person is:

- Transporting the child gratuitously and in good faith in response to a declared emergency situation or an immediate emergency involving the child; or

[2] http://www.ghsa.org/html/stateinfo/laws/childsafety_laws.html (last visited February 3, 2011).

- Transporting a child whose medical condition necessitates an exception as evidenced by appropriate documentation from a health professional.

Courts may dismiss the charge against a driver for a first violation of the child restraint law upon proof of purchase of or otherwise obtained a federally approved child restraint device.

The new child restraint requirements as provided in the bill will not take effect until January 1, 2012. However, the bill authorizes law enforcement personnel to issue a warning and distribute educational literature beginning July 1, 2011, to a person who is in compliance with current law, but whose actions violate the provisions that take effect January 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Drivers of vehicles must use a separate carrier, an integrated child seat or a child booster seat to transport children through age 7 years if they are less than 4 feet 9 inches in height. Seat belts alone will not satisfy the legal requirements for child restraints for children between the ages of 4 and 7 years who are less than the required height when being transported in a motor vehicle on roadways, streets, or highways in Florida. This will have a fiscal impact to vehicle operators for the cost of acquiring the necessary restraint devices.

However, because the number of additional children who will need restraint devices other than seat belts is unknown, the amount of this impact cannot be determined. Violation of the law would be punishable by a fine of at least $60 plus court costs and add-ons, and a 3 point assessment on the operator's driver license. The court may dismiss a first violation if the operator purchases an approved device. Furthermore, for six months prior to the new requirements becoming effective, a law enforcement officer may issue verbal

warning and provide informational material to drivers who would violate the requirements after the effective date.

C. Government Sector Impact:

Enactment of the bill may result in increased issuance of traffic citations, resulting in revenue increases to state and local governments. Since the number of additional citations that will be issued is unknown, any resulting positive fiscal impact on state and local governments is indeterminate. Also, the cost to DHSMV of providing educational literature is expected to be minimal and will be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DHSMV recommends revising the effective date to October 1, 2011, to allow for the programmatic updates to be implemented.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 400
INTRODUCER:	Senator Wise
SUBJECT:	Treatment-based Drug Court Programs
DATE:	February 7, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Pre-meeting**
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill expands postadjudicatory treatment-based drug court programs as a sentencing option by:

- increasing the total number of sentencing points an offender may have accumulated and still qualify for the program,
- allowing courts to consider including offenders who have prior violent felony offenses for the program, and
- providing that offenders who violate his or her probation or community control for any reason may be admitted to the program.

This bill could have a positive fiscal impact on the Department of Corrections resulting from fewer new commitments to state prison.

This bill substantially amends the following sections of the Florida Statutes: 397.334, 921.0026, 948.01, 948.06, and 948.20.

II. Present Situation:

Postadjudicatory drug courts are designed to divert drug-addicted offenders from the prison system by providing supervised community treatment services in lieu of incarceration.

Drug Court Overview

Section 397.334, F.S., authorizes the establishment of drug courts, and s. 948.08, Florida Statutes, mandates the type of offenders that *pretrial* drug courts may serve.

In 2009, *postadjudicatory* drug courts were targeted by the Legislature for definition and expansion. The expansion was largely due to the documented success of the programs in diverting offenders from prison. In March of 2009, the Office of Program Policy Analysis and Government Accountability (OPPAGA) reported that, based on available data, Florida's postadjudicatory drug courts appeared to reduce prison admissions among offenders who successfully complete the program.

OPPAGA analyzed prison admissions for a group of 674 offenders who graduated from post-adjudicatory drug courts in 2004 and compared their subsequent prison admissions to a similar group of 8,443 offenders who were sentenced to drug offender probation. Over a three-year period, offenders who successfully completed drug court were 80 percent less likely to go to prison than the matched comparison group. Forty-nine percent of those who did not graduate from the program were incarcerated during the three-year follow-up period.[1]

According to the report, both the programs' treatment and supervision components are significant factors in reducing prison admissions.[2]

Ideally, drug courts operate as special court dockets that hear cases involving drug addicted offenders. Judges order participating offenders to attend community treatment programs under close supervision by the court. The participant undergoes an intensive regimen of substance abuse treatment, case management, drug testing, and monitoring. Although treatment is tailored to each offender's individual substance abuse treatment needs, drug court programs generally require at least one year of intensive individual and/or group substance abuse treatment.

Section 397.334, F.S., sets forth the following strategy and principles for the operation of Florida's drug courts:

> (4) The treatment-based drug court programs shall include therapeutic jurisprudence principles and adhere to the following 10 key components, recognized by the Drug Courts Program Office of the Office of Justice Programs of the United States Department of Justice and adopted by the Florida Supreme Court Treatment-Based Drug Court Steering Committee:
> (a) Drug court programs integrate alcohol and other drug treatment services with justice system case processing.
> (b) Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
> (c) Eligible participants are identified early and promptly placed in the drug court program.
> (d) Drug court programs provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.

[1] OPPAGA Report 09-13, March 2009, *State's Drug Courts Could Expand to Target Prison-bound Adult Offenders.*
[2] *Id.*

(e) Abstinence is monitored by frequent testing for alcohol and other drugs.
(f) A coordinated strategy governs drug court program responses to participants' compliance.
(g) Ongoing judicial interaction with each drug court program participant is essential.
(h) Monitoring and evaluation measure the achievement of program goals and gauge program effectiveness.
(i) Continuing interdisciplinary education promotes effective drug court program planning, implementation, and operations.
(j) Forging partnerships among drug court programs, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

Participants in drug court must comply with more demanding requirements than those offenders serving regular probation. In addition to reporting to court several times each month, drug court participants receive regular drug testing, individual and group substance abuse treatment and counseling, and are monitored by both a probation officer and drug court case manager. Most drug courts also provide ancillary services such as mental health treatment, trauma and family therapy, and job skills training to increase the probability of participants' success.

Drug courts generally use graduated sanctions when offenders violate program requirements by such actions as testing positive on drug tests, missing treatment sessions, or failing to report to court. These sanctions may include mandatory community service, extended probation, or jail time.

Sentencing Points as Sentencing Mechanism
The Criminal Punishment Code applies to defendants whose non-capital felony offenses were committed on or after October 1, 1998.[3] Each non-capital felony offense is assigned a level ranking that reflects its seriousness.[4] There are ten levels, and Level 10 is the most serious level.[5] The primary offense, additional offenses, and prior offenses are assigned level rankings.[6] Points accrue based on the offense level. The higher the level, the greater the number of points. The primary offense accrues more points than an additional or prior offense of the same felony degree. Points may also accrue or be multiplied based on factors such as victim injury, legal status, community sanctions, and motor vehicle theft among others.

The total sentence points scored is entered into a mathematical computation that determines the lowest permissible sentence. If the total sentence points equals or is less than 44 points, the lowest permissible sentence is a nonstate prison sanction (usually community supervision), though the sentencing range is the minimum sanction up to the maximum penalty provided in s. 775.082, F.S. If the total sentence points exceeds 44 points, a prison sentence is the lowest permissible sentence, though the judge may sentence up to the maximum penalty provided in

[3] s. 921.002, F.S.
[4] The level ranking is assigned either by specifically listing the offense in the appropriate level in the offense severity ranking chart of the Code, s. 921.0022, F.S., or, if unlisted, being assigned a level ranking pursuant to s. 921.0023, F.S., based on the felony degree of the offense.
[5] s. 921.0022, F.S.
[6] s. 921.0024, F.S. All information regarding the Code is from this statute, unless otherwise indicated.

s. 775.082, F.S.[7] Sentence length (in months) for the lowest permissible sentence is determined by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.

A sentence may be "mitigated," which means that the length of a state prison sentence may be reduced or a nonprison sanction may be imposed even if the offender scores a prison sentence, if the court finds any permissible mitigating factor. Section 921.0026, F.S., contains a list of mitigating factors. This is called a "downward departure" sentence.

A mitigating factor was added with the passage of the postadjudicatory drug court expansion in 2009:

> 921.0026 Mitigating circumstances.—
> (2) Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to:
> (m) The defendant's offense is a nonviolent felony, the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 52 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence. For purposes of this paragraph, the term "nonviolent felony" has the same meaning as provided in s. 948.08(6).[8]

An offender cannot appeal a sentence within the permissible range (lowest permissible sentence to the maximum penalty), but can appeal an illegal sentence. The state attorney can appeal a downward departure sentence.

Postadjudicatory Drug Court Expansion in 2009
As previously noted, in 2009 the parameters under which an offender could be sentenced to complete a postadjudicatory drug court program were both statutorily defined and expanded beyond "traditional" local criteria. The target population consisted of felony defendants or offenders who have a substance abuse or addiction problem that is amenable to treatment. Entry into the postadjudicatory drug court program was also expanded to include offenders who violate their probation or community control solely due to a failed or suspect drug test.

Whether having violated community supervision or before the court for sentencing on a substantive law violation, the candidate for the expanded postadjudicatory drug court program may not score more than 52 sentencing points, must 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.[9] The recommendation of the state attorney and victim, if any, must be

[7] If the sentence scored exceeds the maximum penalty in s. 775.082, F.S., the scored sentence is both the minimum sentence and the maximum penalty.
[8] s. 921.0026(2)(m), F.S.
[9] ss. 397.334, 921.0026(m), 948.01(7), 948.06(2)(i), 948.20, and F.S.

considered by the court.[10] Successful completion of the program is a condition of a probation or community control sentence.[11]

The drug court assumes jurisdiction of the case until such time as the offender successfully completes the program, is terminated from the program, or until the sentence is completed.[12]

Measuring Success of the 2009 Postadjudicatory Drug Court Expansion
It should be remembered that the statutory revisions which expanded the availability of postadjudicatory drug court to a larger pool of offenders have statewide application. However, the research and administrative focus has been on the areas of the state where the Legislature expected the expansion to have the most positive effect on prison costs and where extra funding was directed for the programs.

The Legislature appropriated $19 million federal Byrne grant money, over a two-year period, to the Office of the State Courts Administrator (OSCA) to pay for additional postadjudicatory drug court coordinators, data collection and reporting, service providers, program administration, Department of Corrections costs and to compensate prosecutors and public defenders who handle these drug court cases within 8 counties.[13]

The number of participating counties was reduced from 9 to 8 following Duval county's withdrawal from the program in May, 2010. Currently the participants are:

- 1st Circuit; Escambia County
- 5th Circuit; Marion County
- 6th Circuit; Pinellas County
- 7th Circuit; Volusia County
- 9th Circuit; Orange County
- 10th Circuit; Polk County
- 13th Circuit; Hillsborough County
- 17th Circuit; Broward County

The 2009 legislation required the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to evaluate the effectiveness of postadjudicatory drug court programs and issue a report by October 1, 2010. Since the expansion programs became operational in early 2010, OPPAGA had a limited amount of data to review before its report was due.

OPPAGA found that expansion drug courts are generally meeting Florida drug court standards. Of the standards that were measurable at the time of the OPPAGA report, it was concluded that all of the programs are providing services along with the frequent judicial contact as expected for

[10] s. 397.334(3), F.S.
[11] s. 948.01(7), F.S.
[12] s. 948.01(7), 948.06(2)(i), F.S.
[13] 3 of the 8 state attorneys and 3 of the 8 participating public defenders accepted the grant money.

drug court programs, and early identification and placement of offenders in the program is the norm.[14]

Expansion drug courts, as currently implemented, are unlikely to significantly reduce state prison costs. According to the October 2010 OPPAGA report, without changes, the anticipated cost savings to the state are not likely to be met for three main reasons:

1) *Because of the interplay of several factors, the initial estimate of potential prison inmates who might be diverted from prison to postadjudicatory drug court was overly ambitious, which has translated to overstated estimated savings to date.*
Estimated savings were calculated using data that included the historical drug crime-related prison admissions, by jurisdiction, in order to determine which counties and circuits should yield the largest pool of potential candidates for postadjudicatory drug court. Based upon this data, the jurisdictions were chosen for the focus of the drug court expansion and receipt of the federal grant money. Losing Duval County as a participant adversely effected the program's savings outcome to date because the anticipated number of offenders from that county (200) were included in the potential defendants or offenders diverted. Also, Duval County has not been replaced with another county participant.[15]

   Additionally, the program was slower to become operational than originally anticipated. This resulted in fewer cases being processed and a smaller number of offenders being sentenced to the expanded program, to date, than originally planned.[16]

   There has been some reported resistance to implementing the program under the expanded participant parameters set forth in the 2009 statutes. Specifically, offenders who may meet the statutory criteria for admission to the program are apparently not always being considered for it.[17] According to the OPPAGA report, the state attorney's office in each of the 8 counties screen the cases to determine whether the defendant meets the court's eligibility criteria.[18] It is possible that some offenders are rejected during the screening process or that the courts have standards for candidates that are more restrictive than anticipated.[19]

   There is also anecdotal evidence that some eligible defendants and offenders may be choosing not to participate in the prison-diversion program. These variables were not taken into consideration, or perhaps were not quantifiable, when cost savings were estimated by the Office of Economic and Demographic Research, Office of the State Courts Administrator and other participants in the planning and implementation process.[20]

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[14] "Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings," Office of Program Policy Analysis and Governmental Accountability Report No. 10-54, October 2010, pgs. 2-3.
[15] Briefing document for Legislative Budget Commission presentation by State Court System, July 2009; Adult Post-Adjudicatory Drug Court Expansion Program, Status Update (draft on file with Florida Senate Criminal Justice Committee) dated February 14, 2011, OSCA.
[16] Adult Post-Adjudicatory Drug Court Expansion Program, Status Update (draft on file with Florida Senate Criminal Justice Committee) dated February 14, 2011, OSCA.
[17] *Id.*at pgs. 4-5.
[18] *Id.*at pg. 2.
[19] *Id.* at pg. 4. OPPAGA indicates that the postadjudicatory eligibility criteria set forth, for the first time, in the Florida Statutes in 2009 varied from the "traditional" criteria that had been implemented at the local level.
[20] Briefing document for Legislative Budget Commission presentation by State Court System, July 2009.

2) *Current eligibility criteria restrict admissions.*
Although OSCA reports 811 admissions statewide through January 2011, this is well below the expected number of admissions and below the program capacity.[21] OPPAGA indicates that restricting the admissions in violation of probation or community control cases to only those where the *sole violation* is a failed substance abuse test has omitted a large pool of offenders. This is so because 74 percent of all violations for a failed drug test occur with *other technical violations*.[22] Reaching this pool of offenders would require a change in statutory eligibility criteria.

Also, although the 2009 criteria does not exclude offenders with a felony history of violent offenses, they have "traditionally" been excluded from drug courts due to federal grant restrictions. The Byrne grant funds that have been appropriated to expand postadjudicatory drug court do not carry those restrictions, however, the courts and perhaps other practitioners have been reluctant to include this pool of offenders in the postadjudicatory drug court program.[23]

3) *The postadjudicatory drug courts are serving offenders who were not intended by the Legislature to be a part of the program.*
Under the Florida Criminal Punishment Code, an offender or defendant who scores less than 44 total sentencing points is unlikely to be sentenced to a term in prison absent special circumstances.[24] When the points are equal to or exceed 44, the lowest permissible sentence is a term of incarceration, absent mitigating factors or other appropriate sentencing alternatives.

The 2009 postadjudicatory drug court expansion provided statutory authority to admit offenders with sentencing points of 52 or less into the program as a condition of community supervision, in lieu of a prison sentence. The goal was to *divert* qualified offenders *who, without the alternative sentencing, might otherwise have gone to prison* to a program that both showed a quantifiable success rate and that costs far less than incarceration.[25] It appears, however, that -- by a 2-to-1 margin -- the offenders who are receiving postadjudicatory drug court sentences score from 1 to 43 points.[26] Serving this particular pool of offenders is not achieving the anticipated cost savings the Legislature intended.

[21] "Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings," Office of Program Policy Analysis and Governmental Accountability Report No. 10-54, October 2010, pgs. 3-4; Status Update (draft on file with Florida Senate Criminal Justice Committee) dated February 14, 2011, OSCA.
[22] Based upon Department of Corrections data as reported by OPPAGA, "Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings," Office of Program Policy Analysis and Governmental Accountability Report No. 10-54, October 2010, pg. 4.
[23] *Id.* at pgs. 4-5.
[24] *Id.* at pg. 6.
[25] *Id.* at pgs. 5-6; OPPAGA Report 09-13, March 2009, *State's Drug Courts Could Expand to Target Prison-bound Adult Offenders.*
[26] *Id.* at pg. 6. Of the 323 offenders in the program at the time of the report, 216 scored less than 44 points.

OPPAGA suggests the following changes in the postadjudicatory drug court program:

- Expand the admission criteria to include all technical violations of community supervision if there is a nexus to substance abuse and give courts discretion, statutorily, to include offenders with prior violent offenses.
- Include additional counties in the expansion program.
- Require the expansion drug courts to serve predominantly prison-bound offenders and consider shifting funding from counties that do not comply.

OPPAGA also suggests that the federal grant dollars could be shifted to other prison-diversion programs rather than have the funds revert to the federal government.[27]

III. Effect of Proposed Changes:

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. He or she may have prior violent felony offenses and be admitted to the program at the court's discretion. 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.

The bill becomes effective July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[27] *Id.* at pgs. 6-7.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Although the Criminal Justice Impact Conference has not yet met to consider the potential fiscal impact of this bill, staff of the Legislature's Economic and Demographic Research Division provided a preliminary estimate that if 10 percent of the eligible pool of offenders are diverted from prison, $.9 million (operating costs) could be saved in the first year. Year five could see a $26.1 million reduction in Department of Corrections operating costs if the same rate of admissions is maintained.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 50 - 54
and insert:
the defendant's agreement to enter the program.

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete lines 3 - 7
and insert:
programs; amending s. 397.334, F.S.; requiring all offenders sentenced to a

Overview of the Privatization of State Prisons

Senate Criminal Justice Committee

February 22nd, 2011

Chapter 944, Florida Statutes, assigns legal custody of all Florida inmates in state and private prisons to the Department of Corrections.

- DOC makes all decisions that affect inmate discipline, gain time and release
- DOC conducts routine security, infirmary and contraband audits

Inmate Population as of February 18th 2011 **101,885**

State facilities – 55 major prisons, 82 minor facilities		91,785
Private Facilities		
Bay CF	983	
Black Water River CF	1,997	
Gadsden CF	1,519	
Graceville CF	1,878	
Lake City CF	887	
Moore Haven CF	976	
South Bay CF	1,860	10,100

- Florida is the only state where private prison contracts are managed outside a correctional agency.

- Regardless, DOC and DMS have forged a good relationship in managing private prison contracts

- Economy of management and professional oversight would be increased however, if the DOC was authorized to manage the contracts

Private Prison Inmate Assignments

- All inmates go through the DOC reception process upon incarceration
- After Initial Classification, inmates are transferred to private prisons as appropriate.
- Private prisons do not house every type of inmate
- Inmates are transferred in and out of private prisons for various reasons

Security Audits

- The security audit process is applied equally to both private prisons and state prisons.
- DOC security standards and procedures are provided to each private prison.
- A team of DOC auditors performs the audit and subsequent follow-up to insure any corrective action is being fully implemented.

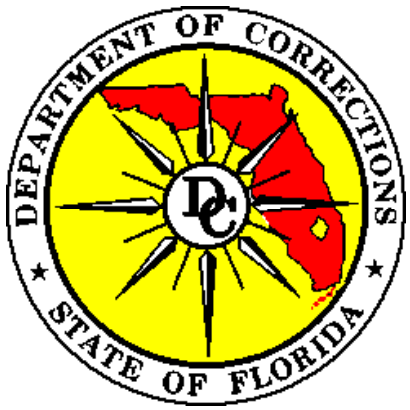
Differences between state and private prison design

- DOC adopts a campus style design as opposed to the single site facility that private companies have built.
- Security – we believe this may provide better sight lines and visibility of dorms from the control room.
- Allows for future expansion – provides a bigger foot print for growth.

Calculation of Comparable Prison Per Diem Rate

- Pursuant to s. 957.07 (4), F.S. DOC identifies a similar sized public facility and DMS makes adjustments to the actual operating costs to reach a comparable operating cost.

- This per diem cost is used by DMS for procurement and as a base for calculating savings.



Questions?