CONTROLLED SUBSTANCES AND DRUG CONTROL

CS/SB 232 — Controlled Substances/Hydrocodone

by Criminal Justice Committee and Senator Brown-Waite

This bill amends s. 893.03(3)(c), F.S., to reinstate the former listing under that paragraph of materials, compounds, mixtures, or preparations containing hydrocodone in limited quantities per milliliters or dosage unit as Schedule III controlled substances.

The bill also amends s. 893.135(1)(c), F.S., which prohibits trafficking in hydrocodone, to reference the Schedule III scheduling references for hydrocodone in order to indicate that this trafficking provision applies to hydrocodone, regardless of whether it is a Schedule II or Schedule III substance.

The bill clarifies legislative intent regarding the weighing of hydrocodone, or any other controlled substance, in a mixture, for the purpose of charging trafficking.

If approved by the Governor, these provisions take effect July 1, 2001.
Vote: Senate 39-0; House 117-0

CS/SB 1932 — Controlled Substances

by Criminal Justice Committee and Senator Laurent

This bill authorizes the Orange County Sheriff's Office to create and supervise a 3-year pilot program in Orange County to target and intercept the illegal shipment of controlled substances via package-delivery services. The Sheriff's Office is required to submit a formal report of its findings to the Legislature by May 1, 2004.

The bill amends s. 823.10, F.S., to provide that a person commits a third degree felony by willfully keeping or maintaining or willfully aiding or abetting another to keep or maintain a public nuisance consisting of a warehouse, structure, or building. For purposes of this section, a warehouse, structure, or building is a public nuisance if it is visited for the purpose of obtaining illegal drugs or is used to keep, sell, or deliver illegal drugs.

The bill amends s. 877.111, F.S., to clarify current exceptions to unlawful possession and use of nitrous oxide, such as in the treatment of a disease or injury by a licensed practitioner.

The bill amends s. 893.03, F.S., to add 1, 4 butanediol, gamma-butyrolactone (GBL), and gamma-hydroxybutyric acid (GHB) to the list of Schedule I controlled substances and groups the

substances with methaqualone (Quaaludes) and mecloqualone, which are currently listed in Schedule I; adds 4-methoxymethamphetamine, a phenethylamine, to Schedule I; deletes current Schedule II references for 1, 4 butanediol, and GHB; and adds to Schedule III any drug product containing GHB for which an application is approved under s. 505 of the Federal Food, Drug, and Cosmetic Act.

The bill amends s. 893.033, F.S., to list chloroephedrine and chloropseudoephedrine as precursor chemicals.

The bill amends s. 893.135, F.S., to create offenses for trafficking in GBL and lysergic acid diethylamide (LSD). The applicable GBL and LSD trafficking penalties: a first degree felony with 3, 7, or 15-year mandatory term (depending on the amount trafficked), or a capital felony, if 150 kilos or more of GBL or 7 grams or more of LSD are manufactured or imported and such manufacture or importation results in the death of a person. The bill also lists 4-methoxymethamphetamine for the purpose of prosecution of trafficking in phenethylamines.

If approved by the Governor, these provisions take effect July 1, 2001, except for the provision creating the Orange County pilot program, which takes effect upon becoming law.
Vote: Senate 38-0; House 120-0

CORRECTIONS

SB 226 — Sexual Violence/Jails and Prisons

by Senator Dawson

This act is called the "Protection Against Sexual Violence in Florida Jails and Prisons Act." The act amends s. 944.35, F.S., to require the Criminal Justice Standards and Training Commission to develop a course relating to sexual assault identification and prevention as part of the correctional officer training program. The act also creates s. 951.221, F.S., which applies the same prohibitions against sexual misconduct by correctional staff to county and municipal jails that are currently enforced for prisons, under s. 944.35, F.S.

If approved by the Governor, these provisions take effect October 1, 2001.
Vote: Senate 40-0; House 117-1

CS/SB 322 — Disposition of Youthful Offenders

by Criminal Justice Committee and Senator Geller

This act amends the Department of Corrections inmate classification scheme described in s. 944.1905, F.S., to require the department to provide separate housing for those inmates under

the age of 18 and allow for placement of certain young inmates in youthful offender programs that would otherwise be off limits to them because of the degree of offense committed. This act also amends s. 921.0021, F.S., to redefine the term "prior record," in reference to crimes adjudicated in juvenile court, to include the five years prior to the offense for which the younger offender is to be sentenced.

If approved by the Governor, these provisions take effect on July 1, 2001.
Vote: Senate 33-0; House 115-0

CS/HB 245 — Parole Commission Reform

by Healthy Communities Council, Rep. Brummer and others (CS/SB 388 by Criminal Justice Committee and Senator Burt)

This act may be referred to as the "Parole Commission Reform Act of 2001." It amends parts of ch. 947, F.S., dealing with the Florida Parole Commission (commission). This reorganization of the commission transfers most of the case management or information gathering functions now performed by the commission to the Department of Corrections (department). The commission retains all of its decision making authority to set conditions of supervision, modify those conditions upon review, conduct revocation hearings, reinstate parole and conditional release and discharge persons from supervision.

Section 947.04(4), F.S., is amended to allow the field offices of the commission to be relocated into existing department space, which would provide the state with a cost savings.

Section 944.605, F.S., is amended to designate the department as the agency responsible for notifying all of the interested parties - victims or their representatives, local law enforcement, the prosecuting attorney and the sentencing court - of an impending release of an offender from prison or other form of custody.

Section 947.1405, F.S., dealing with the conditional release program is amended to transfer conditional release casework from commission staff to department classification officers. This act authorizes the department to take over the inmate evaluation and release plan function from the commission by:

- Authorizing a representative of the department (classification officer supervising the inmate), rather than representative of the commission (parole examiner), to review the inmate's program participation, disciplinary report, psychological and medical reports, criminal records, and any other information pertinent to the impending release;

- Authorizing a representative of the department, rather than representative of the commission, to personally interview the inmate to determine the inmate's release plan, especially where the inmate will live and work;

- Requiring the department to evaluate this information and submit a written report to the commission recommending terms and conditions of the inmate's supervision;

- Allowing the commission to review and consider the department's recommendations; and

- Permitting the commission to adopt the recommendations of the department, but the commission may impose different terms of supervision.

If approved by the Governor, these provisions take effect on July 1, 2001.
Vote: Senate 38-0; House 114-1

CS/SB 888 — Probation or Community Control

by Criminal Justice Committee and Senator Campbell

This act substantially amends s. 948.06, F.S., dealing with community supervision of offenders. This act provides for the period of an offender's probation or community control to be tolled upon the filing of an affidavit and the issuance of a warrant alleging violation of supervision. Notwithstanding the tolling, the court retains jurisdiction over the offender, and the probation officer continues supervision, pending the court's decision to revoke, reinstate, or terminate supervision. If the court dismisses the affidavit of violation, the term of supervision continues and the offender receives credit for all the tolled time against his or her term of supervision.

If approved by the Governor, these provisions take effect July 1, 2001.
Vote: Senate 36-0; House 116-0

CS/CS/SB 912 — Criminal Rehabilitation

by Appropriations Committee; Criminal Justice Committee; and Senator Villalobos

This bill implements most of the recommendations made in the Task Force on Self-Inflicted Crimes' January 2000 report. In brief summary, the bill:

- Modifies the position of Assistant Secretary for Programming to include transition and release services which organizationally will result in a separate bureau within the Department of Corrections (DOC) responsible for transition and special release services**;**

- Adds responsibilities for the DOC to assist released inmates transition into the community and funds 52 transition-assistance specialist positions to be located at each major institution;

- Requires the department to ensure that inmates released from its custody complete a 100-hour transition course;

- Funds 400 additional beds for the contracted faith-based substance abuse transitional housing program;

- Designates 400 non-secure drug treatment or probation and restitution center beds as post-release transition beds and requires the department to ensure that the number of transition-housing beds provided by private organizations with a faith component not exceed the number of transition housing beds provided by private organizations without a faith component;

- Mandates and expands substance-abuse treatment for offenders;

- Creates, prospectively, a mandatory post prison release program for substance abusers who, in addition to being supervised upon release, will also be given an opportunity to opt for placement in a contracted substance abuse transitional housing program;

- Requires the DOC to assist state inmates released from a private prison with transition services, similar to what is required for inmates released from state facilities;

- Provides privately operated transition housing assistance programs for released inmates;

- Adds six additional faith-based dormitory programs modeled after the dormitory program at Tomoka Correctional Institution and authorizes funding for six additional chaplains and clerical staff to coordinate the program and recruit volunteers;

- Funds ten additional chaplains for placement in the community correctional centers to recruit volunteers, serve as liaisons with community faith leaders, and assist inmates in placement in a contracted faith-based substance abuse transitional housing program, if requested;

- Specifies that two members appointed to the Statewide Drug Policy Advisory Council have professional expertise in faith-based substance abuse treatment services and directs the council to identify necessary law changes that would remove barriers to enhance the work component of any substance abuse treatment program and to recommend ways to expand and fund drug courts;

- Prohibits a person who has been charged with a violent offense from being accepted into a drug court program and gives the state attorney veto power over drug court eligibility when certain offenses have been charged;

- Requires an extensive study to identify effective intervention and treatment strategies for prostitution; and

- Provides an appropriation ($5,005,514).

If approved by the Governor, these provisions take effect July 1, 2001.
Vote: Senate 36-0; House 111-3

SB 1148 — Prison Industries and Offender Supervision

by Senator Crist

This act allows PRIDE (prison industries) to set up a second non-profit corporation to pursue new industries not usually associated with prison industries, and allows PRIDE employees to buy into the state's employee insurance programs and HMO's. This act makes some minor technical changes to some of the sections related to correctional work programs so that cross referencing is accurate and conforms with prior changes. The act also permits the Department of Corrections to charge offenders up to the full cost for electronic monitoring of criminal offenders who are being electronically monitored on community supervision.

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided.
Vote: Senate 39-0; House 116-0

COURT PROCEDURES

CS/SB 238 — Death Penalty/Mental Retardation

by Criminal Justice Committee and Senators Mitchell, Sullivan, Sebesta, Jones, Dawson, Holzendorf, Wasserman Schultz, Latvala, Horne, Clary, Rossin, Meek, Dyer, Lawson, Garcia, Lee, Silver, Campbell, Smith, Miller, and Crist

The bill creates s. 921.137, F.S., to bar the execution of the mentally retarded as follows:

Definition

The bill contains a definition of mental retardation which is substantially the same as the existing definition in s. 393.063, F.S., and in s. 916.106, F.S. The definition in the bill has three prongs: low intellectual functioning; deficits in adaptive behavior; and manifestation of conditions by age 18.

The bill does not contain a set IQ level, but rather it provides that low intellectual functioning "means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Department of Children and Family Services." Although the department does not currently have a rule specifying the intelligence test, it is anticipated that the department will adopt the nationally recognized tests. Two standard deviations from these tests is approximately a 70 IQ, although it can be extended up to 75. The effect in practical terms will be that a person that has an IQ of around 70 or less will likely establish an exemption from the death penalty. An IQ score of 70 falls in the category of the "mildly retarded."

The bill provides express rule-making authority to the Department of Children and Family Services.

Exemption

The bill provides that a death sentence may not be imposed on a person who suffers from mental retardation. Currently, mental retardation is considered in death cases only as a "non-statutory" mitigating circumstance which may be outweighed by aggravating circumstances. The exemption created by the bill is limited to those cases where the defense is able to prove by clear and convincing evidence that the defendant suffers from mental retardation.

Notice Required

The bill provides that a defendant who intends to raise the defense of mental retardation as a bar to the death penalty must give notice of his or her intention to do so in accordance with the rules of court governing notice of intent to offer expert testimony regarding mental health mitigation during the penalty phase of a capital trial. The rules of court governing the presentation of mental health mitigation through expert testimony requires the notice be provided not less than 20 days before trial. Fla.R.Crim.P. 3.202(c).

Separate hearing held after conviction or adjudication where advisory jury recommends death sentence; standard of proof

The bill provides that after conviction or adjudication when an advisory jury has recommended a sentence of death, the court shall, upon receiving a motion from the defendant, conduct a separate proceeding to determine whether a capital defendant should be sentenced to life imprisonment because the defendant suffers from mental retardation.

The court shall appoint two experts in the field of mental retardation who will evaluate the defendant and report their findings to the court and all interested parties prior to the final sentencing hearing. The state and the defendant may present the testimony of additional experts on the issue of whether the defendant suffers from mental retardation.

The final sentencing hearing is conducted without a jury. If the court finds by clear and convincing evidence that the defendant suffers from mental retardation, the court shall enter a written order that sets forth with specificity its findings in support of its determination that the defendant suffers from mental retardation.

Separate hearing held where defendant waives right to a recommended sentence by advisory jury

When the defendant waives the right to a recommended sentence by an advisory jury, either subsequent to entering a plea to a capital felony or a jury finding of guilt, if the defendant has given notice of the intent to raise mental retardation as a bar to the death sentence and filed the requisite motion, the court shall proceed as outlined above.

Separate hearing held where advisory jury recommends life imprisonment but state will ask court to sentence defendant to death

Where the defendant has filed notice of his or her intent to rely on mental retardation as a bar to the death penalty, if the advisory jury recommends life imprisonment but the state asks the court to sentence the defendant to death, upon the state notifying the defendant of that intent, the defendant may file the motion for determination of mental retardation by the court. The court shall then proceed as outlined above.

State appeal authorized; application of the bill

The state is authorized to appeal a determination of mental retardation, pursuant to s. 924.07, F.S.

The bill provides that the provision barring the execution of the mentally retarded does not apply to a capital defendant who was sentenced to death before the effective date of this act.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 32-0; House 110-1

CS/CS/SB 366 — DNA Evidence

by Appropriations Committee; Criminal Justice Committee; and Senators Villalobos and Smith

Postsentencing DNA Testing

The bill creates a new statutory section which provides that a person who has been found guilty at trial of committing a criminal offense has the right to seek testing of physical evidence collected at the time of the crime which may contain DNA evidence that would exonerate him or her, or mitigate the sentence that he or she received.

In order to seek such testing, a sworn motion must be filed in the trial court within two years of the date on which the judgment and sentence in the case becomes final if no direct appeal is taken, within two years of the date on which the conviction is affirmed on direct appeal if an appeal is taken, within two years following the date that collateral counsel is appointed or retained subsequent to the conviction being affirmed on direct appeal in a capital case or by October 1, 2003, whichever is later. The bill also authorizes a petition being filed or considered at any time if the facts on which the petition is predicated were unknown to the petitioner or the petitioner's attorney and could not have been ascertained by the exercise of due diligence.

The sworn petition must contain the following:

- A statement of the facts relied upon, including a description of the physical evidence which contains DNA and, if known, the present location or the last known location of the evidence and how it was originally obtained;

- A statement that the evidence was either not previously tested for DNA, or, if tested, that the results of the previous test(s) was inconclusive, and that subsequent scientific developments in DNA testing would likely produce a definitive result;

- A statement that the defendant is innocent and how the DNA evidence will exonerate the defendant of the crime for which he or she was convicted, or mitigate the sentence received;

- A statement that identification of the defendant is a genuinely disputed issue in the case, and why it is an issue; and

- Any other material facts that are relevant to the petition.

The petition must also contain a certification that the appropriate state attorney has been served with a copy of the petition.

Under the provisions of the bill, the trial court will review the petition and determine if the facts are sufficient to support its filing. The court has the option of denying the petition at that point if the facts are insufficient. If the court finds the facts alleged are sufficient to support the filing of the petition, the court shall then order the state attorney to respond to the petition within 30 days. After reviewing the state's response, the court may then rule on the petition or order a hearing on the matter. If the defendant is indigent, counsel may be appointed to assist the defendant if the petition proceeds to a hearing and the court deems the assistance of counsel is necessary.

In ruling on the motion, the court must find whether:

- The physical evidence that may contain DNA still exists;

- The results of DNA testing of that evidence would be admissible at trial and whether there is reliable proof that the evidence has not been materially altered and would be admissible at a future hearing; and

- There is a reasonable probability that the defendant would have been acquitted or would have received a lesser sentence if the DNA evidence had been admitted at trial.

The court's ruling on the petition may be appealed by any adversely affected party under the provisions of the bill. The defendant may appeal an adverse ruling within 30 days. The time for filing the appeal is tolled if a petition for rehearing is filed, until an order on that petition is filed. A petition for rehearing must be filed within 15 days of service of the court's order denying the original motion for DNA testing. The order denying relief must include notice of these time limitations.

If the petition for testing is granted, the court is required to make a determination of whether the defendant is indigent. An indigent defendant may not be required to pay for the DNA testing. If the defendant is not indigent, the cost of testing the physical evidence may be assessed against him or her. The Florida Department of Law Enforcement or its designee is directed to carry out any testing ordered by the court.

The bill provides that results of testing ordered by the court shall be provided to the court, the defendant, and the prosecuting authority.

The bill requires governmental entities to hold physical evidence for the time frame within which a postconviction DNA petition could be filed, and for 60 days after the execution of the sentence in a death penalty case.

DNA Testing/Data Bank

In 1989, the Legislature created a state DNA data bank to accumulate and analyze DNA from known criminals to compare to DNA evidence collected from crime scenes to help solve crimes. A major part of the bill establishes a time table for expanding the DNA data bank to include:

- Any person convicted for robbery as of July 1, 2002;
- Any person convicted for manslaughter or kidnapping as of July 1, 2003;
- Any person convicted for any violent felony offense or attempted violent felony offense as of July 1, 2004; and
- Any person convicted for any felony offense.

The bill adds a provision requiring criminals convicted for certain violent crimes to submit blood specimens for DNA analysis not later than 45 days prior to their release dates. In doing so, this provision will capture DNA profiles from persons in prison for violations of kidnapping, false imprisonment, manslaughter, and robbery.

If approved by the Governor, the provisions regarding Postsentencing DNA Testing take effect October 1, 2001, and the DNA Data Bank provisions take effect July 1, 2001.
Vote: Senate 37-0; House 118-0

CRIMINAL OFFENSES AND PENALTIES

HJR 951 — Constitutional Amendment/Excessive Punishment

by Crime Prevention, Corrections & Safety Committee and Reps. Bilirakis and Kyle (SJR 124 by Senator Burt)

This joint resolution submits to the Florida electors a proposed amendment to s. 17, Art I, State Constitution, which presently prohibits (and has historically prohibited) "cruel or unusual" punishment. The joint resolution includes a ballot title and summary of the proposed amendment.

The proposed amendment to Section 17 would prohibit "cruel and unusual" punishment rather than "cruel or unusual" punishment, and would require that this prohibition be construed in conformity with decisions of the United States Supreme Court that interpret the federal constitutional prohibition against cruel and unusual punishment.

The proposed amendment would also provide that the death penalty is an authorized punishment for any capital crime designated by the Legislature.

The proposed amendment would also allow any method of execution not prohibited by the Federal Constitution and allow the Legislature to designate the method of execution. It would authorize retroactive application of a change in any method of execution. Further, it would provide that, when a method of execution is declared invalid, a death sentence shall not be reduced and shall remain in force until it can be carried out by a valid method.

Finally, the proposed amendment would provide for retroactive application of Section 17, as amended.

The proposed amendment to Section 17 would be submitted to the Florida electors for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.
Vote: Senate 27-7; House 96-22

CS/SB 208 — Consumer Protection

by Commerce & Economic Opportunities Committee and Senator Geller

The bill (Chapter 2001-39, L.O.F.) amends s. 501.203, F.S., relating to definitions for the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), so that protections and remedies under

FDUTPA will clearly extend to consumers, which the bill specifies includes a business and any commercial entity, however structured.

The bill amends s. 501.207, F.S., to provide the FDUTPA "enforcing authority," which is the Office of the State Attorney or the Department of Legal Affairs (depending on such factors as where the violation occurred), with the power to take the same actions on behalf of governmental entities that it now takes on behalf of consumers. Additionally, the bill adds the granting of legal and equitable relief to the list of orders that a court may make upon motion of the enforcing authority or any interested party in any action brought under this section.

The bill amends s. 501.2075, F.S., to provide that the court may waive the civil penalties for violations of the FDUTPA if a governmental entity has been made whole.

The bill repeals s. 501.2091, F.S., which provided that any party to a FDUTPA proceeding may obtain a stay of such proceedings at any time by filing a civil action requesting a trial on the issues raised by the enforcing authority in the circuit court in the county of this party's residence.

The bill amends s. 501.211, F.S., to clarify that the remedies available to individuals under the FDUTPA are also available to businesses that are harmed by a violation of the FDUTPA.

The bill amends s. 501.212, F.S., to update the exemptions to the FDUTPA to provide that the exemptions include: any person or activity regulated under laws administered by the Department of Insurance; banks and savings and loan associations regulated by the Department of Banking and Finance; banks or savings and loan associations regulated by federal agencies; and any activity regulated under laws administered by the Florida Public Service Commission.

If approved by the Governor, these provisions take effect July 1, 2001.
Vote: Senate 37-0; House 118-0

CS/SB 240 — Sentencing/Crimes Committed While Incarcerated

by Criminal Justice Committee and Senator Smith

This act affects prison inmates who commit and are convicted for committing new crimes while incarcerated. The act requires any inmate to serve the sentence for the newly committed crime in the state correctional system or private prison, regardless of whether the new crime(s) is a felony or a misdemeanor. To accomplish this the act creates s. 944.17(3)(b), F.S., pertaining to any inmate incarcerated in the state correctional system who is convicted of any new crime committed during that incarceration. The act directs the sentencing court on how to sentence the prisoner when the highest ranking offence is a felony and when the highest ranking offense is a misdemeanor.

If approved by the Governor, these provisions take effect July 1, 2001.
Vote: Senate 38-0; House 116-0

SB 338 — Felony Murder

by Senator Campbell

This bill amends s. 782.04, F.S., the homicide statute, to add the offense of resisting an officer with violence to his or her person to the list of qualifying offenses for first degree or second degree felony murder.

If approved by the Governor, these provisions take effect October 1, 2001.
Vote: Senate 38-0; House 120-0

HB 1845 — Criminal Use of Personal Information

by Information Technology Committee and Rep. Hart and others (CS/SB 524 by Criminal Justice Committee and Senators Burt and Crist)

This bill amends s. 817.568, F.S., to create a new identity theft offense. It provides that any person who willfully and without authorization fraudulently uses personal identification information without first obtaining that individual's consent commits a second degree felony if the value of services received is $75,000 or more. The bill also provides for the reclassification of misdemeanor and felony offenses, if the offenses were facilitated or furthered by the use of a public record. For the purpose of sentencing, the bill ranks the new identity theft offense and directs how to rank reclassified offenses.

The bill provides that, in the absence of evidence to the contrary, the location where a victim gives or fails to give consent to the use of personal information is the county where the victim generally resides, and venue for prosecution is in any county in which an element of the offense occurred, including the county where the victim generally resides.

A prosecution of a felony identity theft offense must be commenced within three years after the offense occurred. However, a prosecution may be commenced within one year after discovery of the offense by an aggrieved party, or by a person who has the legal duty to represent the aggrieved party and who is not a party to the offense, if such prosecution is commenced within five years.

If approved by the Governor, these provisions take effect July 1, 2001.
Vote: Senate 37-0; House 108-0

SB 540 — White Collar Crime

by Senators Burt and Crist

This bill, which may be cited as the "White Collar Crime Victim Protection Act," defines "white collar crime" as the commission of, or a conspiracy to commit, various felony offenses.

The bill defines an "aggravated white collar crime" as engaging in at least two white collar crimes that have the same or similar intents, results, accomplices, victims, or methods of commission, or that are otherwise interrelated by distinguishing characteristics and are not isolated incidents, provided that at least one of such crimes occurred on or after July 1, 2001.

It is a first degree felony, ranked in offense severity level 9, for any person to commit aggravated white collar crime, and in doing so, victimize 10 or more elderly persons, victimize 20 or more persons, or victimize the State of Florida, any state agency, any of the state's political subdivisions, or any agency of the state's political subdivisions. In addition to the sentence provided, the person may pay a fine of $500,000 or double the value of the pecuniary gain or loss, whichever is greater.

A person convicted of an aggravated white-collar crime is liable for all court costs and required to pay restitution to each victim of the crime, regardless of whether the victim is named in the information or indictment. A "victim" is any person directly and proximately harmed by the crime for which restitution may be ordered. The court must hold a hearing to determine the identity of qualifying victims and order the defendant to pay restitution based on the defendant's ability to pay.

The court must make payment of restitution a condition of any probation granted to the defendant. They may order continued probation for the defendant for up to 10 years or until full restitution is made to the victim, whichever occurs earlier.

The court retains jurisdiction to enforce its order to pay fines or restitution. The court may initiate proceedings against a defendant for a violation of probation or for contempt of court if the defendant willfully fails to comply with a lawful order of the court.

This bill also amends s. 910.15, F.S., relating to theft and fraudulent practices concerning communication systems, to provide that a person charged with committing a fraudulent practice in a manner in which it may be reasonably assumed that a communication made to facilitate the fraudulent practice could or would be disseminated across jurisdictional lines, may be tried in the county in which the dissemination was originated or made, or in which any act necessary to consummate the offense occurred. If a communication is made by or made available through use of the Internet, the communication was made in every county within the state.

If approved by the Governor, these provisions take effect July 1, 2001.
Vote: Senate 37-0; House 114-3

HB 953 — Burglary

by Crime Prevention, Corrections & Safety Committee and Reps. Bilirakis, Cantens, and others (CS/SB's 1080 & 950 by Criminal Justice Committee and Senators Villalobos, Smith, and Crist)

This bill provides legislative findings and intent to reject a recent construction of the burglary definition by the Florida Supreme Court. The Court interpreted the definition to provide that a licensed entry, if established, is a complete defense to burglary and that unlawfully "remaining in" a premises, as prohibited in the burglary statute, means only surreptitiously remaining in the premises.

The bill expressly supports the Florida Supreme Court's longstanding prior construction of the burglary definition, which provided that:

- Consent to enter and remain in the premises is an affirmative defense; and
- A reasonable trier of fact could infer on the basis of circumstantial evidence of the crime committed within the premises that the victim of the crime impliedly withdrew consent to remain in the premises. The bill directs that this construction operates retroactively to February 1, 2000.

For burglaries committed on or before July 1, 2001, the definition remains unaltered and applies. For offenses committed after July 1, 2001, the burglary definition is altered and the new definition applies. This definition specifies that a person commits burglary by entering a premises with the intent to commit an offense therein, unless the premises is at the time open to the public or the entry is licensed or by invitation. A person also commits burglary, regardless of lawful entry, if the person remains in a premises surreptitiously or after permission to remain is withdrawn and with the intent to commit an offense therein, or remains in a premises to commit or attempt to commit a forcible felony therein.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 116-0

SB 1198 — Crimes/Using Two-Way Communications Device

by Senators Webster and Crist

This bill provides that any person who uses a two-way communications device, including, but not limited to, a portable two-way wireless communications device, to facilitate or further the commission of any felony commits a felony of the third degree. The bill ranks this felony for the purpose of sentencing.

If approved by the Governor, these provisions take effect July 1, 2001.
Vote: Senate 39-0; House 120-0

CS/CS/SB 1282 — Property Crimes

by Commerce & Economic Opportunities Committee; Criminal Justice Committee; and Senators Burt and Horne

This bill addresses numerous property-related crimes. The bill amends s. 812.014, F.S., to make it a first degree felony to steal cargo valued at $50,000 or more, and a second degree felony if the cargo is valued at less than $50,000. The bill also makes it a second degree felony, to steal emergency medical equipment valued at $300 or more from hospitals and medical transport.

The bill amends s. 812.015, F.S., to provide that retail theft includes taking possession of or carrying away property and altering or removing a universal product code, and to provide that an antishoplifting or inventory control device includes any electronic or digital imaging or any video recording or other film used for security purposes and the cash register tape or other record made of the register receipt.

If a merchant or merchant's employee takes a person into custody or acts as a witness with respect to any person taken into custody, the merchant or merchant's employee may provide his or her business address to any investigating law enforcement officer.

The penalty for unlawful possession, use, or attempted use of an antishoplifting or inventory control device countermeasure is increased to a third-degree felony, and the offense is made subject to repeat offender sanctions.

If a person commits retail theft, it is a third-degree felony if the property stolen is valued at $300 or more, and one or more specified aggravating factors is present. Value of property may be aggregated in specified, limited circumstances. A second or subsequent retail theft violation is a second degree felony.

The bill creates s. 812.0155, F.S., to authorize the court to order the suspension of the driver's license of each person adjudicated guilty of any misdemeanor violation of s. 812.014, F.S., (theft) or s. 812.015, F.S., (retail theft), regardless of the value of the property stolen. However, the court is required to order the suspension of a repeat offender's license.

If an offender is a minor and a first-time offender, the court is authorized to revoke, suspend, or withhold issuance of the minor's driver's license as an alternative to other specified sentencing.

The bill creates s. 812.017, F.S., which makes it a second-degree misdemeanor to request a refund of merchandise, money, or any other thing of value through the use of a fraudulently obtained receipt or false receipt. It is a first-degree misdemeanor to obtain merchandise, money, or any other thing of value through the use of a fraudulently obtained receipt or false receipt.

The bill creates s. 812.0195, F.S., which provides that any person in this state who uses the Internet to sell or offer for sale any merchandise or other property that the person knows, or has reasonable cause to believe, is stolen commits a second-degree misdemeanor, if the value of the property is less than $300. It is a third-degree felony, ranked in offense severity level 4, if the value of the property is $300 or more.

The bill creates s. 817.625, F.S., which makes it a third-degree felony for a person to use a scanning device or reencoder to obtain or transfer encoded information on a payment card without the permission of the authorized card user and with the intent to defraud the user, the issuer of the user's card, or a merchant. A second or subsequent scanning or reencoding violation is a second-degree felony. Additionally, anyone who commits a scanning or reencoding violation is subject to state contraband forfeiture laws.

The bill amends s. 831.07, F.S., (forging bank bills or promissory notes), s. 831.08, F.S., (possessing certain forged notes or bills), s. 831.11, F.S., (bringing into the state forged bank bills), and s. 831.12, F.S., (fraudulently connecting parts of a genuine instrument), to provide that the sections apply to checks or drafts. Section 831.09, F.S., (offense of uttering forged bills), is amended to provide that this section applies to checks, drafts, or notes.

The bill creates s. 831.28, F.S., to make it a third-degree felony to counterfeit a payment instrument with the intent to defraud a financial institution, account holder, or any other person or organization or for a person to have a counterfeit payment instrument in such person's possession. Printing of a payment instrument in the name of a person or entity or with the routing number or account number of a person or entity without the permission of the person or entity to manufacture or reproduce such payment instrument with the name, routing number, or account number is prima facie evidence of intent to defraud.

The counterfeiting offenses do not apply to a law enforcement agency that produces or displays counterfeit payment instruments for investigative or educational purposes.

The bill amends s. 832.05, F.S., for the following construction of the worthless check section: a payee or holder does not have knowledge, express notification, or reason to believe that the maker or drawer has insufficient funds to ensure payment of a check, draft, or debit card solely because the maker or drawer has previously drawn or issued a worthless check, draft, or debit card order to the payee or holder.

The bill ranks various current offenses and created offenses for the purpose of sentencing.

Finally, the bill provides a statement encouraging each local law enforcement agency to create a task force on retail crime and indicates how such a task force, if created, should be composed and conducted.

If approved by the Governor, these provisions take effect July 1, 2001.
Vote: Senate 32-0; House 119-0

CS/SB 1318 — Offenses Against Correctional Officers

by Criminal Justice Committee and Senator Saunders

This act creates s. 784.078, F.S., the new third-degree felony offense of "battery upon a facility employee by throwing, tossing, or expelling certain fluids or materials." The offense applies to any person being detained in any public or privatized jail, prison, or detention facility that causes or attempts to cause an employee to come into contact with saliva, blood, masticated food, regurgitated food, seminal fluid, urine or feces. Such offense is to be ranked as a level 4 offense under the Criminal Punishment Code.

If there were reason to believe that an employee or other person in the facility may have been exposed to a communicable disease, inmates would have to be promptly tested at the request of the affected person for the presence of a communicable disease. The test results would be inadmissible in any civil or criminal proceeding against the tested person. Appropriate access to counseling would have to be provided by the Department of Corrections to the affected person that was an employee of the department.

The act also creates s. 784.074, F.S., providing enhanced penalties for persons who commit assaults and batteries against the staff of the Sexually Violent Predator Program (SVPP) and criminal mischief against the property of the SVPP. This act mirrors the law providing enhanced penalties for those who commit crimes against law enforcement, with similar offense sentencing levels.

If approved by the Governor, these provisions take effect on October 1, 2001.
Vote: Senate 38-0; House 119-0

FIREARMS

SB 412 — Civil Actions/Firearms and Ammunition

by Senators Bronson, Garcia, Posey, Peaden, and Cowin

This bill (Chapter 2001-38, L.O.F.) prohibits civil actions against firearms and ammunition manufacturers, distributors, dealers and trade associations by certain governmental entities under certain circumstances. The right to sue the firearms entities for damages, abatement, or injunctive relief resulting from the lawful design, marketing, or sale of firearms to the public is prohibited. The specified entities prohibited from bringing such suits are the state or its agencies and instrumentalities, counties, municipalities, special districts, or other political subdivisions of the state. The bill does not prohibit an individual person from bringing a suit for breach of contract, breach of express warranty, or injuries resulting from a defect in materials or workmanship.

The bill specifically does not prohibit actions against firearms or ammunition manufacturers or dealers for breach of contract or warranty in connection with firearms or ammunition purchased by a county, municipality, special district or other political subdivision or agency of the state. Further, the bill does not prohibit actions for injuries resulting from a firearm or ammunition malfunction due to defects in design or manufacture.

The bill provides a legislative finding that the manufacture, distribution, or sale of firearms and ammunition by duly licensed manufacturers, distributors, or dealers is a lawful activity and is not unreasonably dangerous. The bill also provides that the unlawful use of firearms and ammunition is the proximate cause of injuries arising from their unlawful use, not the lawful manufacture, distribution or sale of firearms and ammunition.

The bill further provides that the potential of a firearm or ammunition to cause serious injury, damage or death as a result of normal function, or when it is discharged legally or illegally, does not constitute a defective condition of the product.

The bill provides for attorney's fees, costs, lost income and expenses for civil actions brought in violation of the provisions of the bill.

These provisions became law upon approval by the Governor on May 1, 2001.
Vote: Senate 27-12; House 78-35

JUVENILE JUSTICE

CS/CS/HB 267 — Juvenile Justice

by Lifelong Learning Council, Juvenile Justice Committee, and Reps. Kravitz, Barreiro, Davis, and others (CS/SB 1914 by Criminal Justice Committee and Senator Smith; CS/SB 974 by Education Committee and Senator Bronson)

This legislation amends laws relating to juvenile justice as follows:

- Expands the list of enumerated offenses under s. 435.04, F.S., which disqualify a candidate from employment with the Department of Juvenile Justice (DJJ) to include assault and battery on a law enforcement officer, felony burglary, and escape. Potential employees are also required to be of good moral character. No exemptions are granted for applicants seeking employment in the juvenile justice system for any of these enumerated offenses if it occurred during the most recent 7-year period.

- Allows the Florida Department of Law Enforcement (FDLE) to expunge a nonjudicial arrest record of a juvenile for a non-violent misdemeanor who successfully completed a prearrest, postarrest, or teen court diversion program that was verified and approved in

writing by the state attorney. This change allows such juveniles to apply subsequently for another expunction if otherwise qualified under s. 943.0585, F.S.

- Allows the Secretary of DJJ to designate as certified law enforcement officers certain employees who work within the Office of the Inspector General and who already hold law enforcement certifications under ch. 943, F.S. This authority allows DJJ to enforce criminal laws and conduct criminal investigations that relates to state-operated programs or facilities over which the DJJ has jurisdiction. The bill also allows certified youth custody officers to receive special risk retirement benefits.

- Expands current law that requires certain offenders to submit a blood sample for purposes of DNA testing to include juveniles who are transferred to Florida under the Interstate Compact on Juveniles. Failure to comply would result in the State refusing to accept the juvenile under the Interstate Compact on Juveniles.

- Permits the secure detention of a juvenile offender for a period, not to exceed 24 hours, for the purpose of being transported by DJJ to or from a commitment facility in order to ensure the safe delivery of the child to the commitment program, to court, or to the community.

- Requires an offender's parent or guardian to provide personal identification and financial information when the offender is taken into custody, released or delivered from custody, placed in any form of detention care or in a residential commitment facility in order to determine ability to pay. Upon refusal to provide this information, the parent or guardian can be held in contempt of court. DJJ is required to determine the cost of care and report it to the court at the detention hearing and/or disposition hearing. The department is given authorization, even in the absence of a court order, to collect at least $5 per day that the child is placed in a commitment program, $2 per day that the child is in secure detention, and $1 per day that the child is otherwise under the supervision of the department.

- Removes confidentiality requirements presently provided for the name, photograph, address, and arrest report of juvenile offenders who are transferred to the adult system and sentenced as an adult or transferred back to the juvenile system and sentenced as a juvenile, or who commit crimes for which adult sanctions are applicable.

- Provides legislative intent that the department, when contracting for service providers, consider faith-based organizations equally with other non-governmental providers.

- Moves language concerning collection and reporting of cost-effectiveness program information from s. 985.404 to s. 985.412, F.S., and adds requirements relating to the collection and reporting of cost data and program ranking. Further, the amendment requires DJJ to submit to the Legislature proposals for funding incentives and disincentives based upon quality assurance performance and cost-effectiveness performance. It allows the DJJ to include recommendations for the use of liquidated

damages in the proposal; however, the department is not presently authorized to contract for liquidated damages in non-hardware-secure facilities until January 1, 2002.

- Authorizes the district school board, at the request of the provider, to decrease the number of days of school instruction up to 20 days for teacher planning for nonresidential programs, subject to the approval of DJJ and DOE.

- Prohibits certain students from attending a school or riding on a school bus if the victim of an enumerated felony or the victim's sibling attends the school or rides on the bus, except as provided for in a written disposition order. The school district must allow these students to attend another school in the district in which the student resides, unless the victim or the victim's sibling attends the school. If the student is unable to attend any other school in his or her district and is prohibited from attending school in another school district, the student's school district must take every reasonable precaution to keep the student separated from the victim while on school grounds or on school transportation.

- Requires the DJJ to notify the appropriate school district about the court's action on a student's case, the new law, and any prohibition related to student attendance and transportation. Responsibility for transportation arrangements and payment is assigned to the student or his or her parents or legal guardians, if the student is a juvenile. However, the responsible party cannot be charged for existing modes of transportation that can be used by the student at no additional cost to the district.

- Requires the court to make a finding related to the appropriateness of entering a "no contact" order in favor of the victim or sibling of the victim. The determination must be made by the court, based on whether the child attends or is eligible to attend the same public school as the victim or the victim's sibling.

- Requires each school district to adopt a zero tolerance policy for victimizing students. Cooperative agreements between the DJJ and the district must specify guidelines for ensuring that all court "no-contact orders" are reported and enforced and that all necessary steps are taken to protect crime victims.

- Requires each school district to conduct a mandatory self-assessment of its safety and security practices. Each school superintendent must then provide recommendations for improving safety and security to the school board. School boards must annually receive self-assessment results at publicly noticed school board meetings. Each superintendent must report self-assessment results and school board actions to the Commissioner of Education within 30 days following the meeting.

- Requires the "best safety and security practices" developed by the Office of Program Policy Analysis and Government Accountability (OPPAGA) and approved by the Commissioner of Education to be annually reviewed by OPPAGA and the Partnership for

School Safety and Security. Each entity must make recommendations to the Commissioner of Education for changes to the best practices.

- Makes numerous clarifying, technical, and conforming changes in ch. 985, F.S.

If approved by the Governor, all these provisions, except the ones relating to cost of care, take effect October 1, 2001. The cost of care provisions take effect upon becoming a law.
Vote: Senate 39-0; House 116-0

LAW ENFORCEMENT

CS/SB 84 — Motorist Profiling

by Criminal Justice Committee and Senators Meek and Crist

This bill provides that by October 1, 2001, the Criminal Justice Standards and Training Commission, shall develop and provide instruction on the subject of interpersonal skills relating to diverse populations relating to discriminatory profiling.

The bill also provides that on or before January 1, 2002, every sheriff shall incorporate an antiracial or other antidiscriminatory profiling policy into the sheriff's policies and practices, utilizing the Florida Police Chiefs Association Model Policy as a guide. Antiprofiling policies shall include elements of definitions, traffic stop procedures, community education and awareness efforts, and policies for handling public complaints.

Finally, the bill imposes on municipal law enforcement agencies the same requirements that are imposed on sheriffs to incorporate an antiracial or other antidiscriminatory profiling policy.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 117-0

SB 272 — Liability Exemption/Imitation Controlled Substances

by Senator Klein

This bill amends s. 817.564, F.S., to provide that civil or criminal liability may not be imposed by virtue of this section against a law enforcement officer engaged in an authorized drug investigation in which the officer possesses, manufactures, dispenses, sells, gives, or distributes an imitation controlled substance as part of the investigation. The liability exemption also extends to an informer or third party acting under the direction or control of this officer.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 119-0

HB 403 — Public Records Exemption/Pawnbroker Transactions

by State Administration Committee and Rep. Brummer (SB 804 by Criminal Justice Committee)

Chapter 539, F.S., regulates the pawnbroker industry in Florida. Section 539.001(9), F.S., requires pawnbrokers to provide local law enforcement with copies of every pawnbroker transaction form generated by the business, which includes the name and address of the pawnshop, a complete description of the pledged or purchased goods, the name, address, home telephone number, place of employment, date of birth, physical description, personal identification number and right thumbprint of the pledgor or seller, the date and time of the transaction, and the financial arrangements made between the pledgor or seller and the pawnbroker.

Although the local law enforcement agency is allowed to disclose a limited amount of information from the pawnbroker transaction form to the alleged owner of stolen property that may have been pawned, the Legislature exempted the information contained on the form from the public records law in 1996 by finding that "information relating to pawnbroker transactions is of a sensitive and personal nature to the pledgor or seller of pledged goods…it is a public necessity that such information be held confidential and exempt from public records laws." Chapter 1996-241, s. 2, L.O.F., s. 539.003, F.S. The section would expire October 2, 2001, unless the Legislature reviewed and reenacted it. The bill reenacts s. 539.003, F.S.

If approved by the Governor, these provisions take effect October 1, 2001.
Vote: Senate 37-0; House 116-0

CS/HB 1425 — Law Enforcement

by Healthy Communities Council and Rep. Bowen and others (CS/SB's 1864 & 2086 by Criminal Justice Committee and Senators Bronson, Burt, and Crist)

Violent Crime Council

This bill expands the functions of the Violent Crime Council to allow it to assume a role in promoting Florida's drug control strategies in addition to violent crime strategies. The bill amends s. 943.031, F.S., (Florida Violent Crime Council), to rename the Florida Violent Crime Council as the Florida Violent Crime and Drug Control Council, and provide that drug control efforts by state and local law enforcement agencies, including investigations of illicit money laundering activities, must also be addressed by the council.

The bill expands the council's membership and provides that the council may advise the executive director of the Department of Law Enforcement.

The bill amends s. 943.042, F.S., (Violent Crime Emergency Account), to change the name of the Violent Crime Emergency Account to the Violent Crime Investigative Emergency and Drug

Control Strategy Implementation Account. Use of funds from the account is expanded to include supplemental or matching funding to multiagency or statewide drug control or illicit money laundering investigative efforts that significantly contribute to the state's goal of reducing drug-related crime, that represent a significant money laundering investigative effort, or otherwise support statewide strategies developed by the Statewide Drug Policy Advisory Council.

The Department of Law Enforcement, in consultation with the council, must maintain rules which address guidelines establishing a $100,000 maximum limit on the amount that may be disbursed on a single investigation and a $200,000 maximum limit on funds that may be provided to a single agency during the agency's fiscal year.

The Department of Law Enforcement, in consultation with the council, must adopt rules with regard to the eligibility for funding of drug control or illicit money laundering investigative efforts or task force efforts.

Criminal Records

The bill expands the list of enumerated offenses that make a person ineligible to have his or her criminal record expunged or sealed. The bill amends ss. 943.0585 and 943.059, F.S., (respectively, expunction and sealing of criminal history records), to provide that a person who has been found guilty of or pled guilty or nolo contendere to any of the following criminal offenses is ineligible for the court-ordered expunction or sealing of a criminal history record:

- Luring or enticing a child.
- Procuring a person under the age of 18 for prostitution.
- Lewd or lascivious offenses against an elderly person or disabled adult.
- Showing obscene material to a minor.
- Computer pornography.
- Selling or buying of minors, as defined in s. 847.0145, F.S.

Section 943.0585, F.S., provides that, prior to petitioning the court to expunge a criminal history record, a person seeking to have a record expunged must obtain, and submit to the Department of Law Enforcement, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates that the criminal history record does not relate to a criminal offense specified in that section. The bill expands the list of criminal offenses listed in s. 943.0585, F.S.

DNA Analysis

The bill amends s. 943.325, F.S., (blood specimen testing for DNA analysis), to expand the Department of Law Enforcement's authority to collect blood samples for DNA analysis to include other biological specimens approved by the Department of Law Enforcement. The bill clarifies that DNA analysis applies to convicted persons who have never been incarcerated yet are within the confines of the legal state boundaries and are on probation, community control, parole, conditional release, control release, or any other court-ordered supervision.

The withdrawal of blood for DNA analysis must be performed in a medically approved manner using a collection kit provided by, or accepted by, the Department of Law Enforcement. The withdrawal of blood may be performed by or under the supervision of, in addition to medical personnel, other trained and competent personnel. The collection of other approved biological specimens must be performed by a person using a collection kit that is provided by, or accepted by, the Department of Law Enforcement, in a manner approved by the department, as directed in the kit, or as otherwise found to be acceptable by the department.

The Department of Law Enforcement may, in addition to the specimens required for submission under s. 943.325, F.S., receive and utilize other blood specimens or other approved biological specimens.

Courts are required to include in the judgment of conviction an order stating that blood specimens or other approved biological specimens are required to be drawn or collected by the appropriate agency in a manner consistent with s. 943.325, F.S.

A person who collects an approved biological specimen other than blood will not be held civilly or criminally liable as long as the collector used a Department of Law Enforcement collection kit, and the collection is done by instruction or in a reasonable manner.

The agency having custody over a convicted person, and acting pursuant to a court order for withdrawal or collection of blood or biological specimen, may, in lieu of transporting the person to a collection site, secure the specimen at the location of the convicted person in a reasonable manner. If the convicted person resists collection of the specimen, a person using reasonable force to secure the collection or reasonably assisting in the securing of the specimen is not civilly or criminally liable.

Police Radio Communication

The bill creates s. 843.167, F.S., which provides that a person may not intercept any police radio communication by use of a scanner or any other means for the purpose of using that communication to assist in committing a crime or to escape from or avoid detection, arrest, trial, conviction, or punishment in connection with the commission of such crime. The penalty for a crime committed in this manner is enhanced one misdemeanor or felony degree, as appropriate, or in the case of a first degree misdemeanor is punished as if it were a third degree felony.

A person commits a first degree misdemeanor if he or she divulges the existence, contents, substance, purpose, effect, or meaning of a police radio communication to any person he or she knows to be a suspect in the commission of a crime with the intent that the suspect may escape from or avoid detection, arrest, trial, conviction, or punishment.

A person is presumed to have unlawfully intercepted a police radio communication if the person is charged with a crime and during the time such crime was committed, possessed or used a police scanner or similar device capable of receiving police radio transmissions.

Costs of Producing Criminal History Information

The bill amends s. 943.053, F.S., (dissemination of criminal history information), to provide that the Department of Law Enforcement's determination of actual costs for producing criminal history information must take into account the total cost of creating, storing, maintaining, updating, retrieving, improving, and providing this information in a centralized, automated database, including personnel, technology, and infrastructure expenses. Actual costs must be computed on a fee-per-record basis, and access to criminal history information by the private sector must be assessed using the per-record without regard to the quantity or category of information requested.

Expunction of Non-Judicial Record

The bill creates s. 943.0582, F.S., which provides that, notwithstanding any law dealing generally with the preservation and destruction of public records, the Department of Law Enforcement may provide by rule for the expunction of any nonjudicial record of the arrest of a minor who has successfully completed a prearrest or postarrest diversion program for minors as authorized by s. 985.3065, F.S., (prearrest diversion programs).

As used in s. 943.0582, F.S., the term "expunction" has the same meaning ascribed in s. 943.0585, F.S., the expunction statute. The provisions of the expunction statute relating to the effect of expunction of criminal history records do not apply, except that such record of a person whose record is expunged pursuant to this section must be made available only to criminal justice agencies for the purpose of determining eligibility for prearrest, postarrest, or teen court diversion programs; when the record is sought as part of a criminal investigation; or when the subject of the record is a candidate for employment with a criminal justice agency. For all other purposes, this person may lawfully deny or fail to acknowledge the arrest or charge covered by the expunged record.

Records maintained by local criminal justice agencies in the county in which the arrest occurred which are eligible for expunction pursuant to s. 943.0582, F.S., must be sealed as that term is used in s. 943.059, F.S., the sealing statute.

As used in s. 943.0582, F.S., the term "nonviolent misdemeanor" includes simple assault or battery when prearrest or postarrest diversion expunction is approved in writing by the state attorney for the county in which the arrest occurred.

The Department of Law Enforcement must expunge the nonjudicial arrest record of a minor who has successfully completed a prearrest or postarrest diversion program if the minor:

- Submits an FDLE-form application for expunction signed by the minor's parent or legal guardian, or by the minor if he or she has reached the age of majority at the time of applying, within 6 months after completion of the diversion program;

- Participates in a diversion program that expressly permits such expunction and on the basis of an arrest that is not an act of domestic violence; and

- Has never, prior to filing the expunction application, been charged with or found to have committed a criminal offense or comparable ordinance violation.

The Department of Law Enforcement is authorized to collect a $75 processing fee for each expunction application.

Prearrest Diversion Program

The bill amends s. 985.3065, F.S., (prearrest diversion programs), to provide that a law enforcement agency or school district, in cooperation with the state attorney, may establish a postarrest diversion program.

The child in the postarrest diversion program is subject to the provisions currently in s. 985.3065, F.S., that provide that a child in a prearrest program may be required to surrender his or her driver's license, or refrain from applying for such license, for a period of not more than 90 days, and further provides that if the child fails to comply with the requirements of the program, the state attorney may notify the Department of Highway Safety and Motor Vehicles in writing to suspend the child's driver's license for a period of not more than 90 days.

The bill authorizes the prearrest or postarrest diversion program, upon agreement of the agencies that establish the program, to provide for the expunction of the nonjudicial records of a minor who successfully completes such a program

If approved by the Governor, these provisions take effect July 1, 2001.
Vote: Senate 38-0; House 120-0

HB 1731 — Criminal Justice Programs/Transfer

by Fiscal Responsibility Council and Rep. Johnson (SB 1980 by Senator Burt)

This bill amends ss. 938.01 and 943.25, F.S., to delete references to the Department of Community Affairs as they relate to disbursements from the Additional Court Cost Clearing Trust Fund and the Operating Trust Fund. Disbursements from those funds are to the Department of Law Enforcement.

The bill transfers the Criminal Justice Program from the Department of Community Affairs to the Department of Law enforcement by a type two transfer.

The bill transfers the Prevention of Domestic and Sexual Violence Program from the Department of Community Affairs to the Department of Children and Family Services by a type two transfer. From the funds deposited into the Department of Law Enforcement Operating Trust Fund, the Department of Law Enforcement shall transfer funds to the Department of Children and Family Services to be used as matching funds for the administration of the Prevention of Domestic and Sexual Violence Program. The bill directs how the amount of the transfer shall be determined.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 36-0; House 118-0

SENTENCING ENHANCEMENTS AND MINIMUM MANDATORY TERMS OF IMPRISONMENT

HB 695 — Criminal Street Gangs

by Rep. Mack and others (SB 122 by Senators Burt and Klein)

This bill amends s. 874.04, F.S., which provides for enhanced penalties for felonies and misdemeanors, or any delinquent act or violation of a law which would be a felony or misdemeanor if committed by an adult, if the court finds at sentencing that the defendant is a member of a criminal street gang. The bill provides that the court at sentencing must find that the defendant committed the charged offense for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang. The amendment of the law is intended to address language in the criminal street gang statute that the Florida Supreme Court held violates a defendant's substantive due process rights because it subjects the defendant to conviction for a higher degree crime than originally charged based solely upon a defendant's simple association with a criminal street gang.

Conforming changes are made to s. 921.0024, F.S., as it relates to the Criminal Punishment Code scoresheet and that part of the worksheet key explaining the 1.5 sentence multiplier applied to the offender who has been convicted of the primary offense and is found to have been a member of a criminal street gang at the time of the commission of the primary offense pursuant to s. 874.04, F.S.

If approved by the Governor, these provisions take effect July 1, 2001.
Vote: Senate 34-0; House 118-0

SEXUAL OFFENDERS

CS/CS/SB 144 — Computer Crimes

by Judiciary Committee; Criminal Justice Committee; and Senators Geller and Crist

This act prohibits several offenses committed through the use of the Internet or computers, such as transmitting child pornography, transmitting sexually explicit material to minors, damaging computer services, or introducing computer viruses. If a person knowingly sends child pornography in, into, or from Florida, he or she commits a third degree felony. If a person knowingly sends sexually explicit images to a child in, into, or from Florida, he or she commits a third degree felony. If a person knowingly and without permission disrupts computer service or introduces a computer virus resulting in under $5,000 damage, he or she commits a third degree felony. If a person knowingly and without permission disrupts computer service or introduces a computer virus resulting in over $5,000 damage, he or she commits a second degree felony. If a person knowingly and without permission disrupts computer service or introduces a computer virus that endangers human life, he or she commits a first degree felony.

This act creates and updates a number of definitions in regard to the computer crimes listed above:

- Child pornography – any image depicting a minor engaged in sexual conduct;
- Transmit – send an electronic mail communication to a specified electronic mail address or addresses;
- Computer contaminant – (virus) a program introduced into a computer to cause damage to data or the network; and
- Computer network – a system that provides communications between one or more computer systems and other electronic devices such as printers or terminals.

This act expands the jurisdiction of the Statewide Prosecutor to prosecute these crimes regardless of where they occur in this state or elsewhere causing harm in the state. The law provides a grant of civil immunity to persons who uncover evidence of child pornography and transmission of images harmful minors if they report such evidence to law enforcement.

If approved by the Governor, these provisions take effect July 1, 2001, except as otherwise provided.
Vote: Senate 37-0; House 116-0

SEXUAL OFFENSES/VICTIMS

SB 698 — Statute of Limitations/Sexual Offenses

by Senator Campbell

This bill amends s. 775.15(7), F.S., to provide that if the victim of a sexual battery, a lewd and lascivious offense, statutory rape under former s. 794.05, F.S., or of incest is under the age of 18, the applicable limitation period would not begin to run until the victim reaches the age of 18, rather than the age of 16, or until the violation is reported to a law enforcement agency, whichever occurs earlier. Thus, under the bill, if a 14 year old child is a victim of a third degree felony lewd and lascivious offense, the three-year statute of limitations would not begin to run until the victim reaches the age of 18, or until he or she reports the crime, whichever occurs earlier. Accordingly, the statute of limitations would not expire until the victim reaches the age of 21, rather than the age of 19 as under the current statute.

If approved by the Governor, these provisions take effect October 1, 2001.
Vote: Senate 32-0; House 119-0

VICTIMS AND PUBLIC PROTECTION

CS/CS/SB 306 — Public Protection

by Appropriations Committee; Criminal Justice Committee; and Senators Clary and Smith

This bill requires the Department of Corrections (DOC), within 30 days of approving an inmate for community work release, to notify: the state attorney; the victim; the victim's parent or guardian if the victim is a minor; the lawful representative of the victim or the victim's parent or guardian if the victim is a minor; or the victim's next of kin in a homicide case. Additionally, the bill amends other victim notification statutes to expand the notification requirements to include notification of the victim's parent or guardian or lawful representative, when applicable.

The bill requires that domestic violence victims be informed about the address confidentiality program established in s. 741.403, F.S. It also requires the court to inform the victim of a sex offense of his or her right to have the courtroom cleared of certain persons before testifying. The bill provides that a victim, the victim's parent or guardian if the victim is a minor, the lawful representative of the victim, or of the victim's parent or guardian if the victim is a minor, or the victim's next of kin in the case of a homicide may review the presentence investigation report of a defendant being considered for adjudication as a youthful offender.

The bill also enables Florida to join with other states to establish the "Interstate Compact for Adult Offender Supervision" in place of the current Interstate Compact for the Supervision of Parolees and Probationers. It substantially amends s. 949.07, F.S., by replacing the current language describing the compact the state utilizes to coordinate the movement of parolees and

probationers among Florida and other states. The new language is drawn from a model version of the compact and authorizes the Governor to enter into the compact. The new provisions include:

- A statement of purpose that describes the need to form an interstate compact to coordinate the movement of offenders and their supervision in order to prevent crime.

- A description of the "Interstate Commission for Adult Offender Supervision" which would be the corporate body and a joint agency of the compacting states. The commission consists of the representatives of the compacting states and support staff. The commission must meet at least once a year to conduct business.

- A requirement to form a "State Council" to oversee that state's participation in the compact.

- A provision that empowers the commission to supervise the interstate movement of offenders, enforce compliance with the rules of the commission, maintain offices, contract, conduct the normal business of an agency or similar commission and resolve disputes between compacting states.

- A provision that each member (state) of the commission will have a vote in establishing the rules and policies of the commission and compact. All meetings will be public. The commissioner will have the authority to make rules; however, if a majority of the compacting states' Legislature rejects a commission rule, that rule would be in effect repealed.

- A statement specifying that jurisdiction for contesting actions or rules of the commission would be the United States District Court for the District of Columbia or the federal district court where the commission's principal office is located.

If approved by the Governor, these provisions take effect July 1, 2001.
Vote: Senate 34-0; House 114-0

HB 1083 — Public Records/Autopsy Photographs

by Reps. Johnson, Miller, and others (CS/CS/SB 1356 by Governmental Oversight & Productivity Committee; Criminal Justice Committee; and Senators King, Posey, Sebesta, Clary, Peaden, Bronson, Horne, Brown-Waite, Pruitt, Dawson, Burt, Constantine, Sanderson, Saunders and Garcia)

This legislation (Chapter 2001-1, L.O.F.) makes confidential and exempt from the inspection and copying requirements of s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution, photographs and video and audio recordings of autopsies in the possession of a medical examiner. A surviving spouse is permitted to view, listen to, and copy the autopsy records. In the absence of a

surviving spouse, the parents of the deceased have access. If there is not a living parent, the adult children of the deceased have access.

Additionally, the bill authorizes a local governmental entity, or state or federal agency in furtherance of its official duties, upon written request, to view, listen to, or copy such photographs or video or audio recordings. The custodian of the record or his or her designee may not permit any other person to view or duplicate the photo or video or audio recording without a court order.

Under the bill, the court, upon a showing of good cause, may issue an order authorizing any other person to view or copy a photograph or video of an autopsy or listen to or copy an audio recording of the autopsy and to prescribe any restrictions or stipulations that the court deems appropriate. The bill requires that the surviving spouse must be given reasonable notice of a petition filed with the court to view or copy an autopsy photograph or video recording, or listen to or copy an audio recording. In all cases, the viewing of, listening to, copying of, or other handling of the photo or video must be under the direct supervision of the custodian of the record or his or her designee.

The bill provides that it is a felony of the third degree for any custodian of a photo or video or audio recording of an autopsy to willfully and knowingly violate the provisions of the section. It also provides a third degree felony penalty for anyone to willfully and knowingly violate a court order issued pursuant to this section.

The bill also notes that photographs and video and audio recordings of an autopsy are highly sensitive depictions of the deceased that, if copied and publicized on the World Wide Web or in written publications, could result in continuous injury to the immediate family of the deceased, as well as injury to the memory of the deceased. As such, it is a public necessity to make autopsy photos and video and audio recordings confidential and exempt. The written autopsy report, which typically includes drawings, remains subject to public inspection and can be copied, thereby preserving public oversight.

The bill also provides a statement that the Legislature finds that the exemption should be given retroactive application because it is remedial in nature.

These provisions became law upon approval by the Governor on March 29, 2001.
Vote: Senate 40-0; House 91-12