The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Dean, Vice Chair

MEETING DATE: Monday, March 14, 2011
TIME: 1:00 —3:00 p.m.
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 118** Bullard (Identical H 981)	Bicycle Safety; Revises safety standard requirements for bicycle helmets that must be worn by certain riders and passengers. Provides for enforcement of requirements for bicycle lighting equipment. Provides penalties for violations. Provides for dismissal of the charge following a first offense under certain circumstances. TR 02/22/2011 Favorable CJ 03/14/2011 BC	
2	**SB 234** Evers (Similar H 517, Compare 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 Temporarily Postponed CJ 03/09/2011 Temporarily Postponed CJ 03/14/2011 JU RC	
3	**SB 240** Joyner (Identical H 101)	Violations of Injunctions for Protection; Adds circumstances that violate an injunction for protection against repeat violence, sexual violence, or dating violence. CJ 03/14/2011 JU BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 246** Health Regulation / Joyner (Compare H 477)	Human Trafficking; Requires operators of massage establishments to maintain valid work authorization documents on the premises for each employee who is not a United States citizen. Requires presentation of such documents upon request of a law enforcement officer. Prohibits the use of a massage establishment license for the purpose of lewdness, assignation, or prostitution. Provides criminal penalties. Includes within the severity ranking chart of the Criminal Punishment Code certain offenses prohibited by the act. HR 02/08/2011 Fav/CS CJ 03/14/2011 BC	
5	**SB 438** Hill (Compare H 563)	Injunctions for Protection Against Violence; Subject to available funding, directs the Florida Association of Court Clerks to develop an automated process by which a petitioner for an injunction for protection may request notification of service of the injunction or notice of other court actions related to the injunction. Requires that notice be given to the petitioner within a specified time. Provides for the content of the notice. CJ 03/14/2011 JU BC	
6	**SB 888** Dean (Compare H 75)	Offense of Sexting; Provides that a minor commits the offense of sexting if he or she knowingly uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of himself or herself which depicts nudity and is harmful to minors. Provides noncriminal and criminal penalties. Provides that the act does not prohibit prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement or for stalking, etc. CJ 03/14/2011 JU CU BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 1086** Hill (Identical H 779)	Restraint of Incarcerated Pregnant Women; Prohibits a correctional institution or county or municipal detention facility from using restraints on a prisoner known to be pregnant unless a corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance requiring restraints. Provides that a doctor, nurse, or other health care professional treating the prisoner may request that restraints not be used, in which case the corrections official accompanying the prisoner shall remove all restraints, etc. CJ 03/14/2011 HR CA BC	
8	**SB 1092** Wise (Compare H 4159)	State Attorneys; Deletes a provision that requires each state attorney to quarterly submit deviation memoranda relating to offenders who are not sentenced to the mandatory minimum prison sentence in cases involving the possession or use of a weapon. Repeals provisions relating to criteria to be used when state attorneys decide to pursue habitual felony offenders or habitual violent felony offenders. Repeals provisions relating to direct-file policies and guidelines for juveniles, etc. CJ 03/14/2011 JU BC	
	Pending Reconsideration:		
9	**SB 144** Smith (Identical H 1177)	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 Temporarily Postponed CJ 03/09/2011 Pending reconsider (Unfavorable) CJ 03/14/2011 JU BC	

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 118
INTRODUCER:	Senator Bullard
SUBJECT:	Bicycle Safety
DATE:	March 8, 2011
REVISED:	

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

I. Summary:

This bill revises safety standard requirements for bicycle helmets worn by minor riders and passengers to require the helmets to meet certain federal safety standards. The use of helmets purchased before October 1, 2011, in compliance with current statutory standards will be permitted until January 1, 2015. The bill also provides the option for law enforcement to issue a verbal warning and a safety brochure or to issue a citation to violators of the bicycle lighting equipment requirements; clarifies penalties for violations, and provides for dismissal of a first offense.

This bill substantially amends s. 316.2065 of the Florida Statutes.

II. Present Situation:

Current Bicycle Helmet Requirements

Under current law, a bicycle rider or passenger who is less than 16 years of age must wear a bicycle helmet properly fitted and fastened securely by a strap. The helmet must meet the standards of the American National Standards Institute (ANSI Z 90.4 Bicycle Helmet Standards), the standards of the Snell Memorial Foundation (1984 Standard for Protective Headgear for Use in Bicycling), or any other nationally recognized standards for bicycle helmets adopted by the Department of Highway Safety and Motor Vehicles. The term "passenger" includes a child who is riding in a trailer or semi trailer attached to a bicycle. A law enforcement officer or school crossing guard is specifically authorized to issue a bicycle safety brochure and a verbal warning to a rider or passenger who violates the helmet law. A law enforcement officer is authorized to issue a citation and the violator will be assessed a $15 fine plus applicable court costs and fees. An officer may issue a traffic citation for a violation of this provision only if the violation occurs

on a bicycle path or road. A court is required to dismiss the charge against a bicycle rider or passenger for a first violation of the provision upon proof of purchase of a bicycle helmet in compliance with the law. Further, a court is authorized to waive, reduce or suspend payment of any fine imposed for a violation of the helmet law.

Current Bicycle Lighting Requirements
Currently, every bicycle in use between sunset and sunrise must be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a lamp and reflector on the rear, each exhibiting a red light visible from a distance of 600 feet to the rear. A bicycle or its rider may be equipped with lights or reflectors in addition to those required by law. Violation of bicycle lighting requirements is a non-criminal traffic infraction punishable as a pedestrian violation by a $15 fine plus applicable court costs and fees.

Standards for Bicycle Helmet Manufacturing
Nearly 17 years ago, the United States Congress passed the Child Safety Protection Act of 1994, requiring the Consumer Product Safety Commission (CPSC) to develop mandatory bicycle helmet standards. The CPSC published 16 CFR Part 1203 in March, 1998 to apply to all helmets manufactured since March, 1999. The rule mandates several performance requirements related to impact protection, children's helmets head coverage, and chin strap strength and stability. Helmets meeting the requirements display a label indicating compliance with the standards.

III. Effect of Proposed Changes:

This bill amends bicycle helmet regulations effective October 1, 2011, to require compliance with the federal safety standard for bicycle helmets contained in 16 C.F.R., part 1203. Helmets purchased prior to October 1, 2011, in compliance with the existing statutory standards may continue to be worn legally by riders or passengers until January 1, 2015.

The bill allows law enforcement officers to issue bicycle safety brochures and verbal warnings to bicycle riders and passengers who violate bicycle lighting equipment standards in lieu of issuing a citation. At the discretion of the law enforcement officer, a bicycle rider who violates the bicycle lighting equipment standards may still be issued a citation and assessed a fine as described above. However, the bill requires the court to dismiss the charge against a bicycle rider for a first violation of this offense upon proof of purchase and installation of the proper lighting equipment.

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:

Since the CPSC standards were established 10 years ago, the number of helmets not meeting the standards has diminished significantly. Further, the bill allows helmets purchased before the effective date to be used without penalty until 2015. This minimizes fiscal impact to individuals since these helmets likely will have been outgrown or otherwise need to be replaced.

C. Government Sector Impact:

There is a likely positive yet indeterminate fiscal impact due to a presumed reduction of public health costs.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/09/2011	.	
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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

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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

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

180224

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.

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/09/2011	.	
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The Committee on Criminal Justice (Evers) recommended the following:

Senate Substitute for Amendment (180224) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (1) of section 790.053, Florida Statutes, is amended to read:

790.053 Open carrying of weapons.—

(1) Except as otherwise provided by law and in subsection (2), it is unlawful for any person to openly carry on or about his or her person any firearm or electric weapon or device, except as provided in s. 790.06(1). It shall not be a violation

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of this section for a person who is licensed to carry a concealed firearm, and who is lawfully carrying it in a concealed manner, to accidentally or inadvertently display the firearm to the ordinary sight of another person so long as the firearm is not displayed in a rude, angry, or threatening manner.

Section 2. Subsection (1), paragraph (h) of subsection (2), paragraph (c) of subsection (5), and subsection (12) of section 790.06, Florida Statutes, are amended to read:

790.06 License to carry concealed weapon or firearm.—

(1) The Department of Agriculture and Consumer Services is authorized to issue licenses to carry concealed weapons or concealed firearms to persons qualified as provided in this section. Each such license must bear a color photograph of the licensee. For the purposes of this section, concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined in s. 790.001(9). Such licenses shall be valid throughout the state for a period of 7 years from the date of issuance. Any person in compliance with the terms of such license may carry a concealed weapon or concealed firearm notwithstanding ~~the provisions of~~ s. 790.01, or may carry openly as set forth in paragraphs (a) - (c) of this subsection, notwithstanding s. 790.053. The licensee must carry the license, together with valid identification, at all times in which the licensee is in actual possession of a concealed weapon or firearm and must display both the license and proper identification upon demand by a law enforcement officer. A violation ~~Violations of the provisions~~ of this subsection shall

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constitute a noncriminal violation with a penalty of $25, payable to the clerk of the court.

(a) Carrying openly requires that the firearm be secured by the carrier in a Level 2 security holster.

(b) Carrying openly requires that the carrier display his or her license to carry a concealed firearm in a clear sleeve on or near the holster in such a manner as to be visible.

(c) Carrying openly requires the carrier to have demonstrated competence with a firearm and firearm retention as provided in paragraph (2)(h).

(2) The Department of Agriculture and Consumer Services shall issue a license if the applicant:

(h) Demonstrates competence with a firearm and firearm retention by any one of the following:

1. Completion of any hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or a similar agency of another state;

2. Completion of any National Rifle Association firearms safety or training course;

3. Completion of any firearms safety or training course or class available to the general public offered by a law enforcement, junior college, college, or private or public institution or organization or firearms training school, utilizing instructors certified by the National Rifle Association, Criminal Justice Standards and Training Commission, or the Department of Agriculture and Consumer Services;

4. Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision

of law enforcement or security enforcement;

5. Presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service;

6. Is licensed or has been licensed to carry a firearm in this state or a county or municipality of this state, unless such license has been revoked for cause; or

7. Completion of any firearms training or safety course or class conducted by a state-certified or National Rifle Association certified firearms instructor;

A photocopy of a certificate of completion of any of the courses or classes; or an affidavit from the instructor, school, club, organization, or group that conducted or taught said course or class attesting to the completion of the course or class by the applicant; or a copy of any document which shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under this paragraph; any person who conducts a course pursuant to subparagraph 2., subparagraph 3., or subparagraph 7., or who, as an instructor, attests to the completion of such courses, must maintain records certifying that he or she observed the student safely handle and discharge the firearm;

(5) The applicant shall submit to the Department of Agriculture and Consumer Services:

(c) A full set of fingerprints of the applicant administered by a law enforcement agency or the Division of Licensing of the Department of Agriculture and Consumer Services.

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(12)(a) A ~~No~~ license issued under ~~pursuant to~~ this section does not ~~shall~~ authorize any person to carry a concealed weapon or firearm into:

1. Any place of nuisance as defined in s. 823.05;

2. Any police, sheriff, or highway patrol station;

3. Any detention facility, prison, or jail;

4. Any courthouse;

5. 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;

6. Any polling place;

7. Any meeting of the governing body of a county, public school district, municipality, or special district;

8. Any meeting of the Legislature or a committee thereof;

9. Any school, college, or professional athletic event not related to firearms;

10. Any public elementary or secondary school facility or administration building;

11. 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;~~

12. The inside of 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

13. Any place where the carrying of firearms is prohibited by federal law.

(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 3. 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 public 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


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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 public 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 public 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 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 4. Section 790.28, Florida Statutes, is repealed.

Section 5. 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


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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 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

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licensed importer, licensed manufacturer, or licensed dealer in another state.

Section 6. 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 firearms; amending s. 790.053, F.S.; providing that person in compliance with the terms of a concealed carry license is not in violation of s. 790.053(1), F.S. when the concealed firearm is accidentally or inadvertently displayed to the ordinary sight of another person; amending s. 790.06, F.S.; providing that a person in compliance with the terms of a concealed carry license may carry openly notwithstanding specified provisions; providing for compliance to certain requirements in order to lawfully carry a firearm openly; allowing the Division of Licensing of the Department of Agriculture and Consumer Services to take fingerprints from concealed carry license applicants; limiting 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; providing that concealed carry licensees shall not be prohibited from carrying

245176

or storing a firearm in a vehicle for lawful 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.

563520

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/09/2011	.	
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The Committee on Criminal Justice (Dockery) recommended the following:

Senate Amendment to Substitute Amendment (245176) (with title amendment)

Delete lines 116 - 133
and insert:
10. Any elementary or secondary school facility or administration building;
11. Any career center;
12. 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

563520

and the weapon does not fire a dart or projectile;

13. 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;~~

14. The inside of 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

15. Any place where the carrying of firearms is prohibited by federal law.

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

And the title is amended as follows:

Delete lines 325 - 330

and insert:

carry license applicants; providing that concealed

Delete lines 333 - 336.

519268

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/09/2011	.	
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The Committee on Criminal Justice (Dockery) recommended the following:

Senate Amendment to Substitute Amendment (245176)

Delete lines 142 - 237.

973004

LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment to Substitute Amendment (245176) (with title amendment)

Delete lines 6 - 93
and insert:
Section 1. Subsection (1), paragraph (c) of subsection (5), and subsection (12) of section 790.06, Florida Statutes, are amended to read:
790.06 License to carry concealed weapon or firearm.—
(1) The Department of Agriculture and Consumer Services is authorized to issue licenses to carry concealed weapons or concealed firearms to persons qualified as provided in this

973004

section. Each such license must bear a color photograph of the licensee. For the purposes of this section, concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined in s. 790.001(9). Such licenses shall be valid throughout the state for a period of 7 years from the date of issuance. Any person in compliance with the terms of such license may carry a concealed weapon or concealed firearm notwithstanding ~~the provisions of~~ s. 790.01, or may carry openly notwithstanding s. 790.053. The licensee must carry the license, together with valid identification, at all times in which the licensee is in actual possession of a concealed weapon or firearm and must display both the license and proper identification upon demand by a law enforcement officer. A violation ~~Violations of the provisions~~ of this subsection shall constitute a noncriminal violation with a penalty of $25, payable to the clerk of the court.

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

And the title is amended as follows:

Delete lines 312 - 322

and insert:

An act relating to firearms; amending s. 790.06, F.S.; providing that a person in compliance with the terms of a concealed carry license may carry openly notwithstanding specified provisions; allowing the Division

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 240
INTRODUCER:	Senator Joyner
SUBJECT:	Violations of Injunctions for Protection
DATE:	March 9, 2011
REVISED:	

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

I. Summary:

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

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

This bill has an effective date of July 1, 2011.

This bill substantially amends section 784.047, Florida Statutes.

II. Present Situation:

Injunction for Protection against Domestic Violence

In 2005, it was estimated that more than 1.5 million adults in the United States are victims of domestic violence each year, and more than 85 percent of the victims are women.[1] In Florida, 113,123 incidents of domestic violence were reported in 2008, which is 1.8 percent less than what was reported for the same period in 2007.[2]

A victim of domestic violence[3] or a person who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence may seek protective injunctive relief.[4] In seeking protective injunctive relief, a person must file a sworn petition with the court that alleges the existence of domestic violence and includes specific facts and circumstances upon which relief is sought.[5] The court must set a hearing at the earliest possible time after a petition is filed.[6] The respondent must be personally served with a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and any temporary injunction that has been issued.[7] The court can enforce a violation of an injunction through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a criminal violation under s. 741.31, F.S.[8] Either party may move the court to modify or dissolve an injunction at any time.[9]

Section 741.31, F.S., deals with violations of an injunction for protection against domestic violence. This section provides that it is a first-degree misdemeanor[10] for a person to willfully violate an injunction for protection against domestic violence by:

- Refusing to vacate the dwelling that the parties share;
- Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Committing an act of domestic violence against the petitioner;

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[1] Margaret Graham Tebo, *When Home Comes to Work*, ABA JOURNAL (Sept. 2005), *available at* http://www.abajournal.com/magazine/when_home_comes_to_work/ (last visited Mar. 8, 2011) (citing statistics from Legal Momentum, an advocacy and research organization based in New York City); *see also* Nat'l Coalition Against Domestic Violence, *Domestic Violence Facts*, http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf (last visited Mar. 8, 2011).

[2] Florida Dep't of Law Enforcement, *Crime in Florida* (Jan.-Dec. 2008), http://www.fdle.state.fl.us/Content/getdoc/4f6a6cd0-6479-4f4f-a5a4-cd260e4119d8/CIF_Annual08.aspx (last visited Mar. 8, 2011).

[3] Domestic violence is defined as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." Section 741.28(2), F.S.

[4] Section 741.30(1), F.S.

[5] Section 741.30(3), F.S.

[6] Section 741.30(4), F.S.

[7] *Id*. When an immediate and present danger of domestic violence exists, the court may grant a temporary injunction ex parte, pending a full hearing. Section 741.30(5), F.S.

[8] Section 741.30(9), F.S.

[9] Section 741.30(10), F.S.

[10] A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year or a fine not exceeding $1,000, or both. See ss. 775.082(4) and 775.083(1), F.S.

- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.[11]

Any person who suffers as a result of a violation of an injunction for protection against domestic violence may be awarded economic damages, including costs and attorneys' fees, for the injury or loss suffered.[12]

Injunction for Protection against Repeat Violence, Sexual Violence, or Dating Violence
Data from the National Women's Study and the National Violence Against Women Survey indicate that 13.4 percent of adult women in the United States have been victims of a forcible rape sometime during their lifetime.[13] Based on this national data, one report found:

[A]pproximately 11.1% of adult women in Florida have been victims of one or more completed forcible rapes during their lifetime. According to the 2000 Census, there are about 6.4 million women age 18 or older living in Florida. This means that the estimated number of adult women in Florida who have ever been raped is nearly 713,000.[14]

Additionally, statistics show that one in five high school girls has reported being physically or sexually abused by a dating partner, and females ages 16 through 24 are three times more vulnerable for partner violence than any other age group.[15]

Section 784.046, F.S., governs the issuance of injunctions for protection against repeat violence,[16] dating violence,[17] and sexual violence.[18] The statute specifies the following:

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[11] Section 741.31(4), F.S.
[12] Section 741.31(6), F.S.
[13] Kenneth J. Ruggiero and Dean G. Kilpatrick, *Rape in Florida: A Report to the State, One in Nine*, NAT'L VIOLENCE AGAINST WOMEN PREVENTION RESEARCH CTR., 1 (May 15, 2003), *available at* http://www.doh.state.fl.us/Family/svpp/planning/Rape_in_Florida.pdf (last visited Mar. 8, 2011).
[14] *Id*. at 2.
[15] American Bar Association, *Teen Dating Violence Facts* (2006), http://www.abanet.org/unmet/teendating/facts.pdf (last visited Mar. 3, 2010).
[16] Section 784.046(1)(b), F.S., defines repeat violence as "two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member."
[17] Dating violence is defined as "violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature." The following factors come into play when determining the existence of such a relationship: (1) a dating relationship must have existed within the past six months; (2) the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and (3) the persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. Section 784.046(1)(d), F.S.

- Petitions for injunctions for protection must allege the incidents of repeat violence, sexual violence, or dating violence and must include the specific facts and circumstances that form the basis upon which relief is sought.[19]
- Upon the filing of the petition, the court must set a hearing to be held at the earliest possible time. The respondent must be personally served with a copy of the petition, notice of hearing, and temporary injunction, if any, prior to the hearing.[20]
- When it appears to the court that an immediate and present danger of violence exists, the court may grant a temporary injunction, which may be granted in an ex parte hearing, pending a full hearing, and may grant such relief as the court deems proper.[21]
- The court shall enforce, through a civil or criminal contempt proceeding, a violation of an injunction for protection.[22]
- The petitioner or the respondent may move the court to modify or dissolve an injunction at any time.[23]

Section 784.047, F.S., provides penalties for violating an injunction for protection against repeat violence, sexual violence, or dating violence. The statute specifies that a person commits a first-degree misdemeanor[24] if he or she willfully violates an injunction for protection against repeat violence, sexual violence, or dating violence by:

- Refusing to vacate the dwelling that the parties share;
- Going to the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Committing an act of repeat violence, sexual violence, or dating violence against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner; or
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party.[25]

III. Effect of Proposed Changes:

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

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[18] Sexual violence is defined as any one incident of "1. Sexual battery, as defined in chapter 794; 2. A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age; 3. Luring or enticing a child, as described in chapter 787; 4. Sexual performance by a child, as described in chapter 827; or 5. Any other forcible felony wherein a sexual act is committed or attempted." For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney. Section 784.046(1)(c), F.S.
[19] Section 784.046(4), F.S.
[20] Section 784.046(5), F.S.
[21] Section 784.046(6), F.S.
[22] Section 784.046(9), F.S.
[23] Section 784.046(10), F.S.
[24] A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year or a fine not exceeding $1,000, or both. See ss. 775.082(4) and 775.083(1), F.S.
[25] Section 784.047, F.S.

The new violations will include the following:

- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.

Additionally, the bill adds a distance limitation to a violation in existing law by providing that a person can violate an injunction for protection by going to, *or being within 500 feet of*, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member. This change also parallels the way a person can currently violate an injunction for protection against domestic violence.

This bill has an effective date of July 1, 2011.

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 provides additional ways a person may violate an injunction for protection against repeat violence, sexual violence, or dating violence, which subjects the person to a possible fine of up to $1,000. Accordingly, this bill has the potential to fiscally affect people who willfully violate the new provisions added by the bill, which may not have been punishable before.

C. Government Sector Impact:

This bill expands the ways in which a person can violate an injunction for protection against repeat violence, sexual violence, or dating violence, resulting in a first-degree

misdemeanor, which can be punishable by up to one year in jail. This could have an indeterminate bed impact upon local jails.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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:	CS/SB 246
INTRODUCER:	Health Regulation Committee; and Senators Joyner and Margolis
SUBJECT:	Human Trafficking
DATE:	March 10, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**Fav/CS**
2.	Cellon	Cannon	CJ	**Pre-Meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill requires operators of massage establishments to maintain valid work authorization documents on the premises for employees who are not U.S. citizens, and present these documents to a law enforcement officer upon request. The bill makes it unlawful for a massage establishment operator to knowingly use a massage establishment for the purpose of lewdness, assignation, or prostitution. Criminal penalties are established for a violation of any of the provisions set forth in the bill.

The effective date of this bill is October 1, 2011.

This bill creates section 480.0535, and substantially amends section 921.0022, of the Florida Statutes.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, men and women. Victims of human trafficking are subjected to force, fraud, or coercion, for the purpose of sexual exploitation or forced labor.[1]

The International Labor Organization (ILO), the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that there are at least 12.3 million adults and children in forced labor, bonded labor, and commercial sexual servitude at any given time.[2] The Federal Government has estimated that the number of persons trafficked into the United States each year range from 14,500-17,500.[3] Additionally, an estimated 200,000 American children are at risk for trafficking into the sex industry each year, according to the U.S. Department of Justice.[4]

After drug dealing, trafficking of humans is tied with arms-dealing as the second largest criminal industry in the world, and is the fastest growing. Many victims of human trafficking are forced to work in prostitution or the sex entertainment industry. However, trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work.[5]

Traffickers use various techniques to instill fear in victims and to keep them enslaved. Some traffickers keep their victims under lock and key. However, the more frequent practice is to use less obvious techniques including:

- Debt bondage - financial obligations, honor-bound to satisfy debt.
- Isolation from the public - limiting contact with outsiders and making sure that any contact is monitored or superficial in nature.
- Isolation from family members and members of their ethnic and religious community.
- Confiscation of passports, visas or identification documents.
- Use or threat of violence toward victims or families of victims.
- The threat of shaming victims by exposing circumstances to family.
- Telling victims they will be imprisoned or deported for immigration violations if they contact authorities.
- Control of the victims' money, and holding their money for "safe-keeping."[6]

[1] U.S. Department of Health and Human Services, Administration for Children & Families, *About Human Trafficking*, available at http://www.acf.hhs.gov/trafficking/about/index.html# (Last visited on January 31, 2011).
[2] *See* U.S. Department of State, *The 2009 Trafficking in Persons (TIP) Report*, June 2009, available at http://www.state.gov/g/tip/rls/tiprpt/2009/ (Last visited on February 1, 2011).
[3] Sonide Simon, *Human Trafficking and Florida Law Enforcement*, Florida Criminal Justice Executive Institute, pg. 2, March 2008, available at http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx (Last visited on February 1, 2011).
[4] *Id.* at 3.
[5] *Supra* fn. 1.
[6] *Id.*

Federal Trafficking Law

In 2000, Congress enacted the Trafficking Victims Protection Act (TVPA) to "combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims."[7] The TVPA not only criminalizes human trafficking, but also requires that victims, who might otherwise be treated as criminals (e.g. engagement in prostitution), be treated as victims of crime and be provided with health and human services, if they cooperate with prosecutions.

The Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), Pub. L. 108-193, reauthorized the TVPA and added responsibilities to the U.S. Government's anti-trafficking portfolio. In particular, the TVPRA 2003 mandated new information campaigns to combat sex tourism, added refinements to the federal criminal law provisions, and created a new civil action that allows victims to sue their traffickers in federal district court. In addition, the TVPRA 2003 required an annual report from the Attorney General to Congress.[8]

The Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005), Pub. L. 109-164, reauthorized the TVPA and authorized new anti-trafficking resources, including grant programs to assist state and local law enforcement efforts and expand victim assistance programs to U.S. citizens or resident aliens subjected to trafficking; authorized pilot programs to establish residential rehabilitative facilities for trafficking victims, including one program aimed at juveniles; and provided extraterritorial jurisdiction over trafficking offenses committed overseas by persons employed by or accompanying the federal government.[9]

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457, reauthorized the TVPA for 4 years and authorized new measures to combat human trafficking. The TVPRA 2008:

- Created new crimes imposing severe penalties on those who obstruct or attempt to obstruct the investigations and prosecutions of trafficking crimes;
- Changed the standard of proof for the crime of sex trafficking by force, fraud, or coercion by requiring that the government merely prove that the defendant acted in reckless disregard of the fact that such means would be used;
- Broadened the reach of the crime of sex trafficking of minors by eliminating the requirement to show that the defendant knew that the person engaged in commercial sex was a minor in cases where the defendant had a reasonable opportunity to observe the minor;
- Expanded the crime of forced labor by providing that "force" is a means of violating the law; imposed criminal liability on those who, knowingly and with intent to defraud, recruit workers from outside the U.S. for employment within the U.S. by making materially false or fraudulent representations;

[7] Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, (2000).

[8] Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons, pg. 2 (July 2010), available at http://www.justice.gov/ag/annualreports/tr2009/agreporthumantrafficking2009.pdf (Last visited on February 1, 2011).

[9] *Id.* at 3.

- Enhanced the penalty for conspiring to commit trafficking-related crimes; and
- Penalized those who knowingly benefit financially from participating in a venture that engaged in trafficking crimes.[10]

Between Fiscal Years 2001-2009, the FBI's Civil Rights Division and U.S. Attorneys' Offices, under authority of the TVPA, prosecuted 645 defendants, secured 466 convictions and guilty pleas, and opened 1,187 new investigations.[11]

Florida Statewide Task Force on Human Trafficking

The Florida Statewide Task Force on Human Trafficking was created in 2009[12] with the express purpose of examining the problem of human trafficking and recommending strategies and actions for reducing or eliminating the unlawful trafficking of men, women, and children into Florida. The Florida State University Center for the Advancement of Human Rights (CAHR) was directed to submit a statewide strategic plan to the task force by November 1, 2009.[13] The strategic plan was required to address the following five subjects:

- A description of available data on human trafficking in Florida;
- Identification of available victim programs and services;
- Evaluation of public awareness strategies;
- Assessment of current laws; and
- A list of recommendations produced in consultation with governmental and non-governmental organizations.[14]

The CAHR's strategic plan is broken up into five goals or objectives to meet the five subjects required to be addressed by the CAHR under ch. 2009-95, Laws of Florida. In summary, the strategic plan provided the following:

- Labor trafficking is the most prevalent type of human trafficking in Florida, while domestic minor sex trafficking is also prevalent and the most under-reported and under-prosecuted human trafficking offense in Florida.
- There is a need to have and maintain an up-to-date resource directory for all persons and organizations that assist victims of trafficking in Florida.
- Public awareness is at the heart of Florida being able to successfully assist victims of human trafficking statewide and public awareness campaigns must have broad support, involve diverse activities, and have an accurate and concise message, while also being culturally sensitive.
- Although Florida has made progress in its human trafficking laws, more training is needed to carry out enforcement of such laws and further reforms should be considered.

[10] *Id.*
[11] *Id.* at 48.
[12] *See* ch. 2009-95, Laws of Florida.
[13] Florida State University, Center for the Advancement of Human Rights, *Florida Strategic Plan on Human Trafficking*, available at http://www.dcf.state.fl.us/initiatives/humantrafficking/docs/FSUStrategicPlan2010.pdf (Last visited on January 31, 2011).
[14] *Id.*

- There is a need for state government training and awareness of human trafficking so that government employees and contractors may learn how they might encounter human trafficking and how they should respond; Florida needs to provide effective and safe services for victims; and law enforcement needs more training for more effective responses and needs to develop and sustain partnerships within communities.[15]

The task force was required to propose a plan of implementation of the strategic plan by October 1, 2010.[16]

Human Trafficking in Florida

The exact number of persons trafficked in Florida is difficult to determine because little data is available due to the reluctance of victims to report trafficking, the ease with which traffickers can move and operate, and until recently, little historical experience by law enforcement and prosecutors in cases of human trafficking. However, Florida is ranked as one of the top states in the nation for human trafficking cases, with immigrants and non-English speaking persons especially vulnerable.[17]

The CAHR has found that Asian massage parlors are often used to disguise sex trafficking. Women are trafficked in from Korea, Vietnam, Thailand or China using tourist visas. The women are then forced to work off their debt of being smuggled in, which is typically $50,000 to $100,000.[18] Officials in Florida have discovered a very pronounced pattern of "moving targets" with some massage establishments operating a "taxi service," transporting women to other massage establishments throughout the country as often as every 7 to 14 days.[19] Massage establishments engaged in trafficking will also often close and re-open frequently to avoid having to hold trafficked women in a single location.[20]

Currently in Florida, all law enforcement recruits receive mandatory training in recognizing and investigating human trafficking cases. Also, the U.S. Justice Department currently operates human trafficking task forces in Miami, Homestead, Naples, Fort Myers, and Tampa-Clearwater.

Florida Laws on Human Trafficking, Sex Trafficking, and Prostitution

"Human trafficking" is defined under s. 787.06(2)(c), F.S., to mean transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport.

Section 787.06(3), F.S., provides that it is a second-degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., (maximum imprisonment of 15 years, maximum fine of $10,000, or penalties applicable for a habitual offender) for any person to knowingly:

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[15] *Id.*

[16] Senate Health Regulation Committee professional staff requested a copy of the implementation plan on January 31, 2011, from a task force member, and is awaiting a response.

[17] Terry S. Coonan, *Human Rights in the Sunshine State: A proposed Florida Law on Human Trafficking*, 31 FLA. ST. U. L. REV. 289 (Winter 2004).

[18] Email received from Terry Coonan, Executive Director of the FSU Center for the Advancement of Human Rights (CAHR), on February 1, 2011. A copy of the email is on file with the Senate Health Regulation Committee.

[19] Terry Coonan, CAHR, *Rationale for the Proposed Revisions*. Document on file with the Committee on Health Regulation staff.

[20] *Supra* fn. 13.

- Engage, or attempt to engage, in human trafficking with the intent or knowledge that the trafficked person will be subjected to forced labor or services; or
- Benefit financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services.

"Sex trafficking" is regulated under ch. 796, F.S., relating to prostitution. Section 796.045, F.S., provides that any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking, a second-degree felony. A person commits a first-degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., (maximum imprisonment of 30 years, maximum fine of $10,000, or penalties applicable for a habitual offender) if the offense of sex trafficking is committed against a person who is under the age of 14 or if such offense results in death.

Section 796.07, F.S., makes it unlawful to, among other things, own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution. A person who commits this offense is guilty of:

- A misdemeanor of the second-degree for the first violation, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., (maximum imprisonment of 60 days or maximum fine of $500);
- A misdemeanor of the first-degree for the second violation, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., (maximum imprisonment of 1 year or maximum fine of $1,000); or
- A felony of the third degree for the third or subsequent violation, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S., (maximum imprisonment of 5 years, maximum fine of $5,000, or penalties applicable for a habitual offender).

"Prostitution" is defined under s. 796.07, F.S., to mean the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses. "Lewdness" means any indecent or obscene act and "assignation" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.

Florida Regulation of Massage Therapists and Massage Establishments

Massage therapists and massage establishments in Florida are regulated by the Board of Massage Therapy (board) in the DOH under the Massage Practice Act, ch. 480, F.S., and Chapter 64B7, Florida Administrative Code. A person must be licensed as a massage therapist to practice massage for compensation, unless otherwise specifically exempted under the Massage Practice Act.[21] In order to be licensed as a massage therapist, an applicant must:

- Be at least 18 years old or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a board-approved massage school or apprenticeship program; and

[21] Section 480.047(1)(a), F.S. *See also* s. 480.033(4), F.S.

- Pass an examination,[22] which is currently offered in English and in Spanish.[23]

Li**c**ensed massage therapists may practice in a licensed massage establishment, at a client's residence or office, or at a sports event, convention or trade show.[24] Sexual misconduct, defined as a violation of the professional relationship through the use of such relationship to engage or attempt to engage in sexual activity outside the scope of the profession, is strictly prohibited.[25]

A person may be approved by the board to become an apprentice to study massage under the instruction of a licensed massage therapist, if the person meets the qualifications stated in Rule 64B7-29.002, Florida Administrative Code. To qualify for an apprenticeship, the applicant must have secured the sponsorship of a sponsoring massage therapist, complete a DOH application, pay a $100 fee, and must not be enrolled simultaneously as a student in a board-approved massage school.[26]

Section 480.43, F.S., provides that a massage establishment license is required at any facility where massage therapy services are offered by a licensed massage therapist and directs the board to adopt application criteria. It also provides that massage establishment licenses may not be transferred to a new owner, but may be transferred to a new location if the new location is inspected and approved by the board and an application and inspection fee has been paid. A license may be transferred from one business name to another if approved by the board and if an application fee has been paid.

The board's rules include insurance requirements, compliance with building codes, and safety and sanitary requirements, and require a licensed massage therapist to be onsite any time a client is receiving massage services.[27] Upon receiving an application, the DOH inspects the establishment to ensure it meets the licensure requirements.[28] Once licensed, the DOH inspects the establishment at least annually.[29]

An application for a massage establishment license may be denied for an applicant's conviction of crimes related to the practice of massage, and must be denied for convictions of enumerated crimes within 15 years of application[30] and for past sexual misconduct.[31]

It is a misdemeanor of the first degree to operate an unlicensed massage establishment.[32] Currently, upon receiving a complaint that unlicensed activity is occurring, the DOH's Medical Quality Assurance inspectors coordinate with local law enforcement. Unlicensed practice of massage therapy is punishable as a third-degree felony.[33] The DOH may issue cease and desist

[22] Section 480.042, F.S.
[23] Rule 64B7-25.001(3), F.A.C.
[24] Section 480.046(1)(n), F.S.
[25] Section 480.0485, F.S. *See also* Rule 64B7-26.010, F.A.C.
[26] *See* rule 64B7-27.005, for the apprentice fee amount.
[27] Rule 64B7-26.003, F.A.C.
[28] Rule 64B7-26.004, F.A.C.
[29] Rule 64B7-26.005, F.A.C.
[30] Section 456.0635, F.S.
[31] Section 456.063, F.S.
[32] Section 480.047, F.S.
[33] Section 456.065, F.S.

notices, enforceable by filing for an injunction or writ of mandamus and seek civil penalties against the unlicensed party in circuit court.[34] The DOH may also impose, by citation, an administrative penalty up to $5,000. While the DOH has investigative authority, it does not have arrest authority or sworn law enforcement personnel.

I-551 Permanent Residence Card, Employment Authorization Document
The U.S. Citizen and Immigration Service (USCIS) within the Department of Homeland Security (DHS) is the federal department responsible for granting lawful permanent residence.[35] A permanent resident is someone who has been granted authorization to live and work in the U.S. on a permanent basis. As proof of that status, a person is granted a Permanent Resident Card or Alien Registration Receipt Card. A Permanent Resident Card is officially called "Form I-551," and commonly called a "green card."[36]

Individuals who are temporarily in the U.S. and eligible[37] for employment authorization may file a Form I-765, Application for Employment Authorization, to request an Employment Authorization Document (EAD).[38] An EAD card, commonly called a "work permit," provides its holder the legal right to work in the U.S.

III. Effect of Proposed Changes:

Section 1 creates s. 480.0535, F.S., to require a person, who operates a massage establishment pursuant to s. 480.043, F.S., to maintain valid work authorization documents on the premises for *each* employee who is not a U.S. citizen and to present to a law enforcement officer, upon request, the work authorization documents for each employee who is not a U.S. citizen. Valid work authorization documents include:

- A valid I-551 permanent residence card; or
- A valid government-issued employment authorization document.

The bill prohibits a person operating a massage establishment from knowingly using a massage establishment licensed pursuant to s. 480.043, F.S., including any location, structure, trailer, conveyance or any other part thereof, for the purpose of lewdness, assignation, or prostitution.

The bill provides a cross-reference to s. 796.07, F.S., to define the terms lewdness, assignation, and prostitution.

A person who violates any provisions of the bill commits:

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[34] *Id.*
[35] U.S. Immigration Support, *USCIS*, available at http://www.usimmigrationsupport.org/uscis.html (Last visited on February 1, 2011).
[36] U.S. Immigration Support, *Form I-551 (Green Card)*, available at: http://www.usimmigrationsupport.org/form-i-551-greencard.html (Last visited on February 1, 2011).
[37] Employment authorization eligibility is codified in Federal Regulations at 8 C.F.R. §274a.12, available at http://law.justia.com/us/cfr/title08/8-1.0.1.2.54.2.1.1.html (Last visited on February 1, 2011).
[38] U.S. Citizen and Immigration Service, *I-765, Application for Employment Authorization*, available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=73ddd59cb7a5d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD (Last visited on February 1, 2011).

- A misdemeanor of the second degree for the first violation, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., (maximum imprisonment of 60 days or maximum fine of $500);
- A misdemeanor of the first-degree for the second violation, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., (maximum imprisonment of 1 year or maximum fine of $1,000); or
- A felony of the third-degree for the third or subsequent violation, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S., (maximum imprisonment of 5 years, maximum fine of $5,000, or penalties applicable for a habitual offender).

Section 2 amends s. 921.0022, F.S., to rank third and subsequent violations of s. 480.0535, F.S., as level 5 offenses under the Criminal Punishment Code for the purpose of sentencing.

Section 3 provides an effective date of October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Operators or owners of massage establishments may incur nominal administrative costs to comply with the requirements set forth in the bill. The provisions of the bill might prevent or deter human trafficking in massage establishments.

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.)

CS by Health Regulation on February 8, 2011:
The CS differs from the bill in that it:

- Removes the requirement that individuals providing or offering to provide massage services for compensation or on behalf of a massage establishment or business possess, and show to law enforcement upon request, license cards issued by the Department of Health and other identifying documentation.
- Clarifies that the employment authorization documents to be maintained by the massage establishment operators are to be "government-issued" employment authorization documents.
- Provides a cross-reference for the definitions of the terms "lewdness," "assignation," and "prostitution."
- Makes a technical correction in the Criminal Punishment Code relating to a description of the offenses provided for in the bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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 438
INTRODUCER:	Senator Hill
SUBJECT:	Injunctions for Protection
DATE:	March 10, 2011
REVISED:	

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

I. Summary:

The bill requires the Florida Association of Court Clerks, subject to available funding, to develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence. Such notification must be made within 12 hours after the sheriff or other law enforcement officer serves the protective injunction.

This bill amends sections 741.30 and 784.046, Florida Statutes

II. Present Situation:

Protective Injunctions

In 2005, it was estimated that more than 1.5 million adults in the United States are victims of domestic violence each year, and more than 85 percent of the victims are women.[1] In Florida, 113,123 incidents of domestic violence were reported in 2008, which is 1.8 percent less than what was reported for the same period in 2007.[2] Additionally, statistics show that one in five high school girls has reported being physically or sexually abused by a dating partner, and

[1] Margaret Graham Tebo, *When Home Comes to Work*, ABA JOURNAL (Sept. 2005), *available at* http://www.abajournal.com/magazine/when_home_comes_to_work/ (last visited Mar. 10, 2011) (citing statistics from Legal Momentum, an advocacy and research organization based in New York City); *see also* Nat'l Coalition Against Domestic Violence, *Domestic Violence Facts*, http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf (last visited Mar. 10, 2011).

[2] Florida Dep't of Law Enforcement, *Crime in Florida* (Jan.-Dec. 2008), http://www.fdle.state.fl.us/Content/getdoc/4f6a6cd0-6479-4f4f-a5a4-cd260e4119d8/CIF_Annual08.aspx (last visited Mar. 10, 2011).

females ages 16 through 24 are three times more vulnerable for partner violence than any other age group.[3]

An injunction for protection is a civil order that provides protection from abuse by certain people. An injunction can order the abuser to do certain things (such as moving out of the house), to not do certain things (such as contacting the victim), or it can give the victim certain rights (such as temporary custody of any children).[4] In 1979, the Florida Legislature created a cause of action for an injunction for protection against domestic violence, and in 1988 a cause of action for an injunction for protection against repeat violence, sexual violence, or dating violence was also created.[5]

A victim of domestic violence[6] or a person who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence may seek protective injunctive relief.[7] Additionally, a victim of repeat violence,[8] sexual violence,[9] or dating violence[10] may seek protective injunctive relief.[11]

Florida law requires that within 24 hours after the court issues or modifies an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence, the clerk of the court must forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The following requirements must be followed when serving the injunction:

- The law enforcement officer must forward the written proof of service of process to the sheriff within 24 hours after service of process of a domestic violence protective injunction upon a respondent;

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[3] American Bar Association, *Teen Dating Violence Facts* (2006), http://www.abanet.org/unmet/teendating/facts.pdf (last visited Mar. 3, 2010).
[4] *Injunctions for Protection Against Domestic Violence* (Feb. 3, 2010), http://www.womenslaw.org/laws_state_type.php?id=496&state_code=FL (last visited March 10, 2011).
[5] See chs. 79-402, s. 1, and 88-344, s. 1, Laws of Fla.
[6] Domestic violence is defined as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." Section 741.28(2), F.S.
[7] Section 741.30(1), F.S.
[8] Section 784.046(1)(b), F.S., defines repeat violence as "two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member."
[9] Sexual violence is defined as any one incident of "1. Sexual battery, as defined in chapter 794; 2. A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age; 3. Luring or enticing a child, as described in chapter 787; 4. Sexual performance by a child, as described in chapter 827; or 5. Any other forcible felony wherein a sexual act is committed or attempted." For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney. Section 784.046(1)(c), F.S.
[10] Dating violence is defined as "violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature." The following factors come into play when determining the existence of such a relationship: (1) a dating relationship must have existed within the past six months; (2) the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and (3) the persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. Section 784.046(1)(d), F.S.
[11] Section 784.046(2), F.S.

- The sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the Florida Department of Law Enforcement (FDLE) within 24 hours after the sheriff receives a certified copy of the protective injunction; and
- The sheriff must make such information relating to the service available to other law enforcement agencies by electronically transmitting such information to the FDLE within 24 hours after the sheriff or other law enforcement officer makes service upon the respondent and the sheriff has been so notified.[12]

Victim Notification

Section 960.001, F.S., provides guidelines for the fair treatment of victims and witnesses involved in the criminal and juvenile justice systems. Specifically, the purpose of the guidelines is to achieve specified objectives in the following categories:

- Information concerning services available to victims of adult and juvenile crime;
- Information for purposes of notifying victim or appropriate next of kin of victim or other designated contact of victim;
- Information concerning protection available to victim or witness;
- Notification of scheduling changes;
- Advance notification to victim or relative of victim concerning judicial proceedings; right to be present;
- Information concerning release from incarceration from a county jail, municipal jail, juvenile detention facility, or residential commitment facility;
- Consultation with victim or guardian or family of victim;
- Return of property to victim;
- Notification to employer and explanation to creditors of victim or witness;
- Notification of right to request restitution;
- Notification of right to submit impact statement;
- Local witness coordination services;
- Victim assistance education and training;
- General victim assistance;
- Victim's rights information card or brochure;
- Information concerning escape from a state correctional institution, county jail, juvenile detention facility, or residential commitment facility;
- Presence of victim advocate during discovery deposition; testimony of victim of a sexual offense;
- Implementing crime prevention in order to protect the safety of persons and property, as prescribed in the State Comprehensive Plan;
- Attendance of victim at same school as defendant;
- Use of a polygraph examination or other truth-telling device with victim; and
- Presence of victim advocates during forensic medical examination.

[12] See ss. 741.30(8)(c)2.-4., and 784.046(8)(c)2.-4., F.S.

Essentially, victims have the right to be informed, to be present, and to be heard when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent that this right does not interfere with constitutional rights of the accused.

Upon the request of the victim (or the appropriate next of kin or designated contact), the chief administrator of a county jail, municipal jail, juvenile detention facility, or residential commitment facility must make a reasonable attempt to notify the requestor prior to the defendant's or offender's release from incarceration. However, victims (or the appropriate next of kin or designated contact) of specified offenses[13] must be notified within four hours by the chief administrator about the release of an offender or defendant from incarceration in any of the above facilities or the release of an offender or defendant following sentencing, disposition, or furlough.[14]

If an offender escapes from a state correctional institution or any of the above facilities, then the institution of confinement must immediately notify the state attorney of the jurisdiction where the criminal charge arose and the judge who imposed the sentence. The state attorney must then make every effort to notify the victim, material witness, parents or legal guardian of a minor who is a victim or witness, or immediate relatives of a homicide victim of the escapee.[15]

The Department of Corrections (DOC or department) is required by law to notify, if requested, the state attorney, victim, or personal representative of the victim when an inmate has been approved for community work release within 30 days after the date of approval.[16] The department is also required to notify the victim six months before the release of an inmate from the custody of the department.[17] In addition, if an inmate is a sexual offender,[18] DOC is required, if requested, to notify the victim of the offense, the victim's parent or legal guardian if the victim is a minor, the lawful representative of the victim, or the next of kin if the victim is a homicide victim, within six months prior to the anticipated release of a sexual offender, or as soon as possible if the sexual offender is released earlier than anticipated.[19]

III. Effect of Proposed Changes:

This bill amends ss. 741.30(8)(c) and 784.046(8)(c), F.S., to require, in addition to the notice requirements on law enforcement for serving an injunction for protection, the Florida Association of Court Clerks, subject to available funding, to develop an automated process by

[13] These offenses include homicide, sexual offense, an attempted murder or sexual offense, stalking, or domestic violence. See s. 960.001(1)(b), F.S.
[14] Section 960.001(1)(f), F.S.
[15] Section 960.001(1)(p), F.S.
[16] Section 944.605(6), F.S.
[17] Section 944.605(1), F.S.
[18] Section 944.606, F.S., defines "sexual offender" as "a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subsection."
[19] Section 944.606(3)(b), F.S.

which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence, as well as other court actions related to the injunction. Notification must be made within 12 hours after the sheriff or other law enforcement officer has served the protective injunction. The notification must include, at a minimum, the location, date, and time that the protective injunction was served.

This bill provides an effective date of July 1, 2011.

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:

The bill requires the Florida Association of Court Clerks to develop an automated process so that a petitioner may request notification of service of an injunction for protection. However, the bill specifies that the association is only required to develop the automated process if it has available funding. It is unclear how the determination will be made that sufficient funding is available for the association to comply with the bill's requirements. The association has stated that a determined funding amount and the source of the funding need to be established in order for the association to comply with the bill.[20]

VI. Technical Deficiencies:

None.

[20] Correspondence from Fred Baggett, General Counsel, Fla. Ass'n of Court Clerks and Comptrollers, to Senator Anthony Hill (Mar. 25, 2010) (on file with the Senate Committee on Judiciary).

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (c) of subsection (8) of section 741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(8)

(c)1. Within 24 hours after the court issues an injunction

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for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence and other court actions related to the injunction for protection. The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the

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respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against domestic violence was served. The Florida Association of Court Clerks and Comptrollers shall apply for any available grants to fund the development of the automated process.

6.~~5.~~ Within 24 hours after an injunction for protection against domestic violence is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 2. Paragraph (c) of subsection (8) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations.—

(8)

(c)1. Within 24 hours after the court issues an injunction for protection against repeat violence, sexual violence, or dating violence or changes or vacates an injunction for protection against repeat violence, sexual violence, or dating violence, the clerk of the court must forward a copy of the injunction to the sheriff with jurisdiction over the residence of the petitioner.

2. Within 24 hours after service of process of an injunction for protection against repeat violence, sexual

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violence, or dating violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against repeat violence, sexual violence, or dating violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against repeat violence, sexual violence, or dating violence and other court actions related to the injunction for protection. The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against repeat violence, sexual violence, or dating violence was served. The Florida Association of Court Clerks and Comptrollers shall apply for any available grants to fund the development of the

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automated process.

6.~~5.~~ Within 24 hours after an injunction for protection against repeat violence, sexual violence, or dating violence is lifted, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff or local law enforcement agency receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 3. This act shall take effect July 1, 2011.

================ 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 injunctions for protection against domestic violence, repeat violence, sexual violence, or dating violence; amending ss. 741.30 and 784.046, F.S.; subject to available funding, directing the Florida Association of Court Clerks and Comptrollers to develop an automated process by which a petitioner for an injunction for protection may request notification of service of the injunction or notice of other court actions related to the injunction; requiring that notice be given to the petitioner within a specified time; providing for the content of the notice; 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 888
INTRODUCER:	Senator Dean
SUBJECT:	Offense of Sexting
DATE:	March 7, 2011
REVISED:	

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

I. Summary:

"Sexting" is a term that describes the act of sending sexually explicit messages, photographs, or videos of oneself or another person by electronic means. The bill creates a new offense that applies to minors who engage in sexting that involves knowingly using a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of himself or herself which depicts nudity and is harmful to minors. A minor who commits this act is subject to penalties which begin with a noncriminal violation for the first offense and escalate with subsequent offenses. Currently, acts that are covered by the bill could be prosecuted as a felony and result in the minor having to register as a sexual offender and be subject to residency restriction laws.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Florida law currently contains various statutes that prohibit the creation, possession, and transmission of sexual materials depicting minors. Some of these laws address photographs or videos that do not rise to the level of child pornography, which is statutorily defined as "any image depicting a minor engaged in sexual conduct."[1] Section 847.001(16), F.S., defines "sexual conduct" as:

> [A]ctual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual

[1] See ss. 775.0847(1)(b) and 847.001(3), F.S.

physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."[2]

Sexual Performance by a Child
Section 827.071(5), F.S., provides that it is a third degree felony for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The statute specifies that the possession of each photograph, motion picture, exhibition, show, representation, or presentation is a separate offense.

Prohibition of Acts Relating to Obscene and Lewd Materials
Section 847.011(1)(a), F.S., provides that it is a first degree misdemeanor for a person to knowingly sell, lend, give away, distribute, transmit, show, or transmute, or have in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, or transmute, specified obscene items, including pictures, photographs, and images. However, s. 847.011(1)(c), F.S., provides that it is a third degree felony if the violation of s. 847.011(1)(a) or (2), F.S., is based on materials that depict a minor[3] engaged in any act or conduct that is harmful to minors.[4]

Section 847.011(2), F.S., provides that it is a second degree misdemeanor for a person to have in his or her possession, custody, or control specified obscene items, including pictures, photographs, and images, without the intent to sell, etc., such items.

Protection of Minors
Section 847.0133, F.S., provides that it is a third degree felony for a person to knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene[5] material to a minor. "Material" includes pictures, photographs, and images.

Computer Pornography
Section 847.0135(2), F.S., provides that it is a third degree felony for a person to:

- Knowingly compile, enter into, or transmit the visual depiction of sexual conduct with a minor by use of computer;
- Make, print, publish, or reproduce by other computerized means the visual depiction of sexual conduct with a minor;

[2] "Sexual conduct" is defined identically in ss. 775.0847 and 827.071, F.S. It has a more limited definition in s. 365.161, F.S., which relates to obscene or indecent communications made by a telephone that describe certain sexual acts.
[3] The term "minor" is defined as "any person under the age of 18 years." Section 847.001(8), F.S.
[4] The term "harmful to minors" is defined in s. 847.001(6), F.S. For a more detailed definition, see the "Effect of Proposed Changes" section of this bill analysis.
[5] Section 847.001(10), F.S., defines the term "obscene" as the status of material which the average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest; depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and taken as a whole, lacks serious literary, artistic, political, or scientific value. A mother's breastfeeding of her baby is not under any circumstance "obscene."

- Knowingly cause or allow to be entered into or transmitted by use of computer the visual depiction of sexual conduct with a minor; or
- Buy, sell, receive, exchange, or disseminate the visual depiction of sexual conduct with a minor.

Transmission of Pornography
Section 847.0137(2), F.S., provides that any person in this state who knew or reasonably should have known that he or she was transmitting child pornography to another person in this state or another jurisdiction commits a third degree felony.

Transmission of Material Harmful to Minors
Section 847.0138(2), F.S., provides that any person who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors to a specific individual known or believed by the defendant to be a minor commits a third-degree felony.

Both minors and adults can be charged with any of the offenses described above.

Sexting
"Sexting" is a recently coined term that combines the words "sex" and "texting."[6] It is used to describe the act of sending sexually explicit messages, photographs, or videos of oneself or another person by electronic means. As the name suggests, "sext" messages are most commonly sent by a cell phone text message. Media reports and other studies indicate that sexting is a growing trend among teenagers. In a 2008 survey of 1,280 teenagers and young adults of both sexes, 20 percent of teens (ages 13-19) and 33 percent of young adults (ages 20-26) had sent nude or semi-nude photographs of themselves electronically.[7] Additionally, 39 percent of teens and 59 percent of young adults had sent sexually explicit text messages.[8]

There is no Florida law that specifically addresses sexting. Under current law, a person who knowingly sends certain sexually explicit images of a minor to another person, or a person who knowingly receives such images, could be charged with any number of different offenses that relate to sexual material depicting minors. For example, in 2007, 18-year-old Phillip Alpert was arrested and charged with transmitting child pornography (among other things) after he sent a nude photo of his 16-year-old girlfriend to her friends and family after they had an argument. In total, Alpert was charged with 72 offenses, sentenced to five years of probation, and was required to register as a sexual offender.[9]

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[6] Stacey Garfinkle, Sex + Texting = Sexting, *The Washington Post*, Dec. 10, 2008, available at http://voices.washingtonpost.com/parenting/2008/12/sexting.html (last visited March 7, 2011).
[7] National Campaign to Prevent Teen and Unplanned Pregnancy, Sex and Tech: Results from a Survey of Teens and Young Adults, 1, available at http://www.thenationalcampaign.org/sextech/PDF/SexTech_Summary.pdf (last visited March 7, 2011).
[8] *Id.*
[9] Vicki Mabrey and David Perozzi, 'Sexting': Should Child Pornography Laws Apply?, *ABC NEWS* (Apr. 1, 2010), available at http://abcnews.go.com/Nightline/phillip-alpert-sexting-teen-child-porn/story?id=10252790 (last March 2, 2011); Deborah Feyerick and Sheila Steffen, 'Sexting' lands teen on sex offender list, *CNN* (Apr. 8, 2009), available at http://www.cnn.com/2009/CRIME/04/07/sexting.busts/index.html (last visited March 7, 2011).

Similarly, in other jurisdictions, some law enforcement officers and district attorneys have begun prosecuting teens who "sext" under laws generally reserved for producers and distributors of child pornography. For example, in Pennsylvania, a district attorney gave 17 students who were either pictured in images or found with "provocative" images on their cell phones the option of either being prosecuted under child pornography laws or agreeing to participate in a five-week after school program and probation.[10] Similar incidents have occurred in other states, e.g., Massachusetts, Ohio, and Iowa.[11]

As a result, state legislatures have considered making laws that downgrade the charges for sexting from felonies to misdemeanors. For example, in 2009, Vermont and Utah passed laws that downgraded the penalties for minors and first-time perpetrators of sexting.[12]

III. Effect of Proposed Changes:

The bill creates a new offense that applies to "sexting" *by a minor*. A minor who commits sexting is subject to penalties that are less than the punishment that could be assessed for the same conduct under existing law. Also, a conviction of sexting would not result in the requirement to register as a sexual offender or to comply with existing residency restriction laws or other laws that apply to persons who are convicted of certain sexual offenses.

Sexting occurs when a minor knowingly uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of himself or herself which depicts nudity, as defined in s. 847.001(9), F.S., and is harmful to minors, as defined in s. 847.0016, F.S.

The term "nudity" is defined in s. 847.001(9), F.S., to mean:

> [T]he showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute "nudity," irrespective of whether or not the nipple is covered during or incidental to feeding.

Section 847.001(6), F.S., defines "harmful to minors" to mean:

> [A]ny reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:
> (a) Predominantly appeals to a prurient, shameful, or morbid interest;
> (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and

[10] Amanda Lenhart, Teens and Sexting: How and why minor teens are sending sexually suggestive nude or nearly nude images via text messaging, *Pew Research Ctr*., 3 (Dec. 15, 2009), available at http://www.pewinternet.org/~/media//Files/Reports/2009/PIP_Teens_and_Sexting.pdf (last visited March 7, 2011).
[11] *Id*.; *see also* Mabrey and Perozzi, *supra* note 10.
[12] Lenhart, *supra* note 11, at 3.

(c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

A mother's breastfeeding of her baby is not under any circumstance "harmful to minors."

The transmission or distribution of multiple photographs or videos is a single offense if the photographs or videos were transmitted or distributed within the same 24-hour period. The possession of multiple photographs or videos that were transmitted or distributed by a minor is a single offense if the photographs or videos were transmitted or distributed in the same 24-hour period.

The bill provides the following graduated punishment schedule for a violation of sexting:

- A first sexting violation is a noncriminal violation, punishable by eight hours of community service or, if ordered by the court in lieu of community service, a $60 fine. The court may also order the minor to participate in suitable training or instruction[13] in lieu of, or in addition to, the community service or fine.
- A sexting violation that occurs after being found to have committed a noncriminal violation for sexting is a second degree misdemeanor. A second degree misdemeanor is punishable by a jail term of not more than 60 days and may include a fine of not more than $500.[14]
- A sexting violation that occurs after being found to have committed a second degree misdemeanor violation for sexting is a first degree misdemeanor. A first degree misdemeanor is punishable by a jail term of not more than one year and may include a fine of not more than $1,000.[15]
- A sexting violation that occurs after being found to have committed a first degree misdemeanor violation for sexting is an unranked third degree felony. A third-degree felony is punishable by state imprisonment for not more than five years and may include a fine of not more than $5,000.[16] However, because the felony is unranked, the offender may be sentenced to a term of probation under supervision by the Department of Corrections.[17]

The bill defines the term "conviction." However the term "conviction" is not used in the text of the new section the bill creates. The definition actually appears to be applicable to the term "found to have committed." (See "Technical Deficiencies" section of the bill analysis for a discussion of this definition.)

SB 888 is substantially similar to a bill that passed the Senate last year (CS/SB 2560). According to an analysis prepared by the Florida Department of Law Enforcement (FDLE) on CS/SB 2560, because the first sexting violation is a noncriminal violation, the minor will not have an FDLE

[13] The bill does not define "suitable training or instruction," and it is unclear what type of training or instruction is anticipated under the bill.
[14] Sections 775.082 and 775.083, F.S.
[15] *Id.*
[16] Sections 775.082 and 775.083, F.S.
[17] "Unranked" is a descriptive term for a noncapital felony that is not specifically ranked in the offense severity ranking chart in s. 921.0022, F.S. If the felony is not ranked in the chart, it is ranked pursuant to s. 921.0023, F.S., based on its felony degree. An unranked third degree felony is a Level 1 offense. *Id.* A first-time offender convicted of only the unranked third degree felony would score a nonprison sanction as the lowest permissible sentence. Section 921.0024, F.S. Further, in this first-time offender scenario, a non prison sanction would be required unless the sentencing court made written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

record. Therefore, if the offenses occur in different jurisdictions, prosecutors may be unaware of a previous noncriminal violation and the minor may not be charged with the proper offense.[18]

Under the bill, the offense of sexting and its reduced penalties do not include the conduct of a minor who re-transmits a sexted photograph or video. Accordingly, the state attorney would continue to have discretion in the prosecution of such conduct.

The bill specifies that the sexting provisions do not prohibit the prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement, and does not prohibit the prosecution of a minor for stalking under s. 784.048, F.S.

The bill provides that it will take effect October 1, 2011.

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:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of criminal legislation, estimates that the bill will have an insignificant prison bed impact. However, the bill creates new misdemeanor offenses, which could affect local jails, though the impact is unknown at this time.

[18] Florida Department of Law Enforcement, Senate Bill 2560 Relating to Sexting (Mar. 17, 2010) (on file with the Senate Committee on Criminal Justice).

VI. Technical Deficiencies:

The bill defines the term "conviction" at lines 62-66 of the bill to mean a determination of guilt that is the result of a plea or trial, or a finding of delinquency that is the result of a plea or an adjudicatory hearing, regardless of whether adjudication is withheld. However the term "conviction" is not used in the text of the new section the bill creates. The definition actually appears to be applicable to the term "found to have committed." Therefore, Senate professional staff suggests that the reference to "conviction" be changed to "found to have committed" to reflect the actual terminology used in the bill with conforming changes to the bill's title.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

755604

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete line 62
and insert:
(4) As used in this section, the term "found to have committed" means a

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 17
and insert:
term "found to have committed"; providing an effective

755604

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 1086
INTRODUCER:	Senator Hill
SUBJECT:	Restraint of Incarcerated Pregnant Women
DATE:	March 10, 2011 REVISED:

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

I. Summary:

This bill creates the "Healthy Pregnancies for Incarcerated Women Act." It generally prohibits the use of restraints on any woman known to be pregnant and who is incarcerated in a state or local adult or juvenile facility during labor, transport to a medical facility, delivery, or postpartum recover. However, exceptions are allowed on an individual basis if there is a substantial flight risk or an extraordinary medical or security circumstance that dictates the use of restraints. The bill specifies that a woman who is harmed can file a complaint within one year in addition to any other remedies that might be available under state or federal law.

The bill includes several administrative requirements: (1) any exception must be documented in writing and kept available for public inspection for a period of 5 years; (2) a report of every instance in which shackles were used must be made to the governor's office annually; and (3) DOC and DJJ must adopt rules to administer the new law, and each correctional institution must inform prisoners of the rules and post the policies in the institution.

This bill creates a new section of the Florida Statutes.

II. Present Situation:

The issue of whether or not pregnant female inmates should be exempted from normal policies regarding use of restraints has been widely debated during the last few years. A number of states have considered legislation prohibiting or limiting the use of restraints for pregnant inmates, and in 2008 the Federal Bureau of Prisons revised its policy to limit the use of restraints. The National Commission on Correctional Health Care Board of Directors recently adopted a position paper on restraint of pregnant inmates. The introduction states:

> Restraint is potentially harmful to the expectant mother and fetus, especially in the third trimester as well as during labor and delivery. Restraint of pregnant inmates during labor and delivery should not be used. The application of restraints during all other pre-and postpartum periods should be restricted as much as possible and, when used, done so with consultation from medical staff. For the most successful outcome of a pregnancy, cooperation among custody staff, medical staff, and the patient is required.[1]

Department of Corrections Policy

DOC is responsible for the health care of inmates in its custody[2] and treats more than 80 pregnant inmates per year.[3] Florida refers each pregnant inmate to an OB/GYN physician to provide prenatal care and to follow her throughout her pregnancy. Inmates receive prenatal counseling, vitamins, and exams. They also receive an extra nutritional meal each day[4]

DOC has an established procedure regarding the use of restraints. Key components include:

- After it is learned that an inmate is pregnant (and during her postpartum period), her hands are not restrained behind her back and leg irons are not used. The use of waist chains or black boxes is also prohibited when there is any danger that they will cause harm to the inmate or fetus. The inmate's hands can be handcuffed in front of her body during transport and at the medical facility if required by security conditions due to her custody level and behavior. The shift supervisor's approval is required to remove handcuffs for medical reasons, except that approval is not required in an emergency situation.
- Unarmed escort officers are required to maintain close supervision of a pregnant inmate and to provide a "custodial touch" when necessary to prevent falls.
- An inmate in labor is not restrained, but after delivery she may be restrained to the bed with normal procedures (tethered to the bed by one ankle) for the remainder of her hospital stay. A correctional officer is stationed in the room with the inmate to be sure that she has access to the bathroom or can perform other needs that require movement.[5]

DOC reports that its procedures for the use of restraints on pregnant inmates are consistent with national guidelines. It also reports that there were no formal medical grievances submitted regarding the application of restraints during pregnancy from January 1, 2009 to the present.[6]

Department of Juvenile Justice Policy

DJJ policy is that pregnant youth must be handcuffed in the front when they are transported outside the secure area. Leg restraints, waist chains, and restraint belts cannot be used on

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[1] Position Paper on Restraint of Pregnant Inmates, adopted by the National Commission on Correctional Health Care Board of Directors (October 10, 2010), http://www.ncchc.org/resources/statements/restraint_pregnant_inmates.html , last viewed March 10, 2011.
[2] Section 945.6034, F.S.
[3] DOC Analysis of Senate Bill 1086 (March 10, 2011), page 4.
[4] Guidelines for the care and treatment of pregnant inmates are defined in DOC Procedure 506.201 (*Pregnant Inmates and the Placement of Newborn Infants*) and Health Services Bulletin 15.03.39 (*Health Care for Pregnant Inmates*).
[5] DOC Procedure 506.201, section 12, and DOC Analysis, page 2.
[6] DOC Analysis, pages 2 and 4.

pregnant youth.[7] There is no formal rule addressing the use restraints during labor and delivery. However, the practice is for restraints to be removed during labor and delivery and whenever requested by the treating health care professional.[8]

III. Effect of Proposed Changes:

The bill generally prohibits corrections officials from using restraints on a prisoner who is known to be pregnant during labor, transport to a medical facility, delivery, or postpartum recovery. The following are summarized definitions of terms used in the bill:

- "Corrections official" refers to the person who is responsible for oversight of a correctional facility, or his or her designee.
- "Restraints" include any physical restraint or mechanical device used to control the movement of the body or limbs. Examples include flex cuffs, soft restraints, hard metal handcuffs, black boxes, chubb cuffs, leg irons, belly chains, security chairs, and convex shields.
- "Prisoner" includes any person who is incarcerated or detained in a correctional institution at any time in relation to a criminal offense, including both pre-trial and post-trial actions. It also includes any women who is detained in a correctional institution under federal immigration laws.
- "Correctional institutions" include any facility under the authority of DOC or DJJ as well as county and municipal detention facilities.
- "Labor" is the time before birth when contractions bring about effacement and progressive cervical dilation.
- "Postpartum recovery" is the time immediately following delivery, including recovery time in the hospital or infirmary. The duration of postpartum recovery is determined by the physician.

Despite the general rule, restraints can be used if the corrections official makes an individualized determination of extraordinary circumstances that require their use. This is permissible in two situations: (1) when the prisoner presents a substantial flight risk; or (2) when there is an extraordinary medical or security circumstance that dictates the use of restraints for the safety and security of the prisoner, corrections or medical staff, other prisoners, or the public. However, there are situations that override the exceptions: (1) the corrections official accompanying the prisoner must remove all restraints if removal is requested by the treating doctor, nurse, or other health care professional; and (2) use of leg and waist restraint are completely prohibited during labor and delivery.

The corrections official who authorizes the use of restraints due to an extraordinary circumstance must document the reasons for the exception within 10 days of their use. The correctional institution must maintain this documentation on file and available for public inspection for at least 5 years. However, the prisoner's identifying information may not be made public without the prisoner's consent.

[7] DJJ Basic Curricula (PAR) 63H-1.001-.016(10).
[8] DJJ Analysis of Senate Bill 1086 (2011), pages 1-2.

In addition to maintaining a record of exceptions, the secretaries of DOC and DJJ and the official responsible for any local correctional facility where a pregnant woman was shackled during the previous year must submit a written report to the Executive Office of the Governor with an account of every instance in which shackles were used.

The bill requires DOC and DJJ to adopt rules to administer the new law, and each correctional institution must inform prisoners of the rules when they are admitted to the institution, include the policies and practices in the prison handbook, and post the policies in appropriate places within the institution.

The bill also specifies that a woman who is harmed may file a complaint within one year in addition to any other remedies that might be available under state or federal law. However, it is not clear to whom such a complaint would be directed or what relief would be available.

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:

It does not appear that the bill would have a significant fiscal impact on the government sector. In its analysis of the bill, DOC notes that staff will have to maintain files and prepare the annual report to the Governor but does not quantify any costs.

VI. Technical Deficiencies:

- Although it appears that the bill is only intended to apply to restraint of pregnant inmates during specified times in the latter stages of pregnancy, it would be helpful to clarify the intent.

- Clarification should be made as to whether the bill is intended to apply to correctional facilities operated by private companies.
- Unless it is already covered by an existing exemption, the requirement to redact prisoner's identifying information from publicly obtainable information creates a new public records exemption and therefore must meet requirements for enacting such legislation.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

393096

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Shackling of incarcerated pregnant women.—

(1) SHORT TITLE.—This section may be cited as the "Healthy Pregnancies for Incarcerated Women Act."

(2) DEFINITIONS.—As used in this section, the term:

(a) "Correctional institution" means any facility under the authority of the department, the Department of Juvenile Justice, or a county or municipal detention facility, or operated by a private entity.

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(b) "Corrections official" means the official who is responsible for oversight of a correctional institution, or his or her designee.

(c) "Department" means the Department of Corrections.

(d) "Extraordinary circumstance" means a substantial flight risk or some other extraordinary medical or security circumstance that dictates restraints be used to ensure the safety and security of the prisoner, the staff of the correctional institution or medical facility, other prisoners, or the public.

(e) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

(f) "Postpartum recovery" means, as determined by her physician, the period immediately following delivery, including the recovery period when a woman is in the hospital or infirmary following birth.

(g) "Prisoner" means any person incarcerated or detained in any correctional institution who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms and conditions of parole, probation, community control, pretrial release, or a diversionary program. For purposes of this section, the term includes any woman detained under the immigration laws of the United States at any correctional institution.

(h) "Restraints" means any physical restraint or mechanical device used to control the movement of a prisoner's body or limbs, including, but not limited to, flex cuffs, soft

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restraints, hard metal handcuffs, a black box, chubb cuffs, leg irons, belly chains, a security or tether chain, or a convex shield.

(3) RESTRAINT OF PRISONERS.—

(a) Restraints may not be used on a prisoner who is known to be pregnant during labor, delivery, and postpartum recovery, unless the corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance, except that:

1. If the doctor, nurse, or other health care professional treating the prisoner requests that restraints not be used, the corrections officer, correctional institution employee, or other officer accompanying the pregnant prisoner shall remove all restraints; and

2. Under no circumstances shall leg, ankle, or waist restraints be used on any pregnant prisoner who is in labor or delivery.

(b) If restraints are used on a pregnant prisoner pursuant to paragraph (a):

1. The type of restraint applied and the application of the restraint must be done in the least restrictive manner necessary; and

2. The corrections official shall make written findings within 10 days as to the extraordinary circumstance that dictated the use of the restraints. These findings shall be kept on file by the correctional institution for at least 5 years and be made available for public inspection, except that the identifying information of a prisoner may not be made public without the prisoner’s prior written consent.

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(c) During the third trimester of pregnancy, or when requested by the doctor, nurse, or other health care professional treating the pregnant prisoner:

1. Waist restraints that directly constrict the area of pregnancy may not be used.

2. If wrist restraints are used, they must be applied in such a way that the pregnant prisoner is able to protect herself in the event of a forward fall; and

3. Leg and ankle restraints that restrain the legs close together may not be used when the prisoner is required to walk or stand.

4. Use of leg, ankle or waist restraints is subject to the provisions of paragraph (a)(2).

(d) In addition to the specific requirements of paragraphs (a)-(c), any restraint of a prisoner who is known to be pregnant must be done in the least restrictive manner necessary in order to mitigate the possibility of adverse clinical consequences.

(4) ENFORCEMENT.—

(a) Notwithstanding any relief or claims afforded by federal or state law, any prisoner who is restrained in violation of this section may file a complaint within 1 year after the incident.

(b) This section does not prevent a woman harmed under this section from filing a complaint under any other relevant provision of federal or state law.

(5) NOTICE TO PRISONERS.—

(a) By September 1, 2011, the department and the Department of Juvenile Justice shall adopt rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer this section.

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(b) Each correctional institution shall inform female prisoners of the rules developed pursuant to paragraph (a) upon admission to the correctional institution, including the policies and practices in the prisoner handbook, and post the policies and practices in locations in the correctional institution where such notices are commonly posted and will be seen by female prisoners, including common housing areas and medical care facilities.

(6) ANNUAL REPORT.—By June 30 of each year, the Secretary of Corrections, the Secretary of Juvenile Justice, and the corrections official of each municipal and county detention facility where a pregnant prisoner had been shackled during that previous year shall submit a written report to the Executive Office of the Governor which includes an account of every instance using restraints pursuant to this section. The written reports may not contain identifying information of any prisoner. Such reports shall be made available for public inspection.

Section 2. This act shall take effect July 1, 2011.

================ 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 restraint of incarcerated pregnant women; providing a short title; defining terms; prohibiting use of restraints on a prisoner known to be pregnant during labor, delivery, and postpartum recovery unless a corrections official

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makes an individualized determination that the prisoner presents an extraordinary circumstance requiring restraints; providing that a doctor, nurse, or other health care professional treating the prisoner may request that restraints not be used, in which case the corrections officer or other official accompanying the prisoner shall remove all restraints; requiring that any restraint applied must be done in the least restrictive manner necessary; requiring the corrections official to make written findings within 10 days as to the extraordinary circumstance that dictated the use of restraints; restricting the use of waist, wrist, or leg and ankle restraints during the third trimester of pregnancy or when requested by a doctor, nurse, or other health care professional treating the prisoner; providing that the use of restraints at any time after it is known that a prisoner is pregnant must be by the least restrictive manner necessary in order to mitigate the possibility of adverse clinical consequences; requiring that the findings be kept on file by the correctional institution or detention facility for at least 5 years and be made available for public inspection under certain circumstances; authorizing any woman who is restrained in violation of the act to file a complaint within a specified period; providing that these remedies do not prevent a woman harmed from filing a complaint under any other relevant provision of federal or state law; directing the Department of

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Corrections and the Department of Juvenile Justice to adopt rules; requiring correctional institutions and detention facilities to inform female prisoners of the rules upon admission, including the policies and practices in the prisoner handbook, and post the policies and practices in the correctional institution or detention facility; requiring the Secretary of Corrections, the Secretary of Juvenile Justice, and county and municipal corrections officials to annually file written reports with the Executive Office of the Governor detailing each incident of shackling; providing an effective date.

WHEREAS, restraining a pregnant prisoner can pose undue health risks and increase the potential for physical harm to the woman and her pregnancy, and

WHEREAS, the vast majority of female prisoners in this state are nonviolent offenders, and

WHEREAS, the impact of such harm to a pregnant woman can negatively affect her pregnancy, and

WHEREAS, freedom from physical restraints is especially critical during labor, delivery, and postpartum recovery after delivery as women often need to move around during labor and recovery, including moving their legs as part of the birthing process, and

WHEREAS, restraints on a pregnant woman can interfere with the medical staff’s ability to appropriately assist in childbirth or to conduct sudden emergency procedures, and

WHEREAS, the Federal Bureau of Prisons, the United States

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Marshals Service, the American Correctional Association, the American College of Obstetricians and Gynecologists, and the American Public Health Association all oppose restraining women during labor, delivery, and postpartum recovery because it is unnecessary and dangerous to a woman's health and well-being, NOW, THEREFORE,

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 1092
INTRODUCER:	Senator Wise
SUBJECT:	State Attorneys
DATE:	March 8, 2011
REVISED:	

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

I. Summary:

The bill eliminates the current reporting required of state attorneys in "10-20-Life" cases, prison releasee reoffender cases, habitual felony offender and habitual violent felony offender cases, and juvenile direct-file cases. The bill also eliminates the requirement that state attorneys develop certain criteria for the administration of habitual offender cases, as well as juvenile cases prosecuted in adult court.

Several changes to the collection of costs of prosecution and investigative costs provisions in current law are included in the bill. The bill eliminates the requirement that an investigating law enforcement agency must request authorized costs of investigation. The bill also eliminates the requirement that a defendant prove his or her financial need if a dispute over the assessment of these costs arises. The bill provides an effective date of July 1, 2011.

This bill substantially amends the following sections of the Florida Statutes: 27.366, 775.082, 775.0843, and 938.27. The bill also repeals the following sections of the Florida Statutes: 775.08401, 775.087(5), and 985.557(4).

II. Present Situation:

Explanation and Reporting Requirements for State Attorneys

In certain criminal prosecutions, if mandatory or enhanced sentences are not pursued, the state attorney must document why that decision was made and, in some instances, report those decisions. For example, current law sets forth the legislative intent that defendants who are eligible for enhanced minimum mandatory sentences under subsections 775.087(2) and (3), F.S.,

commonly known as the "10-20-Life" law, receive those sentences.[1] Current law also requires that prosecutors write memoranda for each case in which a defendant qualified for the minimum mandatory sentences under the 10-20-Life law but did not receive the sentence. The memorandum must explain the sentencing deviation.[2] In addition to keeping the memorandum in the defendant's file, it is to be submitted quarterly to the Legislature and the Governor with a copy being retained for 10 years by the Florida Prosecuting Attorneys Association, Inc. (FPAA), and made available to the public upon request.[3]

The same statutory requirement of a sentencing deviation memoranda to the case file and the FPAA exists in cases where the defendant meets the criteria for being sentenced as a "prison releasee reoffender" under s. 775.082(9), F.S. In those cases, the memoranda are forwarded from the prosecutors to the FPAA on an annual basis.[4] The FPAA must also retain these records for 10 years and make these documents available to the public.

Habitual Offender Requirements

Current law requires state attorneys to adopt criteria to be used by the state attorney's office when deciding whether to pursue the enhanced sanctions provided in s. 775.084(4), F.S., for defendants who meet the statutory criteria for sentencing as "habitual felony offenders" and "habitual violent felony offenders."[5] The statute specifies that the criteria be designed to ensure fair and impartial application of those sentencing enhancements. Deviations from the criteria are to be memorialized for the case files.[6]

Juvenile Cases in Adult Court

Current law requires the state attorneys to develop policies and guidelines for filing juvenile cases in adult court.[7] It further requires that the state attorneys submit these policies and guidelines to the Legislature and the Governor no later than January 1 of each year.[8]

Costs of Prosecution and Investigative Costs

Courts are authorized to assess costs against convicted defendants.[9] In all criminal and violation-of-probation or community-control cases, convicted persons are liable for payment of the costs of prosecution, including any investigative costs incurred by the investigating law enforcement agency.[10] Costs of prosecution may be imposed at the rate of $50 in misdemeanor cases and $100 in felony cases unless the prosecutor proves that costs are higher in the particular case before the court.[11] Investigative costs must be separately and specifically requested by the

[1] Section 27.366, F.S.; *see also* s. 775.084(5), F.S.
[2] Section 775.084(5), F.S.
[3] Section 27.366, F.S.
[4] Section 775.082(9)(d)2., F.S.
[5] Section 775.08401, F.S. The criteria for designation as a "habitual felony offender" and a "habitual violent felony offender" are set forth in s. 775.084(1)(a) and (b), F.S.
[6] Section 775.08401(3), F.S.
[7] Section 985.557(4), F.S.
[8] *Id.*
[9] Part IV of ch. 938, F.S.
[10] Section 938.27(1), F.S.
[11] Section 938.27(8), F.S.

investigating agency.[12] Ultimately the costs of prosecution and investigative costs are deposited into agency and state attorney trust funds.[13]

If a dispute arises as to the proper amount or type of the costs of prosecution or the investigative costs, the court must resolve the dispute by a preponderance of the evidence.[14] The burden of demonstrating the amount of costs incurred is on the state attorney. The defendant bears the burden of demonstrating his or her financial resources, as well as financial need.[15] The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.[16]

III. Effect of Proposed Changes:

Explanation and Reporting Requirements for State Attorneys
The bill eliminates the current reporting required of state attorneys "10-20-Life" cases, prison releasee reoffender cases, habitual felony offender and habitual violent felony offender cases, and juvenile direct-file cases.

The bill eliminates the requirement that prosecutors write an explanation for each case in which a defendant qualified for the minimum mandatory sentences under the 10-20-Life law but did not receive the sentence. The bill further eliminates the reporting requirement that the state attorney submit quarterly reports to the Legislature and the Governor regarding the prosecution and sentencing of offenders under the 10-20-Life law, with a copy being retained for 10 years by the Florida Prosecuting Attorneys Association, Inc. (FPAA), and made available to the public upon request.

For those cases in which the defendant meets the criteria for being sentenced as a "prison releasee reoffender" but does not receive the mandatory minimum sentence, the bill eliminates the requirement for the state attorney to transmit these memoranda to the FPAA.

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

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

[12] Section 938.27(1), F.S.
[13] Section 938.27(7) and (8), F.S.
[14] Section 938.27(4), F.S.
[15] *Id.*
[16] *Id.*

Costs of Prosecution and Investigative Costs
The bill eliminates the requirement that law enforcement agencies, fire departments, or the Department of Financial Services and the Office of Financial Regulation of the Financial Services Commission must specifically request the recovery of investigative costs. However, current law does not provide a "default" amount of investigative costs to be recovered as it does with costs of prosecutions. Therefore, it is unclear what amount a court would assess as investigative costs without a request from an agency for a specific amount.

The bill eliminates the requirement that the defendant prove his or her financial need and resources if costs become a disputed issue. The bill also eliminates the language in current law providing that the burden of proving other matters related to the assessment of these costs is upon the party designated by the court.

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The public will no longer have access to certain records and reports by the offices of the state attorneys which are currently required by law and eliminated by the bill, because the records will no longer be created. This does not appear to be a deviation from the open records requirements of the Florida Constitution or statute because the agency is not denying access to existing records, but rather is no longer creating them.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The operating budgets (grants and donations trust funds) of the state attorneys offices may see an increase due to increased collection of costs of prosecution.

State attorneys may experience a decrease in workload as a result of the elimination of the requirement to document certain information related to sentence deviations, as well as the elimination of the requirement to report this information to the Florida Prosecuting Attorneys Association, Inc, as well as, in some instances, to the Legislature and the Governor.

The Office of the State Courts Administrator reports that the bill will have a minimal, if any, judicial impact, although it does note that disputes may arise regarding an offender's inability to pay assessed costs and whether the issuance of a judgment lien is appropriate.[17]

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[17] E-mail from the Office of the State Courts Administrator, March 8, 2011, on file with the Criminal Justice Committee.

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:	03/04/11

	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.

Because of the low volume that is expected over the next five years, the commission indicates that its costs for administering the program would be insignificant and could be absorbed into its existing workload. The Criminal Justice Impact Conference also forecasts that the bill will have an insignificant fiscal impact on the state prison population.

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

[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.

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.

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.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/09/2011	.	
	.	
	.	
	.	

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.