

CORRECTIONS

CS/CS/SB 1792 — Department of Corrections

by Criminal and Civil Justice Appropriations Committee; Transportation Committee; Criminal Justice Committee; and Senators Argenziano and Crist

This bill authorizes the Department of Corrections (DOC) to designate DOC-owned vehicles as authorized emergency vehicles and to operate a siren on such vehicles. It also clarifies that proceeds from the employee canteen and from the recycling program can be a source for funding the Employee Benefit Trust Fund, expands permissible uses of the fund to include employee appreciation programs and activities, and requires centralized oversight and reporting of each institution's fund.

The bill authorizes judges to issue notices to appear to offenders who are alleged to have violated probation or community control, rather than having them arrested and jailed. A notice to appear could be issued at the judge's discretion, but is not authorized for offenders who have committed one of the Anti-Murder Act qualifying offenses. The notice may be served by a probation officer, and the probationary period is tolled when a notice is issued or a warrantless arrest is made.

The bill states that each judicial circuit's chief judge may direct DOC to report violations of community supervision that do not involve a new criminal offense by using a notification letter of technical violation. DOC is also required to provide a disposition recommendation when it is determined that a violation occurred, but the court can specify the form of the report or waive the requirement entirely. If authorized by the court, DOC can use e-mail or facsimile transmission to submit affidavits, violation reports, notification letters, and other documents.

The bill directs DOC to study the effect of removing statutory caseload restrictions that apply to certain categories of offenders and managing probation officer caseloads based upon an assessment of risk. The study results must be reported to the Legislature and the Governor.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 37-1; House 115-0

CRIMINAL OFFENSES AND PENALTIES

CS/SB 184 — Strangulation/Domestic Battery

by Criminal Justice Committee and Senators Dockery, Fasano, and Lynn

The bill amends s. 784.041, F.S., to provide that a person commits domestic battery by strangulation, a Level 6 third degree felony, if the person knowingly and intentionally, against the will of another, impedes the normal breathing or circulation of the blood of a family or

household member or of a person with whom he or she is in a dating relationship, so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the other person's nose or mouth. The bill also defines "family or household member" and "dating relationship," and exempts statutorily-authorized medical diagnosis, treatment, or prescription.

If approved by the Governor, these provisions take effect October 1, 2007.

Vote: Senate 40-0; House 117-0

CS/HB 339 — Federal Law Enforcement Officers

by Safety and Security Council and Rep. Scionti and others (SB 614 by Senator Crist)

The bill redefines the term "law enforcement officer" under s. 784.07, F.S., to include federal law enforcement officers. The effect of this change is that provisions of s. 784.07, F.S., that reclassify the degree of assault or battery offenses committed upon law enforcement officers and others, provide for a five-year mandatory minimum term when the offense is aggravated battery, and provide for a three-year mandatory minimum term when the offense is aggravated assault, will apply to assault and battery offenses upon federal law enforcement officers. Various mandatory minimum terms relevant to battery with a firearm, destructive device, semiautomatic firearm and its high-capacity detachable box magazine, or a machine gun will also apply.

The bill also amends s. 843.08, F.S., which punishes falsely personating a law enforcement officer and others, to also punish falsely personating a federal law enforcement officer. This false personation is a third degree felony. If this false personation occurs during the course of the commission of a felony, it is a second degree felony, except if such commission results in the death or personal injury of another human being, in which case it is a first degree felony.

If approved by the Governor, these provisions take effect July 1, 2007.

Vote: Senate 40-0; House 112-0

HB 409 — Criminal Sentencing

by Rep. L. Garcia and others (SB 566 by Senators Rich and Crist)

This bill adds the offense of attempted felony murder to the list of offenses committed against law enforcement officers or other similar officials which are subject to an increased and certain penalty. Under such circumstances, a person convicted of attempted felony murder is subject to a 2.5 sentencing point multiplier under the Criminal Punishment Code. The bill also increases the sentencing multiplier in the case of second-degree murder of a law enforcement officer or other similar official to 2.5, from the existing multiplier of 2.0. As a result, this bill increases the lowest permissible sentence that can be imposed against a person for conviction of one of these violent offenses against a law enforcement officer or similar official.

The bill also adds attempted felony murder committed against a law enforcement officer or other similar official to those crimes that render an inmate ineligible for control release.

This bill substantially amends ss. 775.0823, 921.0024, and 947.146, F.S.

If approved by the Governor, these provisions take effect October 1, 2007.

Vote: Senate 40-0; House 114-0

CS/HB 449 — Criminal Offenses/State of Emergency

by Safety and Security Council and Rep. Snyder and others (CS/SB 214 by Military Affairs and Domestic Security Committee and Senators Aronberg and Lynn)

This bill reclassifies the felony degree of certain burglary and theft offenses if any of them were committed within a county that is subject to a state of emergency declared by the Governor under ch. 252, F.S., after the declaration of emergency is made, and the perpetration of the offense was facilitated by conditions arising from the emergency. The term “conditions arising from the emergency” means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel.

It also creates two new felony offenses, burglary of an authorized emergency vehicle and theft of law enforcement equipment valued at more than \$300 from an authorized emergency vehicle.

The offense severity ranking level of the burglary and theft offenses is increased by one level if the offenses are reclassified.

A person arrested for committing any of these offenses within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first-appearance hearing.

This bill substantially amends ss. 810.02 and 812.014, F.S.

If approved by the Governor, these provisions take effect July 1, 2007.

Vote: Senate 37-0; House 113-0

CS/SB 1004 — Criminal Justice/Cybercrimes Against Children

by Criminal and Civil Justice Appropriations Committee and Senators Argenziano and Aronberg

This is the Cybercrimes Against Children Act of 2007. It enhances penalties for possession of certain types of child pornography and expands the scope of s. 847.0135, F.S., concerning use of the Internet to influence a child to commit sexual acts. New felony offenses are created for misrepresenting age in the course of committing an offense under s. 847.0135(3), F.S., and for traveling to meet a minor to engage in unlawful sexual conduct with a child or person thought to be a child, or to persuade the child’s guardian to consent to the child’s participation in sexual conduct. In addition, statutes are updated to address newer technologies that are used to facilitate sexual abuse of children and to transfer images of sexual abuse of children.

As of October 1, 2007, sexual predators and sexual offenders will be required to register any e-mail address and instant message name with the Florida Department of Law Enforcement (FDLE) prior to use and to update any changes. FDLE must establish a method for online registration and is authorized to provide the information to social networking websites, which can use the information to screen for those users.

The legislation also expands the investigative and prosecutorial authority of the Office of Statewide Prosecution (OSP) and the subject matter jurisdiction of the statewide grand jury to include violations of ch. 827, F.S., (concerning abuse of children) when the crime is facilitated by or connected to use of the Internet or an electronic data storage or transmission device, and by deeming that crimes facilitated by or connected to use of the Internet occur simultaneously in every Florida judicial circuit. It authorizes prosecutors to charge an act that violates s. 827.071, F.S., (relating to sexual performance of a child) or s. 847.0135, F.S., (relating to child pornography) under any applicable statute, including one with greater penalties. It also authorizes alternative venues for trial of any crime facilitated by communication by mail, telephone, newspaper, radio, television, Internet, or other means of electronic data communication.

This bill amends ss. 16.56, 775.21, 827.071, 847.0135, 905.34, 910.15, 921.0022, 943.0435, 944.606, and 944.607 and creates ss. 775.0847 and 943.0437, F.S.

If approved by the Governor, these provisions take effect October 1, 2007.

Vote: Senate 39-0; House 113-0

CS/CS/SB 1030 — Court Costs

by Judiciary Committee; Criminal Justice Committee; and Senators Argenziano and Bennett

The bill increases court costs in the amount of one dollar (\$1) assessed against a person who is found to have violated a criminal law or committed certain civil infractions. The bill also increases, by the same amount, the assessment to be remitted to the Department of Revenue from every bond estreature or forfeited bail bond.

The additional dollar is earmarked for the Florida Department of Law Enforcement's Criminal Justice Standards and Training Trust Fund.

The bill also requires a person seeking sealing or expunction of his or her criminal history records to pay all outstanding fines and court costs, unless the court makes a finding otherwise.

This bill substantially amends ss. 318.18, 327.73, 938.01, and 938.30, F.S.

If approved by the Governor, these provisions take effect July 1, 2007.

Vote: Senate 39-0; House 117-0

LAW ENFORCEMENT

CS/HB 73 — Florida Highway Patrol Sergeant Nicholas Sottile Act

by Government Efficiency and Accountability Council and Rep. Allen and others (CS/SB 128 by Governmental Operations Committee and Senators Fasano, Posey, Oelrich, Joyner, Atwater, Wise, Bennett, Haridopolos, Ring, Peaden, Aronberg, Lynn, Alexander, Dockery, Hill, Dawson, Bullard, Wilson, Diaz de la Portilla, Lawson, and Baker)

The bill provides that any state law enforcement agency that has 1,200 or more officers must be in a bargaining unit that is separate from officers in other state law enforcement agencies. The bill effectively separates the Florida Highway Patrol officers from the general state law enforcement unit currently represented by the Police Benevolent Association. The bill would also have the effect of superseding the decision by the Public Employees Relations Commission that these officers should be joined with officers in other agencies in one state law enforcement bargaining unit.

The bill further provides that, if a new unit is created, a question concerning representation is not deemed to have arisen regarding the new unit or the existing unit.

If approved by the Governor, these provisions take effect July 1, 2007.

Vote: Senate 37-0; House 109-0

CS/HB 123 — Law Enforcement and Correctional Officers

by Safety and Security Council and Rep. H. Gibson and others (CS/SB 492 by Criminal Justice Committee and Senator Fasano)

The bill amends current law to require any political subdivision that initiates or receives a complaint against a law enforcement or correctional officer to forward that complaint to the officer's employing agency. This must be done within 5 business days.

The term "political subdivision" is defined by the bill, for purposes of this requirement, as: a separate agency or unit of government created or established by law or ordinance and the officers thereof and includes, but is not limited to, an authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

The bill also amends s. 112.532, F.S., regarding the rights of a law enforcement and correctional officer while under investigation or under interrogation by his or her own agency.

The bill requires the investigating agency to interview all identifiable witnesses, whenever possible, and provide the officer with all witness statements and the complaint, before interviewing the accused officer. There is a provision for a tolling of the limitation of time on investigations when the Governor has declared a state of emergency. Also, the officer under investigation can waive the right to review the complaint and witness statements prior to his or her interview.

This bill substantially amends ss. 112.532 and 112.533, F.S.

If approved by the Governor, these provisions take effect July 1, 2007.

Vote: Senate 39-0; House 118-0

HB 143 — Criminal Justice Commission

by Rep. Dean and others (SB 1774 by Senator Crist)

In 2004, Congress passed the “Law Enforcement Officers Safety Act of 2004,” commonly known as HR 218. According to the act, notwithstanding any other provision of the law of any state or political subdivision, an individual who is a “qualified law enforcement officer” or “qualified retired law enforcement officer” as defined by the act and who is carrying specified identification is authorized to carry a concealed firearm. Under this act, the definition of the term “qualified retired law enforcement officer” includes a requirement that the person has met the state’s standards for training and qualification for active law enforcement officers to carry firearms.

This bill requires the Criminal Justice Standards and Training Commission within the Florida Department of Law Enforcement to adopt rules establishing the manner in which the federal Law Enforcement Officers Safety Act of 2004 will be implemented in the state. The bill requires the commission to develop and authorize a uniform proficiency verification card to be issued to persons who achieve a passing score on the firing range testing component of the minimum firearms proficiency course for active law enforcement officers. The card will indicate the person’s name and the date on which he or she achieved the passing score. Such a card will be issued only by firearms instructors certified by the commission.

The bill allows facilities operating firing ranges which use certified firearms instructors to open the firing range to other persons who wish to demonstrate their ability to achieve a passing score on the firing range proficiency course. All costs associated with the demonstration by any such person that he or she meets the requirements of the firing range testing component of the minimum firearms proficiency course will be at the expense of the person being tested.

If approved by the Governor, these provisions take effect July 1, 2007.

Vote: Senate 38-0; House 114-0

HB 547 — Law Enforcement Personnel/Employment

by Rep. Patterson (SB 472 by Senators Baker and Lynn)

The bill requires a law enforcement officer, correctional officer, or correctional probation officer to successfully pass a physical examination in order to presumptively claim that his or her tuberculosis, heart disease, or hypertension resulting in total or partial disability or death was accidental and suffered in the line of duty. It also authorizes an agency that employs law enforcement personnel to establish standards regarding the use of tobacco.

If approved by the Governor, these provisions take effect October 1, 2007.

Vote: Senate 36-0; House 114-0

HB 723 — Correctional/Law Enforcement Officer

by Rep. N. Thompson and others (SB 690 by Senator Haridopolos)

Florida statutes grant law enforcement and correctional officers certain rights when the officer is being investigated by his or her employing agency. Section 112.533, F.S., currently requires law enforcement and correctional agencies to establish procedures for the receipt, investigation, and determination of complaints against law enforcement and correctional officers. Although these procedures vary from agency to agency, most agencies generate some type of investigative report summarizing the complaint and the agency's findings. This bill requires investigators to verify, pursuant to s. 92.525, F.S., that the contents of the report are true and accurate based upon the officer's information and belief.

The bill further requires the officer who is under investigation to make any statements made during the course of the investigation, regardless of form, under oath.

This bill substantially amends s. 112.533, F.S.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 39-0; House 113-0

CS/SB 816 — OGSR/Public Records/Law Enforcement Agencies

by Governmental Operations Committee; and Criminal Justice Committee

Section 119.071(2)(c)2., F.S., provides that a request of a law enforcement agency to inspect or copy a public record that is in the custody of another agency, the custodian's response to the request, and any information that would identify the public record that was requested by the law enforcement agency or provided by the custodian are exempt from public records requirements during the period in which the information constitutes active criminal intelligence or investigative information.

This bill makes some organizational changes for clarity, including transferring existing retroactive language to a new sub-subparagraph; clarifies that any information that would identify whether a law enforcement agency has requested or received that public record is protected; and deletes the repeal of the exemption.

If approved by the Governor, these provisions take effect October 1, 2007.

Vote: Senate 40-0; House 116-0

SEXUAL PREDATORS AND OFFENDERS

CS/SB 988 — High-Risk Offenders

by Criminal Justice Committee and Senators Argenziano and Crist

This bill amends Jessica Lunsford Act provisions that require background checks for contractors on school grounds. It specifies offenses that disqualify a noninstructional contractor from being on school grounds when students are present. The bill clarifies that contractors who contract directly with schools must be screened. It provides an exemption from the screening requirement for a non-instructional contractor who: (1) is under direct line-of-sight supervision of a person who meets the screening requirements; (2) is already required, and has, undergone a level 2 background screening; (3) is a law enforcement officer assigned or dispatched to school grounds, or an employee or medical director of an ambulance provider; (4) works and remains in an area separated from students by a 6-foot chain link fence; or (5) provides pick-up or delivery services to school grounds. The bill also exempts instructional personnel who work with children with developmental disabilities or who are child care personnel if they have undergone a required level 2 background screening in the previous five years, meet the standards, and have fingerprints retained by FDLE. Exempt contractors are subject to a search of the state and national registry of sexual predators and sexual offenders at no charge to the contractor.

The fingerprint-based background check must be performed at least every five years and may be paid for by the school board, the school, or the contractor. Any fee charged by a school board may not exceed 30 percent of the total costs charged by FDLE and the FBI for the check. FDLE is required to implement an Internet-based system for school districts to share the results of the background checks. A contractor who has submitted to a fingerprint-based background check in another district must report that fact to the district where he or she intends to work. School districts must use the shared system to verify the information at no charge to the contractor.

The bill requires a contractor who is arrested for a disqualifying offense to report the arrest to the employer or primary contractor and the school district within 48 hours. If a contractor has been arrested for a qualifying offense, it is a third-degree felony for the contractor to willfully fail to report the arrest or for an employer or primary contractor to knowingly authorize the contractor to be on school grounds when students are present.

If a school district determines that a contractor is to be denied access to school grounds, the bill requires that the contractor be notified of the basis for denial. The only basis for contesting the denial is mistaken identity and misinterpretation of an offense from another jurisdiction.

The bill provides immunity from civil and criminal liability for employees of school districts and schools who share background check information in good faith. It also provides that the new or amended portions of the School Code are not intended to create a new duty of care or basis of liability, or to create a private cause of action.

In addition, the bill requires sexual predators and sexual offenders to obtain a driver's license or identification card that has a designated marking on the front. Possession of a card on which the markings are not displayed or have been altered will be unlawful after February 1, 2008.

If approved by the Governor, these provisions take effect July 1, 2007, except as otherwise provided.

Vote: Senate 39-0; House 115-1

CS/CS/SB 1604 — Sexual Offenders and Predators

by Judiciary Committee; Criminal Justice Committee; and Senator Argenziano

The bill makes changes to Florida's laws regarding registration of sexual predators and sexual offenders to comply with the federal "Adam Walsh Child Protection and Safety Act of 2006" ("Adam Walsh Act"), Pub.L. No. 109-248 (2007), as well as making other changes necessary to effectuate implementation of the registration laws. The major features of the bill include:

- Expanding the population of offenders required to register to include some juveniles adjudicated delinquent of certain crimes. A juvenile who, on or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting or conspiring to commit, sexual battery or some types of lewd battery or lewd molestation or similar offenses in another jurisdiction when the juvenile was 14 years of age or older at the time of the offense is required to register as a sexual offender.
- Providing that a person who was or will be convicted or adjudicated delinquent of a violation of s. 794.011, F.S. (sexual battery), or s. 800.04, F.S. (lewd offenses), or who has committed such violation for which adjudication of guilt was or will be withheld, may move or petition a court for removal of the requirement to register as a sexual predator or sexual offender if other initial criteria are met and removal of the registration requirement will not conflict with federal law. The court may grant the motion or petition if the person meets initial criteria and removal of the registration requirement will not conflict with federal law. If the person is required to register pursuant to the Adam Walsh Act, the court will have to make a finding that consensual sexual conduct occurred so that the removal of the registration requirement does not conflict with the federal act.
- Sexual predators and certain sexual offenders will be required to report in person at the sheriff's office every three months, rather than every six months.
- Sexual predators and certain sexual offenders will be required to maintain registration for life without the possibility of petitioning for removal of the registration requirement.
- Local law enforcement agencies, the Department of Corrections, and the Department of Juvenile Justice will be required to report to the Florida Department of Law Enforcement (FDLE) the failure of a sexual predator or sexual offender to comply with registration requirements.
- The FDLE will be required to develop and maintain a system to provide automatic notification of registration information regarding sexual predators and sexual offenders to the public. Schools, public housing agencies, agencies responsible for conducting employment related background checks, social service entities responsible for protecting minors in the child welfare system, and certain other organizations will have access to this system.

If approved by the Governor, these provisions take effect July 1, 2007.

Vote: Senate 39-0; House 118-0

VICTIMS AND PUBLIC PROTECTION

CS/CS/SB 146 — Anti-Murder Act/Violent Offenders

by Criminal and Civil Justice Appropriations Committee; Criminal Justice Committee; and Senators Dockery, Fasano, Argenziano, Lynn, and Crist

The bill (Chapter 2007-2, L.O.F.) addresses felony probation and community control violations by designating certain alleged probation or community control violators as violent felony offenders of special concern. A violent felony offender of special concern who is alleged to have violated felony probation or community control, other than a failure to pay costs, fines, or restitution, cannot be released from jail until the court has held a hearing to determine whether supervision was violated. If supervision was violated, the court must determine and enter a written finding as to whether the violent felony offender of special concern is a danger to the community. The court must also determine whether to revoke or continue the probation or community control. If it is determined that the violator is a danger to the community, the court must revoke probation or community control and sentence the offender according to the Criminal Punishment Code, up to the statutory maximum or longer if permitted by law. The bill increases Criminal Punishment Code points for a violent felony offender of special concern to an additional 24 points for a new felony conviction and an additional 12 points for other violations.

The bill amends ss. 921.0024 and 948.06 and creates ss. 903.0351 and 948.064, F.S.

These provisions were approved by the Governor and took effect March 12, 2007.

Vote: Senate 40-0; House 116-0

CS/HB 989 — Crime Victims

by Safety and Security Council and Rep. Snyder and others (CS/CS/SB 642 by Criminal and Civil Justice Appropriations Committee; Criminal Justice Committee; and Senators Fasano, Crist, and Joyner)

This bill expands the rights and services for victims of sexual offenses, including sexual battery and lewd or lascivious offenses. Several of the proposed changes to ch. 960, F.S., are necessary to receive federal grant funding for law enforcement programs, victim advocacy services, and enhanced prosecution through the Violence Against Women Act. The bill expands the rights and services for victims of sexual offenses as follows:

- Allows a victim advocate to be present (at a sexual offense victim's request) during the forensic medical exam;

- Provides that a criminal justice official (law enforcement officer, prosecuting attorney, or other government official) may not ask for or require a lie detector test to be taken by a victim before a law enforcement agency will investigate a sexual offense allegation;
- Requires the court to order prescribed defendants to undergo an HIV test within 48 hours after the court orders such testing (there is currently no required time limitation);
- Requires reimbursement from the Crime Victims' Services Office for the victim's initial forensic medical exam, regardless of whether the sexual offense victim reported the offense or cooperated with the investigation (which is currently required);
- Increases the forensic medical exam reimbursement maximum amount from \$250 to \$500; and
- Permits a crime victim, who is a Florida resident, to be compensated when the crime occurs outside Florida, whether in another state or outside the United States, if such crime would otherwise be compensable had it occurred in Florida.

This bill substantially amends ss. 960.001, 960.003, 960.03, and 960.28, F.S.

If approved by the Governor, these provisions take effect July 1, 2007.

Vote: Senate 38-0; House 113-0

