

By the Committees on Judiciary; and Criminal Justice; and
Senator Evers

590-03885-13

2013672c2

1 A bill to be entitled
2 An act relating to juvenile justice; repealing s.
3 945.75, F.S.; deleting a requirement that the
4 Department of Corrections and counties develop
5 programs under which a judge may order juveniles who
6 have committed delinquent acts to tour correctional
7 facilities; repealing s. 985.105, F.S., relating to
8 the creation, duties, and qualifications of the youth
9 custody officer position within the Department of
10 Juvenile Justice; amending s. 121.0515, F.S.;
11 conforming provisions to changes made by the act;
12 creating s. 985.702, F.S.; providing definitions;
13 providing for the imposition of criminal penalties
14 against specified employees who inflict cruel or
15 inhuman treatment upon juvenile offenders; providing
16 enhanced penalties for such treatment that results in
17 great bodily harm, permanent disability, or permanent
18 disfigurement to a juvenile offender; specifying that
19 such conduct constitutes sufficient cause for an
20 employee's dismissal from employment; prohibiting such
21 employee from future employment with the juvenile
22 justice system; providing incident reporting
23 requirements; prohibiting an employee who witnesses
24 such an incident from knowingly or willfully failing
25 to report; prohibiting false reporting, preventing
26 another from reporting, or coercing another to alter
27 testimony or reports; providing penalties; amending s.
28 985.701, F.S.; defining the term "juvenile offender"
29 for purposes of prohibiting sexual misconduct with

590-03885-13

2013672c2

30 juvenile offenders; providing an effective date.

31
32 Be It Enacted by the Legislature of the State of Florida:

33
34 Section 1. Section 945.75, Florida Statutes, is repealed.

35 Section 2. Section 985.105, Florida Statutes, is repealed.

36 Section 3. Paragraphs (h) through (k) of subsection (3) of
37 section 121.0515, Florida Statutes, are redesignated as
38 paragraphs (g) through (j) of that subsection, respectively, and
39 paragraphs (e) through (i) of subsection (2), present paragraphs
40 (g) and (k) of subsection (3), paragraph (b) of subsection (5),
41 paragraph (d) of subsection (8), and paragraph (c) of subsection
42 (10) of that section are amended to read:

43 121.0515 Special Risk Class.—

44 (2) MEMBERSHIP.—

45 ~~(e) Effective July 1, 2001, "special risk member" includes~~
46 ~~any member who is employed as a youth custody officer by the~~
47 ~~Department of Juvenile Justice and meets the special criteria~~
48 ~~set forth in paragraph (3) (g).~~

49 (e) ~~(f)~~ Effective October 1, 2005, through June 30, 2008,
50 the member must be employed by a law enforcement agency or
51 medical examiner's office in a forensic discipline and meet the
52 special criteria set forth in paragraph (3) (g) ~~(3) (h)~~.

53 (f) ~~(g)~~ Effective July 1, 2008, the member must be employed
54 by the Department of Law Enforcement in the crime laboratory or
55 by the Division of State Fire Marshal in the forensic laboratory
56 and meet the special criteria set forth in paragraph (3) (h)
57 ~~(3) (i)~~.

58 (g) ~~(h)~~ Effective July 1, 2008, the member must be employed

590-03885-13

2013672c2

59 by a local government law enforcement agency or medical
60 examiner's office and meet the special criteria set forth in
61 paragraph (3) (i) ~~(3) (j)~~.

62 (h) ~~(i)~~ Effective August 1, 2008, "special risk member"
63 includes any member who meets the special criteria for continued
64 membership set forth in paragraph (3) (j) ~~(3) (k)~~.

65 (3) CRITERIA.—A member, to be designated as a special risk
66 member, must meet the following criteria:

67 ~~(g) Effective July 1, 2001, the member must be employed as~~
68 ~~a youth custody officer and be certified, or required to be~~
69 ~~certified, in compliance with s. 943.1395. In addition, the~~
70 ~~member's primary duties and responsibilities must be the~~
71 ~~supervised custody, surveillance, control, investigation,~~
72 ~~apprehension, arrest, and counseling of assigned juveniles~~
73 ~~within the community;~~

74 (j) ~~(k)~~ The member must have already qualified for and be
75 actively participating in special risk membership under
76 paragraph (a), paragraph (b), or paragraph (c), must have
77 suffered a qualifying injury as defined in this paragraph, must
78 not be receiving disability retirement benefits as provided in
79 s. 121.091(4), and must satisfy the requirements of this
80 paragraph.

81 1. The ability to qualify for the class of membership
82 defined in paragraph (2) (h) ~~(2) (i)~~ occurs when two licensed
83 medical physicians, one of whom is a primary treating physician
84 of the member, certify the existence of the physical injury and
85 medical condition that constitute a qualifying injury as defined
86 in this paragraph and that the member has reached maximum
87 medical improvement after August 1, 2008. The certifications

590-03885-13

2013672c2

88 from the licensed medical physicians must include, at a minimum,
89 that the injury to the special risk member has resulted in a
90 physical loss, or loss of use, of at least two of the following:
91 left arm, right arm, left leg, or right leg; and:

92 a. That this physical loss or loss of use is total and
93 permanent, except in the event that the loss of use is due to a
94 physical injury to the member's brain, in which event the loss
95 of use is permanent with at least 75 percent loss of motor
96 function with respect to each arm or leg affected.

97 b. That this physical loss or loss of use renders the
98 member physically unable to perform the essential job functions
99 of his or her special risk position.

100 c. That, notwithstanding this physical loss or loss of use,
101 the individual is able to perform the essential job functions
102 required by the member's new position, as provided in
103 subparagraph 3.

104 d. That use of artificial limbs is either not possible or
105 does not alter the member's ability to perform the essential job
106 functions of the member's position.

107 e. That the physical loss or loss of use is a direct result
108 of a physical injury and not a result of any mental,
109 psychological, or emotional injury.

110 2. For the purposes of this paragraph, "qualifying injury"
111 means an injury sustained in the line of duty, as certified by
112 the member's employing agency, by a special risk member that
113 does not result in total and permanent disability as defined in
114 s. 121.091(4)(b). An injury is a qualifying injury if the injury
115 is a physical injury to the member's physical body resulting in
116 a physical loss, or loss of use, of at least two of the

590-03885-13

2013672c2

117 following: left arm, right arm, left leg, or right leg.
118 Notwithstanding any other provision of this section, an injury
119 that would otherwise qualify as a qualifying injury is not
120 considered a qualifying injury if and when the member ceases
121 employment with the employer for whom he or she was providing
122 special risk services on the date the injury occurred.

123 3. The new position, as described in sub-subparagraph 1.c.,
124 that is required for qualification as a special risk member
125 under this paragraph is not required to be a position with
126 essential job functions that entitle an individual to special
127 risk membership. Whether a new position as described in sub-
128 subparagraph 1.c. exists and is available to the special risk
129 member is a decision to be made solely by the employer in
130 accordance with its hiring practices and applicable law.

131 4. This paragraph does not grant or create additional
132 rights for any individual to continued employment or to be hired
133 or rehired by his or her employer that are not already provided
134 within the Florida Statutes, the State Constitution, the
135 Americans with Disabilities Act, if applicable, or any other
136 applicable state or federal law.

137 (5) REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP.—

138 (b) Any member who is a special risk member on July 1,
139 2008, and who became eligible to participate under paragraph
140 (3) (g) ~~(3) (h)~~ but fails to meet the criteria for Special Risk
141 Class membership established by paragraph (3) (h) ~~(3) (i)~~ or
142 paragraph (3) (i) ~~(3) (j)~~ shall have his or her special risk
143 designation removed and thereafter shall be a Regular Class
144 member and earn only Regular Class membership credit. The
145 department may review the special risk designation of members to

590-03885-13

2013672c2

146 determine whether or not those members continue to meet the
147 criteria for Special Risk Class membership.

148 (8) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS.—

149 (d) Notwithstanding any other provision of this subsection,
150 this subsection does not apply to any special risk member who
151 qualifies for continued membership pursuant to paragraph (3) (j)
152 ~~(3) (k)~~.

153 (10) CREDIT FOR UPGRADED SERVICE.—

154 (c) Any member of the Special Risk Class who has earned
155 creditable service through June 30, 2008, in another membership
156 class of the Florida Retirement System in a position with the
157 Department of Law Enforcement or the Division of State Fire
158 Marshal and became covered by the Special Risk Class as
159 described in paragraph (3) (h) ~~(3) (i)~~, or with a local government
160 law enforcement agency or medical examiner's office and became
161 covered by the Special Risk Class as described in paragraph
162 (3) (i) ~~(3) (j)~~, which service is within the purview of the
163 Special Risk Class, and is employed in such position on or after
164 July 1, 2008, may purchase additional retirement credit to
165 upgrade such service to Special Risk Class service, to the
166 extent of the percentages of the member's average final
167 compensation provided in s. 121.091(1)(a)2. The cost for such
168 credit must be an amount representing the actuarial accrued
169 liability for the difference in accrual value during the
170 affected period of service. The cost shall be calculated using
171 the discount rate and other relevant actuarial assumptions that
172 were used to value the Florida Retirement System Pension Plan
173 liabilities in the most recent actuarial valuation. The division
174 shall ensure that the transfer sum is prepared using a formula

590-03885-13

2013672c2

175 and methodology certified by an enrolled actuary. The cost must
176 be paid immediately upon notification by the division. The local
177 government employer may purchase the upgraded service credit on
178 behalf of the member if the member has been employed by that
179 employer for at least 3 years.

180 Section 4. Section 985.702, Florida Statutes, is created to
181 read:

182 985.702 Malicious infliction of cruel or inhuman treatment
183 prohibited; reporting required; penalties.-

184 (1) As used in this section, the term:

185 (a) "Employee" means a paid staff member, volunteer, or
186 intern who works in a department program or a program operated
187 by a provider under a contract with the department.

188 (b) "Juvenile offender" means any person of any age who is
189 detained, or committed to the custody of, the department.

190 (c) "Neglect of a juvenile offender" means:

191 1. An employee's failure or omission to provide a juvenile
192 offender with the proper level of care, supervision, and
193 services necessary to maintain the juvenile offender's physical
194 and mental health, including, but not limited to, adequate food,
195 nutrition, clothing, shelter, supervision, medicine, and medical
196 services; or

197 2. An employee's failure to make a reasonable effort to
198 protect a juvenile offender from abuse, neglect, or exploitation
199 by another person.

200 (2) (a) Any employee who, with malicious intent, inflicts
201 cruel or inhuman treatment by neglect or otherwise, without
202 causing great bodily harm, permanent disability, or permanent
203 disfigurement to a juvenile offender, commits a misdemeanor of

590-03885-13

2013672c2

204 the first degree, punishable as provided in s. 775.082 or s.
205 775.083.

206 (b) Any employee who, with malicious intent, inflicts cruel
207 or inhuman treatment by neglect or otherwise, and in so doing
208 causes great bodily harm, permanent disability, or permanent
209 disfigurement to a juvenile offender, commits a felony of the
210 second degree, punishable as provided in s. 775.082, s. 775.083,
211 or s. 775.084.

212 (c) Notwithstanding prosecution, any violation of paragraph
213 (a) or paragraph (b), as determined by the Public Employees
214 Relations Commission, constitutes sufficient cause under s.
215 110.227 for dismissal from employment with the department, and
216 such person may not again be employed in any capacity in
217 connection with the juvenile justice system.

218 (3) An employee who witnesses the infliction of cruel or
219 inhuman treatment committed against a juvenile offender shall
220 immediately report the incident to the department's incident
221 hotline and prepare, date, and sign an independent report that
222 specifically describes the nature of the incident, the location
223 and time of the incident, and the persons involved. The employee
224 shall deliver the report to the employee's supervisor or program
225 director, who must provide copies to the department's inspector
226 general and the circuit juvenile justice manager. The inspector
227 general shall immediately conduct an appropriate administrative
228 investigation, and, if there is probable cause to believe that a
229 violation of subsection (2) has occurred, the inspector general
230 shall notify the state attorney in the circuit in which the
231 incident occurred.

232 (4) (a) Any person who is required to prepare a report under

590-03885-13

2013672c2

233 this section who knowingly or willfully fails to do so, or who
234 knowingly or willfully prevents another person from doing so,
235 commits a misdemeanor of the first degree, punishable as
236 provided in s. 775.082 or s. 775.083.

237 (b) Any person who knowingly or willfully submits
238 inaccurate, incomplete, or untruthful information with respect
239 to a report required under this section commits a misdemeanor of
240 the first degree, punishable as provided in s. 775.082 or s.
241 775.083.

242 (c) Any person who knowingly or willfully coerces or
243 threatens any other person with the intent to alter testimony or
244 a written report regarding an incident of the infliction of
245 cruel or inhuman treatment commits a felony of the third degree,
246 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

247 Section 5. Paragraph (a) of subsection (1) of section
248 985.701, Florida Statutes, is amended to read:

249 985.701 Sexual misconduct prohibited; reporting required;
250 penalties.—

251 (1)(a)1. As used in this subsection, the term:

252 a. "Sexual misconduct" means fondling the genital area,
253 groin, inner thighs, buttocks, or breasts of a person; the oral,
254 anal, or vaginal penetration by or union with the sexual organ
255 of another; or the anal or vaginal penetration of another by any
256 other object. The term does not include an act done for a bona
257 fide medical purpose or an internal search conducted in the
258 lawful performance of duty by an employee of the department or
259 an employee of a provider under contract with the department.

260 b. "Employee" includes paid staff members, volunteers, and
261 interns who work in a department program or a program operated

590-03885-13

2013672c2

262 by a provider under a contract.

263 c. "Juvenile offender" means a person of any age who is
264 detained or supervised by, or committed to the custody of, the
265 department.

266 2. An employee who engages in sexual misconduct with a
267 juvenile offender detained or supervised by, or committed to the
268 custody of, the department commits a felony of the second
269 degree, punishable as provided in s. 775.082, s. 775.083, or s.
270 775.084. An employee may be found guilty of violating this
271 subsection without having committed the crime of sexual battery.

272 3. The consent of the juvenile offender to any act of
273 sexual misconduct is not a defense to prosecution under this
274 subsection.

275 4. This subsection does not apply to an employee of the
276 department, or an employee of a provider under contract with the
277 department, who:

278 a. Is legally married to a juvenile offender who is
279 detained or supervised by, or committed to the custody of, the
280 department.

281 b. Has no reason to believe that the person with whom the
282 employee engaged in sexual misconduct is a juvenile offender
283 detained or supervised by, or committed to the custody of, the
284 department.

285 Section 6. This act shall take effect July 1, 2013.