

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7035 PCB CCJP 10-02 Criminal Justice Repealer

**SPONSOR(S):** Criminal & Civil Justice Policy Council; Holder

**TIED BILLS:** **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Criminal & Civil Justice Policy Council	12 Y, 0 N	Mato	Havlicak
1)	_____	_____	_____	_____
2)	_____	_____	_____	_____
3)	_____	_____	_____	_____
4)	_____	_____	_____	_____
5)	_____	_____	_____	_____

**SUMMARY ANALYSIS**

This bill repeals obsolete and expired statutes and corrects cross references. The bill repeals the following statutes and amends other statutes to delete references to these statutes:

- s. 16.07, F.S., making it a misdemeanor for the Attorney General to receive any fee for defending an offender in court.
- s. 30.11, F.S., which requires a sheriff to live in the county seat or within two miles of county seat.
- s. 944.293, F.S., an outdated restoration of civil rights provision, which is now done automatically.
- s. 957.125, F.S., which authorized the Correctional Privatization Commission to build/operate three youthful offender facilities and then give two of them to the Department of Juvenile Justice to operate. The Correctional Privatization Commission was eliminated in 2004. The Department of Juvenile Justice no longer operates these facilities. The facilities are maintained by the Department of Corrections.
- s. 985.4891, F.S., which relates to the Sheriff's Training and Respect program.
- The bill removes a definition in s. 948.001, F.S., Criminal Quarantine Community Control. This type of supervision was established in 1993 as a sentencing disposition for offenders sentenced for criminal transmission of HIV. The Department of Corrections reports that since the statutes were enacted in 1993, no one has been sentenced to criminal quarantine community control for any offense.
- The bill amends s. 948.035, F.S., to remove Community Residential Drug Punishment Centers. These centers have never been funded and do not exist. No one has ever been sentenced to these centers.

The bill appears to have no fiscal impact on state or local government.

The bill takes effect July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

There are many criminal justice statutes which are out of date or not in use. This bill repeals these statutes and amends others that contain a reference to the repealed statutes. The following statutes are affected:

##### **Prohibition on collecting fee for defending**

Section 16.07, F.S., makes it a misdemeanor in office for the Attorney General to take or receive any fee for defending any supposed offender in any of the courts. This law was enacted in 1845, but is no longer used.

##### *Effect of the Bill*

This bill would repeal s.16.07, F.S., because it is obsolete.

##### **Sheriff's Place of Residence**

Section 30.11, F.S., requires the sheriff or his or her deputy to reside within two miles of the county seat. This law was enacted in 1851, but is no longer used.

##### *Effect of the Bill*

The bill would repeal s.30.11, F.S., because it is obsolete.

##### **Criminal Quarantine Community Control**

Section 948.001, F.S., defines "criminal quarantine community control" as "intensive supervision, by officers with restricted caseloads, with a condition of 24-hour-per-day electronic monitoring, and a condition of confinement to a designated residence during designated hours." This type of supervision was established in 1993 as a sentencing disposition for offenders sentenced for criminal transmission of HIV. Section 775.0877, F.S., establishes the crime of criminal transmission of HIV, which is currently a third degree felony punishable by a term of criminal quarantine community control.

The Department of Corrections reports that since the statutes were enacted in 1993, no one has been sentenced to criminal quarantine community control for any offense. Those convicted of criminal transmission of HIV have historically been sentenced to regular probation. Thus, this type of supervision has never existed operationally.

The following statutes contain references to Criminal Quarantine Community Control. Section 384.34, F.S., sets penalties. Section 796.08, F.S., relates to screening for HIV and sexually transmissible

diseases and provides penalties. Section 921.187, F.S., provides sentencing alternatives that may be used in criminal sentencing to best suit the needs of the community. Section 775.0877, F.S., relates to the criminal transmission of HIV and its penalties.

*Effect of the Bill*

The bill removes references to criminal quarantine community control throughout Florida Statutes. Additionally, the bill specifies that criminal transmission of HIV is a third degree felony punishable as provided in ss. 775.082, 775.083 and 775.084, F.S.

The following statutes are amended to remove references to Criminal Quarantine Community Control: ss. 948.001, 384.34, 775.0877, 796.08, 948.101, 948.11, and 921.187, F.S.

**Community Residential Drug Punishment Centers**

Section 948.034, F.S., defines community residential drug punishment centers. These centers allow for probation instead of prison, but require the offender to stay at the community center. These centers were never funded and do not exist according to the Department of Corrections. No one has ever been sentenced to one of these centers.

The following statutes contain references to the community residential drug punishment centers: s. 893.13, F.S., relating to penalties for Drug Abuse; s. 921.187, F.S., providing sentencing alternatives that may be used in criminal sentencing to best suit the needs of the community; s. 984.04, F.S., relating to the period of probation for drug offenses; and s. 948.0345, F.S., allowing the court to assign additional community service in lieu of a fine that would have been levied under s. 948.034, F.S.

*Effect of the Bill*

Section 948.034, F.S., relating to community residential drug punishment centers is repealed.

The following sections are amended to remove references to the community residential drug punishment centers: ss. 893.13, 921.187, and 984.04, F.S. The bill repeals s. 948.0345, F.S., since it becomes obsolete with the repeal of s. 948.034, F.S.

**Rights Restoration Process**

Currently, Section 944.293, F.S., requires the Department of Corrections, prior to the discharge of an offender from supervision, to obtain from the Governor the application and other necessary forms for restoring civil rights; to assist the offender in completing the forms; and to ensure that the application and other forms are forwarded to the Governor.

In years past, the restoration of civil rights process required persons to fill out and submit paper applications to the Florida Parole Commission, an agent of the Clemency Board. However, the restoration of civil rights process has undergone changes and is now fully automated. In 2001, the Clemency Board eliminated the requirement for inmates to file an application and instead a computer-generated list of felons eligible for restoration is sent directly to the Commission by the Department of Corrections. The Clemency Board also revised the rules in 2001 to make more offenders eligible for restoration without a hearing. Since 2001, the Department reports that it has electronically submitted the names of inmates released from incarceration and offenders who have completed supervision to the Clemency Administration Office in the Florida Parole Commission. These lists are submitted on a monthly basis and serve as electronic restoration of civil rights applications. Due to these current practices, s. 944.293, F.S., no longer accurately accounts for the department's process in assisting inmates and offenders with restoration of civil rights.

*Effect of the Bill*

The bill repeals s. 944.293, F.S., as it is obsolete.

**Correctional Privatization Commission**

Section 957.125, F.S., authorized the Correctional Privatization Commission to build/operate three youthful offender facilities and later, give two of them to the Department of Juvenile Justice to operate. Department of Juvenile Justice no longer operates these facilities. The facilities are maintained by the

Department of Corrections. The Correctional Privatization Commission was eliminated in 2004 by ch. 2004-248, L.O.F.

*Effect of the Bill*

Section 957.125, F.S., is repealed because it is obsolete.

**Sheriff's Training and Respect Program**

Section 985.4891 F.S., authorizes a county or municipal law enforcement agency to implement and operate a sheriff's training and respect program to provide intensive education, physical training, and rehabilitation program for certain youthful offenders. The Department of Juvenile Justice indicates that these programs do not exist.

*Effect of the Bill*

This bill repeals s. 985.4891, F.S., because it is obsolete.

The following sections are amended to remove references to the Sherriff's Training and Respect Program: ss. 958.046, 985.445, 985.47, 985.483, 985.494, and 985.645, F.S.

**B. SECTION DIRECTORY:**

- Section 1 – repeals s. 16.07, F.S., relating to prohibition on collecting fee for defending.
- Section 2 – repeals s. 30.11, F.S., relating to sheriff's place of residence.
- Section 3 – amends s. 384.34, F.S., relating to penalties for sexually transmitted diseases.
- Section 4 – amends s. 775.0877, F.S., relating to penalties for sexually transmitted diseases.
- Section 5 – amends s. 796.08, F.S., relating to screening for HIV and sexually transmitted diseases.
- Section 6 – amends s. 893.13, F.S., relating to prohibited acts.
- Section 7 – amends s. 921.187, F.S., relating to disposition and sentencing; alternatives; restitution.
- Section 8 – repeals s. 944.293, F.S., relating to initiation of restoration of civil rights.
- Section 9 – amends s. 948.001, F.S., removing the definition of criminal quarantine community control.
- Section 10 – repeals s. 948.034, F.S., relating to community residential drug treatment centers.
- Section 11 – repeals s. 948.0345, F.S., relating to community service alternative to fines.
- Section 12 – amends s. 948.04, F.S., removing a reference to community residential drug punishment centers.
- Section 13 – amends s. 948.101, F.S., relating to terms and conditions of community control.
- Section 14 – amends s. 948.11, F.S., relating to electronic monitoring devices.
- Section 15 – repeals s. 957.125, F.S., relating to the Correctional Privatization Commission.
- Section 16 – repeals s. 985.4891, F.S., relating to sheriff's training and respect programs.
- Section 17 – amends s. 958.046, F.S., relating to placement in county-operated boot camp programs for youthful offenders.
- Section 18 – amends s. 985.445, F.S., relating to cases involving grand theft of a motor vehicle.
- Section 19 – amends s. 985.47, F.S., relating to serious or habitual juvenile offender.
- Section 20 – amends s. 985.483, F.S., relating to intensive residential treatment program for offenders less than 13 years of age.
- Section 21 – amends 985.494, F.S., relating to commitment programs for juvenile felony offenders.
- Section 22 – amends s. 985.645, F.S., relating to protective action response.
- Section 23 – Provides and effective date of July 1, 2010.

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

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

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 2, 2010, the Criminal & Civil Justice Policy Council adopted an amendment that removed references to Criminal Quarantine Community Control in ss. 948.101 and 948.11, F.S.