

## **FINAL BILL ANALYSIS**

**BILL #:** CS/CS/CS/HB 251

**FINAL HOUSE FLOOR ACTION:**

116 Y's 0 N's

**SPONSOR:** Rep. Dorworth

**GOVERNOR'S ACTION:** Approved

**COMPANION BILLS:** CS/CS/SB 488

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### **SUMMARY ANALYSIS**

CS/CS/CS/HB 251 passed the House on May 5, 2011, and subsequently passed the Senate on May 6, 2011. The bill was approved by the Governor on June 24, 2011, chapter 2011-220, Laws of Florida. Sections 1-14 of the bill are effective July 1, 2011. Sections 15 and 16 of the bill are effective October 1, 2011. The bill creates the "Walk in Their Shoes Act" and does the following:

- Expands the admissibility of collateral crime or "similar fact" evidence in cases where a person is charged with child molestation or a sexual offense.
- Allows the use of a registered service or therapy animal when taking the testimony of children in any proceeding involving a sexual offense.
- Prohibits a court from granting a criminal defendant's request to duplicate or copy material depicting sexual performance by a child or child pornography so long as the state attorney makes the material reasonably available to the defendant for inspection.
- Requires facilities providing emergency room services to gather forensic medical evidence from victims of sexual assault who have reported a sexual battery to a law enforcement agency or who have requested such evidence be gathered for purposes of filing a report in the future.
- Amends the statute of limitations for video voyeurism offenses to authorize commencement of prosecutions within one year from either the date the victim learns of the existence of the video recording or the date the recording is confiscated by law enforcement, whichever occurs first.
- Adds crimes to the list of offenses for which a \$151 surcharge will be assessed against a convicted defendant in order to fund the Rape Crisis Program Trust Fund.
- Amends s. 960.003, F.S., to require hepatitis testing to the same extent as HIV testing and to provide for follow-up HIV testing if medically appropriate. The bill also amends s. 960.003(2), F.S., to require the court, upon a victim's request, to order specified defendants to undergo hepatitis and HIV testing within 48 hours of the filing of an indictment or information or petition for delinquency, if such time has passed, within 48 hours of a victim's request.
- Requires Internet safety to be taught at public schools.
- Requires a law enforcement officer to provide for a sexual battery victim's transportation to an appropriate facility and to permit the victim to review the officer's final report for accuracy.
- Makes it a third degree felony for a person to control or intentionally view specified items that he or she knows includes sexual conduct by a child; and
- Appropriates \$1.5 million nonrecurring General Revenue funds to a nonprofit organization for the purposes of educating adults and children about sexual abuse topics through an in-school curriculum and for maintaining a 24-hour crisis hotline.

On April 4, 2011, the Criminal Justice Impact Conference determined the bill will not have an impact on state prison beds. The bill could have a significant positive fiscal impact on the Rape Crisis Trust Fund.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

CS/CS/CS/HB 251 creates the “Walk in Their Shoes Act.”

#### **Evidence of Other Crimes, Wrongs or Acts**

Section 90.404(2)(a), F.S., is the general provision regarding the admission of “similar fact” or collateral crime evidence in criminal proceedings. It provides:

- (a) Similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity.

Under this provision, evidence of other crimes or actions (also called "collateral crime" or "similar fact" evidence) is admissible when it is relevant to a matter that is at issue in a trial. Such evidence is not admissible, however, if it is **only** relevant to show a defendant's propensity to commit such crimes or other wrongful acts.

This section is a codification of the standard of admissibility announced by the Florida Supreme Court in Williams v. State.<sup>1</sup> Under this standard, “relevant evidence will not be excluded merely because it relates to similar facts which point to the commission of a separate crime. The test of admissibility is relevancy. The test of inadmissibility is a lack of relevancy.”<sup>2</sup>

Under this provision, similarity of detail or uniqueness is not required for the admission of similar fact evidence of other crimes, wrongs or acts.<sup>3</sup> Even though similarity is not in and of itself required, it may be necessary to make the evidence relevant to the issue it is offered to prove. For example, if identity of the perpetrator is an issue at trial, then a “fingerprint” type of similarity between the other crimes or wrongs and the charged offense are necessary because without such similarity the evidence is prejudicial to the defendant, but doesn’t necessarily prove the defendant actually committed the crime charged.<sup>4</sup> When identity is not disputed, finer points of similarity are not required to establish the relevance of collateral crime evidence to prove other issues such as absence of mistake, plan, opportunity, or preparation.

Additionally, all forms of relevant evidence are scrutinized under s. 90.403, F.S., which precludes the admission of relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice" (also known as a "403 balancing test").

In the context of prosecutions for sexual offenses, the law surrounding the admission of collateral crime evidence has become confusing. A strict “fingerprint” type standard of similarity that the Florida Supreme Court articulated in connection with cases where identity is in issue

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<sup>1</sup> Williams v. State, 110 So.2d 654 (Fla. 1959).

<sup>2</sup> *Id.* at 659-60.

<sup>3</sup> *See*, Williams v. State, 621 So.2d 413, 414 (Fla. 1993); Gore v. State, 599 So.2d 978 (Fla. 1992); Bryan v. State, 533 So.2d 744, 746 (Fla. 1988), *cert. denied*, 490 U.S. 1028 (1989); *See also*, C. Ehrhardt, Florida Evidence, Section 404.09, at 222-23 (2010 Edition).

<sup>4</sup> *See*, State v. Savino, 567 So.2d 892 (Fla. 1990). “When the purported relevancy of past crimes is to identify the perpetrator of the crime being tried, we have required a close similarity of facts, a unique or fingerprint type of information, for the evidence to be relevant.”

has been held to apply in cases involving sexual abuse even where identity of the defendant is not in dispute.<sup>5</sup> In State v. Richman, a rheumatologist was charged with one count of sexual battery against a victim who was physically helpless to resist and another count for lewd and lascivious molestation of an elderly or disabled person. His victims were his patients. The state proffered the testimony of seven former patients, each of whom claimed to have been sexually assaulted by Richman. The trial judge first determined that testimony of three of the seven witnesses was admissible, but later changed his mind and disallowed all of their testimony. The Second District Court of Appeal, however, overruled the trial judge and found the testimony admissible.

In a concurring opinion in the case, now Chief Justice Canady stated:

. . . I believe the strict test set forth in (reference omitted) is not appropriately applied in a case . . . where the identity of the defendant is not at issue. The rationale for requiring a heightened level of similarity in cases where the defendant is identified as the perpetrator based on collateral crimes involving the same modus operandi used in the charged offense is simply not applicable where the similar acts evidence is offered to corroborate the victim's testimony that an offense occurred and to rebut the defendant's contention that the victim's testimony is fabricated. . . .

The justification for applying a relaxed standard of similarity focuses on the appropriateness of using similar acts evidence to support the credibility of a victim who testifies concerning an offense committed when the victim was alone with a person well known to the victim. The rationale for allowing such similar acts evidence is just as compelling when the context is a sexual assault by a physician on a patient in the privacy of the physician's examining room as it is when the context is a sexual assault by a parent on that parent's child in the privacy of the home. Indeed, the rationale is compelling in any context where a defendant who is well known to the victim has been accused of an offense and the critical issue is whether the victim's testimony regarding the offense is a fabrication.<sup>6</sup>

In 2001, the Legislature amended s. 90.404(2), F.S., to add a new paragraph (b) to expand the admissibility of collateral crime evidence in cases involving sexual abuse of children 16 years of age or younger.<sup>7</sup> Section 90.404(2)(b), F.S., provides:

(b)1. In a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

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<sup>5</sup> See, State v. Richman, 861 So.2d 1195 (Fla. 2d DCA 2003), a case involving sexual battery and lewd and lascivious molestation of adult victims where the District Court of Appeal applied the strict similarity requirements that existed in child sexual abuse cases prior to the 2001 amendments to s. 90.404(2) (b), F.S., to the case before it. Richman, at 1197 citing Kulling v. State, 827 So.2d 311, 314 (Fla. 2d DCA 2002) citing State v. Savino, 567 So.2d 892, 894 (Fla. 1990).

<sup>6</sup> *Id.* at 1200-1203 (Canady concurring).

<sup>7</sup> Chapter 2001-221, L.O.F. For a discussion of issues surrounding the admission of similar fact evidence in child sexual abuse cases prior to ch. 2001-221, L.O.F., see, D. De La Paz, *Sacrificing the Whole Truth: Florida's Deteriorating Admissibility of Similar Fact Evidence in Cases of Child Sexual Abuse*, New York Law School Journal of Human Rights, Vol. 15, Part 3, 449-481 (Spring 1999).

2. For the purposes of this paragraph, the term “child molestation” means conduct proscribed by s. 794.011, s. 800.04, or s. 847.0135(5) when committed against a person 16 years of age or younger.<sup>8</sup>

The conduct proscribed under these statutory sections are the following:

1. Sexual Battery under s. 794.011, F.S.,
2. Lewd or Lascivious Battery under s. 800.04(4), F.S.,
3. Lewd or Lascivious Molestation under s. 800.04(5), F.S.,
4. Lewd or Lascivious Conduct under s. 800.04(6), F.S.,
5. Lewd or Lascivious Exhibition under s. 800.04(7), F.S., and
6. Lewd or Lascivious Exhibition via computer transmission under s. 847.0135(5), F.S.

The 2001 addition to s. 90.404(b), F.S., was challenged on due process grounds and upheld by the Florida Supreme Court in McLean v. State.<sup>9</sup> This section significantly broadened the admissibility of collateral crime evidence in prosecutions of child molestation cases.<sup>10</sup> The Court noted that the amendments to s. 90.404, F.S., abrogated their prior cases with respect to the admission of such evidence.<sup>11</sup> In upholding the statute, the Court adopted standards to govern admission of such evidence designed to protect the due process rights of the accused. First, the court required that the evidence of the collateral crime be proven by clear and convincing evidence. Second, the court required that the trial court balance the probative value of the evidence against the danger of unfair prejudice, pursuant to s. 90.403, F.S.<sup>12</sup> Third, the court cautioned that the collateral crime evidence must not become a “feature” of the trial. Finally, the court required that, upon request, the jury be instructed as to the limited purpose for which the evidence may be considered.

#### Effect of the Bill

The bill expands the admission of collateral crime evidence in cases involving sexual abuse. With respect to collateral crime evidence currently admitted under s. 90.404(2)(b), F.S., involving defendants charged with “child molestation,” the bill adds new offenses to the list of proscribed conduct which may be admitted into evidence in a criminal trial. The new offenses added are:

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|-------------------------------------|---|
| s. 787.025(2)(c), F.S., -           | Luring or enticing a child                          |
| s. 794.05, F.S., -                  | Unlawful activity with certain minors               |
| s. 796.03, F.S., -                  | Procuring person under 18 for prostitution          |
| s. 796.035, F.S., -<br>prostitution | Selling or buying of minors into sex trafficking or |
| s. 796.045, F.S., -                 | Sex trafficking                                     |
| s. 827.071, F.S., -                 | Sexual performance by a child                       |

<sup>8</sup> Section 847.0135(5), F.S., was added to the offenses in this subsection in ch. 2008-172, L.O.F.

<sup>9</sup> McLean v. State, 934 So.2d 1248 (Fla. 2006).

<sup>10</sup> *See, Mendez v. State*, 961 So.2d 1088, 1090 (Fla. 2007).

<sup>11</sup> McLean, *supra*, at 1259.

<sup>12</sup> In upholding the statute, the Court compared the new provisions to the comparable federal rules of evidence dealing with the same issue and paralleled the federal court analysis in connection with its second requirement that such evidence be subject to the balancing test required under s. 90.403, F.S. McLean, *supra*, at 1259 -1261 comparing s. 90.404(2)(b), F.S., and s. 90.403, F.S., with Federal Rule of Evidence 413 relating to sexual assault, 414 relating to child molestation and 403 relating to balancing probative value against prejudice to the defense.

- s. 847.0145, F.S., - Selling or buying minors
- s. 985.701(1), F.S., - Sexual misconduct by a juvenile justice employee

The bill also creates a new provision which expands the admission of collateral crime evidence in cases involving defendants charged with a sexual offense to the same extent it is presently admitted in cases involving child molestation. The admission of evidence under this section applies regardless of the age of the victim. The bill adds the same new offenses mentioned above, plus s. 825.1025(2)(b), F.S., relating to lewd or lascivious offenses against an elderly or disabled person, s. 794.011, F.S., relating to sexual battery, and s. 847.0135(5), F.S., relating to lewd or lascivious exhibition via computer transmission, to the list of crimes proscribing conduct which may be admitted into evidence in a criminal trial.

### **Judicial Proceedings Involving Victim/Witness under the Age of 16 or with Mental Retardation**

Section 92.55, F.S., allows the court to enter any order necessary to protect a child under the age of 16 or person with mental retardation who is a victim or witness in any judicial proceeding or other official proceeding from severe emotional or mental harm due to the presence of the defendant if the child or person with mental retardation is required to testify in open court. The statute also allows the court to enter orders limiting the number of times that a child or person with mental retardation may be interviewed, prohibiting depositions, requiring the submission of questions prior to examination, setting the place and conditions for interviewing or for conducting any other proceeding, or permitting or prohibiting the attendance of any person at any proceeding.

### **Effect of the Bill**

CS/CS/CS/HB 251 allows for courts to set conditions on the taking of testimony by children which use a registered service or therapy animal in any proceeding involving a sexual offense.

### **Access to Evidence for Criminal Proceedings**

CS/CS/CS/HB 251 also requires material or property in a criminal proceeding which depicts a sexual performance by a child or child pornography to remain secured or locked in the custody or control of law enforcement, the state attorney or the court. It also prohibits courts from granting any request of a defendant to photo copy or otherwise reproduce such material notwithstanding any court rule or law to the contrary as long as the state attorney makes the material reasonably available. The bill specifies that material is reasonably available if the state attorney provides ample opportunity at a designated facility for the inspection, viewing, and examination of the property or material that portrays sexual performance by a child or constitutes child pornography by the defendant, his or her attorney, or any individual whom the defendant uses as an expert during the discovery process or at a court proceeding.

### **Treatment of Sexual Assault Victims**

Section 395.1021, F.S., requires medical facilities that perform emergency room services to arrange for rendering of appropriate medical attention and treatment of sexual assault victims. The section requires that this be done in part through medical examinations conducted for the purpose of collecting physical evidence when required by law enforcement personnel.

### Effect of the Bill

CS/CS/CS/HB 251 amends s. 395.1021(2), F.S., to provide that the “appropriate medical attention and treatment of sexual assault victims” required under this section includes the gathering of forensic medical evidence necessary for investigation and prosecution either when a victim reports a sexual battery to a law enforcement agency or when the victim requests the evidence to be gathered for a possible future report to law enforcement.

### **Video Voyeurism Statute of Limitations**

Section 810.145, F.S., creates the criminal offenses of video voyeurism, video voyeurism dissemination, and commercial video voyeurism dissemination. Depending on the circumstances, the offenses under this section are punishable as a first degree misdemeanor, third degree felony or second degree felony.<sup>13</sup>

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. Section 775.15, F.S., provides statutes of limitations for criminal offenses. Under this section, the time limitations period begins to run the day after an offense is committed.<sup>14</sup> An offense is considered committed either when every element of the crime has occurred or, if there is a legislative purpose to prohibit a continuing course of conduct, at the time the course of conduct is terminated.<sup>15</sup> The statute of limitations for a misdemeanor of the first degree is two years. For second and third degree felonies the statute of limitations period is three years.

One of the essential elements of the video voyeurism offenses is that they occur without the victim’s knowledge. As a result, the statute of limitations can expire before a victim becomes aware that the crime has occurred.

### Effect of the Bill

CS/CS/CS/HB 251 amends s. 775.15, F.S., to authorize prosecution for any offense of video voyeurism within one year after the date on which the victim obtained actual knowledge of the existence of a recording or the date on which the recording is confiscated by a law enforcement agency, whichever occurs first. The one year period of limitation provided in the bill would be in addition to the applicable time period currently provided for misdemeanor and felony offenses.

### **Rape Crisis Program Trust Fund**

The Rape Crisis Program Trust Fund is created in s. 794.056, F.S., within the Department of Health to provide funds for rape crisis centers in the state. It is funded in part through collections of additional court assessments which consist of a \$151 surcharge added to amounts paid by persons pleading guilty or no contest to, or found guilty of, specified sex offenses listed in s. 938.085, F.S., and s. 794.056, F.S.<sup>16</sup>

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<sup>13</sup> Section 810.145(6), F.S., provides that the offense is generally a first degree misdemeanor. If, however, the person has a prior conviction, the person is guilty of a third degree felony. Section 810.145(7), F.S. Also, under s. 810.145(8), F.S., persons over 18 years of age responsible for a child under 16, or who are employed at a private school, and persons 24 years of age who commit the offense against a child under 16, commit a third degree felony. If persons under subsection (8) have been previously convicted, the offense is a second degree felony.

<sup>14</sup> Section 775.15(3), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> The sum of \$150 from these surcharges is deposited into the trust fund while \$1 is paid to the clerk of court as a service charge. Section 938.085, F.S.

### Effect of the Bill

CS/CS/CS/HB 251 amends ss. 794.056 and 938.085, F.S., to add several new offenses to the list of crimes which will support the financing of the trust fund through the \$151 surcharge.<sup>17</sup>

### **Hepatitis and HIV Testing of Person Charge with Certain Crimes**

Section 960.003(1), F.S., provides legislative intent regarding the right of a victim of a crime involving the transmission of body fluids, or the victim of certain sexual offenses who is a minor, an elderly person or a disabled adult, to know at the earliest possible opportunity whether the person charged with the crime has tested positive for HIV. This subsection includes a legislative finding that medical science now recognizes that early diagnosis is a critical factor in the treatment of HIV and that both the victim and the defendant benefit from prompt disclosure of HIV test results.

Section 960.003(2)(a), F.S., requires a court, upon request of the victim, to order a defendant to undergo HIV testing in any case where the defendant is formally charged with any of the sexual or violent offenses listed in s. 775.0877(1)(a)-(n), F.S., that involved the transmission of body fluids from one person to another.<sup>18</sup>

Section 960.003(2)(b), F.S., requires a court, upon request of the victim, to order a defendant to undergo HIV testing when the crime involved is a sexual offense under ss. 775.0877(1)(a)-(n), F.S., or 825.1025, F.S., and the victim is a minor, disabled adult or an elderly person, regardless of whether the crime involved the transmission of body fluids from one person to another. Under both sections, the defendant must undergo testing within 48 hours after the court enters an order compelling the testing.

Section 960.003(3), F.S., requires results of HIV tests ordered under this section to be disclosed to the defendant within 2 weeks after the court receives the results. Results must also be

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<sup>17</sup> The new crimes added are: s. 775.21(6), (10)(a)-(d) and (g), offenses specified in the Florida Sexual Predators Act; s. 787.01(3), kidnapping a child under the age of 13; s. 787.02(3), false imprisonment of a child under the age of 13; s. 787.025, luring or enticing a child; s. 787.06, human trafficking; s. 787.07, human smuggling; s. 794.05, unlawful sexual activity with certain minors; s. 794.08, female genital mutilation; s. 796.03, procuring a person under 18 for prostitution; s. 796.035, selling or buying minors into sex trafficking; s. 796.04, forcing or compelling another to become a prostitute; s. 796.045, sex trafficking; s. 796.05, deriving support from proceeds of prostitution; s. 796.06, renting space to be used for lewdness, assignation or prostitution; s. 796.07(2)(a)-(d) and (i), prostitution; s. 800.03, exposure of sexual organs; s. 800.04, lewd or lascivious offenses committed upon a child under the age of 16; s. 810.14, voyeurism; s. 810.145, video voyeurism; s. 812.135, home invasion robbery; s. 817.025, home or private business invasion by false impersonation; s. 825.102, abuse or aggravated abuse of an elderly or disabled person; s. 825.1025, lewd and lascivious offenses committed on an elderly or disabled person; s. 827.071, sexual performance by a child; s. 836.10, written threats to kill or do bodily injury; s. 847.0133, protection of minors, prohibited acts in connection with obscenity; s. 847.0135(2), computer pornography child exploitation; s. 847.0137, transmission of pornography by electronic device; s. 847.0145, selling or buying minors; or s. 943.0435(4)(c), (7), (8), (9)(a), (13) and (14)(c), offenses specified in the sexual offender registration statute; and s. 985.701, sexual misconduct of a juvenile justice employee.

<sup>18</sup> The offenses are: s. 794.011, relating to sexual battery; s. 826.04, relating to incest; s. 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age; s. 784.011, 784.07(2)(a), and 784.08(2)(d), relating to assault; s. 784.021, 784.07(2)(c), and 784.08(2)(b), relating to aggravated assault; s. 784.03, 784.07(2)(b), and 784.08(2)(c), relating to battery; s. 784.045, 784.07(2)(d), and 784.08(2)(a), relating to aggravated battery; s. 827.03(1), relating to child abuse; s. 827.03(2), relating to aggravated child abuse; s. 825.102(1), relating to abuse of an elderly person or disabled adult; s. 825.102(2), relating to aggravated abuse of an elderly person or disabled adult; s. 827.071, relating to sexual performance by person less than 18 years of age; s. 796.03, 796.07, and 796.08, relating to prostitution; and s. 381.0041(11)(b), relating to donation of blood, plasma, organs, skin, or other human tissue.

provided to public health agencies and to the victim upon request.<sup>19</sup> Face-to-face counseling services regarding the meaning of test results, the possible need for further testing, and social, medical, and economic consequences of a positive test are also provided under this section.<sup>20</sup> Section 960.003(4), F.S., requires the court, upon the victim's request, to order HIV testing following a defendant's conviction if the testing required by s. 960.003(2), F.S., has not taken place. The requirement for court ordered HIV testing, pursuant to s. 960.003(2) &(4), F.S., does not apply when the defendant has undergone testing voluntarily.<sup>21</sup>

#### Effect of the Bill

CS/CS/CS/HB 251 amends s. 960.003(1), F.S., to include hepatitis in the legislative intent and findings described in the subsection.

The bill amends s. 960.003(2), F.S., to add a requirement for the court to order a defendant to undergo hepatitis testing in the same instances where HIV testing is required under this subsection. The bill changes the time period the defendant must undergo testing from within 48 hours after the court's order, to 48 hours after the indictment or information or petition for delinquency has been filed. The bill also clarifies that in those instances where the victim requests hepatitis and HIV testing after 48 hours has elapsed from the filing of the indictment or information or petition for delinquency, the testing shall be done within 48 hours of the victim's request. In addition, CS/HB 251 provides for follow-up HIV testing, without an additional court order, when a physician determines further testing to be medically appropriate. The victim and the defendant must be notified of the test results as soon as practicable.

CS/CS/CS/HB 251 also amends s. 960.003(3), F.S., to require the results of hepatitis testing to be provided to the defendant, the victim, and public health agencies in the same manner they are currently provided for HIV testing. The bill also extends to the victim face-to-face counseling services regarding the meaning of hepatitis test results.

CS/CS/CS/HB 251 amends s. 960.003(4), F.S., to require the court, upon the victim's request, to order hepatitis testing following a defendant's conviction if the testing required by s. 960.003(2), F.S., has not taken place. Like the HIV testing provision, hepatitis testing is not required to be ordered under this subsection or subsection (2) when the defendant voluntarily undergoes testing.

#### **Required Instruction**

Section 1003.42(2), F.S., requires members of the instructional staff of public schools to teach prescribed courses of study on the following topics related to health and safety:

(n) Comprehensive health education<sup>22</sup> that addresses concepts of community health; consumer health; environmental health; family life, including an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy; mental and emotional health; injury

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<sup>19</sup> Results to public health agencies are provided to the public health agency of the county in which the conviction occurred and, if different, the county of residence of the offender. Section 775.0877, F.S.

<sup>20</sup> Section 381.004, F.S.

<sup>21</sup> Section 960.003(5), F.S.

<sup>22</sup> The health education curriculum for students in grades 7 through 12 shall include a teen dating violence and abuse component that includes, but is not limited to, the definition of dating violence and abuse, the warning signs of dating violence and abusive behavior, the characteristics of healthy relationships, measures to prevent and stop dating violence and abuse, and community resources available to victims of dating violence and abuse.

prevention and safety; nutrition; personal health; prevention and control of disease; and substance use and abuse.

Effect of the Bill

CS/CS/CS/HB 251 adds Internet safety to the list of topics which must be covered under this section.

**Services for Sexual Battery Victims and Law Enforcement Reports**

Section 794.052(1)(a), F.S., requires a law enforcement officer investigating a sexual battery to assist the victim in obtaining medical treatment and, if medical treatment is necessary, a forensic examination. In addition, the officer must assist the victim in obtaining advocacy and crisis-intervention services from a rape crisis center.

Effect of the Bill

CS/CS/CS/HB 251 amends s. 794.052(1)(a), F.S., to require a law enforcement officer to provide or arrange for transportation for a victim to an appropriate facility. The bill also requires a law enforcement officer to permit the victim to review the officer's final report and provide a statement regarding the accuracy of the report.

**Sexual Performance by a Child**

Under s. 827.071(5), F.S., it is a third degree felony for a person to knowingly possess a photograph, motion picture, exhibition, show, representation or other presentation which he or she knows to include any sexual conduct by a child.

Effect of the Bill

The bill amends s. 827.071, F.S., to make it a third degree felony for a person to control or intentionally view items specified in s. 827.071(5), F.S. The bill adds "image, data or computer depiction[s]" to the list of prohibited items. The bill also defines "intentionally view" to mean ". . . to deliberately, purposefully, and voluntarily view." The bill specifies that proving intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation or other presentation over any period of time.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

See Fiscal Comments.

**2. Expenditures:**

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

None.

**2. Expenditures:**

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The Criminal Justice Impact Conference met on April 4, 2011 and determined the bill will not have an impact on state prison beds.

**Judicial impact of collateral crime evidence**

The Office of State Court Administrator (OSCA) provided a judicial impact statement on the original version of this bill. Although the language of the original bill in this section was revised, in terms of the bill's reach in expanding the admissibility of this evidence, it is largely similar to the bill in its final form. OSCA's impact statement of the original bill says in part:

There will probably be a substantial increase in the number of pretrial hearings in cases where the defendant is charged with a sexually-related crime and the state has evidence that the defendant committed other sexually-related crimes.

The OSCA analysis, however, provides no basis to substantiate the claim of an increase in the number of pretrial hearings. Under current law, where the state has collateral crime evidence against a defendant, courts already conduct pretrial hearings to determine the admissibility of such evidence. The impact of the bill would be to alter the outcome of those hearings rather than increase the number of hearings held. There will be more instances where the evidence is admissible under the bill than under the stricter standards of the current law. In addition, with easier standards for admissibility of evidence in these cases, there may be fewer appellate reversals of trial court decisions to admit collateral crime evidence, which could result in fewer retrials.

**Rape Crisis Program Trust Fund**

This bill will have a positive fiscal impact on the Rape Crisis Program Trust Fund (Fund). According to the Florida Department of Law Enforcement, in 2009 there were 1,850 people convicted of the additional offenses in this bill that would require payment of the \$151 surcharge (\$1 goes to the clerk of the court). This could annually generate approximately \$277,500 for the Fund.

**Specific Appropriation**

The bill appropriates \$1.5 million nonrecurring General Revenue funds to the Department of Legal Affairs for the purpose of funding Lauren's Kids, a nonprofit organization, to educate adults and children about sexual abuse topics through an in-school curriculum and to maintain a 24-hour crisis hotline.