Senate Committee on Criminal Justice

CONTROLLED SUBSTANCES AND DRUG CONTROL

SB 134 — Controlled Substances/Child Care

by Senator Klein

This bill amends s. 893.13, F.S., Florida's Controlled Substance Act, to correct the placement of a statutory provision relating to the unlawful sale or possession of a controlled substance within a specified area surrounding a licensed child care facility. This provision requires that the owner or operator of a child care facility post a sign identifying such facility as a licensed child care facility.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 36-0; House 115-0

CS/SB 152 — Controlled Substances

by Criminal Justice Committee and Senators Brown-Waite, Sullivan, Cowin, Klein, Bronson, Horne, Clary, McKay, Forman, Holzendorf, Latvala, Childers, Grant and Sebesta

This bill amends s. 893.03, F.S., which classifies certain substances as controlled substances for the purpose of penalizing certain acts involving controlled substances. The bill classifies ketamine as a Schedule III controlled substance. This scheduling of ketamine also includes any of its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

In Schedule II, reference to bulk dextropropoxyphene (nondosage forms) is deleted. In Schedule IV, reference to dextropropoxyphene (dosage forms) is deleted. Bulk propoxyphene (nondosage forms) is classified in Schedule II. Propoxyphene (dosage forms) is classified in Schedule IV.

In Schedule II, reference to gamma hydroxy butyrate (GHB) is deleted. Gamma-hydroxybutyric acid (GHB) is classified in Schedule II.

This bill also amends s. 893.035, F.S., which relates to the delegation of authority to the Attorney General to temporarily control substances by rule. The bill deletes obsolete

references to the Department of Business and Professional Regulation and substitutes references to the Department of Health. The Department of Health, the agency where pharmacy services are housed, is required to conduct a medical and scientific evaluation of any substance under consideration for temporary scheduling.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 37-0; House 117-0

CS/CS/SB 1056 — DUI

by Transportation Committee; and Criminal Justice Committee; and Senator Casas

The bill amends ss. 316.192 and 316.193, F.S., 1998 Supp., to require a person who is convicted of reckless driving involving alcohol or drugs or who is convicted of driving under the influence of alcohol or drugs (DUI) to be evaluated by a DUI program as to the need for substance abuse treatment. If treatment is recommended by the treatment provider and the person fails to report for or to complete treatment, the Department of Highway Safety and Motor Vehicles (department) is required to cancel the person's driving privilege. The bill also allows the department to temporarily reinstate the driving privilege if the person completes the substance abuse course and evaluation and, if referred, is currently participating in treatment.

The bill also amends s. 322.292, F.S., by adding criteria for the department to use to evaluate the need for licensing additional DUI programs serving the same geographic area. The department is authorized to assess a uniform application fee not exceeding $1,000 but sufficient to cover its administrative costs in processing and evaluating DUI programs. The department is also required to revoke the license of any DUI program that does not provide specified services within 45 days after licensure and to notify the chief judge of the revocation. In addition, the bill provides minimum standards for DUI programs that apply for licensure after the effective date of this legislation.

The bill also amends s. 318.1451, F.S., by prohibiting governmental entities from providing any information relating to driver improvement schools, except to refer inquiries to the local telephone directory or to the traffic school reference guide. The department is required to develop a traffic school reference guide under the legislation.

Finally, the bill amends s. 322.34, F.S., 1998 Supp., to provide that a motor vehicle is subject to seizure and forfeiture under the Florida Contraband Forfeiture Act if driven by a person under the influence of alcohol or drugs while that person's license is suspended, revoked, or canceled as a result of a prior conviction for driving under the influence. The court, during the forfeiture hearing, may take into consideration the extent that the family of the owner has other public or private means of transportation. The seizing agency is authorized to retain 30 percent of the proceeds from the sale of a forfeited motor vehicle,

while the remaining 70 percent of the proceeds is to be deposited into the General Revenue Fund to be used to provide transportation services for participants of the WAGES program.

If approved by the Governor, all of these provisions, except the prohibition against governmental entities providing information about driver improvement schools, take effect January 1, 2000. The prohibition against governmental entities providing information takes effect June 1, 2000.
Vote: Senate 40-0; House 116-0

CS/CS/SB 1468 — Statewide Drug Control

by Fiscal Policy Committee; Criminal Justice Committee; and Senator Brown-Waite

This bill creates the Office of Drug Control within the Executive Office of the Governor. The director of this office is appointed by the Governor, subject to Senate confirmation.

Terms that appear throughout the legislation are defined. "Substance abuse programs and services" or "drug control" "applies generally to the broad continuum of prevention, intervention, and treatment initiatives and efforts to limit substance abuse, and also includes initiatives and efforts by law enforcement agencies to limit substance abuse."

"Substance abuse" is defined as "the use of any substance if such use is unlawful, and use of any substance if such use is detrimental to the user or to others but is not unlawful."

This bill also provides that it is the intent of the Legislature to establish and institutionalize a rational process for long-range planning, information gathering, and strategic decision making and funding for the purpose of limiting substance abuse.

This bill also provides that the Legislature finds that the creation of a state drug control office and a statewide drug policy advisory council affords the best means for establishing and institutionalizing this new process.

This bill also provides that the Legislature finds that any rational and cost-effective governmental effort to address substance abuse must involve a comprehensive, integrated, and multidisciplinary approach to the problem of substance abuse. Further, five other legislative findings are provided. First, the Legislature finds that because state resources must be available to address an array of state needs, including the funding of drug control efforts, it is critical that a state drug control strategy be developed and implemented.

Second, the Legislature finds that decisions regarding the funding of substance abuse programs and services be based on the state drug control strategy.

Third, the Legislature finds that the drug control strategy be supported by the latest empirical research and data, require performance-based measurement and accountability, and require short-term and long-term objectives.

Fourth, the Legislature finds that the development and implementation of the drug control strategy afford a broad spectrum of the public and private sector the opportunity to comment and make recommendations.

Fifth, the Legislature finds that, because the nature and the scope of the substance abuse problem transcend the jurisdictional boundaries of any single government agency, the drug control strategy be a comprehensive, integrated, and multidisciplinary response to the substance abuse problem.

This bill also specifies that the Office of Drug Control is to work in collaboration with the Office of Planning and Budgeting to perform seven duties or functions. First, the office must coordinate drug control efforts and enlist the assistance of the public and private sectors in those efforts, including, but not limited to, federal, state and local agencies.

Second, the office must provide information to the public about the problem of substance abuse and substance abuse programs and services that are available.

Third, the office must act as the Governor's liaison with state agencies, other state governments, the federal Office of National Drug Control Policy, federal agencies, and the public and private sectors, on matters that relate to substance abuse.

Fourth, the office must work to secure funding and other support for the state's drug control efforts, including, but not limited to, establishing cooperative relationships among state and private agencies.

Fifth, the office must develop a strategic program and funding initiative that links the separate jurisdictional activities of state agencies with respect to drug control (the state drug control office is authorized to designate lead and contributing agencies to develop such initiatives).

Sixth, the office must advise the Governor and the Legislature on substance abuse trends in this state, the status of current substance abuse programs and services, funding of those programs and services, and the status of the state drug control office in developing and implementing the state drug control strategy. On or before December 1 of each year, the director of the state drug control office must report this information to the Governor and the Legislature.

Seventh, the office must make recommendations to the Governor on such measures as the director of the Office of Drug Control considers advisable for the effective implementation of the state drug control strategy. On or before December 1 of each year, the director must report this information to the Governor and the Legislature.

This bill also provides for the creation of a Statewide Drug Policy Advisory Council within the Executive Office of the Governor, chaired by the director of the Office of Drug Control, who serves, as does the director of the Office of Planning and Budgeting, as a nonvoting, ex officio member of the advisory council. Staff support for the advisory council must be provided by the Office of Drug Control and the Office of Planning and Budgeting.

This bill also directs that the following officials shall be appointed to serve on the advisory council: the Attorney General; the executive director of the Department of Law Enforcement; the Secretary of Children and Family Services; the Secretary of Health; the Secretary of Corrections; the Secretary of Juvenile Justice; the Commissioner of Education; the executive director of the Department of Highway Safety and Motor Vehicles; and the Adjutant General. In lieu of these agency heads, their designees may serve on the council.

This bill also provides that the Governor shall appoint 11 members of the public to serve on the advisory council. Of the 11 members, one member must have professional or occupational expertise in drug enforcement, one member must have professional or occupational expertise in substance-abuse prevention, and one member must have professional or occupational expertise in substance-abuse treatment. The remainder of the 11 members appointed should have professional or occupational expertise in, or be generally knowledgeable about issues that relate to drug enforcement and substance-abuse programs and services. The 11 appointments must, to the extent possible, equitably represent all geographic areas of the state.

This bill also provides that the President of the Senate shall appoint one senator to the council; the Speaker of the House shall appoint one representative to the council; and the Chief Justice of the Florida Supreme Court shall appoint one member of the judiciary to the council. These three appointees serve a term of four years each. However, for the purpose of staggered terms, of the Governor's initial appointments, five members are appointed to two-year terms and six members to four-year terms.

Vacancies on the council are filled in the same manner as the original appointments, and any member appointed to fill a vacancy because of death, resignation, or ineligibility for membership, serves only for the unexpired term of the member's predecessor. A member is subject to reappointment.

Members of the advisory council and workgroups serve without compensation but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061, F.S.

The advisory committee meets at least quarterly or upon the call of the chairperson.

This bill also provides that the advisory council is to perform nine duties or functions. First, the council must conduct a comprehensive analysis of the substance abuse problem in this state and makes recommendations to the Governor and Legislature for developing and implementing the state drug control strategy. The council must determine the most effective means of establishing clear and meaningful lines of communication between the council and the public and private sectors, in order to ensure that the process of developing and implementing the state drug control strategy has afforded a broad spectrum of the public and private sectors with the opportunity to comment and make recommendations.

Second, the council must review and make recommendations to the Governor and the Legislature on the funding of substance abuse programs and services, consistent with the state drug control strategy, as developed. The council is authorized to recommend the creation of a separate appropriations category for funding services delivered or procured by state agencies and is also authorized to recommend the use of performance-based contracting as provided in s. 414.065, F.S.

Third, the council must review substance abuse programs and recommend, where needed, measures that are sufficient to determine program outcomes. The council also must review methodologies for evaluating programs and determine whether programs within different agencies have common outcomes. The methodologies must be consistent with those established in s. 216.0166, F.S., which relates to the submission by state agencies of performance-based budget requests, programs, and performance measures.

Fourth, the council must review the drug control strategies and programs of, and efforts by, other states and the federal government and compile the relevant research.

Fifth, the council must make recommendations to the Governor and the Legislature on applied research projects that would use research capabilities within the state, including, but not limited to, the resources of the State University System, for the purpose of achieving improved outcomes and making better-informed strategic budgetary decisions.

Sixth, the council must make recommendations to the Governor and the Legislature on changes in the law which would remove barriers to or enhance implementation of the state drug control strategy.

Seventh, the council must make recommendations to the Governor and the Legislature on the need for public information campaigns to be conducted in the state to limit substance abuse.

Eighth, the council must ensure that there is a coordinated, integrated, and multidisciplinary response to the problem of substance abuse in this state, with special attention to creating partnerships within and between the public and private sectors, and to the coordinated, supportive, and integrated delivery of multiple-system services to substance abusers, including multiagency team approaches to service delivery.

Ninth, the council must assist communities and families in pooling their knowledge and experiences regarding substance abuse. Forums for exchanging ideas, experiences, practical information, as well as instruction, should be considered. For communities, such instruction may involve issues of funding, staffing, training, neighborhood and parental involvement, and instruction on other issues. For families, such instruction may involve practical strategies for addressing family substance abuse; improving cognitive, communication, and decision making skills; providing parents with techniques for resolving conflicts, communicating, and cultivating meaningful relationships with their children, and for establishing guidelines for their children; educating families about drug-free programs and activities in which they can serve as both participants and planners; and other instruction. To maximize the effectiveness of such forums, there should be multiple agency participation.

This bill also provides that the chairperson of the advisory council shall appoint work groups that include members of state agencies that are not represented on the council and solicit input and recommendations from those agencies. The chairperson is authorized to appoint work groups, as necessary, from among the members of the advisory council in order to efficiently address specific issues. A representative of a state agency shall be the head of the agency or his or her designee. The chairperson may designate lead and contributing agencies within a work group.

This bill also provides that the advisory council must submit a report to the Governor, the President of Senate, and the Speaker of the House of Representatives by December 1 of each year which contains a summary of the work of the council and the recommendations required by this bill. Interim reports may be submitted at the discretion of the chairperson of the advisory council.

This bill also repeals ss. 397.801(1) and 397.811(2), F.S. This repeal eliminates language authorizing the creation of a Statewide Coordinator for Substance Abuse Impairment Prevention and Treatment, and the duties attached to that office. The planning and coordination duties are among the planning and coordination duties that would be performed by the director of the Office of Drug Control. Consistent with these changes,

references are also deleted to the Statewide Coordinator and the Coordinator's planning duties in s. 397.821, F.S., which provides for the establishment of councils on juvenile substance abuse impairment prevention and early intervention.

This bill also appropriates 3 FTE's and $270,333 from recurring General Revenue and $14,539 from non-recurring General Revenue to the Executive Office of the Governor to implement the provisions of this act.

If approved by the Governor, these provisions take effect upon becoming law, except that the appropriation is not effective until July 1, 1999.
Vote: Senate 36-0; House 116-0

CORRECTIONS

CS/HB 253 — County and Municipal Jails

by Corrections Committee and Rep. Trovillion and others (CS/SB 292 by Criminal Justice Committee and Senator Bronson)

The law regarding the award of gain-time to prisoners serving his or her criminal sentences in local jails is changed. Rather than requiring counties to give its inmates gain-time at certain statutorily mandated rates, county governing bodies have the option of whether to authorize the granting of gain-time to its jail inmates and may grant incentive gain-time within a range rather than at a set statutorily mandated rate.

If a board of county commissioners voted to grant incentive gain-time to its jail inmates, the gain-time must be given at the rate of up to 5 days per month off the first and second years of the sentence, up to 10 days per month off the third and fourth years of the sentence, and up to 15 days off the fifth and all succeeding years of the sentence. However, if the board of county commissioners did not want to give its jail inmates any "good time" gain-time, or time off sentences for good behavior, it is not required to maintain such a practice. In order to discontinue or revise its commutation of time for good conduct, the board of county commissioners must do so by a majority vote.

Language that authorizes extra good-time allowances for meritorious conduct or exceptional industry is amended to not be in excess of 5 days per month. Thus, counties are limited to a maximum of 5 days per month of meritorious gain-time in addition to good behavior, or incentive, gain-time, if the county voted to allow such gain-time to be granted.

Obsolete language is deleted pertaining to the giving of $5 or $3 to a prisoner at the time of discharge from jail after serving his or her sentence.

The bill also essentially recreates previously existing language that would deem it to be a second degree misdemeanor if a person knowingly and willfully violated any posted jail rule that governs the conduct of local jail prisoners on a second or subsequent occasion. Rather than generally referring to the Florida Model Jail Rules, the bill delineates the specific conduct, by providing a list, that must be encompassed in a posted jail rule to be susceptible to the second degree misdemeanor provision.

A person commits a second degree misdemeanor, punishable by up to 60 days in jail and a $500 fine, if he or she violated a jail rule that prohibits one of the listed acts *two or more times*. The bill requires that the sentence imposed run consecutively to any other sentence that may be imposed upon the offender.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 116-0

CS/SB 932 — Department of Corrections

by Criminal Justice Committee and Senator Brown-Waite

This bill deletes references to "planning" and "design" as authorized governmental activities for the Department of Corrections in providing services and inmate labor for various construction projects. The practical effect of this change in law is that it shifts the delivery of planning and design services from the public to the private sector. Therefore, the Department of Corrections will not be able to utilize its architects and other personnel to assist local, state, federal, or other governmental subdivisions with the planning of any project or the design of any project for which such governmental entities may seek the assistance from the department.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-0; House 117-0

CS/SB's 1604 & 1618 — Correctional Work Programs

by Criminal Justice Committee and Senators Silver, Klein and Grant

The Department of Corrections will no longer have the statutory authority to enter into contracts with private sector businesses to operate PIE programs. PRIDE Enterprises, which is the entity currently responsible for operating correctional industries in prisons, is given statutory authority to enter into contracts with the private sector to operate PIE programs. Therefore, PRIDE is authorized to seek federal certification to administer PIE programs in Florida, rather than the department.

Federal requirements are reiterated to be imposed upon PRIDE as a PIE Program certificate holder. For instance, any contract to operate a PIE program must not result in

the significant displacement of employed workers in the community. Private sector employers are required to provide workers' compensation coverage to inmates who participate in PIE programs. Inmates are expressly not to be entitled to unemployment compensation. Purposes and objectives for PRIDE in operating PIE programs are also provided.

PRIDE is authorized to enter into leases directly with the Board of Trustees of the Internal Improvement Trust Fund for a period of at least 20 years for lands that are currently under specific leases. PRIDE no longer has to submit such lease requests through the Department of Corrections. The lease numbers that are given the authority to enter into such long-term leases directly with the Board of Directors are expressly provided: 3513, 2946, 2675, 2937, 2673, and 2671.

PRIDE is authorized to seek tax-exempt financing for the construction of buildings or capital improvements for correctional work programs and PIE programs on state-owned lands. In such cases, the state retains a secured interest in such an investment by holding a lien against any structure or improvement that used tax-exempt financing or state funds. PRIDE has specific statutory authority to seek and obtain tax-exempt bonds, certificates or participation, lease-purchase agreements, or other tax-exempt financing methods to construct facilities or make capital improvements for PRIDE or PIE programs.

Obsolete language that authorizes PRIDE to contract with any governmental entity in Florida to operate a fish and seafood processing plant is deleted. As part of operating the fish processing plant, authorizing language for PRIDE to spawn and grow fish and seafood for sale is also deleted.

Statutory authority for the Department of Corrections to use the services of inmates in the adult correctional institutions to perform work as needed and used within the state institutions is maintained. Thus, the department will still be able to work inmates without pay for the maintenance and operation of the institutions. It is anticipated that the department would still be able to pay the current inmate workers who earn wages, such as canteen operators and paralegals.

The department maintains its ability to operate farming and gardening programs at major institutions that utilize inmate workers. The food grown by inmates is to be used in the state institutions. However, the department could sell to PRIDE any surplus food items cultivated by inmates. The department must deposit any proceeds received from such surplus food sales into the Correctional Work Program Trust Fund. PRIDE could, in turn, sell such items on the open market for profit if it chooses.

PRIDE is authorized to establish and operate work camps for jails pursuant to contracts. In such work camps, PRIDE is authorized to use jail inmates for labor in PRIDE's regular

correctional industries or PIE programs. The work camps could use jail inmates for labor in correctional work programs or PIE programs. To accomplish this, PRIDE would directly enter into contracts with local governments and the sheriffs or jail administrators to operate the work camps for the respective jurisdictions. PRIDE has the authority to designate appropriate land that is owned or leased by the corporation as the site of a proposed work camp facility. PRIDE can use state, county, or municipal land as the site of a proposed work camp facility. However, prior approval of the Board of Trustees of the Internal Improvement Trust Fund is required if any state lands are used for a jail work camp.

Section 320.06, F.S., pertaining to motor vehicle registration, license plates, and validation stickers is also amended in this law. In addition to obsolete language being deleted, PRIDE is given the express authority to manufacture temporary tags, disabled hang tags, vessel decals, and fuel use decals for the Department of Highway Safety and Motor Vehicles. This authority to manufacture such items is in addition to license plates and validation stickers.

The Department of Corrections is required to periodically reevaluate the vocational programs offered in prisons to maintain correlation between the skills learned in such programming and needed skills to work in PIE programs. The department must look to providing vocational programming to inmates who could be assigned to a PIE program.

Minors adjudicated as adults and in the custody of the department may receive educational services without the consent of the parents of the minor. This allows the department to provide educational services to persons who have been committed to the custody or are under the supervision of the Department of Corrections without delay in services. This will allow the department to continue its reported practice of providing special education services to eligible inmates without obtaining prior parental consent for those inmates who are 18 years of age or younger.

The department would be required to develop a plan to ensure that academic and vocational classes are being offered at more frequent and convenient times, to the extent that resources permit, to accommodate the increasing number of inmates who have work assignments.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-0; House 115-0

CS/SB 1742 — Department of Corrections

by Criminal Justice Committee and Senator Brown-Waite

Reorganizing the Administrative Structure of the Department of Corrections

The Department of Corrections will have the authority to reorganize its administrative structure. The secretary of the department will have increased flexibility in devising the middle- and upper-management structure of the department and the administration of state appropriations to the department to perform its duties.

There is no longer a mandate that there be six assistant secretaries. Instead, the secretary will have the flexibility to determine what is necessary to manage the department through assistant secretaries, directors, and other persons necessary to accomplish the mission and goals of the department.

The department's administrative structure will narrow at the regional level by deleting: the requirement that there be five regional offices in the state, the necessity that each region develop and submit budgets to be included in the department's comprehensive budget, the requirement that there be five regional directors, and the mandate that *each* region have six division directors. The secretary would have more flexibility to appoint persons that would oversee the regions that would be established by the secretary.

The secretary has the flexibility to establish "regions" as he or she decides. Therefore, the geographical boundaries of departmental regions will be solely determined by the secretary. Although there will remain a requirement that the provision of services for community corrections, security, and institutional operations be accomplished through regions, there is not a mandate or limit as to the number of regions.

Subsection (7) of s. 20.315, F.S., no longer enumerates four budget entities for the department's summary document for legislative appropriation. Rather, the department must revise its budget entity designations to conform to the budget entities that are designated by the Executive Office of the Governor under s. 216.0235, F.S. The department must remain consistent with ch. 216, F.S., in transferring funds and positions that are necessary to realign appropriations with the revised budget entity designations. The authorized revisions must still be consistent with the intent of the approved operating budget.

The department would assume a new goal of ensuring that victim's rights and needs are recognized and met.

The responsibility of overseeing the inmate grievance process would be shifted from the department's Office of the Inspector General to the Office of General Counsel.

Changing Some Career Service Positions to Select Exempt Positions

The law increases the positions of Assistant Superintendents I and II and Probation Deputy Circuit Administrators to Select Exempt Positions from Career Service. The change that Select Exempt will have on these positions is that they will serve at the will of the secretary. Although there is an increase in the benefits to the employees who become Select Exempt, an increase in the accountability level and providing the secretary with flexibility to shift and change personnel is the anticipated result of making these positions Select Exempt.

Inmate Escapes from Private Correctional Facilities

When an inmate escapes from a *privatized* correctional facility, the law is clarified that it is a second-degree felony, punishable by up to fifteen years in prison and up to a $10,000 fine. This change would put escapees from private facilities in the same posture as in situations when an inmate escapes from a correctional facility that is operated by a governmental entity. All escapes from a correctional facility, regardless of who or what type of entity operates the correctional facility, would be proscribed equally under the law.

Deleting the Department's Authority to "Plan or Design" Certain Construction Projects

Statutory references to "planning" and "design" are deleted as authorized governmental activities for the Department of Corrections in providing services and inmate labor for various construction projects. The practical effect is that it shifts the delivery of planning and design services from the public to the private sector. Therefore, the Department of Corrections is not able to utilize its architects and other personnel to assist local, state, federal, or other governmental subdivisions with the planning of any project or the design of any project for which such governmental entities may seek the assistance from the department.

Changing "Superintendents" to "Wardens"

The Division of Statutory Revision is requested to prepare a revisor's bill for the 2000 Regular Session to change the term "superintendent" to "warden" in specified statute sections.

Digitized Photographs of Inmates

The Department of Corrections is given the express authority to take digitized photographs of inmates and offenders on community supervision. It will assist with record-keeping and monitoring of inmates in the prison system and offenders who are

being supervised in the community on any type of community supervision by correctional probation officers. Therefore, the department could take such photos of persons who are on supervision that was imposed by the court, granted by the Parole Commission, or required by statute after serving a prison sentence.

Granting Rulemaking Authority to the Department

The Department of Corrections is given expanded rulemaking authority. The department is provided with the authority to adopt rules relating to the function and duties of employees working in community corrections and relating to the operation of probation field and administrative offices.

Study by the Office of Program Policy Analysis and Government Accountability

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is required to conduct a performance review of DOC's reorganization to determine the immediate and long-term effects upon department personnel, and the operational effectiveness and accountability of the DOC's reorganization.

Minimizing the Impact of the Department's Reorganization on its Employees

Legislative intent is provided that the DOC reorganization, to the extent possible, must not result in any employees losing their jobs, not require employees to relocate against their will, and not reduce salaries of any employees.

Elevated Attention to Family Visitation

Inmate visitation is also addressed in this law by providing legislative intent and requiring the DOC to provide certain services and submit an annual legislative budget request to improve the frequency of family visits and the visitation program. It also extends the authorized use of the Inmate Welfare Trust Fund for visitation and family programs and services.

Transfer to Contract Management of the Gadsden Correctional Facility

The Gadsden C.I. facility, which is a privatized facility through the DOC, is transferred to the Correctional Privatization Commission. Upon the transfer of this privately operated prison, the Correctional Privatization Commission will be the sole contract manager and monitor for contract compliance.

Ban on Indoor Use of Tobacco in Prisons

Tobacco use would be prohibited in any inside area of any building, portable, or other enclosed structure of a state or private correctional facility. Although employees of the Department of Corrections or a privatized facility, visitors, and inmates would be prohibited from using tobacco products indoors, they would still be allowed to possess and use tobacco products on the premises of a state or private correctional facility as long as it is not in a prohibited area. The superintendents and wardens would be required to take reasonable steps to ensure that the prohibition of using tobacco products in a prohibited area is strictly enforced against all persons, including employees and visitors.

Any inmate in the state-level correctional system who uses any tobacco product in an indoor area would commit a disciplinary infraction and could be subject to forfeiture of gain-time or the right to earn gain-time as well as any other punishment deemed appropriate by the disciplinary authority. Other such punishments would include confinement.

The Department of Corrections can adopt rules to implement the provisions pertaining to the indoor smoking ban. The department may, by rule, not only designate all prohibited areas within an institution that would be specifically prohibited, but the department may also expand the definition of a prohibited area. Through this authority, the department could extend the tobacco-use ban to include vehicles. The department could promulgate rules that would impose penalties on inmates and employees for violations. By rule, the department could also prohibit a visitor from future visitation to prisons for violations. Privatized prisons would be authorized to adopt policies and procedures to implement the provisions of the ban on indoor tobacco use. These policies and procedures would have to be consistent with the rules of the Department of Corrections.

It is specifically provided that employee housing on the grounds of a state correctional facility and maximum security inmate housing areas would be specifically excepted from the inside tobacco-use prohibition. Therefore, employees could use tobacco products in the employee housing areas and maximum security inmates may smoke in their respective housing areas.

Pursuant to the statement of legislative intent, the Department of Corrections and the Correctional Privatization Commission would be required to make smoking cessation assistance *available* to inmates to implement the tobacco product prohibition. This requirement does not necessarily mean that the department or the commission are directly responsible for *providing* such assistance. Such assistance may be made available to inmates by outside sources.

Effective Dates

The department and the Correctional Privatization Commission would be required to implement the provisions of the prohibition on indoor tobacco-use as soon as possible, but all of the provisions related to tobacco use must be fully implemented by January 1, 2000.

Except for the full implementation of the indoor tobacco-use ban, all other provisions in this act will take effect upon becoming law.
Vote: Senate 37-0; House 117-0

COURT PROCEDURES

CS/HB 13 — Restitution

by Crime & Punishment Committee and Rep. Heyman and others (CS/SB 744 by Criminal Justice Committee and Senator Campbell)

This bill provides that a court that has ordered restitution for a misdemeanor offense shall retain jurisdiction for the purpose of enforcing the restitution. The bill allows the court to retain jurisdiction for any period, not to exceed 5 years, that the court pronounced at the time restitution is ordered.

Currently, a court would lose jurisdiction over the restitution order in a misdemeanor case after one year, in a case where probation was imposed.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 39-0; House 116-0

CS/SB 60 — Pretrial Intervention Programs

by Criminal Justice Committee and Senators Brown-Waite and Laurent

The court or the state attorney may deny admission of a criminal defendant to a pretrial substance-abuse education and treatment intervention program, commonly known as a drug court, if the defendant previously rejected an offer to undertake such a program in lieu of traditional prosecution. In order for an original offer to be made to a defendant to go through a drug court program, the state attorney must make the initial determination as to the defendant's eligibility. This law would maintain prosecutors' control over which defendants may undergo a diversion program and participate in a drug court program. Ultimately, a court must also confirm that a defendant is "eligible" to participate in a drug court program. Therefore, the court would also maintain its control over a defendant's participation under this law as well.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-0; House 117-0

CS/HB 327 — Public Defenders - Conflicts of Interest

by Crime & Punishment Committee and Rep. Warner and others (CS/SB 1910 by Judiciary Committee and Senator Campbell)

This bill amends s. 27.53(3), F.S., by providing that the trial court shall review, may conduct a hearing at its discretion and may inquire into the adequacy of a public defender's representations regarding a conflict of interest but shall not require the disclosure of any confidential information. The bill also requires that the circuit conflict committees assess the conflict representation system in their circuit and report its findings and any recommendations to the Legislature by February 1, 2000.

This bill encompasses some of the recommendations contained in a 1998 interim report by the Senate Criminal Justice Committee and in a separate report by the Commission on Legislative Reform of Judicial Administration.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 113-0

SB 936 — Court costs

by Senator Gutman

This bill amends s. 938.30, F.S., the Comprehensive Court Enforcement Program Act, by allowing a judge to convert a person's obligation to pay court costs to an obligation to perform community service. The bill specifies that the court may convert costs to

community service after examining a person under oath and determining a person's inability to pay.

This bill also amends s. 938.30, F.S., which authorizes the assessment of administrative costs in enforcing compliance by specifying that the court may assess reimbursement for the costs of processing bench warrants and pickup orders.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 118-0

CS/CS/SB 2054 — Capital Collateral Representation -- Registry of Attorneys

by Judiciary Committee; Criminal Justice Committee; and Senator Burt

The Capital Collateral Regional Counsel (CCRC) represents all death-sentenced inmates on collateral actions challenging the legality of the judgement and sentence in the state and federal courts. The 1998 Legislature created a statewide registry of private criminal defense attorneys to supplement the CCRC system and serve as a "backup" by alleviating any case backlog. This bill makes various technical, clarifying, and substantive changes to the attorney registry statute. Among the highlights:

- Increases from $10,000 to $20,000 the cap on fees an attorney is entitled to receive after the trial court issues a final order granting or denying the capital defendant's motion for postconviction relief. This increase is designed to adequately compensate an attorney for work done in preparing for and conducting a postconviction hearing.

- Increases from $5,000 to $15,000 the cap on miscellaneous expenses, such as the cost of preparing transcripts, compensating expert witness, and copying documents.

- Provides that the court shall monitor the performance of registry attorneys to ensure that the capital defendant is receiving quality representation.

- Changes the name of the "Commission on the Administration of Justice in Capital Cases" to the "Commission on Capital Cases."

If approved by the Governor, these provisions take effect July 1, 1999
Vote: Senate 39-0; House 115-0

CRIMINAL PENALTIES/PROSECUTION

CS/HB 11 — Arrests

by Law Enforcement & Crime Prevention Committee and Rep. Trovillion and others (CS/SB 738 by Criminal Justice Committee and Senator Campbell)

The Act amends s. 901.02, F.S., to specify, unlike current law which does not address this topic, what the court may do when a misdemeanor summons is returned unserved. Under the Act, if a misdemeanor summons is returned unserved, and the court, after examining witnesses, reasonably believes that the defendant has committed a misdemeanor, the court may then issue an arrest warrant. Furthermore, the Act overrules current case law's interpretation that an arrest warrant is deemed issued only when it has been delivered to the Sheriff by providing that a warrant is issued when signed by the court.

The Act also creates s. 901.36, F.S., to provide that it is a first degree misdemeanor offense for a person arrested or lawfully detained to give a false name or otherwise falsely identify himself or herself to a law enforcement officer or county jail personnel. This provision has the effect of eliminating current law's requirement that the State, in order to obtain a conviction for this conduct, must prove that the giving of the false name or identification interfered with the officer's performance of his duties. Moreover, the Act provides that this offense is enhanced to a third degree felony if it results in adversely affecting another person, and that a person who is adversely affected may receive restitution and may obtain orders from the court which correct his or her public records.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 106-10

SB 72 — Homicide/Vehicular and Vessel

by Senators Campbell and Klein

This bill amends s. 782.71, F.S. (vehicular homicide), and 782.072, F.S. (vessel homicide), to provide that vehicular and vessel homicide are second degree felonies. Further, these offenses are first degree felonies if, in addition to such homicide, the offender fails to render aid or give information.

This bill also amends s. 921.0022, F.S., which contains the offense severity ranking chart for the sentencing of most offenses under the Criminal Punishment Code. The bill modifies the descriptions of vehicular and vessel homicide in the ranking chart.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 38-0; House 116-0

HB 79 — Airbag Theft

by Rep. Stafford and others (CS/SB 244 by Criminal Justice Committee and Senator Campbell)

The "Airbag Antitheft Act" creates a new statutory section which requires any person, who is engaged in the business of purchasing, selling, or installing salvaged airbags, to disclose to a consumer that an airbag is salvaged. The Act also provides that a record of the purchase, sale, or installation must be kept for thirty-six months following the transaction, that officers may inspect the records, and that the records must be provided, upon request, to an insurer or consumer.

Under the Act, any person, who fails to disclose that an airbag is salvaged, to maintain complete and accurate records, or to provide information within the record upon request, commits a first degree misdemeanor. Furthermore, any person who knowingly possesses, sells, or installs a stolen uninstalled airbag, an airbag with a missing or altered identification number, or an airbag taken from a stolen motor vehicle commits a third degree felony.

If approved by the Governor, this Act takes effect on October 1, 1999.
Vote: Senate 39-0; House 115-0

CS/SB 170 — Children's Protection Act of 1999

by Criminal Justice Committee and Senator Bronson

Lewd, lascivious, or indecent assault or act upon or in the presence of a child under s. 800.04, F.S., is amended to provide definitions and to "break down" the offense to clearly indicate the different types of criminal behavior that is prohibited under s. 800.04, F.S. Different criminal penalties are assessed, in many cases, depending on the age of the offender and, in some cases, on the age of the victim.

As used under s. 800.04, F.S., "sexual activity" is defined as the oral, anal, or vaginal penetration by, or in union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. However, the definition specifically excludes such acts that are done for a bona fide medical purpose. "Consent" is defined as intelligent, knowing, and voluntary consent, and would not include submission by coercion. "Coercion" means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance. "Victim" is defined as a person upon whom an offense described in s. 800.04, F.S., was committed or attempted or a person who has reported a violation of s. 800.04, F.S., to a law enforcement officer.

As to defenses that may be raised by a defendant, the victim's lack of chastity or the victim's consent to the acts proscribed in s. 800.04, F.S., cannot be raised as a defense to prosecution. Ignorance, misrepresentation, or a bona fide belief about the victim's age is also prohibited for purposes of raising a defense to the violation of s. 800.04, F.S.

The current offense of "lewd, lascivious, or indecent assault or act upon or in the presence of a child" will be grouped into four distinct categories: lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, and lewd or lascivious exhibition.

1. Lewd or lascivious *battery* is committed if any person either (a) engages in sexual activity with a person 12 years of age or older but less than 16 years of age; or (b) encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.

   Lewd or lascivious battery is a second-degree felony, punishable by up to 15 years in prison and up to a $10,000 fine, as well as habitualized sentencing under s. 775.084, F.S. Lewd and lascivious battery is ranked under the Offense Severity Ranking Chart as a level 8 offense under the Criminal Punishment Code.

2. Lewd or lascivious *molestation* is committed if any person intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age.

   If the *offender is 18 years of age or older* and commits lewd and lascivious molestation against a *victim less than 12 years of age*, it is a first degree felony, punishable by up to 30 years in prison and up to a $10,000 fine as well as habitualized sentencing under s. 775.084, F.S. Under these circumstances, lewd or lascivious molestation is ranked under the Offense Severity Ranking Chart as a level 9 offense under the Criminal Punishment Code.

   For the offense of lewd or lascivious molestation, if the *offender is less than 18 years of age* and commits the offense against a *victim less than 12 years of age*, or if the offender is more than 18 years of age and commits the offense against a victim who is older than 12 years of age and less than 16 years of age, it is a second-degree felony, punishable by up to 15 years in prison and up to a $10,000 fine as well as habitualized sentencing under s. 775.084, F.S. Under these circumstances, lewd or lascivious molestation is ranked under the Offense Severity Ranking Chart as a level 7 offense under the Criminal Punishment Code.

For the offense of lewd or lascivious molestation, if the *offender is less than 18 years of age* and commits the offense against a *victim that is older than 12 years of age and less than 16 years of age*, it is a third-degree felony, punishable by up to 5 years in prison and up to a $5,000 fine as well as habitualized sentencing under s. 775.084, F.S. Under these circumstances, lewd or lascivious molestation is ranked under the Offense Severity Ranking Chart as a level 6 offense under the Criminal Punishment Code.

3. Lewd or lascivious *conduct* is committed if any person intentionally touches a person under 16 years of age in a lewd or lascivious manner or solicits a person under 16 years of age to commit a lewd or lascivious act.

   If an *offender is 18 years of age or older* and commits the offense of lewd or lascivious conduct it is a second-degree felony, punishable by up to 15 years in prison and up to a $10,000 fine as well as habitualized sentencing under s. 775.084, F.S. Under these circumstances, lewd or lascivious conduct is ranked under the Code's Offense Severity Ranking Chart as a level 6 offense. If an *offender is less than 18 years of age* and commits the offense of lewd or lascivious conduct, it is a third-degree felony punishable by up to 5 years in prison and up to a $5,000 fine as well as habitualized sentencing under s. 775.084, F.S. Under these circumstances, lewd or lascivious molestation is ranked under the Code's Offense Severity Ranking Chart as a level 5 offense.

4. Lewd and lascivious *exhibition* is committed if any person who, in the presence of a victim who is less than 16 years of age, either: (a) intentionally masturbates; (b) intentionally exposes the genitals in a lewd or lascivious manner; or (c) intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity. Under the proposed lewd or lascivious statutory scheme under s. 800.04, F.S., there is an express exception for mothers who are breast-feeding their babies for the application of that statute.

   If the *offender is 18 years of age or older*, it is a second-degree felony, punishable by up to 15 years in prison and up to a $10,000 fine as well as habitualized sentencing under s. 775.084, F.S. Under these circumstances, lewd or lascivious exhibition is ranked under the Code's Offense Severity Ranking Chart as a level 5 offense. If an *offender is less than 18 years of age* and commits the offense of lewd or lascivious exhibition, it is a third-degree felony punishable by up to 5 years in prison and up to a $5,000 fine as well as habitualized sentencing under s. 775.084, F.S. Under these circumstances, lewd or lascivious exhibition is ranked under the Code's Offense Severity Ranking Chart as a level 4 offense.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 38-0; House 117-0

CS/HB 199 — Trespass on School Property

by Crime and Punishment Committee and Rep. Waters and others (CS/SB 154 by Criminal Justice Committee and Senator Sebesta)

The Act expands s. 810.97, F.S., which prohibits trespass at public schools, to also prohibit trespass at private schools. Furthermore, the Act deletes the section's current provisions, which except certain persons from school trespass liability, in reaction to Florida court's holding that the exceptions are confusing and can result in allowing a school student to trespass at any time, notwithstanding whether the student has any legitimate business at the school. Under the Act,
only persons who have legitimate business at the school are excepted from trespass liability.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 117-0

CS/HB 421 — Evidence

by Crime & Punishment Committee and Rep. Lacasa and others (CS/SB's 54 & 902 by Criminal Justice Committee and Senators Lee and Silver)

This bill creates a new section which provides that voluntary intoxication resulting from the consumption, injection, or other use of alcohol or other controlled substances is not a defense to any criminal offense. This evidence is not admissible to show that the defendant lacked the specific intent to commit a criminal offense or that the defendant was insane at the time of the offense, except when the substance involved a controlled substance pursuant to a lawful prescription issued to the defendant by a licensed practitioner.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 39-0; House 118-0

CS/HB 425 — Robbery by Sudden Snatching

by Judiciary Committee and Rep. Sanderson and others (CS/SB 772 by Criminal Justice Committee and Senator Rossin)

This bill creates a new offense of "robbery by sudden snatching." The bill provides that robbery by sudden snatching is the taking of money or other property from the victim's person with intent to deprive the victim of the money or other property, "when, in the course of the taking, the victim was or becomes aware of the taking." The bill specifies that it is not necessary to show that the offender used any amount of force beyond that

necessary to obtain possession of the money or other property. The bill specifies that is not necessary to show that the victim resisted.

The bill responds to a Florida Supreme Court opinion which held that under the robbery statute, snatching or grabbing of property without resistance by the victim does not constitute robbery, but rather theft.

The bill provides that sudden snatching robbery will be punished as a third-degree felony (5-year maximum prison sentence) or as a second-degree felony (15-year maximum prison sentence) if the offender carried a firearm or other deadly weapon in the course of committing the sudden snatching robbery. The increase in punishment would depend on the value of the property stolen. Since the property value is not relevant under the robbery statute, the greatest increase will be in cases where the property value is under $300, currently a petit theft misdemeanor offense.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 38-0; House 119-0

CS/SB 748 — Pretrial Detention

by Criminal Justice Committee and Senators Diaz Balart, Horne, Silver and Meek

Currently, in a typical DUI manslaughter case, the court must set reasonable bail for the defendant. This bill amends s. 907.041(4), F.S., to authorize the court to order pretrial detention (deny bail) to a defendant who is charged with DUI manslaughter when it finds:

- a substantial probability that the defendant committed the crime, and
- the defendant poses a threat of harm to the community.

The bill allows a judge to deny bail if no condition of release can reasonably protect the community from risk of physical harm and the offender is charged with a dangerous crime as specified by s. 907.041, F.S. Current law requires additional proof of one of the following: a prior conviction of a crime punishable by death or life, *or* prior conviction for a dangerous crime within the past 10 years, *or* that a showing that at the time of the new crime, the defendant was on probation or a similar legal restraint. The bill deletes the requirement of finding one of these additional conditions.

The bill creates two new conditions, which will allow a court to deny bail prior to trial.

The bill eliminates a 90-day cap placed on pretrial detention for defendants who are found to pose a danger to the community.

The bill specifies that nothing in s. 907.041, F.S., shall be construed to require the filing of a pretrial detention motion before a court may deny bail. It further specifies that the state may move for pretrial detention any time a defendant is in court for a bail hearing without the necessity of filing a written motion.

The bill repeals Rules 3.131 and 3.132 of the Florida Rules of Criminal Procedure relating to pretrial release and pretrial detention to the extent they are inconsistent with the provisions in the bill.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 40-0; House 119-0

CS/SB 1606 — Unauthorized Cable Television Reception

by Criminal Justice Committee and Senator Silver

This bill provides an enhanced criminal penalty for an offender who has previously been convicted of certain violations of s. 812.15, F.S., relating to unauthorized reception of cable services. Currently, the penalty for most violations of s. 812.15, F.S., is a first-degree misdemeanor (maximum 1 year jail sentence) and repeat offenses are not enhanced. This bill provides that on a second or subsequent offense, the penalty is a third-degree felony (maximum 5 year prison sentence).

The bill creates a new third-degree felony offense, committed when:

- Any person intentionally possesses,
- *5* or more devices or pieces of equipment,
- knowing that the design of such devices or pieces of equipment renders them primarily useful for the unauthorized reception of any communications services offered over a cable system.

The bill enhances this new offense to a second-degree felony (maximum 15 year prison sentence) when a person intentionally possesses *50* or more devices or pieces of equipment.

The bill adds the term "electronic medium," to the existing prohibition against advertising in certain media by promoting the sale of equipment primarily designed for unauthorized reception of cable service. Finally, the bill clarifies that an aggrieved party (generally a cable television company), may recover damage awards "*for each violation*" of s. 812.13, F.S.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 115-1

CS/SB 1706 — Privacy in Merchant's Dressing Rooms

by Criminal Justice Committee and Senator Meek

This bill makes it a criminal offense for:

- any merchant,
- to directly observe or make use of video cameras or other visual surveillance devices,
- in order to observe or record customers who are using the merchant's dressing room, fitting room, changing room, or rest room.

Merchant is defined as "an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise."

Any merchant who commits this offense is guilty of a first degree misdemeanor. Thus, a person who is convicted of this offense would be subject to a maximum sentence of up to one year in jail and a fine of up to $1,000.

If approved by the Governor, these provisions take effect on July 1, 1999.
Vote: Senate 40-0; House 112-0

FIREARMS AND CONCEALED WEAPONS PERMITS

SB 954 — Concealed Weapons and Firearm Licenses - Nonresidents

by Senators Bronson and Brown-Waite

This bill (Chapter 132, L.O.F.) permits a U.S. resident who is a Florida nonresident to carry a concealed weapon or firearm in this state, provided the nonresident:

- Is at least 21 years of age; and
- Has in his or her immediate possession a valid license to carry a concealed weapon or concealed firearm issued to the nonresident in his or her state of residence.

This bill provides that the nonresident's license shall remain in effect in Florida for 90 days following the date on which the license holder establishes legal state residence. A

nonresident establishes legal residence in Florida when he or she does one of the following acts:

- Registers to vote;
- Makes a statement of domicile pursuant to s. 222.12, F.S.; or
- Files for homestead tax exemption on Florida property.

This bill provides that a nonresident is subject to the same concealed weapon or firearm laws and restrictions as a Florida resident. This bill applies only to nonresident concealed weapon or firearm licenseholders from states that honor Florida concealed weapon or firearm licenses.

These provisions were approved by the Governor and take effect July 1, 1999.
Vote: Senate 29-10; House 84-27

IDENTITY THEFT

CS/HB 49 — Identity Theft

by Crime and Punishment Committee and Reps. Trovillion and others (CS/SB 286 by Criminal Justice Committee and Senators Campbell, Silver and Hargrett)

The Act creates s. 817.568, F.S., for the purpose of specifically criminalizing the use of another's personal identification information for fraudulent or harassment purposes. Personal identification information is broadly defined, and includes, but is not limited to, any person's name, social security number, date of birth, identification number, and fingerprint, voice print, retina or iris image.

Under the Act, a person who willfully and without authorization fraudulently uses or possess with the intent to fraudulently use an individual's personal identification information commits a third degree felony. If the intent is to harass, rather than defraud, the person commits a first degree misdemeanor. Harass is defined as conduct intended to cause substantial emotional distress.

This Act results in broadening the types of misconduct which constitute a criminal offense. Under existing law, only theft by fraudulent misrepresentation of a person's identity is proscribed; however, under the Act, mere possession of personal identification information with the intent to defraud, and possession or use for harassment purposes is now proscribed. For example, pursuant to the Act, Florida law will now criminalize conduct such as harassment by posting an individual's name, credit card account information, or

other personal identification information on the Internet or in other places accessible by the public.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 110-0

JUVENILE JUSTICE

SB 130 — Juveniles/Prosecution as Adults

by Senator Klein

Senate Bill 130 broadens current law pertaining to discretionary direct file informations on 14- and 15-year-old juveniles by including the offense of grand theft of a motor vehicle if a juvenile has at least one prior adjudication for that same offense. If a juvenile of 14 or 15 years of age is alleged to have committed the offense of grand theft auto for a second or subsequent occasion, the state attorney may, but is not required to, file a direct information to prosecute the juvenile in adult court. In order for a state attorney to file a direct information on a 14 or 15 year-old juvenile, it would have to be the judgement and discretion of the state attorney that the public interest requires that adult sanctions be considered or imposed when such juveniles are charged with grand theft auto.

If the state attorney uses his or her discretion and files a direct information on a 14- or 15-year-old juvenile for a second or subsequent grand theft auto, adult sanctions are not guaranteed to be imposed by the adult court judge. In fact, the adult court judge upon a finding of guilt could still adjudicate the juvenile delinquent and impose juvenile sanctions. The judge will use his or her discretion to make that determination. However, once a juvenile has adult sanctions imposed upon him or her, the juvenile must be subsequently prosecuted as an adult for future criminal offenses.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 107-7

HB 349 — Juvenile Justice

by Law Enforcement and Crime Prevention Committee and Reps. Futch and others (CS/SB 204 by Criminal Justice Committee and Senator Silver)

This act is a comprehensive juvenile justice package which consists of the substance of CS/SB 204 by Criminal Justice and Senator Silver, CS/CS/SB 1594 by Governmental Oversight & Productivity Committee; Criminal Justice Committee; and Senator Campbell,

CS/SB 1290 by Education Committee and Senator Horne, SB 1324 by Senator Lee, and CS/SB 1550 by Senator Dawson-White and others.

CS/SB 204

This bill addresses the topic of juvenile firearm and weapon offenses. For simple firearm possession by a minor, the bill enhances the offense level for a second or subsequent offense from a first degree misdemeanor to a third degree felony. Furthermore, the bill provides that a minor charged with a simple possession offense must be placed in secure detention before the adjudicatory hearing, and should thereafter be detained for specified periods if the minor is found to have committed the offense. Under the bill, a minor may be detained for up to 3 days for a first simple possession offense, and must be detained for up to 15 days for a subsequent simple possession offense.

The bill also requires that minors charged with any offense involving a firearm, other than simple possession, be placed in detention before the adjudicatory hearing, and thereafter in detention for specified periods if the minor is found to have committed the offense. Under the bill, a minor must be detained for 15 days for a first firearm offense, and for at least 21 days for a subsequent firearm offense.

Community service must be ordered for any minor who commits a firearm offense, and pursuant to the bill, the community service should be served, if possible, in a facility that treats gunshot wound victims.

Furthermore, the bill expands current law, which prohibits any person from possessing a firearm or weapon on school property, to also prohibit possession at a school-sponsored event. The bill adds that any minor charged with a violation of this section must receive medical, psychiatric or substance abuse exams during the pre-adjudication detention period, and adds that the trial court may continue the minor's pre-adjudication detention for up to 21 days without utilizing a risk assessment instrument.

CS/CS/SB 1594

This bill addresses numerous juvenile justice topics and each topic is addressed below under separate subject headings.

Juvenile Criminal History Records

The bill broadens current law to require the Criminal Justice Information Program to retain criminal history records of minors, who are committed to a maximum-risk residential program, for five years after the minor reaches 21 years of age.

Fingerprinting and Photographing of Juveniles

The bill amends current law to provide that the Florida Department of Law Enforcement may include a juvenile's record in its state criminal history database; thereby, enabling other criminal justice agencies which are entitled to these records under existing law, to readily access these records without having to use current law's cumbersome process of contacting the law enforcement agency which compiled the original record.

Juvenile Sexual History Disclosure

The bill amends current law, which provides that the Department of Juvenile Justice (DJJ) must disclose to a school superintendent that a student under the DJJ's supervision has a history of sexual behavior, in order to limit this disclosure requirement only to juveniles with a criminal history of sexual behavior.

Taking a Child into Custody

The bill adds that an officer, who has probable cause to believe that the juvenile is violating his home detention or has absconded from his commitment, may take the juvenile into custody without first obtaining a pickup order from the trial court.

Aftercare Placement

The bill eliminates current law's ambiguity concerning the meaning of aftercare. Under the bill, aftercare is clearly defined as programs, such as non-residential minimum risk, re-entry and postcommitment community control (PCCC), in which a juvenile may be placed after he or she has been released from a residential commitment.

The bill also provides that aftercare is no longer mandatorily required for all juveniles released from residential commitment; instead, either the trial court may order PCCC, or the department may require another aftercare program for the juvenile if the juvenile indicates during an assessment a need for aftercare services.

The bill finally provides that a juvenile's violation of any aftercare program, other than court ordered PCCC, no longer require a court hearing; instead, the DJJ may administratively transfer the juvenile to another commitment program.

Department of Juvenile Justice Hiring Standards

The bill adds new offenses to those currently enumerated in the statutes, which preclude the employment of persons, such as DJJ employees, who are subject to level two employment screening. The newly added offenses include: battery on a detention or

commitment facility staff; removing a child beyond state limits; possessing or exhibiting weapons on, or within 1,000 feet of, school property; resisting arrest with violence; depriving an officer of protection or communication; aiding in an escape; inflicting cruel treatment on an inmate resulting in great bodily harm; aiding an escaped prisoner; introducing contraband into a correctional or detention facility; and sexual misconduct in juvenile justice programs.

Furthermore, the bill amends current law to provide that the DJJ Standards and Training Commission must develop a certifiable, competency based employee training program, and that DJJ employees must pass an examination in order to successfully complete the program. The bill also provides that in order for a person to be eligible to be a DJJ employee, he or she must: be at least 19 years old; be a high school graduate or its equivalent; not have been convicted of a felony or perjury, or have been dishonorably discharged from the military; have abided by the fingerprinting and background investigations required in ch. 435, F.S.; have submitted an affidavit attesting to the person's compliance with this section; and have completed any commission-approved basic training program offered by the DJJ.

Department of Juvenile Justice Crime Prevention

The bill amends current law to require specified agencies involved in the justice system, including the DJJ, to implement crime-prevention measures. The bill limits expenditures to crime prevention, public awareness, public participation, and educational activities, and specifies that no expenditures may be made for lobbying purposes.

Direct-Support Organization

The bill creates a new section to provide the DJJ with the statutory authority to have a Direct Support Organization (DSO). The DSO is defined as a not for profit corporation approved by the Department of State, which is operated for the purpose of raising funds and making expenditures for the benefit of the DJJ, or a county or district board juvenile justice system.

CS/SB 1290

This bill amends sections concerning juvenile justice education programs. The bill defines the school year for juvenile justice programs as a 12 month period, consisting of 250 days of instruction, with authorization to decrease the minimum number of days of instruction by up to 10 days for teacher planning. The bill makes the following changes related to governance:

- requires the State Board of Education to adopt an administrative rule that includes specific components, including the interagency collaborative process; academic expectations; transition services; procedures for the transfer of education records; and contract requirements.

- designates the Department of Education (DOE) as the lead agency for juvenile justice education programs.

- requires the DOE and the DJJ to designate a coordinator for juvenile justice education programs to serve as a point of contact for resolving issues not addressed by local school boards.

The bill requires the development of model contracts for the delivery of education services to youth in DJJ programs, as well as model procedures for moving youth in and out of these programs. The bill revises the current quality assurance provisions in law.

Additionally, the bill provides for the following:

- a study by the Juvenile Justice Accountability Board (JJAB) of the nature and extent of education programs for juvenile offenders committed by the court to the DJJ and for juvenile offenders under court supervision in the community.

- provisions for funding juvenile justice education programs and alternative FTE surveys for Department of Juvenile Justice programs experiencing fluctuations in student enrollment.

- funding for DJJ programs beyond the 180 day school year and summer school must be specified in the General Appropriations Act.

- notice requirements related to the siting of new juvenile justice facilities, requests for proposals, and award of contracts for the construction or operation of commitment or detention facilities.

- subjects schools that provide educational services to youth in juvenile justice programs to requirements in current law, including the provisions for statewide programs of educational assessment and for school improvement plans.

SB 1324

This bill addresses numerous juvenile justice topics and each topic is addressed below under separate subject headings.

Firearm Possession by Adjudicated Delinquents

The bill adds that a juvenile, who has been adjudicated delinquent for a felony offense, is prohibited from possessing a firearm until he or she reaches the age of 24. In so providing, the bill eliminates a glitch in current law which can permit an adjudicated juvenile felon to possess a firearm at the age of 19 or 21, depending on the circumstances.

Direct Filing of Juvenile Offenders

Under current law, a state attorney is statutorily required or permitted to prosecute a juvenile in adult court if the juvenile has been charged with committing certain enumerated offenses. The bill adds burglary with assault or battery, possession or discharge of any weapon or firearm at school, home invasion robbery, and carjacking to the list of enumerated offenses, and further adds that the juvenile may be prosecuted as an adult if the juvenile is charged with attempting or conspiring to commit an enumerated offense.

Moreover, the bill provides that whenever a juvenile is transferred for prosecution as an adult all of the juvenile's other felony cases, which are then pending in juvenile court, must be transferred to adult court. If the juvenile is acquitted of the charge or charges in the original case, the juvenile may only be subject for his or her other felony cases to the sanctions that were available to the court before these cases were transferred.

DJJ Filing Recommendations to the State Attorney

Under current law, the DJJ is statutorily required in every case to provide a recommendation to the state attorney concerning whether charges against a juvenile should be brought in juvenile or adult court. This provision often results in requiring the DJJ to needlessly make ineffective recommendations in cases where the question of whether to direct file is resolved by the mandatory direct filing statutes. Consequently, the bill provides that the DJJ need not make a recommendation in every case. Instead, the bill allows the state attorney and the DJJ to enter an interagency agreement which specifies the types of cases which will warrant a DJJ recommendation.

Maximum-Risk Residential Programs

The bill renames DJJ "maximum-risk residential programs" to "juvenile correctional facilities or juvenile prison," in order to heighten the phrase's deterrence effect. Furthermore, the bill expands current law's list of enumerated offenses which make a juvenile, age 13 or older, eligible for placement in a juvenile correctional facility or prison. Under the bill, eligibility may also be predicated on the offenses of carjacking, home-invasion robbery, or burglary with assault or battery.

Juvenile Appeals

The bill provides that juvenile appeals must be taken in the manner prescribed by the Florida Rules of Appellate Procedure, and the Criminal Appeals Reform Act. The effect of this provision is to require counsel for juveniles, just like counsel for adults, to first raise sentencing error in the trial court, instead of raising it for the first-time on appeal. The purpose for this preservation requirement is to eliminate the unnecessary expense of allowing direct appeals to be filed in the district courts concerning issues which are better and more easily remedied by the trial court.

CS/SB 1550

This bill addresses the topic of vocational and educational programs provided by the school board and the DJJ to juveniles committed to the DJJ's custody. The bill amends current law concerning vocational work programs for delinquents, by changing the section's use of the phrase, "vocational work training programs" to "educational/technical and vocational work-related programs." This amendment should have the effect of broadening the types of programs which may be provided to delinquents.

The bill also specifies that the mission of the juvenile educational/technical and vocational work-related programs includes teaching job and trade skills to youth in juvenile justice programs, and that the DJJ should assist juveniles in obtaining postrelease employment, work in partnership with local businesses to develop the operation of educational/technical and vocational programs, and attempt to obtain training credits for juveniles in apprenticeship programs.

Furthermore, the bill provides that the DJJ is "strongly encouraged" to require juveniles placed in high or maximum risk commitments or classified as serious/habitual offenders to participate in an educational/technical or vocational work-related program for five hours per day, five days per week.

Finally, as requested in the JJAB's 1998 report concerning educational programming, the bill adds that the JJAB shall conduct a study of effective juvenile vocational and work programs across the United States, and shall report its findings by January 31, 2000. Similarly, the bill provides that the DJJ should gather the following information on Florida juvenile vocational and work training programs: the type of vocational or work program offered; the relevant job skills provided; and whether the program works with the trade industry to place youths in jobs upon release.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 114-0

SB 1178 — Juveniles/Diversion Program

by Senator Silver

This bill statutorily authorizes another juvenile diversion program in ch. 985, part III, F.S., 1998 Supp. The bill allows a law enforcement agency or a school district to establish a prearrest diversion program so that a juvenile alleged to have committed a delinquent act can have his or her driver's license taken away for up to 90 days.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 118-0

LAW ENFORCEMENT

HB 391 — Department of Law Enforcement

by Law Enforcement & Crime Prevention Committee and Rep. Futch and others (SB 730 by Senator Meek)

This bill makes various changes affecting the Florida Department of Law Enforcement (FDLE)
Specifically, the bill:

- gives the FDLE a role in implementing the "Foley Amendment," which is a federal law designed to facilitate background checks for volunteers and employees of entities dealing with children, the elderly, or those with disabilities;

- ratifies the National Crime Prevention and Privacy Compact and designates the FDLE as the criminal history record repository for purposes of the contract;

- defines the FDLE's role with regard to the CJNET and provides the FDLE with the authority to manage the network and enter into relationships with non-criminal justice entities;

- clarifies that criminal history records pertaining to any of the "dangerous crimes" set forth in s. 907.041, F.S., may not be sealed or expunged;

- more precisely defines the meaning of *previously* being adjudicated guilty of a criminal offense which precludes the sealing or expunging of criminal history records;

- extends the sunset date on the Firearm Purchase Program from October 1, 1999 to June 1, 2000. This program requires instant computerized checks of a potential firearm purchaser's criminal background for $8 per transaction. The bill also permits FDLE to charge less than $8 per transaction if federal funds are obtained; and

- requires FDLE to provide each public defender's office with on-line access to Florida criminal records. It specifies that the cost of establishing and maintaining on-line access shall be borne by the public defender's office.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 37-0; House 117-0

SB 1866 — Use of Force by Law Enforcement or Correctional Officers

by Senator Webster

This bill specifies that the statutory definition of "deadly force" shall not include the discharge of a firearm, loaded with a "less-lethal munition," by a law enforcement officer or correctional officer during and within the scope of his or her official duties. The effect is to make express what is not currently stated in the deadly force definition.

This bill defines "less-lethal munition" to mean "a projectile that is designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person's body."

Finally, the bill creates an affirmative defense for a law enforcement officer or correctional officer in civil or criminal actions arising out of the use of any less-lethal munition in good faith during and within the scope of his or her official duties.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 36-0; House: 111-0

REPORTING REQUIREMENTS

SB 1182 — Medical Treatment of Violent Wounds

by Senator Silver

Existing law requires health care providers to report to the sheriff's department, "a gunshot wound or other wound indicating an act of violence." Failure to report as required is punished as a first degree misdemeanor.

The phrase "other wound" is currently undefined, and as a result, health care providers have found it difficult to determine exactly which injuries must be reported. For example, bruises could be construed as wounds indicating an act of violence. In order to resolve this ambiguity, this Act amends the section to provide that the "other wound" which triggers the reporting requirement must be life-threatening.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 113-0

SENTENCING ENHANCEMENTS AND MINIMUM MANDATORY TERMS OF IMPRISONMENT

CS/CS/HB 113 — Felons/Increased Prison Terms

by Corrections Committee; Crime & Punishment Committee; Rep. Crist and others (CS/SB 194 by Criminal Justice Committee and Senators Webster, Brown-Waite, Campbell, and Bronson)

This bill (Chapter 12, L.O.F.) is commonly referred to as the 10-20-Life law. It changes s. 775.087, F.S., to increase the minimum mandatory sentences for enumerated serious felonies that are committed with a firearm. Minimum mandatory sentences are categorized in three separate groups depending on the possessor's use of the firearm. The minimum mandatory sentences for possession of a firearm while committing one of the delineated offenses are increased if an enumerated felony is committed with a more "dangerous" firearm, which is specified as a machine gun or a semiautomatic that is fitted with a high-capacity, detachable box magazine.

If a person commits one of the listed offenses while simply possessing a "regular" firearm, the person must serve a minimum mandatory sentence of 10 years. If a person commits one of the listed offenses while possessing a more dangerous firearm, the person must serve a minimum mandatory sentence of 15 years. If a person commits one of the listed offenses and during that offense discharges *any* firearm, the person must serve a minimum

mandatory sentence of 20 years. If a person commits one of the listed offenses, and during that offense the person discharges *any* firearm and actually shoots someone inflicting great bodily harm or death, the person must serve a minimum mandatory sentence of 25 years up to life.

The law expands the list of felonies whereupon, if convicted, a possessor of a firearm would receive a minimum mandatory sentence. It includes trafficking in or capital importation of cannabis, cocaine, illegal drugs, phencyclidine, methaqualone, amphetamine, flunitrazepam, or committing any other violation of s. 893.135 (1), F.S., with a firearm. It also includes the offense of possession of a firearm by a convicted felon for purposes of applying minimum mandatory sentences.

The offense of possession of a firearm will now have a minimum mandatory sentence of 3 years. The offenses of aggravated assault while possessing a firearm or destructive device and burglary of a conveyance while possessing a firearm or destructive device will also have a minimum mandatory sentence of 3 years.

The term "possession" is defined for purposes of imposing a minimum mandatory law under this law. The definition reiterates current law that "possession" means having the firearm on one's person. If a firearm is on your "person," the law infers that you intended to use the firearm. For possession to be proven, the state must still prove "knowledge" of the firearm possession by the possessor.

The definition of possession is modified to also include narrow cases of "constructive" possession. To be subject to minimum mandatory sentences under this section, the state must prove that the firearm was within immediate reach and with ready access to the accused. But, to prove constructive possession, the state would also have to prove beyond a reasonable doubt that the offender intended to use the firearm during the commission of the offense.

A state attorney must file a memorandum with the court in every case that a law enforcement agency based a criminal charge on facts demonstrating that the defendant met the criteria of the 10-20-Life law and the defendant did not receive the mandatory sentence. The memoranda must explain why the minimum mandatory sentence was not imposed. The state attorney must also prepare and maintain memoranda in the state's case file that explains any sentencing deviation where a person meets the "criteria" of the 10-20-Life law and does not receive the mandatory minimum prison sentence. Quarterly, each state attorney must submit copies of deviation memoranda to the President of the Florida Prosecuting Attorneys Association, Inc., which must be held for at least 10 years for public review upon a written request.

The bill also provides authority for the Department of Corrections to utilize current fiscal year appropriations, up to $500,000, to provide public service announcements advertising the penalties provided in this act.

This law takes effect on July 1, 1999. However, the provision requiring public service announcements became effective on March 31, 1999, when the Governor signed it into law.
Vote: Senate 39-0; House 106-11

CS/HB 121 — Sentencing/Three Strikes

by Corrections Committee and Rep. Crist and others (CS/SB 1746 by Criminal Justice Committee and Senators Lee, Brown-Waite, and Cowin)

This bill amends s. 775.084, F.S., relating to various repeat offender penalties, to create a new repeat offender classification called the "three-time violent felony offender." A defendant qualifies for classification and sentencing as a three-time violent felony offender if the defendant's current felony offense and at least two prior felony offenses are any of the violent felony offenses enumerated in this provision, including an offense which is a violation of any other jurisdiction, if the elements of such offense are substantially similar to any of the enumerated felony offenses. Qualifying felony offenses include the attempt to commit any of the enumerated felony offenses.

The current offense must have been committed or attempted while the defendant was serving a prison sentence or other sentence imposed as a result of a prior conviction for any of the enumerated felony offenses, or within 5 years after the date of conviction of the last prior, enumerated felony offense, or within 5 years after the defendant's release from a prison sentence, probation, community control, or other sentence imposed as a result of a prior, enumerated felony offense, whichever is later. This construction of the applicable time period relevant to qualifying offenses is also applied to the provisions in s. 775.084, F.S., relating to the habitual felony offender, habitual violent felony offender, and violent career criminal.

This bill also specifies that the three-time violent felony offender provisions do not apply to any crime for which a defendant has received a pardon on the ground of innocence or which has been set aside in any postconviction proceeding.

This bill also provides that, in a separate proceeding, the court shall determine if the defendant is a three-time violent felony offender. The procedure is patterned on the procedure for determining whether a defendant is a habitual felony offender or habitual violent felony offender. However, unlike disposition of cases involving these repeat offender classifications, the court has no discretion in whether to sentence a defendant as a

three-time violent felony offender, if the state attorney pursues such sanction and the defendant is determined to meet the criteria for imposing such sanction.

The penalty imposed is based upon the felony degree of the current offense: for a life felony, a sentence of life imprisonment; for a first degree felony, a 30-year term of imprisonment; for a second degree felony, a 15-year term of imprisonment; and for a third degree felony, a 5-year term of imprisonment. However, it is also provided that nothing in this penalty provision shall prevent a court from imposing a greater sentence of incarceration as authorized by law. The three-time violent felony offender shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.

Relevant to all repeat offender classifications in s. 775.084, F.S., this bill provides that the placing of a person on probation or community control without an adjudication of guilt shall be treated as a prior conviction.

This bill amends s. 775.082, F.S., to expand the type of offenders eligible for enhanced penalties under the prison releasee reoffender classification to include a defendant who commits or attempts to commit specified violent offenses while the defendant was serving a prison sentence or on escape status from a state correctional facility.

This bill also deletes most current reasons for not prosecuting a person as a prison releasee reoffender, except for extenuating circumstances which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be prosecuted as a prison releasee reoffender. It is also specified that the state attorney determines whether such extenuating circumstances exist.

This bill also amends s. 784.07, F.S., which reclassifies the felony degree of aggravated assault or aggravated battery, if such assault or battery was upon a law enforcement officer or other specified person. This bill provides that a defendant whose aggravated assault or aggravated battery offense is reclassified under this section shall also be sentenced to a 3-year mandatory minimum term of imprisonment.

This bill also amends s. 784.08, F.S., which reclassifies the felony degree of aggravated assault or aggravated battery, if such assault or battery was upon a person 65 years of age or older. This bill provides that a defendant whose aggravated assault or aggravated battery offense is reclassified under this section shall also be sentenced to a 3-year mandatory minimum term of imprisonment.

This bill also creates a new section which creates an additional repeat offender classification called a “repeat sexual batterer.” A defendant qualifies for classification and sentencing as a repeat sexual batterer if the defendant’s current felony offense and at least

one prior felony offense is any of the violent felony offenses enumerated in this provision, including an offense which is a violation of any other jurisdiction, if the elements of such offense are substantially similar to any of the enumerated felony offenses. Qualifying felony offenses include the attempt or conspiracy to commit any of the enumerated felony offenses.

There is provided a separate proceeding for determining whether a defendant is a repeat sexual batterer. This proceeding, and the procedures relevant thereto, are identical to those provided for determining whether a defendant is a three-time violent felony offender. Further, the court must impose a repeat sexual batterer sanction, which is a 10-year mandatory minimum term of imprisonment, if the state attorney pursues such sanction and the defendant is determined to meet the criteria for imposing such sanction.

The construction of the applicable time period relevant to qualifying felony offenses for the repeat sexual batterer sanction is similar to the construction applied to other repeat offender classifications, except that there is a 10-year time span rather than the 5-year time span applicable to other repeat offender classifications.

The repeat sexual batterer provisions are also similar to the three-time violent felony offender provisions in exempting from such sanction offenses pardoned on the ground of innocence and offenses set aside in a postconviction proceeding, and providing that the penalty provision does not prevent the court from imposing a greater sentence under any other law.

This bill also amends s. 893.135, F.S., relating to drug trafficking offenses, to provide for 3-year and 7-year mandatory terms for lower-weight trafficking in cannabis, cocaine, phencyclidine, amphetamines and methamphetamines, and flunitrazepam, and 3-year and 15-year mandatory terms for lower-weight trafficking in heroin and other drugs similarly scheduled.

This bill also removes current weight “caps” for highest-weight trafficking. These are first degree felonies requiring life imprisonment. The effect of the amendment is that the actual weight of the drugs trafficked in will be reflected in prosecution and sentencing.

This bill also lowers the threshold for trafficking in cannabis to 25 pounds. Further, this bill authorizes sentencing for cannabis trafficking based upon number of cannabis plants or their weight, and defines “cannabis plant.” This bill requires sentencing to the longest mandatory term for cannabis trafficking, based upon the weight or number of cannabis plants.

This bill also provides that a person sentenced under s. 893.135, F.S., is not eligible for any form of discretionary early release, except for pardon, executive clemency, or

conditional medical release, prior to serving the mandatory minimum term of imprisonment.

This bill also amends s. 943.0535, F.S., relating to criminal records of aliens, to require Clerks of the Court to notify Immigration and Naturalization Services whenever an alien is convicted of or enters a plea to a felony or misdemeanor offense.

This bill also requires that the Executive Office of the Governor place public service announcements in visible local media through the state explaining the penalties provided in this act.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 35-0; House 102-15

CS/HB 183 — Sentencing/Hate Crimes

by Crime & Punishment Committee and Rep. Fasano and others (CS/SB 912 by Criminal Justice Committee and Senator Latvala)

This bill amends s. 775.085, F.S., Florida's hate crimes section, to require the reclassification of the felony or misdemeanor degree of an offense if the commission of such offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability, or advanced age of the victim.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 113-0

SEXUAL PREDATOR TREATMENT

CS/CS/CS/SB 2192 — Civil Commitment of Sexually Violent Predators

by Fiscal Policy Committee; Judiciary Committee; Children & Families Committee; and Senator Klein

The Jimmy Ryce Act of 1998 is transferred to the new ch. 394, part V, F.S., which is the Mental Health chapter of the Florida Statutes. In doing so, it clarifies that procedures and provisions of the Baker Act, which is in Part I of the Mental Health chapter of the statutes, are inapplicable to procedures and provisions of the Jimmy Ryce Act.

It is clarified that it is a statutory duty of public defenders to represent indigent persons who are subject to possible civil commitment under the Jimmy Ryce Act. Public defenders

are able to represent indigent persons as a respondent in these civil proceedings and appeals therefrom. However, they are not able to represent such persons as plaintiffs in any civil or administrative action. This is consistent with the role of public defenders up to the present date.

The definition of a "sexually violent offense" remains the same, except that the offense of "kidnapping of a child under the age of 16" is changed to "kidnapping of a child under the age of 13" to parallel the Florida statute that designates the criminal offense of "kidnapping of a child under the age of 13."

The definition of "total confinement" is clarified to expressly include persons who are serving an incarcerative sentence in the custody of the Department of Corrections or Department of Juvenile Justice and are, for a variety of reasons, in a jail or other secure facility for a temporary period of time and end up being released from one of these other facilities because they reach expiration of sentence at that time.

The law is clarified as to which state attorney would be the designated state attorney in cases where a person has never been convicted of a sexually violent offense in Florida. The bill also clarifies which state attorney has jurisdiction over cases where a person is being incarcerated in Florida pursuant to interstate compact, but was convicted for the qualifying sexually violent offense in a non-Florida jurisdiction.

The time frame in which the agency having jurisdiction over a person who has a conviction for a sexually violent offense must give notice to the Department of Children and Family Services (DCFS) or the multidisciplinary team and state attorney would be changed. Rather than 180 days before the anticipated release from total confinement or anticipated hearing regarding possible release of a qualifying person, notice must be given *at least 365 days prior* to the anticipated release or anticipated hearing for release. The practical effect of extending the time frame in which notice must be given is that the process begins must earlier. The need to detain persons in an "appropriate secure facility" is alleviated if there is still time remaining on a criminal sentence to be served subsequent to a final determination to civilly commit a sexually violent predator. The costs that would be otherwise expended to detain persons with expired criminal sentences are avoided.

The bill narrowly addresses the issue of adversarial probable cause hearings for persons who are subject to the provisions of the Jimmy Ryce Act. The bill has courts deciding, on a case-by-case basis, whether an adversarial probable cause hearing should be conducted under very limited circumstances. This provision does not give an unfettered right to a respondent to have a probable cause hearing. The court can *only* consider to have an adversarial probable cause hearing if: the respondent's criminal sentence has expired; the multidisciplinary team recommended that the respondent be committed; the respondent has not been released from secure custody; the state attorney has filed a petition for

commitment; and the non-commencement of the trial is not because of any delay caused by the respondent.

The bill requires that additional information be provided to the multidisciplinary team for its evaluation and assessment. It requires the following additional information be provided, if available: the person's criminal history, police reports, victim statements, presentence investigation reports, post-sentence investigation reports, any other documents containing facts of the person's criminal incidents, mental health records, mental status records, medical records, and all clinical records and notes concerning the person. All of this information should be accessible under current law, but this provides specificity of the information that is relevant.

The bill specifically authorizes multidisciplinary *teams*, rather than referencing only one team, that may be established by the secretary of the DCFS. This avoids confusion through a literal interpretation of the current law that two persons are sufficient to evaluate and assess the thousands of persons that qualify for such a review by the Department of Children and Family Services.

Clarity is provided on the issue of whether a face-to-face interview with the person subject to the civil commitment law is required. It clarifies that a personal interview will be offered to any person that meets the definition of a sexually violent predator and will be recommended to the state attorney to be the subject of a petition for civil commitment. If the person is willing to be personally interviewed, a team member who is a licensed psychiatrist or licensed psychologist will conduct the personal interview. Upon the refusal of an interview, the multidisciplinary team may still proceed with a recommendation to file a petition without a personal interview.

If a respondent refuses to cooperate with members of the multidisciplinary team, any expert testimony that is offered by a respondent will be limited or excluded. The bill inserts language regarding expert testimony on behalf of a respondent's expert to make it consistent with current Rule 3.202 (e) of the Florida Rules of Criminal Procedure. The person will either be compelled by the court to interview with a multidisciplinary team member or the defendant's expert's testimony will be excluded.

It clarifies that the multidisciplinary team must evaluate and prepare a *written* assessment as to whether the person meets the definition of a sexually violent predator and provide that written assessment along with the recommendation to the state attorney.

A new statutory section relating to immediate releases from total confinement is created. This section would help the DCFS and the state attorneys to expedite cases where, because of unforeseen circumstances, it is anticipated that a person's release from total confinement will become immediate.

Express language in the bill provides that the state attorney would not be charged a filing fee in circuit court for filing a petition seeking involuntary civil commitment of a sexually violent predator.

The bill clarifies that a judge is to order a person to be taken into custody and held in an appropriate secure facility if the person's incarcerative sentence has expired, otherwise the person is to remain in incarceration on his or her criminal sentence.

The bill expressly provides that the Florida Rules of Civil Procedure and the Florida Rules of Evidence apply unless the act specifies something differently.

Some evidentiary provisions are created giving the state attorney the authority to compel testimony or present evidence that would otherwise be excluded in a court proceeding. It allows admissibility of communications between the subject of the proceedings and his or her psychotherapist if the court determines that the communications are relevant to an issue in the proceedings to involuntarily commit a person. The bill also authorizes the admissibility of evidence of "prior bad acts" if the evidence is relevant to proving the person is a sexually violent predator. Hearsay evidence would also be admissible unless the court finds that such evidence is unreliable. The use of hearsay evidence is limited *in trials* in that it cannot be the sole basis for which a person is civilly committed.

In cases of a trial by jury, the bill clarifies that once a trial has been conducted and the jury deliberates, the jury would be required to return a unanimous *verdict*. The law also clarifies as to what would occur if the verdict was not unanimous. If the jury is unable to reach a unanimous verdict, the court will have to declare a mistrial and poll the jury. The law would remain the same if a majority of the jury would find the person is a sexually violent predator. The state attorney would be able to file a new petition within 90 days of the verdict.

Multidisciplinary teams have express authority to receive information and records that are otherwise confidential or privileged in order to determine whether a person is or continues to be a sexually violent predator. The bill provides that such information would not lose its confidential status simply because it is released to the multidisciplinary team.

The bill adds notice requirements in the act. It requires noticing victims in cases of escapes. It also requires noticing the Department of Corrections in cases of escapes and releases when a person is on an active term of community supervision. The Parole Commission is to be noticed in the same scenarios if the person is on an active term of post-prison community supervision that is administered by the Parole Commission.

The Department of Children and Family Services is given the legislative authority to develop and adopt rules for the operation, management, and procedures to be followed to administer the civil commitment of sexually violent predators program in the department.

The Office of Program Policy Analysis and Government Accountability is mandated to conduct a study and report its findings to the Legislature regarding the administration and operation of the Department of Children and Families' Sexually Violent Predator Program created through the Jimmy Ryce Act.

The Department of Corrections will be required to collect data and categorize that data on inmates in the state correctional system that have a "qualifying violent sex offense conviction" that makes them subject to civil commitment proceedings under the Jimmy Ryce Act.

The Criminal Justice Estimating Conference will be required to continually collect information to project the number of persons who will be discharged and be subject to possible civil commitment in order to determine the future need for detention beds and long-term, post-commitment treatment beds.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 116-0

VICTIM ASSISTANCE AND COMPENSATION

CS/HB 1779 — Victim Compensation

by Judiciary Committee and Rep. Pruitt and others (CS/SB 1484 by Criminal Justice Committee and Senators Saunders and Dyer)

The Act amends ch. 960, F.S., for the purpose of making the following changes to current law governing victim rights and compensation:

- The Act amends s. 960.001, F.S., to provide that both the victim of a crime and the state attorney, with the victim's consent, have standing to assert the victim's legal rights.

- The Act broadens s. 960.03(3)(b), F.S., to provide that a victim may be entitled to crimes compensation for injuries caused by boating or flying while under the influence offenses, in addition to current law's provision that compensation may be predicated upon injuries caused by driving under the influence offenses.

- The Act clarifies s. 960.065(1), F.S., which provides that persons eligible for awards include the parent of a deceased victim or intervenor, to also include the deceased's legal guardian.

- The Act broadens s. 960.03(12), F.S., which requires that a victim have been physically injured in order to receive crimes compensation, to also provide that a victim, who suffers only psychiatric or psychological injury as a direct result of a forcible felony, may receive compensation.

- The Act increases the limitations on crimes compensation award eligibility contained in s. 960.065(2), F.S., by providing that victims/intervenors and surviving representatives may not be eligible for crimes compensation if he or she was imprisoned at the time of the crime, has been adjudicated a habitual offender or violent career criminal, or has been adjudicated guilty of a forcible felony.

- The Act increases the Department of Legal Affair's ability to obtain records related to the crime from the victim/intervenor or his or her representative. Current law only enables the department, when determining a claim, to require a victim or intervenor to provide his or her "medical records." The Act deletes the modifier "medical," and thereby, affords the department the authority to obtain all records needed to determine a claim.

- The Act increases the maximum crime compensation award amount from $15,000 for all costs or losses to $25,000. The Act also adds that this maximum amount becomes $50,000 if the department makes a written finding that the victim has suffered a statutorily defined "catastrophic injury."

- The Act amends s. 960.13(6), F.S., to exempt loss of support benefits paid by collateral sources, such as insurance companies, from those benefits which must, under current law, reduce the amount of an award.

- The Act amends s. 960.14(3), F.S., to broaden the department's ability to reconsider a claim and to modify or rescind an order for compensation. Currently, the department may only reconsider, modify, or rescind based on a change in the victim's/intervenor's "medical circumstances." The Act deletes the term "medical," and thereby, enables the department to reconsider, modify, or rescind based upon any change in the victim's/intervenor's circumstances.

- The Act amends s. 960.12, F.S., to increase the maximum amount of an emergency award from $500 to $1,000.

- The Act amends s. 960.28, F.S., which requires the department to pay the cost of certain victims' forensic physical exams, by increasing the department's payment maximum from $150 to $250.

- The Act creates s. 960.198, F.S., to provide that the department can make a one-time relocation award to certain domestic violence crime victims, who need immediate assistance to escape from a domestic violence environment. The maximum award is $1,500 for any one claim and $3,000 for all claims during a person's lifetime.

If approved by the Governor and except as otherwise provided in the Act, this Act takes effect on January 1, 2000.
Vote: Senate 35-0; House 114-0

CS/SB 1870 — Presentence Investigation Reports

by Criminal Justice Committee and Senator Clary

Under current law, a trial court may order the Department of Corrections to prepare a presentence investigation (PSI) report, which includes an offender's criminal, social, education, and economic history, for the purpose of assisting the court in determining the offender's sentence. The PSI contains both confidential and non-confidential information, and is a non-public record available only to the court, counsel for the parties, and entities having a professional interest in the information. Victims cannot review the PSI.

This Act, which is entitled the "Blair Benson Act," amends ss. 945.10 and 960.001, F.S., to provide that the victim may, upon a request made to the state attorney, review a copy of the PSI, from which any confidential information has been redacted. The Act also requires that the victim maintain the PSI's confidentiality, and that the victim not disclose any of its contents, except to the court or state attorney.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 113-0