SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 17, 1998 Revised: ________ ________ ________ ________

Subject: Law Enforcement

	Analyst	Staff Director	Reference	Action
1.	Barrow	Miller	CJ	Favorable/CS
2.			GO	
3.			WM	
4.				
5.				

I. Summary:

The duties and responsibilities of the Criminal and Juvenile Justice Information System Council (CJJISC) within the Florida Department of Law Enforcement (FDLE) would be amended to enhance standardization and coordination, and to expand information sharing to improve the accessibility and comprehensiveness of criminal and juvenile justice information among all relevant agencies in the State of Florida.

The CS/SB 1378 would also authorize a law enforcement officer, correctional officer, or correctional probation officer, who has resigned due to the officer's appointment or election to office, to continue to participate in any training and educational programs approved by the Criminal Justice Standards and Training Commission within the FDLE. Thus, the officer could retain active certification as an officer without violating the constitutional prohibition against dual office-holding.

The CS would clarify that the responsibilities of state-operated crime laboratories are primarily with the prosecution and are available to the defense if certain criteria is met, including assessment of costs. It would also authorize crime scene analysts, forensic technicians, and lab technicians to request testing for sexually transmitted diseases, which would be the same as sworn law enforcement officers, firefighters, and emergency medical technicians.

The CS would allow FDLE to copyright many of the manuals and materials it produces. It would also standardize protocol for the collection of blood samples from offenders at the local level, to help ensure that blood samples are drawn and transmitted to be analyzed and cataloged in the department's DNA database for offenders who are supposed to submit blood samples.

This CS would substantially amend, create, or repeal the following sections of the Florida Statutes: 943.03, 20.315, 20.316, 186022, 282.1095, 282.111, 318.18, 943.031, 943.08, 943.135, 943.33, 384.287, and 943.325.

II. Present Situation:

Criminal and Juvenile Justice Information Systems Council

The Criminal and Juvenile Justice Information Systems Council (CJJISC or "Council") is a 14-member council established in the Florida Department of Law Enforcement (FDLE). The membership of the Council consists of: the Attorney General, the executive director of the FDLE, the secretary of the Department of Corrections (DOC), the chair of the Parole Commission, the secretary of the Department of Juvenile Justice (DJJ), the executive director of the Department of Highway Safety and Motor Vehicles (DHSMV), the State Courts Administrator; a public defender (appointed by the Florida Public Defender Association, Inc.); a state attorney (appointed by the Florida Prosecuting Attorneys Association, Inc.); and five members appointed by the Governor, as follows: two sheriffs, two police chiefs, and a clerk of the circuit court. The members of CJJISC serve without compensation, but are entitled to reimbursement for per diem and travel expenses.

The CJJISC is charged with facilitating the identification, standardization, sharing, and coordination of criminal and juvenile justice data and other public safety system data among federal, state, and local agencies. The Council is responsible for making recommendations to FDLE's executive director and to the secretary of DJJ regarding issues related to criminal justice information systems, criminal intelligence information systems, and criminal investigative information systems.

During the 1996 Legislative Session, the Council's guiding principles were codified as the guiding principles for the state's management of public safety system information technology resources. These guiding principles include:

- Cooperative planning by public safety system entities is a prerequisite for the effective development of systems to enable sharing of data. The planning process, as well as the coordination of development efforts, should include all principals from the outset.

- Public safety system entities should be committed to maximizing information sharing, moving away from proprietary positions taken relative to data they capture and maintain; maximizing public access to data, while complying with legitimate security, privacy, and confidentiality requirements; and striving for the electronic sharing of information via networks. As much as possible, the redundant capture of data must be eliminated.

- The practice of public safety system entities charging one another for data should be eliminated. Further, when the capture of data for mutual benefit can be accomplished, the costs for the development, capture, and network for access to that data should be shared.

Methods of sharing data among different protocols must be developed without requiring major redesign or replacement of individual systems.

Under current law, the DJJ must submit its annual report regarding its juvenile justice information system to the Council in addition to the Joint Information Technology Resources Committee (JITRC). The JITRC and the Council are directed to review and reach consensus on the report, and then forward the report to the Legislature.

In 1997, the Legislature repealed law that would require the executive director of the Information Resource Commission to consider any findings and recommendations made by the chair of the Council regarding related public safety system information technology resource management issues that affect multiple agencies, rather than having contact with the Council as a whole, pursuant to the former ss. 216.0445(2) & (5), F.S. *See* Ch. 97-286, s. 18, 1997 *Fla. Laws* 5239, 5265. The State Technology Office was created in 1997 to provide support to specified organizations and workgroups and to enhance the state's use and management of information technology resources, among other duties. *See* Ch. 97-286, s. 10, 1997 *Fla. Laws* 5239, 5253 (creating s. 282.3093, F.S.). By March 1 of each year, the State Technology Office is required to develop a State Annual Report on Information Resources Management, which is required to include information resources management information for the annual report prepared by the Supreme Court, state attorneys, and public defenders. Ch. 97-286, s. 10, 1997 *Fla. Laws* 5239, 5254 (creating s. 282.310, F.S.).

The 1997 Legislature created law that stated that by March 1 of each year, the Criminal and Juvenile Justice Information Systems Council must develop a strategic plan following the general statutory requirements that are applicable to agencies pursuant to s. 186.021 (1), (2), and (3), F.S. *See also* Ch. 97-286, s. 37, 1997 *Fla. Laws* 5239, 5283 (creating s. 943.08 (3), F.S., as a cross-reference). The strategic plan is subject to the requirements, and the review and approval processes, that are set out in subsections (2) through (7) of s. 186.021, F.S., with the exception of two circumstances that are provided in paragraphs (a) and (b) of s. 186.022 (9), F.S. Copies of the approved plan are required to be submitted to the Governor, the Legislature, and the Council members. *Id*.

Currently, the Executive Office of the Governor must review the state agency strategic plans to ensure that they are consistent with the State Comprehensive Plan and other requirements. The Governor's office currently reviews the findings, but not the recommendations of the Council with respect to the public safety system strategic information technology resources management issues as part of its state agency strategic plan review.

In 1996, the duties of the Council were expanded. *See* Ch. 96-388, *Fla. Laws*. One duty of the Council that was expanded is to review various budget requests to determine compliance with the Council's guiding principles for managing public safety system information technology resources. Thus, the current responsibilities of the Council reach beyond practical oversight and recommendations for enhancements and improvements to include budget issues that must be considered by the Council.

Dual Office Holding and Law Enforcement Officers

Article II, section 5 (a), *Florida Constitution*, provides:

> No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state.

This constitutional provision prohibits a person from simultaneously holding more than one "office" under the government of the state and the counties and municipalities. Even though the terms "office" or "officer" are not defined, it is well established that a full-time, part-time, auxiliary or certified reserve police officer is an "officer" for purposes of Article II, section 5(a), *Florida Constitution*. Op. Att'y Gen. Fla. 77-63 (1977); *see also* Op. Att'y Gen. Fla. 86-105 (1986), concluding that auxiliary police officers who did not have the authority to make arrests but who were certified, carried firearms, and assisted regular police officers in carrying out their duties were "officers." However, a 1989 Attorney General opinion concluded that an administrative law enforcement position, having no law enforcement certification requirements or arrest powers and not authorized to independently exercise the sovereign powers of the state, was not an office but an employment for purposes of dual office-holding. Op. Att'y Gen. Fla. 89-10 (1989).

The *Florida Constitution* contains several exceptions to its prohibition against dual office-holding. The constitutional provision expressly states that a notary public or military officer may hold another office. In addition any officer may be a member of a constitutional revision commission or constitutional convention. (*See* Art. XI, s. 2, *Fla. Const*., providing for the establishment of a constitutional revision commission every 20 years; and Art. XI, s. 4, *Fla. Const*., reserving to the people the power to call a convention to consider a revision of the entire Constitution.)

Statutory bodies having only advisory powers are also exempted from the constitutional dual office-holding prohibition. It is this exception that has been the subject of interpretation both by the courts and by the Office of the Attorney General.

There are consequences of a public officer accepting a second office in violation of the constitutional dual office-holding prohibition. The Supreme Court of Florida in a 1970 decision set forth the general rule that "[t]he acceptance of an incompatible office by one already holding office operates as a resignation of the first." *Holley v. Adams*, 238 So.2d 401, 407 (Fla. 1970).

The Criminal Justice Standards and Training Commission within the FDLE is charged with the responsibility of establishing uniform minimum standards for the employment and training of all officers in the various criminal justice disciplines. s. 943.12, F.S. The commission is further responsible for the issuance and revocation of certificates for persons qualified for employment or appointed as an officer. s. 943.1395, F.S. No person may be employed as a full-time, part-time, or auxiliary officer in any criminal justice discipline until he has obtained such a certificate of compliance. s. 943.1395, F.S. If any officer fails to meet the training requirements of continued

employment and the rules and regulations of the Criminal Justice Standards and Training Commission, such officer's authority to act and function as an officer is limited and his power to arrest is no greater than that of a private citizen. *See* Op. Att'y Gen. Fla. 73-398 (1973); Op. Att'y Gen. Fla. 73-14 (1973).

State-Operated Crime Laboratories

The Department of Law Enforcement operates crime laboratories around the State of Florida. Under s. 943.33, F.S., FDLE's crime labs may be required to perform analysis on behalf of criminal defendants. Often times when such work is ordered by the court, defense counsel advises the FDLE forensic persons involved to refrain from disclosing the work performed and providing the results found to the state.

As a result of scenarios similar to this, FDLE forensic personnel are placed in an ethical dilemma. While FDLE forensic personnel are obligated to perform objective analyses of the evidence provided to them, the personnel must try to deal with the "gag order" that has been placed on them by defense counsel in the analysis of the evidence provided to them by the defense. According to FDLE, this is very difficult situation to deal with when the state has also submitted evidence to be analyzed by the crime lab. It is also notable that the attempt at keeping lab analyses and findings from the state as directed by defense counsel is contrary to the *Florida Rules of Criminal Procedure* relating to mutual discovery obligations between the state and defense.

Section 943.33, F.S., currently provides authority to the court to order the defendant to pay the cost of laboratory services performed by a state laboratory if the court chooses to do so. However, the court is not required to assess such costs and in many instances does not assess laboratory costs upon the defendant.

The Collection of Offender Blood Samples for the DNA Database

Section 943.325, F.S., governs the collection of blood specimens from offenders for DNA analysis. It states:

> Any person convicted, or who was previously convicted and is still incarcerated, in this state for any offense or attempted offense defined in chapter 794, chapter 800, s. 782.04, s. 784.045, s. 812.133, or s. 812.135, and who is within the confines of the legal state boundaries, is required to submit two specimens of blood to a Department of Law Enforcement designated testing facility as directed by the department. s. 943.325 (1) (a), F.S. For the purpose of the statute, the term "any person" includes both juveniles and adults committed to or under the supervision of the Department of Corrections or the Department of Juvenile Justice. s. 943.325 (1) (b), F.S.

For purposes of determining whether an offender is required to provide a blood sample for analysis, a "conviction" includes a finding of guilty, or entry of a plea of nolo contendere or guilty,

regardless of adjudication or, in the case of a juvenile, the finding of delinquency. s. 943.325 (8) (d), F.S.

The withdrawal of blood for DNA analysis is required to be performed in a medically approved manner and only under the supervision of a physician, registered nurse, licensed practical nurse, or duly licensed medical personnel. s. 943.325 (2), F.S. The Department of Law Enforcement is required to provide the specimen vials, mailing tubes, labels, and instructions for the collection of blood specimens. s. 943.325 (3), F.S. The specimens must be forwarded to the designated testing facility for analysis to determine genetic markers and characteristics for the purpose of individual identification of the person submitting the sample. If necessary, the state or local law enforcement or correctional agency having authority over the person subject to the sampling under this section must assist in the procedure. The law enforcement or correctional officer so assisting may use reasonable force if necessary to require such person to submit to the withdrawal of blood. s. 943.325 (8) (e), F.S. However, the law requires that the withdrawal be performed in a reasonable manner.

The analysis, when completed, is required to be entered into the automated database maintained by the Department of Law Enforcement for such purpose, and cannot be included in the state central criminal justice information repository. s. 943.325 (4), F.S. The results of a DNA analysis and the comparison of analytic results can be released only to criminal justice agencies as defined in s. 943.045(10), at the request of the agency. s. 943.325 (5), F.S. Otherwise, such information is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the *Florida Constitution*.

The Department of Law Enforcement and the statewide criminal laboratory analysis system shall establish, implement, and maintain a statewide automated personal identification system capable of, but not limited to, classifying, matching, and storing analyses of DNA (deoxyribonucleic acid) and other biological molecules. s. 943.325 (6), F.S. The system is required to be available to all criminal justice agencies.

With regard to this DNA database, pursuant to s. 943.325 (7), F.S., the Department of Law Enforcement is required to:

(a) Receive, process, and store blood samples and the data derived therefrom furnished pursuant to subsection (1) or pursuant to a requirement of supervision imposed by the court or the Parole Commission with respect to a person convicted of any offense specified in subsection (1).

(b) Collect, process, maintain, and disseminate information and records pursuant to this section.

(c) Strive to maintain or disseminate only accurate and complete records.

(d) Adopt rules prescribing the proper procedure for state and local law enforcement and correctional agencies to collect and submit blood samples pursuant to this section.

The court is required to include in the judgment of conviction for an offense specified in s. 943.325 (1) (a), F.S., or a finding that a person described in that subsection violated a condition of probation, community control, or any other court-ordered supervision, an order stating that blood specimens are required to be drawn by the appropriate agency and, unless the convicted person lacks the ability to pay, the person must reimburse the appropriate agency for the cost of drawing and transmitting the blood specimens to the Florida Department of Law Enforcement. s. 943.325 (8) (a), F.S. The reimbursement payment may be deducted from any existing balance in the inmate's bank account. If the account balance is insufficient to cover the cost of drawing and transmitting the blood specimens to the Florida Department of Law Enforcement, 50 percent of each deposit to the account must be withheld until the total amount owed has been paid. If the judgment places the convicted person on probation, community control, or any other court-ordered supervision, the court shall order the convicted person to submit to the drawing of the blood specimens as a condition of the probation, community control, or other court-ordered supervision. For the purposes of a person who is on probation, community control, or any other court-ordered supervision, the collection requirement must be based upon a court order. If the judgment sentences the convicted person to time served, the court must order the convicted person to submit to the drawing of the blood specimens as a condition of such sentence.

Section 943.325 (8) (b), F.S., provides that the appropriate agency must have the specimens as soon as practical after conviction but, in the case of any person ordered to serve a term of incarceration as part of the sentence, the specimen must be drawn as soon as practical after the receipt of the convicted person by the custodial facility. The appropriate agency is the Department of Corrections whenever the convicted person is committed to the legal and physical custody of the department. Conviction information contained in the offender information system of the Department of Corrections is deemed to be sufficient to determine applicability under this section. The appropriate agency is the sheriff or officer in charge of the county correctional facility whenever the convicted person is placed on probation, community control, or any other court-ordered supervision or form of supervised release or is committed to the legal and physical custody of a county correctional facility.

As this section has been implemented and FDLE has attempted to build its DNA database, when offenders are remanded to the custody of the Department of Corrections, the in-processing of an offender into the state correctional system results in the collection of the blood sample that is required to be taken from the offenders outlined in s. 943.325, F.S. However, when offenders are not sent to prison, such as placed on probation or incarcerated in jail as a condition of probation, the collection of blood samples does not regularly occur because protocols for the collection of blood at the local level have not been standardized.

The lack of standardization has resulted in a substantial number of offenders not providing their required blood sample for DNA analysis. Additionally, on occasion samples are taken and sent to FDLE, but the sample is not “usable” and another sample must be taken from the offender. There

are not procedures in place that would force an offender to report at a time and date certain to provide the blood sample that an offender has failed to provide earlier despite the law requiring a sample to be given. It has been noted by FDLE that such requirements would greatly improve its DNA database.

Offender Testing for Sexually Transmitted Diseases

Section 384.287, F.S., authorizes certain persons to request screening for sexually transmissible diseases for persons who have placed the enumerated persons at risk of contracting such disease based on exposure to blood or bodily fluids.

Currently, an officer as defined in s. 943.10(14), F.S.; firefighter as defined in s. 633.30, F.S.; or ambulance driver, paramedic, or emergency medical technician as defined in s. 401.23, F.S., acting within the scope of employment, who comes into contact with a person in such a way that significant exposure, as defined in s. 381.004, F.S., has occurred may request that the person be screened for a sexually transmissible disease that can be transmitted through a significant exposure. s. 384.287 (1), F.S. Section 381.004 (2) (c), F.S., defines “significant exposure” as:

1. Exposure to blood or body fluids through needlestick, instruments, or sharps;

2. Exposure of mucous membranes to visible blood or body fluids, to which universal precautions apply according to the National Centers for Disease Control and Prevention, including, without limitations, the following body fluids:

    a. Blood.

    b. Semen.

    c. Vaginal secretions.

    d. Cerebro-spinal fluid (CSF).

    e. Synovial fluid.

    f. Pleural fluid.

    g. Peritoneal fluid.

    h. Pericardial fluid.

    i. Amniotic fluid.

    j. Laboratory specimens that contain HIV (e.g., suspensions of concentrated virus); or

3. Exposure of skin to visible blood or body fluids, especially when the exposed skin is chapped, abraded, or afflicted with dermatitis or the contact is prolonged or involving an extensive area.

If the person from whom a test has been requested will not voluntarily submit to screening, the officer, firefighter, ambulance driver, paramedic, or emergency medical technician, or the employer of such person acting on behalf of the employee, may seek a court order directing that the person who is the source of the significant exposure submit to screening. s. 384.287 (2), F.S. A sworn statement by a physician licensed under chapter 458 or chapter 459 that a significant exposure has occurred and that, in the physician's medical judgment, the screening is medically necessary to determine the course of treatment for the employee, will be deemed to constitute probable cause for the issuance of the order by the court.

In order to use the provisions of this section, the employee subjected to the significant exposure must also be screened for the same sexually transmissible diseases. s. 384.287 (3), F.S. All screenings must be conducted by the department or the department's authorized representative or by medical personnel at a facility designated by the court. s. 384.287 (4), F.S. The cost of screening is required to be borne by the employer.

Pursuant to 384.287 (5), F.S., results of the screening are exempt from the requirements of s. 384.29, F.S., solely for the purpose of releasing the results to the person who is the source of the significant exposure, to the person subjected to the significant exposure, to the physicians of the persons screened, and to the employer, if necessary for filing a worker's compensation claim or any other disability claim based on the significant exposure.

A person who receives the results of a test pursuant to this section, which results disclose human immunodeficiency virus infection and are otherwise confidential pursuant to law, is required to maintain the confidentiality of the information received and the identity of the person tested as required by s. 381.004, F.S. Section 384.287 (6), F.S., provides that violation of this subsection constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

Under the current law described above, crime scene analysts, forensic technologists, and crime laboratory analysts are not provided authority to request a person to submit to a blood test for sexually transmitted disease testing nor can they go to the court and request a blood sample be taken from the person similarly to the rights of sworn officers, firefighters, and EMTs. Crime scene work and laboratory work with blood, tissue, and other bodily fluids could, and many times do, result in exposure that is deemed to be “significant exposure” to the analyst or technician which places them at a high risk of contraction.

Copyrights for Material Produced by FDLE

The Department of Law Enforcement, mainly through the Criminal Justice Standards and Training Commission and the Criminal Justice Executive Institute, develops and produces materials and

handbooks that become very popular. As a result, many of these materials have been incorporated into privately marketed materials. Despite the publications becoming so popular, FDLE had no control on the department's materials being utilized by commercial interests. While commercial interests have been able to financially gain from the work of a state agency, FDLE has not been able to financially benefit from materials it has produced.

The lack of authorization to copyright materials produced by the department has also affected the department in another way. In many instances, commercial interests have approached FDLE with a proposal to better distribute and utilize FDLE materials. However, such commercial interests have withdrawn their interest when they determine that FDLE cannot control by license the use of FDLE materials.

III. Effect of Proposed Changes:

The CS/SB 1378 would require the department to develop, implement, and maintain an information system (such as a communications network) that is capable of supporting the administration of the state's criminal and juvenile justice system. The FDLE would be required to consult with the Criminal and Juvenile Justice Information Systems Council regarding this information system and must comply with the provisions of s. 943.05, F.S. (relating to the Division of Criminal Justice Information Systems) and other applicable provisions of law.

The duties of the Criminal and Juvenile Justice Information Systems Council would be revised. Currently, the Council is required to:

- Review proposed rules and operating policies and procedures of the FDLE's Division of Criminal Justice Information Systems and *make recommendations* to the FDLE's executive director; *and*

- Review proposed policies, rules, and procedures relating to the information system of the DJJ and make recommendations to the secretary of DJJ.

The duty of reviewing the proposed rules and procedures relating to the information system of the Department of Juvenile Justice would be deleted.

In addition to reviewing the proposed plans and policies relating to the information systems of the Department of Juvenile Justice, the CS would expand the scope of review to include those proposed plans and policies relating to the information systems of the Department of Corrections, the Department of Highway Safety and Motor Vehicles, and the Department of Law Enforcement. The CS would remove the requirement that the Council review rules and procedures, enabling the Council to focus on more comprehensive, strategic planning and policy issues.

The purpose of the Council's review would be amended to have the Council determine whether the departments' strategic information technology resource development efforts will facilitate the

effective identification, standardization, sharing, and coordination of criminal and juvenile justice data and other public safety system data among federal, state, and local agencies. The Council would be directed to make recommendations, as it deems appropriate, to the FDLE's executive director and the secretaries of the Departments of Corrections and Juvenile Justice.

The CS would revise the areas that the Council must address when reviewing the departments' proposed plans and policies by: clarifying that juvenile justice information must be addressed in addition to criminal justice information; deleting all references to criminal intelligence and criminal investigative information systems; and striking obsolete language and making technical changes. It would also specifically direct the Council to make recommendations regarding:

> the installation and operation of a statewide telecommunications and data network, to be called the Florida Criminal Justice Intranet Service Network, for which the Department of Law Enforcement will serve as the custodial manager and which will be capable of electronically transmitting text and image data, including electronic mail and file transport, among criminal justice agencies within the state.

When reviewing the proposed plans and policies relating to the information system, the Council would also be required to make recommendations related to the installation and operation, when feasible, of equipment in each of the judicial circuits capable of electronically transmitting over the Florida Criminal Justice Intranet Service Network digitized photographs and live-scan fingerprint images of each criminal defendant convicted or found guilty, at the time and place of such disposition.

The FDLE would serve as the custodial manager of the Intranet Service Network.

The Council would also be required to make recommendations concerning the participation of a majority of local law enforcement agencies, courts, clerks of the court, state law enforcement agencies, the Department of Corrections, and the Department of Juvenile Justice in the Florida Criminal Justice Intranet Services Network. The CS would provide legislative intent that all future installation, enhancement, and planned utilization of equipment capable of transmitting telecommunications and data transmitted by any of the involved entities or agencies be implemented in a manner to assure compatibility with the standards of the Florida Criminal Justice Intranet Service Network.

The Department of Juvenile Justice would be required to consult with the Criminal and Juvenile Justice Information Systems Council under s. 943.08, F.S., in its development of a juvenile justice information system within DJJ. The requirement that DJJ submit the annual report to the Council would be deleted and it would also delete the requirement that the Council and the Joint Information Technology Resources Committee (JITRC) reach consensus on DJJ's report. The Department of Juvenile Justice would continue to submit its report to the JITRC and the JITRC would independently review it and forward it to the Legislature with its comments.

The Governor's Office would be directed to review the findings and recommendations of the Council with respect to the public safety system strategic information technology resources management issues as part of its state agency strategic plan review.

The CS would direct the executive director of the Information Resource Commission to consider any findings and recommendations made by the Council, rather than the chair of the Council, regarding related public safety system information technology resource management issues that affect multiple agencies. Additionally, the size of the Joint Task Force on State Agency Law Enforcement Communications would be reduced from nine to eight members. The member of the task force representing the Council is deleted.

The requirement that the Division of Communications consult with the Council before approving any law enforcement communications system or system expansion under s. 282.111(5), F.S., would be deleted. However, the prior approval of the Department of Management Services would be required before a law enforcement communications system is established or expanded.

Language concerning court costs assessed under s. 318.18 (11), F.S., would also be amended. The amount of court costs that may be assessed still remains capped at a total of $30. However, authorizing language as to what these collected costs may be spent on is amended. Such court costs could be spent on "criminal justice selection centers" (rather than "regional criminal justice assessment centers") or other local criminal justice access and assessment centers. Under s. 943.256, F.S., the facilities currently called "regional criminal justice assessment centers" would be called "criminal justice selection centers" instead. Such centers would perform the same functions under the same direction and control as they do currently.

Statutory and constitutional cross-references relating to the Florida Violent Crime Council would also be amended technically to reflect prior legislative intent concerning the council and public records exemptions. No new public record exemption would be created; correct cross-references would be provided.

The CS/SB 1378 would also amend s. 943.135, F.S., to authorize any law enforcement officer, correctional officer, or correctional probation officer, who has resigned due to the constitutional dual office-holding prohibition, to retain active certification by participating in continuing training and education approved by the commission. Thus, the officer's law enforcement certification would remain valid during the tenure of the elected or appointed office.

For an officer to qualify for this special status, the following must apply:

- the officer's resignation must be for the sole purpose of serving in an office to which he has been elected or appointed;

- the officer must have been employed or associated with an agency authorized by ch. 943, F.S., relating to the Florida Department of Law Enforcement;

- the officer was not subject to an internal investigation or employment action to discipline or dismiss by the agency;
- the officer was not subject to a state or federal criminal investigation or prosecution; and
- the officer was not subject to an investigation or action against his certification by the commission.

The officer would have to become associated or sponsored by a law enforcement agency for the *sole* purpose of continuing the training requirements. However, such association would not be considered "employment" and, therefore, would not violate the constitutional prohibition against dual office-holding.

The legislation sets forth duties for the employing agency that receives the officer's resignation for the purpose of avoiding the dual office-holding prohibition and the sponsoring agency that allows the person to continue the statutorily mandated educational and training requirements. Therefore, the commission would be able to monitor the person's continued eligibility to maintain this newly created special status.

The CS would clarify that the responsibilities of state-operated crime laboratories are primarily with the prosecution and are available to the defense *if* the defendant shows the court "good cause" for the use of a state-operated laboratory. The term "good cause" would be defined as a court finding that the services sought are material to the defendant, not unduly burdensome on the lab, and the services cannot be obtained from any other private lab in the state. It would require a cost assessment upon a defendant and would require the results to be shared with both the defense and prosecution.

The CS would also authorize crime scene analysts, forensic technologists, and crime laboratory analysts to request a person to be tested for sexually transmitted diseases where an analyst or technician has had "significant exposure." If the person refuses to be tested, such persons would be able to petition a court to have the person taken into custody to be able to obtain a blood sample for testing for human immunodeficiency virus (HIV). This would provide such persons the same protection for testing as sworn law enforcement officers, firefighters, and emergency medical technicians.

The Department of Law Enforcement would be able to secure a copyright on any legitimately acquired work product and enforce the department's rights and interests with respect to a copyrighted work product. This would allow the department to regulate its work product and enjoy the same rights as any other entity that would have a copyrighted product. The department would be able to financially benefit from licensing the use of any of its copyrighted product. Any proceeds collected from the sale or license of a departmental product would be required to be deposited into the department's Grants and Donations Trust Fund. "Work product" would be defined.

Protocol for the collection of blood samples from offenders at the local level would be standardized. It would help to ensure that blood samples required by law to be drawn do, in fact, get drawn and transmitted to be analyzed and cataloged in the department's DNA database. This helps FDLE get samples from offenders who may not otherwise provide one. It would provide guidelines for jails, juvenile facilities, and other facilities to implement protocol as part of the regular processing of the facilities' offenders. If a sample that is required by law is not taken at any previous point, or a previously taken sample is "unusable" for purposes of analysis, the CS would allow the department to petition a court for an order to apprehend the person and "take" a specimen. The CS would clarify that unless the convicted person has been declared indigent by a court, the convicted person would be required to pay the actual costs of collecting the blood specimens.

This CS would take effect on July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

No public records exemption is created in this CS. Only technical changes are made to correct cross-references in existing law.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The constitutional prohibition against dual office-holding is contained in Art. II, s. 5 (a), *Florida Constitution*, which provides in pertinent part that, "[n]o person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein. . . ."

The CS/SB 1378 appears to allow an officer in a criminal justice discipline who has been elected or appointed to serve in another position under the state, counties, and municipalities to maintain officer certification without violating this constitutional dual office-holding prohibition.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Any improvements made relating to the identification, standardization, sharing, and coordination of criminal and juvenile justice data and other public safety system data should ultimately have a positive fiscal impact upon state and local governments. However, there is no fiscal impact that can be identified by staff at this time.

There is not a fiscal impact anticipated from any other provision in this CS. The cost of a sexually transmitted disease test is approximately $75 per test. Although FDLE and law enforcement agencies would have to pay for such tests for their respective personnel, it is anticipated that the fiscal impact would be insignificant and could be absorbed by the agencies in their present budgets, according to FDLE.

There would be an indeterminate positive fiscal impact upon the state for any proceeds collected as a result of selling or licensing the use of copyrighted material produced by the Department of Law Enforcement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.