Criminal Justice - 11/03/2011 10:30 AM Customized

Agenda Order

964090 D S RCS CJ, Smith Delete everything after 11/03 04:23 PM 916442 AA S RCS CJ, Bennett Delete L.15 - 17: 11/03 04:23 PM

SB 210 by Wise; (Identical to H 0135) Costs of Prosecution, Investigation, and Representation

SB 278 by Sachs; (Identical to H 0125) Preventing Deaths from Drug-related Overdoses

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE Senator Evers, Chair Senator Dean, Vice Chair

MEETING DATE: Thursday, November 3, 2011

TIME: 10:30 a.m.—12:15 p.m.

PLACE: Mallory Horne Committee Room, 37 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 92 Joyner (Similar S 212, Identical H 5)	Parole for Juvenile Offenders; Cites this act as the "Graham Compliance Act;" providing that a juvenile offender who was less than 18 years of age at the time of commission of a nonhomicide offense and who is sentenced to life imprisonment is eligible for parole if the offender has been incarcerated for a minimum period; requiring an initial eligibility interview to determine whether the juvenile offender has demonstrated maturity and reform for parole; providing criteria to determine maturity and reform; providing eligibility for a reinterview after a specified period for juvenile offenders denied parole, etc. CJ 11/03/2011 Fav/CS BC	Fav/CS Yeas 4 Nays 0
2	SB 210 Wise (Identical H 135)	Costs of Prosecution, Investigation, and Representation; Providing for the withholding of unpaid costs of prosecution and representation from the return of a cash bond posted on behalf of a criminal defendant; requiring a notice on bond forms of such possible withholding; providing liability for the cost of prosecution and investigation for persons whose cases are disposed of under specified provisions; requiring courts to impose the costs of prosecution and investigation; prohibiting the court from converting the costs of prosecution and investigation to any form of community service; clarifying the types of cases that are subject to the collection and dispensing of cost payments by the clerk of the court, etc. CJ 11/03/2011 Temporarily Postponed JU BC	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Thursday, November 3, 2011, 10:30 a.m.—12:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 278 Sachs (Identical H 125)	Preventing Deaths from Drug-related Overdoses; Cites this act as the "911 Good Samaritan Act;" providing that a person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for specified offenses in certain circumstances; providing that a person who experiences a drug-related overdose and needs medical assistance may not be charged, prosecuted, or penalized for specified offenses in certain circumstances; providing that the protections from prosecution for specified offenses are not grounds for suppression of evidence in other prosecutions; amending mitigating circumstances under which a departure from the lowest permissible criminal sentence is reasonably justified to include circumstances in which a defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose, etc.	Temporarily Postponed
		CJ 11/03/2011 Temporarily Postponed HR	
4		o Tolerance Policies by the Florida Association of District tment of Juvenile Justice, and the Southern Poverty Law	Presented
	Other related meeting documents		

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 B	By: The Profe	ssional St	aff of the Criminal	Justice Commit	tee	
BILL:	CS/SB 92						
INTRODUCER:	Criminal Justic	e Committe	ee and Se	nator Joyner			
SUBJECT:	Reducing or Su	spending th	ne Senten	ce of a Juvenile	Offender		
DATE:	November 7, 20	011 RE	VISED:				
ANAL Clodfelter 2. 3. 4. 5.		STAFF DIRE	CTOR	REFERENCE CJ BC	Fav/CS	ACTION	
	Please se A. COMMITTEE SU B. AMENDMENTS	JBSTITUTE.	X 3	for Additional Statement of Substatement amenda Amendments were Significant amenda	stantial Change nents were rec e recommende	es commended ed	

I. Summary:

This bill provides for a resentencing hearing at age 25 for certain inmates who were prosecuted and sentenced as adults for offenses committed while they were minors. These "juvenile offenders" are inmates who were sentenced to a single or cumulative term of 10 or more years for committing one or more nonhomicide offenses when they were less than 18 years of age. In order to be eligible for a resentencing hearing under the bill's provisions, the juvenile offender must have met certain educational goals and must not have received an approved disciplinary report for the preceding three years.

This bill substantially amends section 947.16 of the Florida Statutes.

II. Present Situation:

In 2010, the United States Supreme Court held that it is unconstitutional for a minor who does not commit homicide to be sentenced to life imprisonment without the possibility of parole. The case was Graham v. Florida, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), which originated from crimes committed in Jacksonville. The Court's opinion stated:

"A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance."

As explained below, any recent sentence to life imprisonment is a sentence to life without parole. Because the Court referred to release by executive clemency as a "remote possibility," provisions for executive clemency apparently do not satisfy the requirement that there be a "realistic opportunity to obtain release."

The Department of Corrections (department) reports that 219 inmates were sentenced to life imprisonment for nonhomicide offenses committed while they were under 18 years of age. This includes inmates who were sentenced for attempted murder. Ninety-seven of these inmates also had a homicide for which they were separately sentenced.

Most crimes committed by juveniles are dealt with through delinquency proceedings as set forth in ch. 985, F.S.³ However, the law provides a mechanism for juvenile offenders to be tried and handled as adults. A juvenile who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned. A juvenile who is older than 13 may be tried as an adult for certain felony offenses if a grand jury indictment is returned, if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S., or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Regardless of age, a grand jury indictment is required to try a juvenile as an adult for an offense that is punishable by death or life imprisonment.⁴

Parole

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission. Eligibility for parole has been abolished in Florida, but 439 offenders are currently on parole and 5,360 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.

Inmates who were sentenced as adults for offenses committed prior to reaching 18 years of age are eligible for parole on the same basis as other inmates. An inmate who is granted parole is

Department of Corrections Analysis of Senate Bill 92, September 8, 2011, page 2.

² In Manuel v. State, 48 So.3d 94 (Fla. 2d Dist. 2010), the Second District Court of Appeals held that attempted murder is a nonhomicide offense because the act did not result in the death of a human being.

³ Section 985.03(6), F.S., defines juvenile as "any unmarried person under the age of 18 who has not been emancipated by order of the court and who has been found or alleged to be dependent, in need of services, or from a family in need of services; or any married or unmarried person who is charged with a violation of law occurring prior to the time that person reached the age of 18 years."

⁴ Section 985.58, F.S.

⁵ Parole Commission Analysis of Senate Bill 92, September 13, 2011, page 2.

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 probation officers.

A January 2008 Blueprint Commission and Department of Juvenile Justice report, "Getting Smart about Juvenile Justice in Florida," included a recommendation that juveniles who received more than a 10 year adult prison sentence should be eligible for parole consideration. Florida Tax Watch also recommended parole consideration for inmates who were under 18 when they committed their offense, have served more than 10 years, were not convicted of capital murder, have no prior record, and demonstrated exemplary behavior while in prison.⁶

Clemency

Clemency is an act of mercy that absolves the individual upon whom it is bestowed from all or part of the punishment for a crime. The power of clemency is vested in the Governor pursuant to Article IV, Section 8(a) of the Florida Constitution. All inmates, including those who are not eligible for parole, can apply for clemency.

The governor and members of the Cabinet are collectively the Clemency Board. The governor has discretion to deny clemency at any time for any reason and, with the approval of at least two members of the Cabinet, may grant clemency at any time and for any reason. There are several types of clemency, including pardon, commutation of sentence, remission of fines and forfeitures, restoration of authority to possess firearms, and restoration of civil rights. The Rules of Executive Clemency provide that a person is not eligible for commutation of sentence unless at least two years have elapsed since conviction and he or she has served at least one-third of any minimum mandatory sentence. However, the governor may waive these requirements in cases of extraordinary merit and compelling need.

The Parole Commission provides investigatory and administrative support to the Clemency Board, but the clemency process is independent of the parole process.

Resentencing as a Result of Graham Decision

In the absence of legislative or executive direction, some inmates who fall under the *Graham* decision have already petitioned for and received a resentencing hearing. There appears to be no consolidated source for obtaining the results of these resentencing hearings. However, the results of some resentencing hearings are known from news reports. These include:

- An inmate sentenced to life for the 2005 rape of a young girl when he was seventeen years old was resentenced to a split sentence of 7 years in prison followed by 20 years of probation.⁷
- An inmate sentenced to four life sentences for armed robberies committed in 2004 and 2005 when he was 14 and 15 years old was resentenced to a term of 30 years. 8

⁶ Report and Recommendations of the Florida Tax Watch Government Cost Savings Task Force to Save More than \$3 Billion," Florida Tax Watch, March 2010, p.47.

⁷ "Rapist who was serving life sentence will get second chance," August 30, 2011, last viewed on November 7, 2011 at http://www2.tbo.com/news/breaking-news/2011/aug/30/3/rapist-who-was-serving-life-resentenced-to-seven-y-ar-254096/.

• An inmate sentenced to life for sexual battery with a weapon or force committed in 2008 when he was 14 was resentenced to a term of 65 years. 9

III. Effect of Proposed Changes:

This bill, named the "Second Chance for Children Act," amends s. 947.16, F.S., to provide that certain inmates may be eligible for a resentencing hearing for nonhomicide offenses that were committed when they were less than eighteen years old. The bill states that upon reaching twenty-five years of age, an inmate may petition the original sentencing court to hold a resentencing hearing if he or she meets the following criteria:

- The inmate is serving a sentence for one or more offenses committed when he or she was seventeen years old or younger;
- The sentence is for a single or cumulative term of incarceration for ten years or more; and
- The offense or offenses were "nonhomicide offenses," defined as an offense that did not involve the death of a human being. 10

The bill refers to an inmate who meets the above criteria as a "juvenile offender." The department reports that approximately 900 inmates meet the definition of juvenile offender, including approximately 500 who also have a homicide offense. ¹¹ The bill does not exclude juvenile offenders who also have a homicide conviction from being resentenced for nonhomicide offenses that include a single or cumulative sentence for ten or more years. ¹²

A juvenile offender's petition for resentencing must allege that:

- He or she successfully completed the GED (general education development) program or received a high school diploma, unless the requirement is waived because of disability. Waiver for disability must be shown by the inmate's individual education plan, 504 accommodation plan under s. 504 of the federal Rehabilitation Act of 1973, or by a psychological evaluation; 13 and
- He or she has not received an approved disciplinary report from the department for the three years preceding filing of the petition. ^{14,15}

⁸ "Man who served 11 years fails to persuade Hillsborough judge to set him free," October 6, 2011, last viewed on November 7, 2011 at http://www.tampabay.com/news/courts/criminal/man-who-served-11-years-fails-to-persuade-hillsborough-judge-to-set-him/1195464.

⁹ "Teenage rapist Jose Walle resentenced to 65 years in prison," November 18, 2010, last viewed on November 7, 2011 at http://www.tampabay.com/news/courts/criminal/teenage-rapist-jose-walle-re-sentenced-to-65-years-in-prison/1134862.

¹⁰ It is not clear whether nonhomicide offenses include only offenses that have death of a human being as an element of the offense, or whether the factual circumstances of the offense would have to be examined.

¹¹ Email from department personnel to Criminal Justice Committee staff dated November 7, 2011.

¹²It is not unusual for a convicted offender to be resentenced for only one of multiple convictions as the result of an appellate decision or due to factors that are unique to that conviction.

¹³ Determination of whether an inmate has either met or received a waiver for the education requirement would require separate examination of each inmate's files, so the department is unable to provide the number of juvenile offenders who meet this requirement.

¹⁴ A disciplinary report is a document that initiates the process of disciplining an inmate for a violation of department rules. Upon receiving a disciplinary report, the inmate must be afforded administrative due process before the report is approved. The inmate's due process rights include further investigation, a hearing to determine guilt or innocence and appropriate punishment, and final review by the warden or the regional director of institutions to approve, disapprove, or modify the

If the juvenile offender meets all of these threshold requirements, the court must schedule a resentencing hearing within 90 days after the petition is filed to determine whether the inmate's sentence should be reduced or suspended. The court may appoint an attorney to represent the juvenile offender at the hearing. At the hearing, the court is required to consider a number of factors in determining whether the inmate had been sufficiently rehabilitated to warrant a reduction or suspension of sentence. These factors are:

- The juvenile offender's age, maturity, and psychological development at the time of the offense or offenses;
- Any physical, sexual, or emotional abuse of the juvenile offender before she or he committed the offense or offenses:
- Any showing of insufficient adult support or supervision of the juvenile offender before the offense or offenses:
- Whether the juvenile offender was a principal or an accomplice, was a relatively minor participant, or acted under extreme duress or domination by another person;
- The wishes of the victim or the opinions of the victim's next of kin;
- The results of any available psychological evaluation administered by a mental health professional as ordered by the court before the sentencing hearing;
- Any showing of sincere and sustained remorse by the juvenile offender for the offense or offenses;
- The juvenile offender's behavior while in the custody of the department, including disciplinary reports;
- Whether the juvenile offender has successfully completed or participated in educational, technical, or vocational programs and any available self-rehabilitation programs while in the custody of the department;
- Any showing by the juvenile offender of a post-release plan, including contacts made with transitional organization, faith and character-based organizations, or other reentry service programs; and
- Any other factor relevant to the offender's rehabilitation.

If the court reduces or suspends the sentence in accordance with the bill, the juvenile offender must participate in a reentry program for two years after release. Under the bill, a "reentry program" is a program that promotes effective reintegration of an offender back into the community upon release and provides vocational training, placement services, transitional housing, mentoring, or drug rehabilitation.

If the court does not reduce or suspend the sentence, the inmate may petition the court for another hearing 7 years after the hearing, and may do so every 7 years after an unsuccessful hearing.

result of the hearing. The department's rules concerning disciplinary reports and the inmate disciplinary process are found in Chapter 33-601.301 – 33-601.314, Florida Administrative Code.

¹⁵ The department has provided data indicating that 53 of the 219 *Graham* inmates have not received an approved disciplinary report in the past three years. If this percentage of approximately 25% who are disciplinary report free holds for all juvenile offenders, approximately 225 would currently be eligible for a resentencing hearing if they have met the educational requirement.

If passed, the bill will take effect upon becoming a law.

Other Potential Implications:

The bill specifically provides that it applies "notwithstanding any other law to the contrary." This would allow a juvenile offender who commits an offense after the effective date to be resentenced to less than a minimum mandatory sentence. However, retroactive application of the "notwithstanding clause" may be prohibited by the Savings Clause of the Florida Constitution. This is discussed in the "Other Constitutional Issues" section below.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill does not state whether it is intended to apply to sentences that were imposed for crimes that were committed prior to when it becomes law. A change in a statute is presumed to operate prospectively unless there is a clear showing that it is to be applied retroactively and its retroactive application is constitutionally permissible. *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So.2d 494, 499 (Fla. 1999); *Bates v. State*, 750 So.2d 6, 10 (Fla. 1999). There are indications that this bill is intended to apply to sentences that have already been imposed. The fact that the original bill was to be cited as the "Graham Compliance Act," arguably demonstrates legislative intent that the bill was to apply retroactively to provide a "meaningful opportunity for review" for offenders affected by the *Graham* decision. The bill in its current form applies to *Graham* defendants as well as others who received significant sentences for crimes committed when they were less than eighteen years old.

If it is determined that the bill is intended to be applied retroactively, the second step of the analysis is to determine whether retroactive application of the statute is constitutionally permissible. Article X, section 9 of the Florida Constitution (the "Savings Clause") provides: "Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed." This means that the criminal statutes in effect at the time an offense was committed apply to any prosecution or punishment for that offense. *See State v. Smiley*, 966 So.2d 330 (Fla. 2007).

The Savings Clause prevents retroactive application of a statute that affects prosecution or punishment for a crime, but does not prohibit retroactive application of a statute that is procedural or remedial in nature. Both categories are represented by elements of the bill:

- (1) The aspect of the bill that provides for a resentencing hearing is procedural or remedial in nature. Therefore, it can be applied retroactively to the extent that it allows resentencing to a punishment that would have been permissible under the law in effect at the time the offense was committed.
- (2) The bill also includes a clause that could affect the punishment for a crime: "Notwithstanding any other law, a juvenile offender may be eligible for a reduced or suspended sentence under this section." Absent the Savings Clause, this would allow imposition of a sentence that was not permissible when the offense was committed (such as sentencing to less than a statutory minimum mandatory sentence). However, it is well-established that the Savings Clause prohibits application of a statutory reduction in the maximum sentence for a crime to be applied to an offense that was committed before the change. *See, e.g., Castle v. Sand*, 330 So.2d 10 (Fla. 1976) (reduction of maximum sentence for arson from 10 years to 5 years could not be applied to benefit defendant who committed offense before statutory change).

Therefore, it appears that the provision for a resentencing hearing can be applied to offenses committed before the effective date of the bill. However, the Saving Clause would prevent a reduction of sentence below what was permissible at the time of the offense. ¹⁶

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet considered the fiscal impact of this bill on the state prison population. However, assuming a portion of the 900 cases receive sentence reductions, this bill will likely reduce the costs associated with prison beds.

The resentencing hearings contemplated by the bill would have some fiscal impact on the judiciary, state attorneys, and public defenders.

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¹⁶ It does not appear possible for a minor who commits a nonhomicide offense to be subject to a mandatory sentence to life without the possibility of parole. However, in the case of a *Graham* defendant it can be anticipated that the courts would determine that the federal constitutional requirements under the Eighth Amendment would trump Florida's Savings Clause.

VI. Technical Deficiencies:

It is recommended that the bill be amended to clarify whether it is to apply retroactively and whether the term "nonhomicide offenses" includes only offenses for which death of a human being is an element of the offense.

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 Criminal Justice on November 3, 2011:

- Provides for eligible inmates to have a resentencing hearing upon reaching 25 years of age, rather than creating a possibility of parole after being incarcerated for 25 years.
- Expands the bill to include more inmates in its application. The bill applied to
 inmates who received a life sentence for a nonhomicide offense committed when they
 were 17 years old or less. The CS expands eligibility to include inmates who received
 a single or cumulative sentence of ten years or more for one or more nonhomicide
 offenses committed when they were 17 years old or less.

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: RCS 11/03/2011

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. This act may be cited as the "Second Chance for Children Act."

Section 2. Section 921.167, Florida Statutes, is created to read:

921.167 Juvenile offender reduction or suspension of sentence.-

- (1) As used in this section, the term:
- (a) "Department" means the Department of Corrections.

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- (b) "Juvenile offender" means an offender who was sentenced to a single or cumulative term of imprisonment of 10 or more years for one or more offenses committed while he or she was 17 years of age or younger.
- (c) "Reentry program" means a program that promotes effective reintegration of an offender back into the community upon release and provides one or more of the following activities:
 - 1. Vocational training;
 - 2. Placement services;
 - 3. Transitional housing;
 - 4. Mentoring; or
 - 5. Drug rehabilitation.
- (2) Notwithstanding any other law, a juvenile offender may be eligible for a reduced or suspended sentence under this section.
- (a) A juvenile offender must have a sentencing hearing to determine whether she or he has been sufficiently rehabilitated while in the custody of the department before he or she can be eligible for a reduced or suspended sentence under this section.
- (b) Upon reaching 25 years of age, a juvenile offender may petition the court to reduce or suspend his or her sentence. The petition shall be filed in the court that initially sentenced the juvenile offender. In order to be eligible for a reduced or suspended sentence, the petition must allege that the juvenile offender has:
- 1. Successfully completed the general education development (GED) program, if he or she does not have a high school diploma, unless this requirement has been waived because of the juvenile

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offender's disability as shown by the juvenile offender's previous individual education plan , 504 accommodation plan under s. 504 of the federal Rehabilitation Act of 1973, or by a psychological evaluation; and

- 2. Not received any disciplinary reports issued by the department for a period of at least 3 years immediately before filing the petition.
- (c) The court shall schedule a sentencing hearing within 90 days after the filing of the petition to determine whether the juvenile offender's sentence should be reduced or suspended. When determining whether the juvenile offender has been sufficiently rehabilitated, the court shall consider:
- 1. The juvenile offender's age, maturity, and psychological development at the time of the offense or offenses.
- 2. Any physical, sexual, or emotional abuse of the juvenile offender before the commission of the offense or offenses.
- 3. Any showing of insufficient adult support or supervision of the juvenile offender before the offense or offenses.
- 4. Whether the juvenile offender was a principal or an accomplice, was a relatively minor participant, or acted under extreme duress or domination by another person.
- 5. The wishes of the victim or the opinions of the victim's next of kin.
- 6. The results of any available psychological evaluation administered by a mental health professional as ordered by the court before the sentencing hearing.
- 7. Any showing of sincere and sustained remorse by the juvenile offender for the offense or offenses.
 - 8. The juvenile offender's behavior while in the custody of

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the department including disciplinary reports.

- 9. Whether the juvenile offender has successfully completed or participated in educational, technical, or vocational programs and any available self-rehabilitation programs while in the custody of the department.
- 10. Any showing by the juvenile offender of a post-release plan including, but not limited to, contacts made with transitional organizations, faith- and character-based organizations, or other reentry service programs.
- 11. Any other factor relevant to the juvenile offender's rehabilitation while in the custody of the department.
- (3) A juvenile offender whose sentence is not reduced or suspended under this section may petition the court for a subsequent sentencing hearing 7 years after the date of the previous sentencing hearing and every 7 years thereafter.
- (4) If the court determines that the petitioner's sentence should be reduced or suspended under this section, the juvenile offender shall participate in any available reentry program for 2 years upon release.
- (5) The court may appoint an attorney to represent the juvenile offender at the sentencing hearing.

Section 3. 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

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An act relating to reducing or suspending the sentence of a juvenile offender; providing a short title; creating s. 921.167, F.S.; defining terms; providing that a juvenile offender who was 17 years of age or younger at the time of commission of an offense and who was sentenced to 10 or more years of imprisonment may be eligible for a reduced or suspended sentence; providing that the juvenile offender may petition the court after a specified age for a hearing to reduce or suspend the sentence; setting forth the eligibility criteria to reduce or suspend a sentence; authorizing the juvenile offender to petition for subsequent sentencing hearings if the court does not reduce or suspend the juvenile offender's sentence; providing an effective date.



LEGISLATIVE ACTION

Senate House

Comm: RCS 11/03/2011

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

Senate Amendment to Amendment (964090)

Delete lines 15 - 17

and insert:

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years for one or more nonhomicide offenses committed while he or she was 17 years of age or younger.

- (c) "Nonhomicide offense" means an offense that did not result in the death of a human being.
 - (d) "Reentry program" means a program that promotes

By Senator Joyner

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18-00038-12 201292

A bill to be entitled
An act relating to parole for juvenile offenders;
providing a short title; amending s. 947.16, F.S.;
providing definitions; providing that a juvenile
offender who was less than 18 years of age at the time
of commission of a nonhomicide offense and who is
sentenced to life imprisonment is eligible for parole
if the offender has been incarcerated for a minimum
period; requiring an initial eligibility interview to
determine whether the juvenile offender has
demonstrated maturity and reform for parole; providing
criteria to determine maturity and reform; providing
eligibility for a reinterview after a specified period
for juvenile offenders denied parole; providing an
effective date.

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

Section 2. Subsections (2) through (6) of section 947.16, Florida Statutes, are renumbered as subsections (3) through (7), respectively, and a new subsection (2) is added to that section to read:

947.16 Eligibility for parole; initial parole interviews; powers and duties of commission; juvenile offender eligibility.—

(2) (a) As used in this subsection, the term:

"Juvenile offender" means an offender who was less than
 years of age at the time the nonhomicide offense was

Page 1 of 3

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

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	18-00038-12 201292
30	committed.
31	2. "Nonhomicide offense" means an offense that did not
32	result in the death of a human being.
33	(b) Notwithstanding subsection (1) or any other provision
34	of law to the contrary, a juvenile offender who is sentenced to
35	life imprisonment for a nonhomicide offense may be eligible for
36	parole as provided in this subsection.
37	(c) Before a juvenile offender may be granted parole under
38	this subsection, she or he must have an initial eligibility
39	interview to determine whether she or he has demonstrated
40	maturity and reform while in the custody of the department to
41	justify granting parole. The initial eligibility interview may
42	occur only after the juvenile offender has served 25 years of
43	incarceration for the offense for which parole is sought. The
44	initial eligibility interview and any subsequent eligibility
45	interviews may occur only if the juvenile offender has received
46	no approved disciplinary reports for at least 3 years before the
47	scheduled eligibility interview.
48	(d) In determining whether the juvenile offender has
49	$\underline{\text{demonstrated maturity}}$ and reform and whether she or he should be
50	granted parole, the commission must consider all of the
51	following:
52	$\underline{\mbox{1. The wishes of the victim or the opinions of the victim's}}$
53	next of kin.
54	2. Whether the juvenile offender was a relatively minor
55	participant in the criminal offense or acted under extreme
56	duress or domination of another person.
57	3. Whether the juvenile offender has shown sincere and
58	sustained remorse for the criminal offense.

Page 2 of 3

CODING: Words stricken are deletions; words underlined are additions.

	18-00038-12 201292_
59	4. Whether the juvenile offender's age, maturity, and
60	psychological development at the time of the offense affected
61	her or his behavior.
62	5. Whether the juvenile offender, while in the custody of
63	the department, has aided inmates suffering from catastrophic or
64	terminal medical, mental, or physical conditions or has
65	prevented risk or injury to staff, citizens, or other inmates.
66	6. Whether the juvenile offender has successfully completed
67	any General Educational Development or other educational,
68	technical, work, vocational, or self-rehabilitation program.
69	7. Whether the juvenile offender was a victim of sexual,
70	physical, or emotional abuse before she or he committed the
71	offense.
72	8. The results of any mental health assessment or
73	evaluation of the juvenile offender.
74	(e) A juvenile offender who is not granted parole under
75	this subsection after an initial eligibility interview is
76	eligible for a reinterview 7 years after the date of the denial

of the grant of parole and every 7 years thereafter.

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Page 3 of 3

Section 3. This act shall take effect upon becoming a law.

 ${f CODING:}$ Words ${f stricken}$ are deletions; words ${f underlined}$ are additions.



Tallahassee, Florida 32399-1100

COMMITTEES:Budget - Subcommittee on Criminal and Civil Justice Appropriations, Vice Chair Judiciary, Vice Chair

Budget

Budget - Subcommittee on Higher Education Appropriations
Communications, Energy, and Public Utilities
Rules - Subcommittee on Ethics and Elections

Transportation Reapportionment

SELECT COMMITTEE: Protecting Florida's Children, Vice Chair

JOINT COMMITTEE: Legislative Auditing Committee

SENATOR ARTHENIA L. JOYNER

Democratic Leader Pro Tempore 18th District

September 13, 2011

Senator Greg Evers, Chair Senate Committee on Criminal Justice 510 Knott Building 404 S. Monroe Street Tallahassee, FL 32399-1100

Dear Mr. Chairman:

This is to request that Senate Bill 92 related to Parole for Juvenile Offenders be placed on the agenda for the Committee on Criminal Justice. Your consideration of this request is greatly appreciated.

Sincerely,

Arthenia L. Joyner

arthenia o

ALJ/rr

^{☐ 202} Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5059

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Meeting Date	al Staff conducting the meeting)
Topic parole for juveniles Name Nancy Daniels Job Title Public Defender, 2nd JudicialCi	Bill Number 92 Amendment Barcode 96490 (if applicable) (if applicable)
Address/ Courty Courthouse 3015 Monroe	Phone 850 E-mail daniels.nancya Flpd2.com
Speaking: V For Against Information Representing Florida Public Detender	. ,
Appearing at request of Chair: Yes No Lobbyist	registered with Legislature: Yes No
While it is a Senate tradition to encourage public testimony, time may not permit a meeting. Those who do speak may be asked to limit their remarks so that as man	all persons wishing to speak to be heard at this ny persons as possible can be heard.
This form is part of the public record for this meeting.	S-001 (10/20/11)

APPEARANCE RECORD

Meeting Date (Deliver BOTH copies of this form to the Senator or Se	nate Professional Staff conducting the meeting)
Topic Parole for Adolescent offender Name Sheila Hopkins Job Title Associate Director	Bill Number Pa (if applicable)
Address 201 W. Park Ave. Street Tallahassee FL	Phone 850-205-6826 E-mail Shopkinse flacath conf. org
Representing Florida Catholic Co.	nfesence
Appearing at request of Chair: Yes Appearing	Lobbyist registered with Legislature: X Yes No
While it is a Senate tradition to encourage public testimony, time may	• • •

S-001 (10/20/11)

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APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)	
Topic Second chance for Children Act Bill Number 50 Name Corinne Koeppen Amendment Barcode Job Title Attorney, Public Finterest Law Center	(if applicable)
Address 425 W. Jefferson street Phone 941-23	4.8427 C@ gmail.con
Speaking: For Against Information	
Representing FSU PUBLIC FINTEREST LAW CENTER	
Appearing at request of Chair: Yes No Lobbyist registered with Legisla	ature: Yes No
While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to sp meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible c	
This form is part of the public record for this meeting.	S-001 (10/20/11)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

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11/3/11 Meeting Date	
Topic Parole" for Juvenile Offender Name _ Lanet E. Ferris Job Title Retired Circuit Judge Address 525 Bobbin Brook Lane	Bill Number SB 92 Amendment Barcode 964090 (if applicable) (if applicable) Phone 850 524 0197
Speaking: $ Street $ Street Street State State State Speaking: $ State $ Against $ State $ Information	E-mail
Representing	
Appearing at request of Chair: Yes No Lobbyist	registered with Legislature: Yes No
While it is a Senate tradition to encourage public testimony, time may not permit meeting. Those who do speak may be asked to limit their remarks so that as ma	· · · · · · · · · · · · · · · · · · ·
This form is part of the public record for this meeting.	S-001 (10/20/11)

Meeting Date William Date	*Ore
Topic Mill Number Bill Number)
Name Amendment Barcode (if applicab)	le) le)
Job Title	,
Address 517 E. College Ave Phone 224. 2001	
E-mail USalley who , black have	4
City State Zip	V
Speaking: For Against Information .	
Representing Florida Assoc Crymnal Defense (awyers	
Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No	ło

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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.)

	Prepare	ed By: The Professiona	al Staff of the Criminal	Justice Committee
BILL:	SB 210			
INTRODUCER:	Senator Wise	e		
SUBJECT:	Costs of Pros	secution, Investigat	ion and Representat	tion
DATE:	October 26, 2	2011 REVISED	:	
ANAL	YST	STAFF DIRECTOR	REFERENCE	ACTION
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I. **Summary:**

The bill requires costs of prosecution be assessed in pretrial intervention and drug court programs, where they are not currently assessed. The bill prohibits costs of prosecution from being converted to community service hours in lieu of payment and provides for the clerk of the court to withhold these costs from cash bonds. It also requires the assessment of costs of prosecution in juvenile delinquency proceedings.

This bill substantially amends the following sections of the Florida Statutes: 903.286, 938.27, 938.29 and 985.032.

II. **Present Situation:**

Costs of Prosecution

Section 938.27, F.S., provides that convicted persons are liable for costs of prosecution at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases, unless the prosecutor proves that costs are higher in the particular case before the court. The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.²

Convicted persons are also liable for payment of investigative costs incurred by a law enforcement agency, fire department, or the Department of Financial Services and the Office of Financial Regulation of the Financial Services Commission. Conviction, for this purpose,

Section 938.27(8), F.S.

³ Section 938.27(1), F.S.

includes a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.⁴

Certain defendants facing conviction may be eligible for pretrial diversion programs or intervention programs, such as misdemeanor or felony pretrial substance abuse education and treatment intervention⁵ or treatment-based drug court.⁶ In exchange for the opportunity to have the charges dismissed, the defendant waives the right to a speedy trial in the matter. Defendants who successfully complete these programs have the charges against them dismissed by the court.⁷ Because the charges are dismissed by the court, these defendants are not currently liable for the payment of costs of prosecution.

Costs of Representation

Section 938.29, F.S., provides that convicted persons are liable for payment of the \$50 public defender application fee under s. 27.52(1)(b), F.S., and attorney's fees and costs if he or she received assistance from the public defender's office, a special assistant public defender, the office of criminal conflict and civil regional counsel, or a private conflict attorney, or who has received due process services after being found indigent for costs.

Costs of representation may be imposed at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases. The court may set a higher amount upon showing of sufficient proof of higher fees or costs incurred. The costs of representation are deposited into the Indigent Criminal Defense Trust Fund.

The court may order payment of the assessed application fee and attorney's fees and costs as a condition of probation, of suspension of sentence, or of withholding the imposition of sentence. The clerk within the county where the defendant was tried or received services from a public defender is responsible for enforcing, satisfying, compromising, settling, subordinating, releasing or otherwise disposing of any debt or lien imposed.

Clerks to Collect and Disburse Funds

Section 28.246(2), F.S., requires the clerk of the circuit court (clerk) to establish and maintain a system of accounts receivable for court-related fees, charges, and costs.

The clerk may accept partial payments for all fees, charges, and costs in accordance with the terms of an established payment plan. The clerk may enter into a payment plan when an individual is determined to be indigent for costs by the court.

⁴ Id

⁵ Sections 948.16 and 948.08, F.S., respectively.

⁶ Section 948.08(6), F.S. See s. 397.334, F.S.

⁷ Sections 948.16(2) and 948.08, F.S.

⁸ Section 28.246(4), F.S.

⁹ A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12. Section 28.246(4), F.S.

Criminal Traffic Case Disposition

The clerk of the court is authorized by s. 318.14, F.S., to dispose of certain misdemeanor criminal traffic violations in which the defendant shows the clerk that he or she is in compliance with the law under which the charge was made prior to the court date. Examples of these traffic offenses include operating a motor vehicle without a valid registration under s. 320.131, F.S., and presenting invalid proof of insurance under s. 316.646, F.S. The clerk is statutorily authorized to accept a nolo contendere plea, waive the misdemeanor fines, and assess costs listed in s. 318.14(10)(b), F.S.

Cash Bond Used to Pay Fines, Costs, and Fees

Section 903.286, F.S., authorizes the clerk to withhold the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent ¹⁰ to pay the following:

- Court fees:
- Court costs; and
- Criminal penalties.

If sufficient funds are not available to pay the above costs, the clerk will immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246, F.S.

All cash bond forms must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk for the payment of the above costs on behalf of the criminal defendant regardless of who posted the funds.

Community Service in Lieu of Payment

Section 938.30(2), F.S., authorizes a judge to convert any statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining a person's inability to pay.

In FY 10-11 an estimated \$8,740,000 in court-related fees, charges, costs, fines, and other monetary penalties were converted into community service. 11

Delinquency Cases Exempt

Currently juveniles who are adjudicated delinquent or have had adjudication of delinquency withheld are not required to pay the costs of prosecution.

III. Effect of Proposed Changes:

The bill makes defendants liable for the payment of costs of prosecution, including investigative costs, when charges against them are dismissed by the court after successfully completing a misdemeanor or felony pretrial substance abuse education and treatment intervention program or treatment-based drug court.

¹⁰ Licensed pursuant to ch. 648, F.S.

¹¹ Florida Association of Court Clerks and Comptrollers estimate provided to Staff, October 28, 2011.

The bill requires the court to impose the costs of prosecution and investigation and prohibits these costs from being converted into any form of court-ordered community service in lieu of the financial obligation, notwithstanding any other provision or law, court rule, or administrative order.

The bill adds the costs of prosecution and the costs of representation by the public defender to the list of costs a clerk is required to withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. If such payments are not made from the cash bond, the clerk is required to obtain payment from a defendant or, if sufficient funds are not available, require the defendant to enroll in a payment plan. Cash bond forms must display notice of the funds being subject to forfeiture for payment of costs of prosecution as well as other costs, fees, and fines.

The clerk is required to collect and disburse costs of prosecution in all cases, regardless of whether the cases are disposed of before a judge in open court. These cases may include criminal traffic violations disposed of pursuant to s. 318.14(10), F.S. ¹² (See the Technical Deficiencies section below.)

The bill requires that costs of prosecution be assessed from juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

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¹² In these cases the defendant may elect to show proof of compliance to the clerk of the court and enter a plea of nolo contendere. The clerk is authorized by s. 318.14(10), F.S., to assess certain fees. The assessment and collection of costs of prosecution are not specified therein. Although the statutory provision in s. 938.27(6), F.S., requires the clerk to "collect and dispense cost payments in any case," which would include costs of prosecution and investigation listed in subsection (8) of that section, state attorneys report that the costs are not being collected in the criminal traffic cases disposed of pursuant to ch. 318, F.S.

B. Private Sector Impact:

Defendants who successfully complete pretrial intervention programs and the parents or legal guardian of juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld will now be assessed costs of prosecution.

The bill prohibits costs of prosecution from being converted into court-ordered community service. Defendants will now be responsible for paying this cost as opposed to working the debt off through community service.

C. Government Sector Impact:

This bill appears to have a positive impact on state attorneys and public defenders because:

- 1. The costs of prosecution and investigation will be prohibited from being converted into court-ordered community service. This may result in more costs of prosecution being collected and paid to state attorneys.
- 2. The costs of prosecution and costs of representation will be withheld by the clerk from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. This will likely result in a positive fiscal impact as the cost of prosecution will be deducted from any cash bonds posted on behalf of a criminal defendant.
- 3. The costs of prosecution will now be assessed from defendants who successfully complete pretrial intervention programs and the parents or legal guardian of juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld, unless they were the victim in the case. This will likely result in a positive fiscal impact as these costs were not assessed in these specific cases in the past.

VI. Technical Deficiencies:

State attorneys have reported that costs of prosecution are not being collected in criminal traffic cases that are disposed of by the clerk of the court prior to a court appearance by the defendant as authorized in s. 318.14, F.S. If the bill is intended to address this issue, it is suggested that clarity could be gained by adding a cross-reference to s. 938.27(6), F.S., as amended by the bill, within s. 318.14(10), F.S.

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.

By Senator Wise

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5-00064B-12 2012210

A bill to be entitled An act relating to costs of prosecution, investigation, and representation; amending s. 903.286, F.S.; providing for the withholding of unpaid costs of prosecution and representation from the return of a cash bond posted on behalf of a criminal defendant; requiring a notice on bond forms of such possible withholding; amending s. 938.27, F.S.; providing liability for the cost of prosecution and investigation for persons whose cases are disposed of under specified provisions; requiring courts to impose the costs of prosecution and investigation; prohibiting the court from converting the costs of prosecution and investigation to any form of community service; clarifying the types of cases that are subject to the collection and dispensing of cost payments by the clerk of the court; amending s. 938.29, F.S.; providing liability for attorney's fees and costs for persons whose cases are disposed of under specified provisions; amending s. 985.032, F.S.; providing for assessment of costs of prosecution against a juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld; providing an effective date.

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

Section 1. Section 903.286, Florida Statutes, is amended to read:

Page 1 of 6

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2012 SB 210

	5-00064B-12 2012210_
30	903.286 Return of cash bond; requirement to withhold unpaid
31	fines, fees, court costs; cash bond forms
32	(1) Notwithstanding s. 903.31(2), the clerk of the court
3	shall withhold from the return of a cash bond posted on behalf
34	of a criminal defendant by a person other than a bail bond agent
35	licensed pursuant to chapter 648 sufficient funds to pay any
86	unpaid costs of prosecution, costs of representation as provided
37	by s. 27.52, court fees, court costs, and criminal penalties. If
8	sufficient funds are not available to pay all unpaid \underline{costs} of
39	prosecution, costs of representation as provided by s. 27.52,
0	court fees, court costs, and criminal penalties, the clerk of
1	the court shall immediately obtain payment from the defendant or
12	enroll the defendant in a payment plan pursuant to s. 28.246.
13	(2) All cash bond forms used in conjunction with the
4	requirements of s. 903.09 must prominently display a notice
15	explaining that all funds are subject to forfeiture and
6	withholding by the clerk of the court for the payment of $\underline{\text{costs}}$
17	of prosecution, costs of representation as provided by s. 27.52,
8	court fees, court costs, and criminal penalties on behalf of the
9	criminal defendant regardless of who posted the funds.
0	Section 2. Section 938.27, Florida Statutes, is amended to
51	read:
52	938.27 Judgment for costs $\underline{\text{of prosecution and investigation}}$
3	on conviction
4	(1) In all criminal and violation-of-probation or
55	community-control cases, convicted persons <u>and persons whose</u>
6	cases are disposed of pursuant to s. 948.08(6)(c) or s.
7	$\underline{948.16(2)}$ are liable for payment of the costs of prosecution,
8	including investigative costs incurred by law enforcement

Page 2 of 6

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

5-00064B-12 2012210

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agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission, if requested by such agencies. The court shall include these costs in every judgment rendered against the convicted person. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

(2) (a) Notwithstanding any other law, court rule, or administrative order, the court shall impose upon the defendant the costs of prosecution and investigation. The costs of prosecution and investigation may not be converted to any form of court-ordered community service to be served in lieu of the obligation to pay the costs of prosecution and investigation.

(b) (a) The court shall impose the costs of prosecution and investigation notwithstanding the defendant's present ability to pay. The court shall require the defendant to pay the costs within a specified period or in specified installments.

 $\underline{\text{(c)}\cdot\text{(b)}}$ The end of such period or the last such installment shall not be later than:

- The end of the period of probation or community control, if probation or community control is ordered;
- Five years after the end of the term of imprisonment imposed, if the court does not order probation or community control; or
- 3. Five years after the date of sentencing in any other case.

Page 3 of 6

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Florida Senate - 2012 SB 210

5-00064B-12 2012210

89 However, in no event shall the obligation to pay any unpaid 90 amounts expire if not paid in full within the period specified 91 in this paragraph.

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(d)(e) If not otherwise provided by the court under this section, costs shall be paid immediately.

- (3) If a defendant is placed on probation or community control, payment of any costs under this section shall be a condition of such probation or community control. The court may revoke probation or community control if the defendant fails to pay these costs.
- (4) Any dispute as to the proper amount or type of costs shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.
- (5) Any default in payment of costs may be collected by any means authorized by law for enforcement of a judgment.
- (6) The clerk of the court shall collect and dispense cost payments in any case <u>regardless</u> of whether the disposition of the case takes place before the judge in open court or in any other manner provided by law.
- (7) Investigative costs that are recovered shall be returned to the appropriate investigative agency that incurred the expense. Such costs include actual expenses incurred in conducting the investigation and prosecution of the criminal

Page 4 of 6

 ${f CODING: Words \ \underline{stricken} \ are \ deletions; \ words \ \underline{underlined} \ are \ additions.}$

5-00064B-12 2012210

case; however, costs may also include the salaries of permanent employees. Any investigative costs recovered on behalf of a state agency must be remitted to the Department of Revenue for deposit in the agency operating trust fund, and a report of the payment must be sent to the agency, except that any investigative costs recovered on behalf of the Department of Law Enforcement shall be deposited in the department's Forfeiture and Investigative Support Trust Fund under s. 943.362.

(8) Costs for the state attorney shall be set in all cases at no less than \$50 per case when a misdemeanor or criminal traffic offense is charged and no less than \$100 per case when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred. Costs recovered on behalf of the state attorney under this section shall be deposited into the State Attorneys Revenue Trust Fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecuting criminal cases, which may include the salaries of permanent employees, or for any other purpose authorized by the Legislature.

Section 3. Paragraph (a) of subsection (1) of section 938.29, Florida Statutes, is amended to read:

938.29 Legal assistance; lien for payment of attorney's fees or costs.—

(1) (a) A defendant who is convicted of a criminal act or a violation of probation or community control or whose case is disposed of pursuant to s. 948.08(6) (c) or s. 948.16(2) and who

Page 5 of 6

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Florida Senate - 2012 SB 210

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	5-00064B-12 2012210
146	has received the assistance of the public defender's office, a
147	special assistant public defender, the office of criminal
148	conflict and civil regional counsel, or a private conflict
149	attorney, or who has received due process services after being
150	found indigent for costs under s. 27.52, shall be liable for
151	payment of the assessed application fee under s. 27.52 and
152	attorney's fees and costs. Attorney's fees and costs shall be
153	set in all cases at no less than \$50 per case when a misdemeanor
154	or criminal traffic offense is charged and no less than \$100 per
155	case when a felony offense is charged, including a proceeding in
156	which the underlying offense is a violation of probation or
157	community control. The court may set a higher amount upon a
158	showing of sufficient proof of higher fees or costs incurred.
159	For purposes of this section, "convicted" means a determination
160	of guilt, or of violation of probation or community control,
161	which is a result of a plea, trial, or violation proceeding,
162	regardless of whether adjudication is withheld. The court shall
163	include these fees and costs in every judgment rendered against
164	the convicted person.
165	Section 4. Section 985.032, Florida Statutes, is amended to
166	read:
167	985.032 Legal representation for delinquency cases
168	(1) For cases arising under this chapter, the state
169	attorney shall represent the state.
170	(2) A juvenile who has been adjudicated delinquent or has
171	adjudication of delinquency withheld shall be assessed costs of
172	prosecution as provided in s. 938.27.
173	Section 5. This act shall take effect July 1, 2012.

Page 6 of 6

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APPEARANCE RECORD

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1112111	(Deliver BOTH copies of	of this form to the Senator or	Senate Professiona	al Staff conduc	ting the meeting)		
Meeting Date	I Proceed					`	
Topic Ust	of Fusculu	Mulmest	galo	Bill Numl	ber <u> </u>	<u>/</u>	
Name U	sa thirley	\		Amendm	ent Barcode	(i)	f applicable)
Job Title	awver ,					(if	fapplicable)
Address	17 E. COII	ege Ave		Phone	224.2	ovl	
Street City	allahasse	- State	3320(E-mail	(calaw	atrus!	dailpen
Speaking:	For Against	Information	Zip	a	\wedge	1	net
Representing	Plonda	ASSOC OF	Cum	val T	>e-tense	lawi	jers
Appearing at requ	uest of Chair: Yes	No	Lobbyist	registered	with Legislature	e: Yes	No No
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S-001 (10/20/11)

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APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

(Deliver BOTH copies of this form to the Senator or Senate Professional Meeting Date	al Staff conducting the meeting)
Topic Cost assessments	Bill Number 210
Name Naucy Daviels	(if applicable) Amendment Barcode
Job Title Public Detender	(if applicable)
Address Leon County Courhouse, 301 S. Monroe	Phone 950 606-1010
Address Street	E-mail dayiels, nancy(a)
Speaking: For Against Information	flpdz.com
Speaking: Against Information Representing Florida Public Defender	
	registered with Legislature: Yes No
While it is a Senate tradition to encourage public testimony, time may not permit meeting. Those who do speak may be asked to limit their remarks so that as mai	
This form is part of the public record for this meeting.	S-001 (10/20/11)

APPEARANCE RECORD

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This form is part of the public record for this meeting.

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date	
Topic COSTS OF PROSECUTION INVESTIGE BIll Number Name MONICA HOFHEINZ PROPRESENTATION Amendme	
MONLICA HACUTIONS PROPRESCIPATION	(if applicable)
Name MONTON TOPPIETIVE Amendme	nt Barcode
Job Title ASST. STATE AHORNEY 17th JUD. CIR	(if applicable)
Address 201 SE 6th ST Phone 95	64-831-8543
Street FL 3330/ E-mail_	
City State Zip	
Speaking:	
Representing FLORIDA PROS. AHY'S ASSOC.	
Appearing at request of Chair: Yes No Lobbyist registered v	with Legislature: Yes No
While it is a Senate tradition to encourage public testimony, time may not permit all persons we meeting. Those who do speak may be asked to limit their remarks so that as many persons a	

S-001 (10/20/11)

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 278						
INTRODUCER:	Senator Sac	Senator Sachs					
SUBJECT:	Preventing Deaths from Drug-related Overdoses						
DATE: October 19, 2011 REVISED:							
ANAL	YST	STAF	F DIRECTOR	REFERENCE	ACTION		
1. Cellon		Canno	on	CJ	Pre-meeting		
·-				HR			
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I. Summary:

The bill creates the "911 Good Samaritan Act" and provides that:

- A person making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the person's seeking medical assistance.
- A person who experiences a drug-related overdose and is in need of medical assistance may
 not be charged, prosecuted, or penalized for possession of a controlled substance if the
 evidence for possession was obtained as a result of the overdose and the need for medical
 assistance.

The bill states that the above-described protection from prosecution for possession offenses may not be grounds for suppression of evidence in other criminal prosecutions. The bill also adds the following to the list of mitigating circumstances a judge may consider when departing from the lowest permissible sentence: The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

This bill substantially amends section 921.0026, Florida Statutes. The bill creates section 893.21, Florida Statutes.

II. Present Situation:

Florida law currently contains a number of provisions that provide immunity from civil liability to persons in specified instances. Florida law also contains various provisions that allow criminal

defendants to have their sentences reduced or suspended in certain instances. A description of these provisions follows.

Florida "Good Samaritan" Laws

The Good Samaritan Act, codified in s. 768.13, F.S., provides immunity from civil liability for those who render emergency care and treatment to individuals in need of assistance. The statute provides immunity for liability for civil damages to any person who:

- Gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situations or at the scene of an emergency, without objection of the injured victim, if that person acts as an ordinary reasonable and prudent person would have acted under the same or similar circumstances.¹
- Participates in emergency response activities of a local, state, or federal emergency response
 or management agency, if that person acts prudently and within the scope of his or her
 training.²
- Gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency if that person acts as an ordinary reasonable and prudent person would have acted under the same or similar circumstances.³

Section 768.1325(3), F.S., provides that a person is immune from civil liability for any harm resulting from the use or attempted use of an automated external defibrillator device on a victim of a perceived medical emergency, without objection of the victim.

Section 768.1355(1), F.S., entitled the Florida Volunteer Protection Act, provides that any person who volunteers to perform any service for any nonprofit organization without compensation will incur no civil liability for any act or omission that results in personal injury or property damage if:

- The person was acting in good faith within the scope of any official duties performed under the volunteer service and the person was acting as an ordinary reasonable and prudent person would have acted under the same or similar circumstances; and
- The injury or damage was not caused by any wanton or willful misconduct on the part of the person in the performance of the duties.

Reduction or Suspension of Criminal Sentence

Section 921.186, F.S., allows the state attorney to move the sentencing court to reduce or suspend the sentence of persons convicted of a felony who provide substantial assistance in the identification, arrest, or conviction of any accomplice, accessory, coconspirator, or principal of the defendant, or of any other person engaged in felonious criminal activity.

¹ Section 768.13(2)(a), F.S.

² Section 768.13(2)(d), F.S.

³ Section 768.13(3), F.S.

Mitigating Circumstances

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level 10 (most severe) and are assigned points based on the severity of the offense as determined by the Legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.⁵

The points are added in order to determine the "lowest permissible sentence" for the offense. A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are "circumstances or factors that reasonably justify the downward departure." Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include:

- The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
- The defendant acted under extreme duress or under the domination of another person.
- The defendant cooperated with the state to resolve the current offense or any other offense.⁷

Currently, there are no mitigating circumstances related to defendants who make a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

Possession of Controlled Substance

Section 893.02, F.S., states possession of a controlled substance⁸ includes "temporary possession for the purpose of verification or testing, irrespective of dominion or control."

Actual or constructive possession of certain controlled substances, unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice, is a third-degree felony punishable by up to five years in prison and a fine up to \$5,000. 10

Possession of less than 20 grams of cannabis 11 is a first-degree misdemeanor punishable 12 by up to one year in prison and a fine up to \$1,000.13

⁴ Section 921.0022, F.S.

⁵ Section 921.0024, F.S., provides that a defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; and the defendant's prior record and other aggravating factors.

⁶ Section 921.0026, F.S.

⁷ *Id*.

⁸ Section 893.02(4), F.S., defines controlled substance as "any substance named or described in Schedules I-V of s. 893.03[, F.S]."

⁹ As provided in ss. 775.082, 775.083, or 775.084, F.S.

¹⁰ Section 893.13(6)(a), F.S.

¹¹ For the purposes of s. 893.13(6)(b), F.S., cannabis is defined as all parts of any plant of the genus *Cannabis*, whether growing or not, and the seeds thereof.

As provided in ss. 775.082 or 775.083 F.S.

Possession of more than 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), F.S., or any combination thereof, or any mixture containing any such substance is a first-degree felony punishable by up to 30 years in prison and a fine up to \$10,000. 15

Paragraphs (1)(a)-(1) of s. 893.135, F.S., prohibit the actual or constructive possession of various quantities of controlled substances that appear in s. 893.03, F.S., and are commonly referred to as "scheduled" drugs. The scheduled drugs are listed in Schedules I-V according to the potential for abuse or addiction, currently accepted medical use in treatment in the United States, and relative degree of danger to the user. Possession violations of s. 893.135(1)(a)-(1), F.S., are drug trafficking offenses that carry minimum mandatory prison sentences that increase in severity as the amount or weight of the drug possessed increases, including capital crimes if deaths result from the manufacture or importation of the drug.¹⁶

911 Good Samaritan Laws in Other States

In New Mexico, the 911 Good Samaritan Act prevents the prosecution for drug possession based on evidence "gained as a result of the seeking of medical assistance" to treat a drug overdose. ¹⁷ This law, which took effect in June 2007, was the first of its kind in the country. ¹⁸

While many states have considered similar Good Samaritan immunity legislation, Alaska, Connecticut, New York, and Washington are the only other states to have passed such a law.¹⁹

III. Effect of Proposed Changes:

Section 1 provides that this act may be cited as the "911 Good Samaritan Act."

Section 2 creates s. 893.21, F.S., to provide that a person who in good faith seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the person's seeking medical assistance.

The bill provides that a person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the overdose and the need for medical assistance.

The bill states that the above-described protection from prosecution for possession offenses may not be grounds for suppression of evidence in other criminal prosecutions.

¹³ Section 893.13(6)(b), F.S.

¹⁴ As provided in ss. 775.082, 775.083, or 775.084, F.S.

¹⁵ Section 893.13(6)(c), F.S.

¹⁶ Sections 893.03 and 893.135(1), F.S.

¹⁷ Drug Policy Alliance, "Preventing Overdose, Saving Lives," March 2009, http://www.drugpolicy.org/library/overdose2009.cfm (last visited April 21, 2011). ¹⁸ *Id*.

¹⁹ Alaska Statute section 12.55.155(d)(19); effective September 2008. Connecticut Public Act No. 11-210.; effective 2011. Laws of New York s. 220.78; effective September 2011. Revised Code of Washington 69.50.315; effective June 2010.

Section 3 amends s. 921.0026, F.S., to add the following to the list of mitigating circumstances a judge may consider when departing from the lowest permissible sentence: "The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose."

Section 4 provides an effective date for the bill of October 1, 2012.

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 the 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:

None.

C. Government Sector Impact:

On March 2, 2011, the Criminal Justice Impact Conference (CJIC) determined that an identical bill considered during the 2011 Legislative Session would have no impact on the Department of Corrections. Although the bill has not yet been reviewed by CJIC this Session, it is unlikely that the analysis or outcome will change relative to last Session's determination.

VI. Technical Deficiencies:

None.

VII.	Ralatar	lssues:
VII.	Relatet	1 155UES.

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.

Florida Senate - 2012 SB 278

By Senator Sachs

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30-00340-12 2012278

A bill to be entitled An act relating to preventing deaths from drug-related overdoses; providing a short title; creating s. 893.21, F.S.; providing that a person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for specified offenses in certain circumstances; providing that a person who experiences a drug-related overdose and needs medical assistance may not be charged, prosecuted, or penalized for specified offenses in certain circumstances; providing that the protections from prosecution for specified offenses are not grounds for suppression of evidence in other prosecutions; amending s. 921.0026, F.S.; amending mitigating circumstances under which a departure from the lowest permissible criminal sentence is reasonably justified to include circumstances in which a defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose; providing an effective date.

WHEREAS, some research suggests that in a majority of cases of fatal drug overdose another person was aware of or present during the decedent's fatal drug use and that in one-third of the cases someone recognized the decedent's distress, and

WHEREAS, many people cite fear of police involvement or fear of arrest as their primary reason for not seeking immediate

Page 1 of 3

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2012 SB 278

	30-00340-12 2012278
30	help for a person thought to be experiencing a drug overdose,
31	and
32	WHEREAS, it is in the public interest to encourage a person
33	who is aware of or present during another individual's drug
34	overdose to seek medical assistance for that individual, NOW,
35	THEREFORE,
36	
37	Be It Enacted by the Legislature of the State of Florida:
38	
39	Section 1. This act may be cited as the "911 Good Samaritan
40	Act."
41	Section 2. Section 893.21, Florida Statutes, is created to
42	read:
43	893.21 Drug-related overdoses; medical assistance; immunity
44	<pre>from prosecution</pre>
45	(1) A person acting in good faith who seeks medical
46	assistance for an individual experiencing a drug-related
47	overdose may not be charged, prosecuted, or penalized pursuant
48	to this chapter for possession of a controlled substance if the
49	evidence for possession of a controlled substance was obtained
50	as a result of the person's seeking medical assistance.
51	(2) A person who experiences a drug-related overdose and is
52	in need of medical assistance may not be charged, prosecuted, or
53	penalized pursuant to this chapter for possession of a
54	controlled substance if the evidence for possession of a
55	controlled substance was obtained as a result of the overdose
56	and the need for medical assistance.
57	(3) Protection in this section from prosecution for
58	possession offenses under this chapter may not be grounds for

Page 2 of 3

CODING: Words stricken are deletions; words underlined are additions.

Florida Senate - 2012 SB 278

	30-00340-12 2012278
59	suppression of evidence in other criminal prosecutions.
50	Section 3. Paragraph (n) is added to subsection (2) of
51	section 921.0026, Florida Statutes, to read:
52	921.0026 Mitigating circumstances.—This section applies to
53	any felony offense, except any capital felony, committed on or
54	after October 1, 1998.
55	(2) Mitigating circumstances under which a departure from
56	the lowest permissible sentence is reasonably justified include
57	but are not limited to:
58	(n) The defendant was making a good faith effort to obtain
59	or provide medical assistance for an individual experiencing a
70	drug-related overdose.
71	Section 4. This act shall take effect October 1, 2012.

Page 3 of 3

 ${f CODING:}$ Words ${f stricken}$ are deletions; words ${f underlined}$ are additions.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Profession	onal Staff conducting the meeting)
Meeting Date	774
Topic 911 Good Samaritan ACL	Bill Number
Name Deffrey Cla	(if applicable) Amendment Barcode
Job Title FSU Instructor	(if applicable)
Address 700 W. Virginia St. #242	Phone 239-293-2026
TG//a.hassu FL 32304 City State Zip	E-mail 11004f@fsv.edu
Speaking: Against Information	
Representing My51/F	
	st registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator of Senate Profession	al Stan conducting the meeting)
Topic Dug Overdose Name Frank Messersmith	Bill Number 58 278 (if applicable) Amendment Barcode (if applicable)
Job Title	
Address 2901 Sk Bradford	Phone <u>576-5858</u>
lall K	E-mail Fratka AOL-Com
City State Zip	
Speaking: X For Against Information	
Representing Florida Sheuffs assoc	
	registered with Legislature: X Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Profession $1/3$	al Staff conducting the meeting)
Topic PREVENTING DEATHS from BRUG RELATED	Bill Number 278
Name CHRISTINE FRANZETTI	(if applicable) Amendment Barcode(if applicable)
Job Title POLICY COORDINATOR	(у аррисавіе)
Address 2858 MAHAN & STEI	Phone 850878-2196
Street ALLAHASS29 FL 3308 City State Zip	E-mail Chanzetti Cfadaaoec
Speaking: Against Information	
Representing FLOMIDA ALGOHOL + DRUGAR	NSE ASSOCIATION
Appearing at request of Chair: Yes No Lobbyist	registered with Legislature:
While it is a Senate tradition to encourage public testimony, time may not permit meeting. Those who do speak may be asked to limit their remarks so that as ma	· · · · · · · · · · · · · · · · · · ·
This form is part of the public record for this meeting	\$.001 (10/20/11)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Profession Meeting Date	onal Staff conducting the meeting)
Topic Good Samaritan bill Name Nancy Daniels Job Title Public Defender, 2nd Circuit	Bill Number (if applicable) Amendment Barcode (if applicable)
Address 3015 . Monroe St . #40/ Street Talkhassee FL 3230) State Zip Speaking: For Against Information	Phone 850 606-1010 E-mail dauiels. naucy (a) FIRST 2.com
Representing Florida Public Befender	Association
Appearing at request of Chair: Yes No Lobbyi While it is a Senate tradition to encourage public testimony, time may not perm meeting. Those who do speak may be asked to limit their remarks so that as n	

This form is part of the public record for this meeting.

S-001 (10/20/11)

ORD
nal Staff conducting the meeting)
Bill Number 278
(if applicable)
Amendment Barcode
(if applicable)
Phone 774 700 (
E-mail UShaw (athw. Sackban
not 1
munal Seense Muyers
t registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

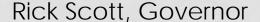
A Presentation to the Senate Criminal Justice Committee

November 3, 2011



ZERO TOLERANCE UPDATE

FLORIDA DEPARTMENT OF JUVENILE JUSTICE



Wansley Walters, Secretary

SB 1540 – ZERO TOLERANCE

- Provides legislative intent on the use of zero-tolerance policies;
- Requires district school boards to revises the requirements for zero-tolerance
 policies to define a petty act of misconduct and an act that poses a serious threat
 to school safety;
- Requires cooperative agreements to specify guidelines for addressing acts that pose a serious threat to school safety and reporting to law enforcement; and,
- Prohibits zero-tolerance policies from requiring the reporting of petty acts of misconduct and certain misdemeanors to a law enforcement agency
- Provides for an administrative hearing for a student who has been expelled from school.
- Requires any school board that has a policy allowing corporal punishment to review their policy once every 3 years during a school board meeting to get public input.
- Added the words "volunteers and staff" to the list covered under the districts zero tolerance policy as it relates to minimizing the victimization of this population.

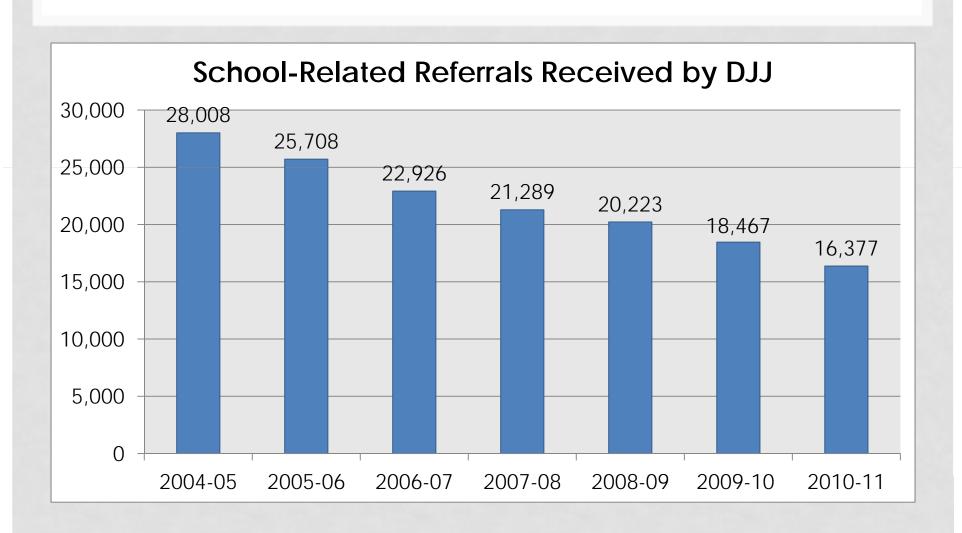
WHAT IS A SCHOOL REFERRAL?

- An arrest is considered school-related if the offense occurred on school grounds, a school bus, a bus stop or at a school sanctioned event (e.g., football game).
- Being arrested at school for delinquency committed elsewhere does not count as "school-related"

WHO ARRESTS KIDS AT SCHOOL?

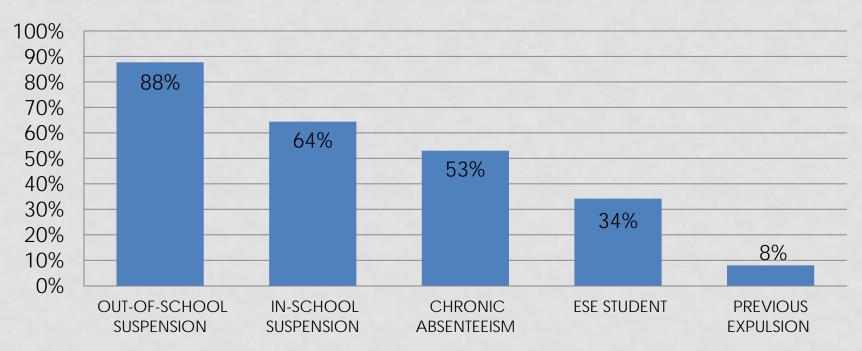
- Local law enforcement will respond to delinquency based on their individual department policy and that of the local school district.
- Many school districts in Florida have law enforcement entities devoted entirely to school safety.
- These are commonly referred to as "School Resource Officers" (SRO).

SCHOOL REFERRAL TRENDS



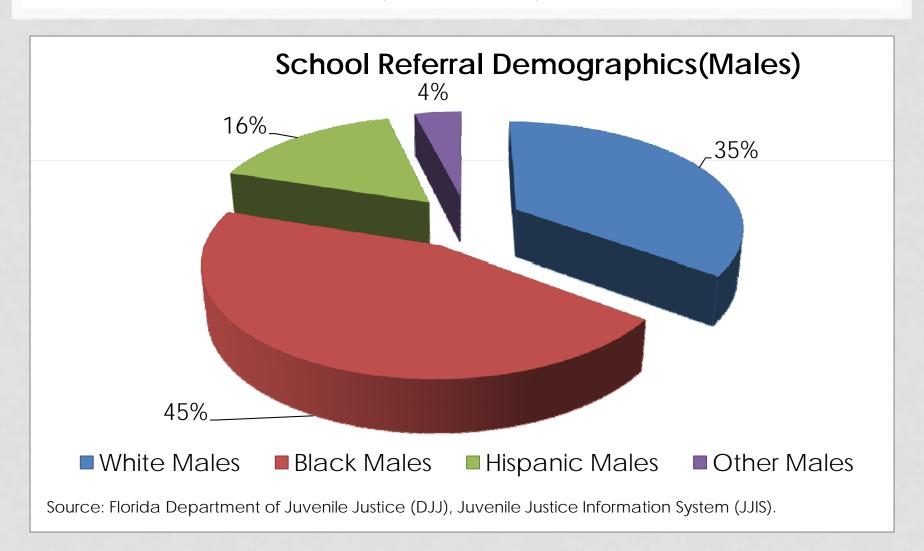
SCHOOL DISCIPLINE HISTORY

School Referral Students & School Status/History (FY 2009-10)

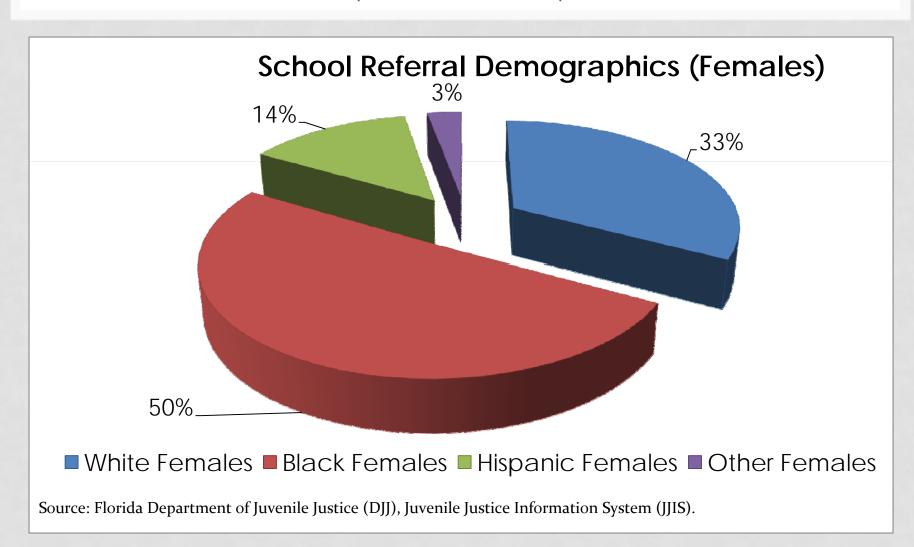


Source: Department of Education (DOE). Percentages reflect rates for only youth whose school discipline and status data were available (n=9,888 out of 16,784).

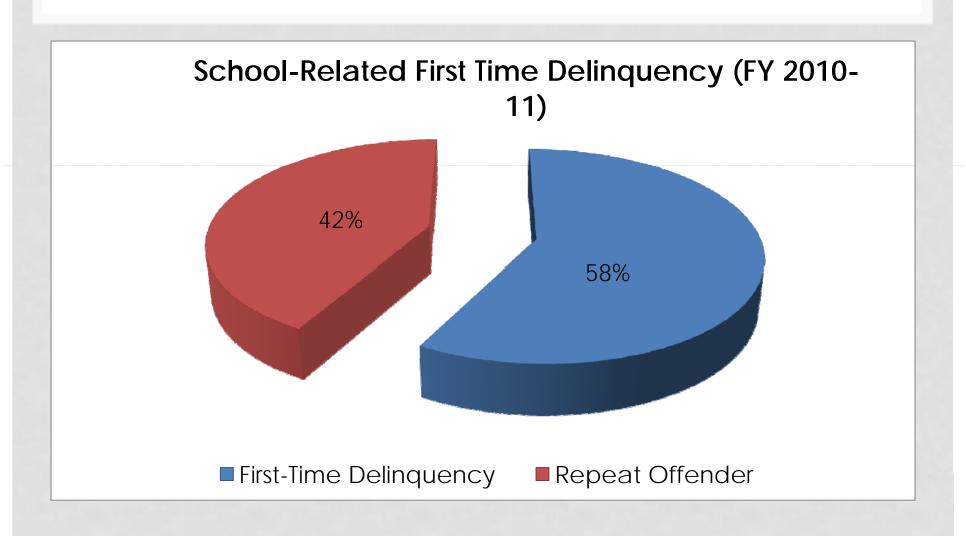
SCHOOL REFERRAL DEMOGRAPHICS (MALES)



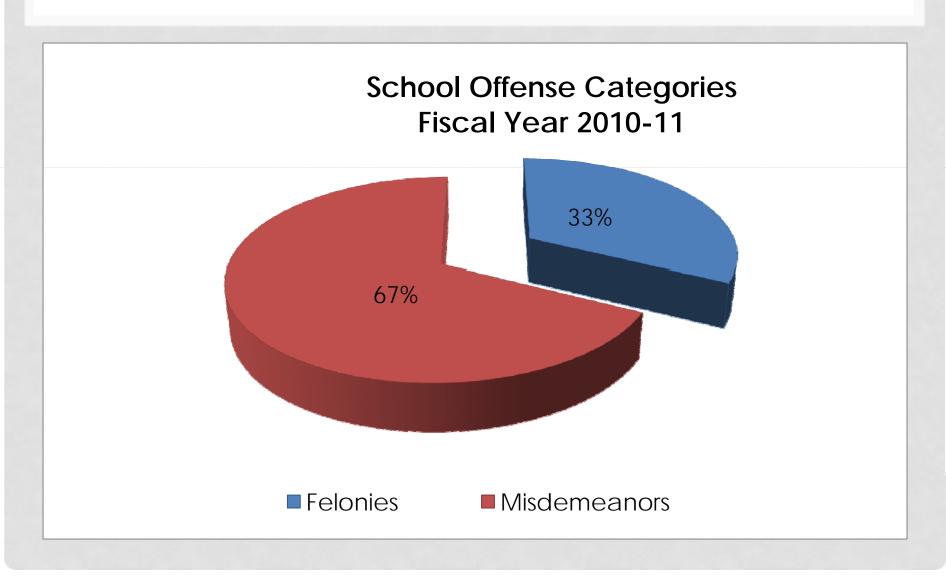
SCHOOL REFERRAL DEMOGRAPHICS (FEMALES)



SCHOOLS AS A GATEWAY TO DJJ



WHAT KIND OF OFFENSES ARE WE SEEING?



WHAT ARE THE MOST COMMON OFFENSES

Most Common School-Related Delinquency Referrals Fiscal Year 2010-11



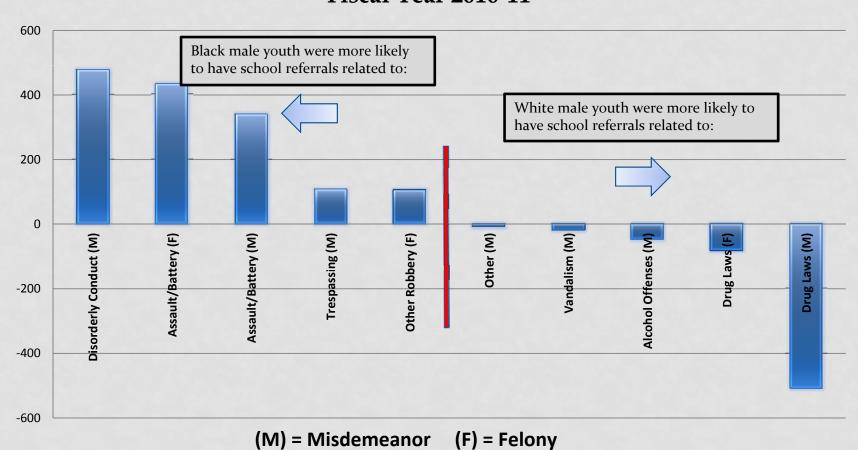
WHAT HAPPENS TO THESE KIDS?

School Referral Case Dispositions Fiscal Year 2010-11

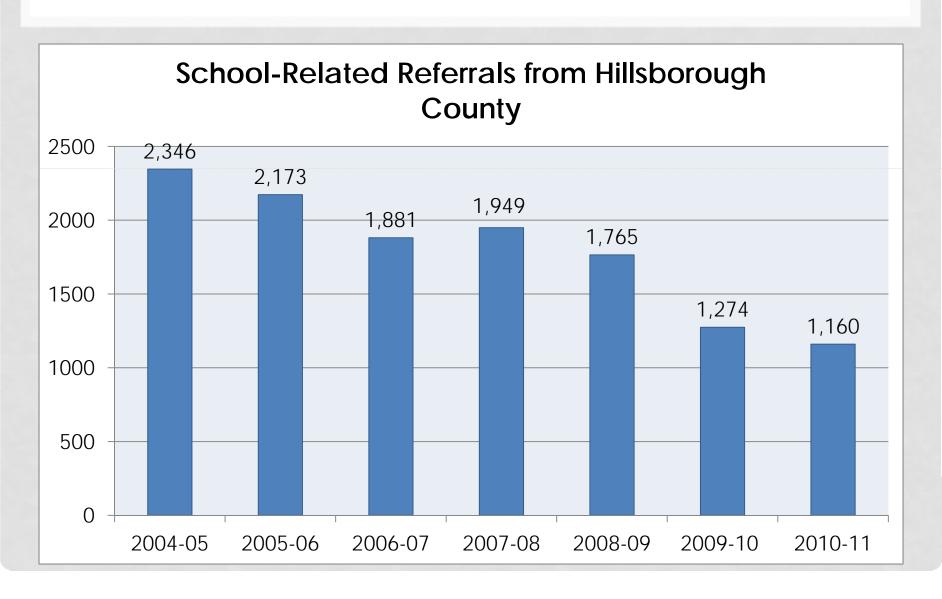


RACIAL DIFFERENCES IN OFFENSE PATTERNS

Black Male vs. White Male School Offense GAP Analysis Fiscal Year 2010-11



HILLSBOROUGH COUNTY – AN EXAMPLE OF IMPROVEMENT



School Referral Rates Relative to Student Populations Fiscal Year 2010-11

Small School Districts ¹		Medium Sch	hool Districts ²	Large School Districts ³		
Referral Rate		Referral Rate		Referral Rate		
Low - Average ⁴ High ⁵		Low - Average ⁴	High ⁵	Low - Average ⁴	High ⁵	
LIBERTY	WALTON	SANTA ROSA	MARION	DADE	PINELLAS	
FRANKLIN	CALHOUN	OKALOOSA	BAY	DUVAL	POLK	
DIXIE	GILCHRIST	SARASOTA	OSCEOLA	TAYLOR	VOLUSIA	
NASSAU	UNION	CLAY	LAKE	PALM BEACH		
HOLMES	GADSDEN	HERNANDO	LEON	LEE		
WASHINGTON	LEVY	COLLIER	ESCAMBIA	BROWARD		
HAMILTON	FLAGLER	ST. JOHNS	MANATEE	BREVARD		
GULF	INDIAN RIVER		ST. LUCIE	PASCO		
DESOTO	MARTIN		ALACHUA	SEMINOLE		
HARDEE	JACKSON			HILLSBOROUGH		
GLADES	HENDRY			ORANGE		
SUMTER	JEFFERSON	¹ Districts with 10,00	00 or less middle & high s	chool students		
CITRUS	BAKER	² Districts with 10,00	01 - 29,999 middle & high	school students		
BRADFORD	SUWANNEE	³ Districts with 30,000 or more middle & high school students				
CHARLOTTE	MADISON	⁴ Districts whose referral rate was less than or equal to 12 for every 1,000 students				
COLUMBIA	HIGHLANDS	⁵ Districts whose referral rate was 13 or more for every 1,000 students				
MONROE	OKEECHOBEE	Sources: Student Population Data are derived from Florida Department of Education (DOE),				
LAFAYETTE	PUTNAM	2010-11 Survey 2 Data; Population of public school students (excludes lab) in grades 6-12				
WAKULLA		during the 2010-11 school year. School-related delinquency referral data are derived from the				

Florida Department of Juvenile Justice (DJJ), Juvenile Justice Information System (JJIS).

OPPORTUNITIES FOR IMPROVEMENT

- Enhance alternatives to arrest.
- Review progressive response plans in each school district.

Rethinking Zero Tolerance: How to Create Positive Outcomes for Children while Ensuring School Safety

Florida's

Zero Tolerance Law

David Utter, Southern Poverty Law Center

The Good News

According to the DJJ, delinquency referrals for school-related offenses declined by 41% over the past six years:

28,008 referrals in FY 2004-05

16,377 referrals in FY 2010-11

The Bad News

During FY 2004-05, **63%** of school-related referrals were for misdemeanors

During FY 2010-11: **67%** of school-related referrals were for misdemeanors

The Ugly News

Even though African-Americans only make up approximately **22%** of the youth aged 10-17 in Florida,

During FY 2004-05: Black youth accounted for **47%** of all school-related referrals

And in FY 2009-10, Black youth still accounted for **47%** of all school-related referrals.

No Such Thing as Bad Publicity?

Orlando Sentinel

Zero tolerance went overboard



Oct 13, 2009

Lehigh student Tasered in school fight

The New York Times

October 11, 2009

It's a Fork, It's a Spoon, It's a ... Weapon?



February 15, 2010

6-year-old handcuffed in Port St. Lucie

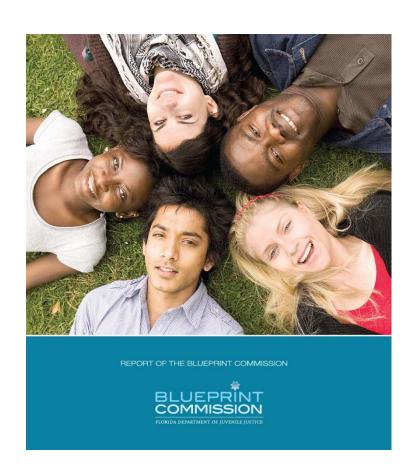
2008 **DJJ Blueprint Commission**

--16% of all delinquency referrals come from schools

--66% for misdemeanors

--Most common=disorderly
conduct and misdemeanor
assault (fighting)

Recommendation: Eliminate the referral of youth for misdemeanor offenses



2009 Amendments to the Zero Tolerance Statute

Section 1006.13, Florida Statutes, is amended to read: 1006.13 Policy of zero tolerance for crime and victimization.—

It is the intent of the Legislature to promote a safe and supportive learning environment in schools, to protect students and staff from conduct that poses a **serious threat to school safety**, and to **encourage schools to use alternatives** to expulsion or referral to law enforcement agencies by addressing disruptive behavior through restitution, civil citation, teen court, neighborhood restorative justice, or similar programs.

The Legislature finds that zero-tolerance policies are **not intended to be rigorously applied to petty acts of misconduct and misdemeanors**, including, but not limited to, minor fights or disturbances.

The Legislature finds that zero-tolerance policies **must apply equally** to all students regardless of their economic status, race, or disability.

Reducing Arrests and Expulsions

1006.13(2)(1) Each district school board shall adopt a policy of zero tolerance that:

- (a) Defines criteria for reporting to a law enforcement agency any act that occurs whenever or wherever students are within the jurisdiction of the district school board.
- (b) Defines acts that pose a **serious threat to school safety**.
- (c) Defines petty acts of misconduct.

Serious Threat to School Safety

- (3) Zero-tolerance policies must require students found to have committed one of the following offenses to be expelled, with or without continuing educational services, from the student's regular school for a period of not less than 1 full year, and to be referred to the criminal justice or juvenile justice system.
- (a) Bringing a firearm or weapon, as defined in chapter 790, to school, to any school function, or onto any school-sponsored transportation or possessing a firearm at school.
- (b) Making a threat or false report, as defined by ss. 790.162 and 790.163, respectively, involving school or school personnel's property, school transportation, or a school-sponsored activity.

What is a Weapon?

According to Chapter 790 of the Fla. Statutes a "weapon means any dirk, knife, metallic knuckles, slingshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife."

What is a Threat?

Ch. 790.162 Threat . . .

It is unlawful for any person to threaten to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person, . . .

What is a False Report?

Chapter 790.163 False report about planting bomb, explosive, or weapon of mass destruction . . .

(1) It is unlawful for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction . . .

Guaranteeing individualized consideration of circumstances for each incident

Section 1006.13

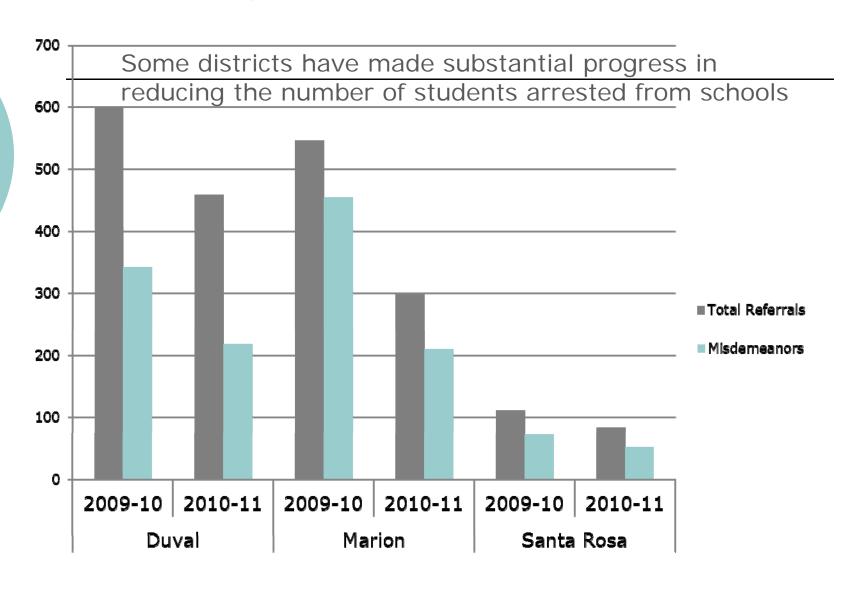
(7) Any disciplinary or prosecutorial action taken against a student who violates a zero-tolerance policy must be based on the particular circumstances of the student's misconduct.

What Must Be Reported to Law Enforcement

Section 1006.13

- (4)(a) Each district school board shall enter into agreements with the county sheriff's office and local police department specifying guidelines for ensuring that acts that pose a serious threat to school safety, whether committed by a student or adult, are reported to a law enforcement agency.
- (b) The agreements must include the role of school resource officers, if applicable, in handling reported incidents, circumstances in which school officials may handle incidents without filing a report with a law enforcement agency, and a procedure for ensuring that school personnel properly report appropriate delinquent acts and crimes.
- (c) Zero-tolerance policies do not require the reporting of petty acts of misconduct and misdemeanors to a law enforcement agency, including, but not limited to, disorderly conduct, disrupting a school function, simple assault or battery, affray, theft of less than \$300, trespassing, and vandalism of less than \$1,000.

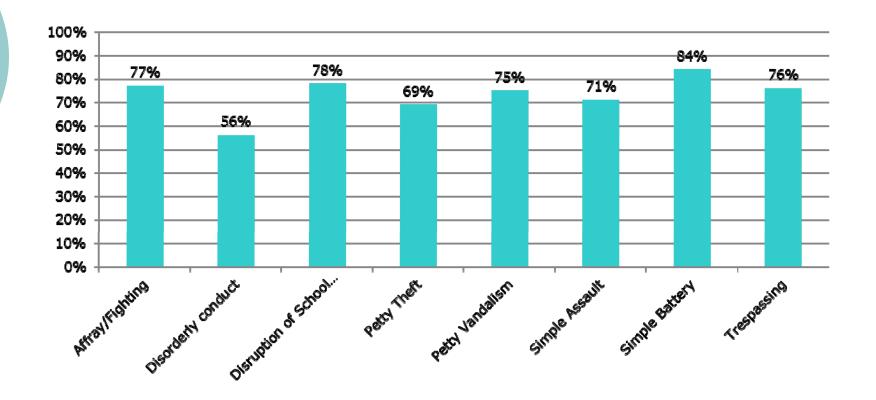
Tracking Implementation



But some districts arrested more students, not less -

- In 23 of Florida's 67 school districts more students were arrested in 2010-11 than in the previous year.
- In over 40% of the districts, the number of students arrested at school for misdemeanors either increased or stayed the same as in 2009-10.

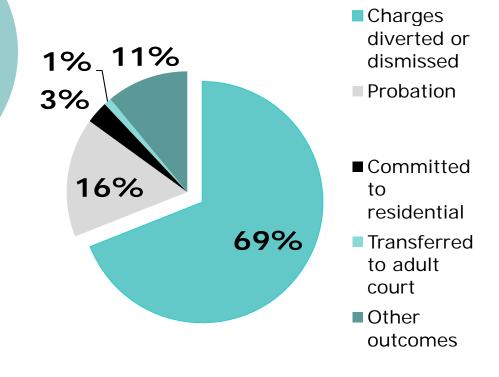
Percentage of Districts that Allow Students to be Referred to Law Enforcement for Minor Offenses 2009-10



Source: ACLU of Florida, Advancement Project, Florida State Conference of the NAACP, "Still Haven't Shut Off the School-to-Prison Pipeline: Evaluating the Impact of Florida's New Zero-

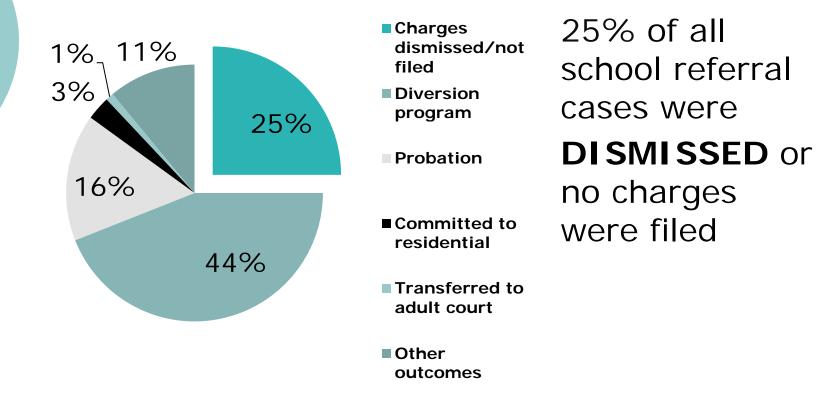
Tolerance Law," p. 9 (2011)

An Arrest Record – for what?



69% of all school referral cases were DIVERTED from the JJ system or DISMISSED

...for what?



...for what?

 So—11,300 young people last year were arrested from school only to have the case dismissed or diverted!

 4,100 of those youngsters had their charges dismissed or not filed!

What happens to a child arrested at school?

Even if the student goes no deeper into the juvenile justice system, the impact of an arrest is severe and lasting:

- The child will be photographed and fingerprinted.
- The child may be suspended or expelled from school.
- Life long limitation for college and career, applying for college and jobs, even housing.

What is Needed to Keep Children and Schools Safe?

Incidents that do not pose a serious threat to school safety may <u>not</u> be referred to the juvenile justice system.

Zero Tolerance should be limited to:

- Capital felonies;
- Life felonies;
- 1st degree felonies;
- 2nd and 3rd degree felonies involving a firearm, weapon or use of fire or explosives;
- Bringing a firearm or other deadly weapon to school, any school function, or on school sponsored transportation;
- Possessing a firearm at school;

And...

- Making a false report or threat related to explosives or weapons of mass destruction and involving school or school personnel's property, school transportation, or a school sponsored activity;
- Aggravated battery;
- Aggravated battery against school personnel; and
- Dealing or delivering in controlled substances.

Schools Must Report to the DoE

Schools should be required to establish sensible policies to implement the law and report those policies and their impact annually to the Dept. of Education.

Florida's New Zero Tolerance Law

David Utter david.utter@splcenter.org

Creating Model District Policies under Florida's New Zero Tolerance Law

Useful websites:

- Advancement Project, Stop the Schoolhouse to Jailhouse Track: www.stopschoolstojails.org
- Dignity in Schools Campaign: www.dignityinschools.org
- Southern Poverty Law Center and Teaching Tolerance: <u>www.splcenter.org</u>

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/3/11

This form is part of the public record for this meeting.

1004

S-001 (10/20/11)

Meeting Date		
Topic Boothe Zero Tokrance	Bill Number	
^	(if applicable)	
Name DARVIN Boothe	Amendment Barcode	
	(if applicable)	
Job Title Legis/Afive Liason		
Address 1606 N. Westmore (AND DR. Street	Phone 4.7-592-5263	
6RLAWD F1 32804 City State Zip	E-mail darvin buthaseps. US	
City State Zip		
Speaking: Against Information	Seninole	
Representing Fl. Association District School Su	perintendents/ Public	
Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No		
While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.		

APPEARANCE RECORD

Tab &

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Toma Francisco	Bill Number
Topic tero berance	(if applicable)
Name Mark Greenwald	Amendment Barcode
Job Title Chars of Research + Planning	(if applicable)
Address 2737 Conterview Dr.	Phone 850-921-0726
Tallahasea FL 35399 City State Zip	E-mail
Speaking: State Zip Speaking: Information	
Representing DJJ	
Appearing at request of Chair: Yes No Lobbyist	registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic	Bill Number	
	(if applicable)	
Name Lavid Utto	Amendment Barcode	
Job Title Policy & Legislative Director	(if applicable)	
Address 4770 Biscaye Blud	Phone 334/296-8727	
Street City State Zip	E-mail david uffer at splicet	
Speaking: Against Information		
Representing Southern Parenty C	an Certer	
Appearing at request of Chair: Yes No	Lobbyist registered with Legislature: Yes No	
While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.		
This form is part of the public record for this meeting.	S-001 (10/20/11)	

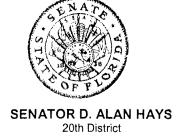
Taliahassee, Florida 32339-1100



COMMITTEES: Budget - Subcommittee on General Government Appropriations, *Chair* Agriculture Banking and Insurance Budget Budget - Subcommittee on Higher Education Appropriations Criminal Justice

JOINT COMMITTEE: Administrative Procedures

Reapportionment



October 20, 2011

Senator Greg Evers, Chair Criminal Justice Committee 308 Senate Office Building 510 Knott Building 404 S. Monroe Street Tallahassee, FL 32399-1100

Dear Chairman Evers:

I respectfully request to be excused from the Criminal Justice committee meeting scheduled for November 3, 2011. I have a prior commitment and will be unable to attend.

Thank you for your consideration of this request.

Sincerely,

Senator D. Alan Hays, DMD

District 20

CC: Amanda Cannon, Staff Director

Sue Arnold, Administrative Assistant

□ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov



Tallahassee, Florida 32399-1100

COMMITTEES:

Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations, Vice Chair
Reapportionment, Vice Chair
Banking and Insurance
Budget
Budget - Subcommittee on Finance and Tax
Communications, Energy, and Public Utilities
Criminal Justice
Governmental Oversight and Accountability

SENATOR GWEN MARGOLIS

35th District

October 17, 2011

President Haridopolos,

On Monday, October 24, 2011, I am schedule to undergo surgery for a hip replacement. During this week, I will be having the necessary "pre-ops" that are require pre-surgery. At this time, I am requesting approval of my absence from the current committee week and the committee week of October 31st.

My Legislative staff will be in Tallahassee in my absence and should you need anything, please do not hesitate to contact them.

Thank you again for your continued support and understanding.

Senator Swen Margolia

Sincerely,

Gwen Margolis State Senator

cc: Chair Alexander

cc: Chair Benacquisto

cc: Chair Gaetz cc: Chair Richter cc: Chair Bogdanoff cc: Chair Gardiner cc: Chair Evers

cc: Chair Ring cc: Chair Thrasher

REPLY TO:

☐ 3050 Biscayne Boulevard, Suite 600, Miami, Florida 33137 (305) 571-5777

🗆 414 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5121

Senate's Website: www.flsenate.gov

CourtSmart Tag Report

Room: LL 37 Case: Type: Caption: Criminal Justice Committee 10:30 a.m. Judge: Started: 11/3/2011 10:35:55 AM Ends: 11/3/2011 12:12:18 PM Length: 01:36:24 10:35:56 AM Recording Paused 10:35:56 AM Recording Resumed 10:35:57 AM Meeting called to order. Quorum present 10:37:11 AM SB 92 - Senator Joyner-Parole for Juvenile Offenders 10:38:15 AM There is a delete-all amendment barcode 964090 by Senator Smith (courtesy for Senator Joyner) 10:40:12 AM Senator Dean with a question regarding changes in the bill. Senator Dean cannot support the amendment. Question by Senator Evers 10:41:30 AM Senator Bennett with a courtesy hand written amendment. Takes homicide portion out of delete-all 10:42:28 AM amendment. 10:43:56 AM Roll call on hand written amendment-Senator Dean against-amendment passed. 10:45:32 AM Now on amendment as amended-any discussion. Senator Bennett wants public testimony next. 10:46:56 AM Sheila Hughes Parole for adolescent offenders-waives in support 10:47:32 AM Janet Ferris-Parole for Juvenile Offenders 10:49:42 AM Corinne Koeppen-Attorney, Public Interest Law Center-FSU 10:51:56 AM Nancy Daniels waives in support Senator Bennett with a series of questions for Senator Joyner 10:54:46 AM 10:55:34 AM Senator Joyner with a series of questions. 10:57:30 AM Senator Smith is going to support amendment and bill. 11:00:10 AM Roll call on amendment as amended. Bill as amended. 11:00:30 AM 11:03:08 AM Senator Bennett shows a committee substitute 11:03:24 AM SB 210 Senator Wise-Costs of Prosection, Investigation and Representation 11:04:37 AM Questions on SB 210-Senator Smith with a question. 11:07:40 AM Monica Hofheinz-Florida Pros. Attorney's Association 11:14:11 AM Senator Evers with a series of questions. 11:19:41 AM Nancy Daniels-Florida Public Defender's Association 11:22:27 AM Senator Dean with a series of questions 11:24:13 AM Senator Smith with questions 11:26:08 AM Lisa Hurley-Florida Assoc. of Criminal Defense Lawyers 11:32:18 AM Senator Smith with concerns on ability to pay by cash or community service. Juvenile ssection of the bill is concern. 11:34:07 AM Senator Wise has decided to TP the bill at this time. 11:35:13 AM SB 278 Senator Sach-presented by Caesar Fernandez-Preventing Deaths from Drug related Overdoses 11:36:33 AM Senator Bennett with a question 11:39:52 AM Senator Smith with questions 11:44:25 AM SB 278 will be temporary postponed Presentation on School District on zero tolerance policies-Darvin Boothe-Seminole County Public Schools 11:45:40 AM Senator Smith with a question regarding school resource officers 11:57:01 AM 12:00:22 PM Senator Dean with a series of questions

12:03:02 PM

12:08:43 PM

12:09:53 PM

12:11:58 PM

David Utter-Southern Poverty Law Center

Senator Evers with a quetions for Mr. Booth.

Senator Bennett moves we rise. Adjourned

Senator Bennett with a statement