

CONTROLLED SUBSTANCES

CS/HB 173 — Controlled Substances

by Safety and Security Council and Rep. N. Thompson and others (CS/SB 390 by Criminal Justice Committee and Senators Oelrich, Gaetz, and Lynn)

The primary purpose of the bill is to address the illegal growing of marijuana through indoor grow operations. The bill defines "cultivating," a term of relevance to indoor grow operations. The bill also creates several felony offenses, which are ranked within the offense-severity ranking chart of the Criminal Punishment Code:

- A third-degree felony (level 5) to own, lease, or rent any place, structure, or part thereof, trailer, or other conveyance with the knowledge that it will be used for the purpose of manufacturing a controlled substance intended for sale or distribution to another.
- A second-degree felony (level 7) to knowingly be in actual or constructive possession of any place, structure, or part thereof, trailer, or other conveyance with the knowledge that it will be used for the purpose of trafficking in a controlled substance, selling a controlled substance, or manufacturing a controlled substance intended for sale or distribution to another.
- A first-degree felony (level 8) to be in actual or constructive possession of a place, structure, trailer, or conveyance with the knowledge it is being used to manufacture a controlled substance intended for sale or distribution to another, if the violator knew or should have known that a minor is present or resides in the place, structure, trailer, or conveyance.

The bill also provides that proof of the possession of 25 or more cannabis plants constitutes prima facie evidence that the cannabis is intended for sale or distribution.

The bill also provides that in the prosecution of an offense involving the manufacture of a controlled substance, a photograph or video recording of the manufacturing equipment used in committing the offense may be introduced as competent evidence of the existence and use of the equipment and is admissible in the prosecution of the offense to the same extent as if the property were introduced as evidence.

Finally, the bill provides that after a law enforcement agency documents the manufacturing equipment by photography or video recording, the agency may destroy the manufacturing equipment on site and leave it in disrepair. The law enforcement agency destroying the equipment is immune from civil liability for the destruction of the equipment. The destruction of

the equipment must be recorded by the supervising law enforcement officer and records must be maintained for 24 months.

If approved by the Governor, these provisions take effect July 1, 2008.

Vote: Senate 36-0; House 115-1

CS/HB 1363 — Controlled Substances

by Safety and Security Council and Rep. Brandenburg and others (CS/SB 340 by Criminal Justice Committee and Senators Lynn and Dockery)

The bill schedules *Salvia divinorum* and Salvinorin A as Schedule I controlled substances. *Salvia divinorum*, a relatively rare sage plant, and Salvinorin A, the plant's main psychoactive component, are being used recreationally in the United States for their hallucinogenic-like effects. The bill provides for an exception to the scheduling of *Salvia divinorum* and Salvinorin A: any drug product approved by the U.S. Food and Drug Administration which contains either of these substances or their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers.

If approved by the Governor, these provisions take effect July 1, 2008.

Vote: Senate 39-0; House 109-4

CORRECTIONS

CS/CS/SB 2000 — Sentencing/Justice and Correctional Policies

by Criminal and Civil Justice Appropriations Committee; Criminal Justice Committee; and Senator Dockery

The bill creates the Correctional Policy Advisory Council within the Legislature. The Council is a 10-member advisory body that is abolished July 1, 2011. The purpose of the council is to evaluate and make findings and recommendations on or before January 15 of each year regarding correctional policies, justice reinvestment initiatives, and laws affecting or applicable to corrections. All recommendations must be consistent with the goals of protecting public safety and providing for the most cost-effective and efficient use of correctional resources to the extent that such use is not in conflict with the public safety goal.

The council consists of the following members: two senators; two representatives; a representative from the victim advocacy profession appointed by the Attorney general; the Attorney General or designee; the Secretary of Corrections or designee; one state attorney, one public defender, and one private attorney appointed by the Governor. Council members serve without compensation but are entitled to per diem and travel expenses. The Office of Legislative Services provides administrative staff support and EDR provides technical and substantive staff support.

The council contains a Justice Reinvestment Subcommittee. The subcommittee is tasked with reviewing the availability of alternative sanctions for low-level drug and property offenders, the effectiveness of mental health and substance abuse diversion programs, the effectiveness of prison reentry practices, the feasibility of implementing a progressive sanctions system for probationers, the impact of jail overcrowding on the effectiveness of local alternative programs and sanctions, the effectiveness of supervision strategies, and the delivery of supervision and programs in neighborhoods that have a high proportion of supervised offenders. The council is required to develop a technical assistance agreement with the Justice Center of the Council of State Governments to work with the subcommittee to accomplish its duties.

If approved by the Governor, these provisions take effect July 1, 2008.

Vote: Senate 39-0; House 117-0

HB 7137 — Department of Corrections

by Safety and Security Council and Rep. Adams (CS/CS/CS/CS/SB 1614 by Criminal and Civil Justice Appropriations Committee; Judiciary Committee; Children, Families, and Elder Affairs Committee; and Criminal Justice Committee)

This bill addresses a number of issues within the department's jurisdiction. Through its principal provisions, the bill:

- Provides that an administrative law judge may appoint a private pro bono attorney in a continued placement proceeding to represent an inmate who is receiving treatment in a correctional mental health facility.
- Adds cellular phones and other portable communication devices to the list of articles declared to be contraband within a state prison and makes it a third-degree felony to introduce or possess a cellular phone or portable communication device with an intent to provide the device to an inmate.
- Revises the Corrections Mental Health Act to allow, among other changes, a court to waive the presence of an inmate at the mental health hearing, the inmate's counsel to have access to the inmate and records that are relevant to representation of the inmate, and an administrative law judge to waive the inmate's presence at a continued placement hearing.
- Requires the department to house certain young adult offenders, who currently must be housed separately, at youthful offender facilities.
- Authorizes a court to place on community control an offender who has been convicted of a forcible felony and who has a prior forcible felony conviction.
- Removes the requirement that a trainee who attends an approved basic recruit training program paid for by the employing agency and leaves employment less than two years

after graduation shall reimburse the agency for wages and benefits paid during the training period.

If approved by the Governor, these provisions take effect October 1, 2008.

Vote: Senate 37-0; House 105-0

CRIMINAL OFFENSES AND PENALTIES

CS/CS/HB 43 — Criminal Activity/Criminal Gangs

by Policy and Budget Council; Safety and Security Council; and Rep. Snyder and others (CS/CS/SB 76 by Criminal and Civil Justice Appropriations Committee; Criminal Justice Committee; and Senators Atwater, Gaetz, Lynn, Fasano, Baker, Haridopolos, Bullard, and Jones)

This bill addresses the problem of criminal gang activity in Florida. The bill requires a felon, as part of convicted felon registration, to register information on any felony committed for the purpose of furthering a criminal gang, and creates a third degree felony for failure to register this information.

The bill creates a first degree felony, punishable by imprisonment up to life and ranked in level 7 of the offense severity ranking chart of the Criminal Punishment Code, for a person to own or possess a firearm, ammunition, or specified weapon or device if that person has been convicted of a felony and has previously qualified or currently qualifies for penalty enhancements under the gang chapter (ch. 874, F.S.).

The bill provides that a person commits a third degree felony if he or she is in possession of a bulletproof vest while committing or attempting to commit a criminal gang-related offense under ch. 874, F.S., or a narcotics offense under ch. 893, F.S.

The bill also provides that a criminal gang, criminal gang member, or criminal gang associate who engages in the commission of criminal gang-related activity is a public nuisance. The use of a location on two or more occasions by such person or persons for the purpose of engaging in criminal gang-related activity is also a public nuisance. These public nuisances can be abated or enjoined.

The bill makes a number of changes to current definitions and creates new definitions. The bill specifies that "criminal gangs" include terrorist organizations and hate groups. A "criminal gang member" is not required to be a member of a "criminal gang" but must meet two or more specified criteria, including new criteria. The bill expands "criminal gang-related activity" to include activity for a non-monetary benefit (such as status), and provides that a single act or factual transaction may satisfy multiple criteria.

The bill provides that findings necessary for imposing the current enhanced penalty for gang-related offenses must be found "beyond a reasonable doubt."

The bill amends provisions relating to the recovery of attorney's fees and costs in a civil cause of action for treble damages under s. 874.06, F.S., for harm in violation of ch. 874, F.S., and provides that the state has a civil cause of action for damages (excluding punitive damages). The bill creates a first degree misdemeanor for knowingly violating a temporary or permanent order relating to abating or enjoining a public nuisance.

The bill authorizes the Florida Department of Law Enforcement to compile and retain information regarding criminal gangs, and authorizes local law enforcement agencies to create or update the electronic file of a suspected gang member or associate within that database and to notify the prosecutor of that individual's status.

The bill creates a first degree felony, punishable by imprisonment up to life and ranked in level 7, for a person to knowingly initiate, organize, plan, finance, direct, or supervise criminal gang-related activity ("gang kingpin" penalty).

The bill also creates a third degree felony for any person who, for the purpose of furthering the interests of a criminal gang, uses electronic communication (defined in the bill) to intimidate or harass other persons, or to advertise his or her presence in the community, including, but not limited to, such activities as distributing, selling, transmitting, or posting on the Internet any audio, video, or still image of criminal activity.

The bill also creates a second degree felony for possessing or manufacturing any blank, forged, stolen, fictitious, fraudulent, counterfeit, or otherwise unlawfully issued identification document to further the interests of a criminal gang.

The bill provides that juvenile adjudications of delinquency may serve as predicate offenses for a racketeering charge, and adds additional predicate offenses for a racketeering charge, such as fleeing and eluding, burglaries, etc., which are offenses commonly committed by criminal gang members.

The bill requires courts during bail determinations to consider whether the funds, real property, etc., used to post bail or procure an appearance bond may be linked to or derived from criminal activity, and places the burden on the defendant to establish noninvolvement in or nonderivation from such activity of such funds, real property, etc. Courts, during bail determination, must also consider whether the crime charged is a violation of ch. 874, F.S., or alleged to be subject to enhanced punishment under that chapter. If such is the case, the defendant is ineligible for release on bail or surety bond until the first appearance on the case.

The bill creates new penalties for tampering or harassment affecting a criminal investigation or criminal proceeding so that the tampering offense is one misdemeanor or felony degree greater

than the misdemeanor or felony degree of the crime being investigated or prosecuted, or in the case of the harassment offense, is the same degree as the misdemeanor or felony degree of the crime being investigated or prosecuted. Further, it is a third degree felony to commit tampering or harassment that affects an official investigation or official proceeding of a crime in which the misdemeanor or felony degree is indeterminable or involves a noncriminal investigation or proceeding.

The bill authorizes the Florida Violent Crime and Drug Control Council to disburse grants for certain gang initiatives, amends criteria and other provisions relevant to grant disbursement, and creates the Drug Control Strategy and Criminal Gang Committee within the council to review and approve all requests for disbursement of funds.

The bill provides as a condition of probation, community control, parole, or conditional release that persons found to have committed a crime for the purpose of furthering the interests of a criminal gang are prohibited from knowingly associating with other criminal gang members or associates, except as authorized by law enforcement officials, prosecutorial authorities, or the court, for the purpose of aiding in the investigation of criminal gang activity.

Finally, the bill creates an 11-member Coordinating Council on Criminal Gang Reduction Strategies within the Department of Legal Affairs. The council's duties include, but are not limited to, developing a statewide strategy to stop the growth of, reduce the number of, and render ineffectual criminal gangs in this state. The council is abolished June 30, 2009.

If approved by the Governor, these provisions take effect October 1, 2008, except as otherwise provided.

Vote: Senate 39-0; House 119-0

HB 61 — Offenses Against Officers

by Rep. Scionti and others (CS/SB 654 by Criminal Justice Committee and Senator Crist)

The bill extends the current prohibition against a citizen's use of violence to resist an arrest to include virtually any legal duty undertaken by a law enforcement officer so long as it is undertaken in good faith.

The bill prohibits the use of force "to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith." The bill gives law enforcement officers greater legal protections in citizen encounters that don't rise to the level of arrests, should a citizen respond to an officer aggressively or violently.

Also, the law enforcement officer or any person summoned to assist the officer may not use force under circumstances, including arrests or the execution of other legal duties, if the officer's actions are unlawful and known by him or her to be unlawful.

This bill substantially amends s. 776.051, F.S.

If approved by the Governor, these provisions take effect July 1, 2008.

Vote: Senate 39-0; House 115-0

HB 85 — Lewd or Lascivious Molestation

by Rep. Kravitz and others (SB 496 by Senators Dockery and Fasano)

The bill provides that, for a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), F.S. (lewd or lascivious molestation by a person 18 years of age or older against a victim less than 12 years of age), the penalty is a term of imprisonment for life.

If approved by the Governor, these provisions take effect July 1, 2008.

Vote: Senate 37-0; House 112-0

CS/SB 92 — Persons Injured by Crime/Medical Treatment

by Judiciary Committee and Senators Villalobos, Gaetz, Dockery, and Lynn

The bill creates two new felony offenses when a person takes custody of or exercises control over someone he or she knows to be injured as a result of criminal activity and deprives that person of medical care with the intent to avoid, delay, hinder, or obstruct any investigation of the criminal activity contributing to the injury. It is a third-degree felony if the victim's medical condition worsens as a result of the deprivation of medical care. It is a second-degree felony if the deprivation of medical care results in the victim's death.

If approved by the Governor, these provisions take effect October 1, 2008.

Vote: Senate 39-0; House 117-0

CS/HB 321 — Murder of Law Enforcement Officers

by Safety and Security Council and Rep. Snyder and others (CS/SB 1064 by Criminal Justice Committee and Senators Dockery, Baker, Dean, and Bullard)

The bill provides that a person shall be sentenced to life imprisonment without eligibility for early release if the person is found beyond a reasonable doubt to have committed or attempted to commit murder in the first degree as described in s. 782.04(1), F.S., and a death sentence was not imposed; murder in the second or third degree as described in s. 782.04(2), (3), or (4), F.S.; attempted murder in the first or second degree as described in s. 782.04(1)(a)1. or (2), F.S.; or attempted felony murder as described in s. 782.051, F.S., when the victim of the offense is a law

enforcement officer, part-time law enforcement officer, or auxiliary law enforcement officer engaged in the lawful performance of a legal duty.

If approved by the Governor, these provisions take effect October 1, 2008.

Vote: Senate 39-0; House 110-0

SB 366 — Elderly Persons and Disabled Adults/Abuse and Neglect

by Senators Margolis, Fasano, Bullard, and Lynn

The bill increases the felony degree of the offense of aggravated abuse of an elderly person or disabled adult from a second degree felony to a first degree felony. The bill also requires that certified law enforcement personnel receive training in the identification and investigation of elder abuse and neglect.

If approved by the Governor, these provisions take effect July 1, 2008.

Vote: Senate 39-0; House 119-0

CS/HB 537 — Offense of Voyeurism

by Safety and Security Council and Rep. Dorworth and others (CS/SB 328 by Criminal and Civil Justice Appropriations Committee and Senators Aronberg and Fasano)

The bill provides that it is a third degree felony for:

- A person 18 years of age or older to commit video voyeurism against a child younger than 16 years of age when the offender is responsible for the welfare of the child, regardless of whether the person knows or has reason to know the age of the child;
- A person 18 years of age or older who is employed at a K-12 school or voluntary prekindergarten program, whether public or private, to commit video voyeurism against a student of the school or program; or
- A person 24 years of age or older to commit video voyeurism against a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child.

The bill also provides that these offenses are second degree felonies if the offender has a prior conviction or delinquency adjudication for video voyeurism.

If approved by the Governor, these provisions take effect July 1, 2008.

Vote: Senate 39-0; House 116-0

CS/HB 559 — Material Harmful to Minors

by Safety and Security Council and Rep. Schenck and others (CS/CS/SB 1128 by Judiciary Committee; Criminal Justice Committee; and Senator Fasano)

This bill expands what materials might be determined harmful to minors by amending the three-pronged definition of "harmful to minors."

The bill provides that any person who knowingly sells, etc., obscene materials that depict a minor engaged in any act or conduct that is harmful to minors commits a third degree felony. The bill also provides that it is a third degree felony for a person to knowingly use a minor in the production of certain proscribed material (such as photographs or videos of sexual conduct) regardless of whether the material is intended for distribution to minors or is actually distributed to them.

The bill amends sections of law relating to the prohibition of sale or other distribution of materials harmful to minors and relating to exposing minors to harmful motion pictures, by removing an "honest mistake" excuse from the definition of "knowingly."

Throughout various obscenity statutes dealing with minors, the bill provides that a person's ignorance of a minor's age, a minor's misrepresentation of his or her age, a bona fide belief of a minor's age, or a minor's consent may not be raised as a defense in a prosecution for offenses under those statutes.

Legislative intent language is amended to specify that it is the intent of the Legislature to preempt the field, to the exclusion of counties and municipalities, insofar as it concerns exposing persons less than 17 years of age to commercial or sexual exploitation.

Finally, the bill provides exceptions from criminal offenses for providers of communications services or providers of information services.

If approved by the Governor, these provisions take effect July 1, 2008.

Vote: Senate 38-0; House 111-0

CS/SB 1988 — Drivers' Licenses/Suspended, Revoked, or Canceled

by Criminal Justice Committee and Senators Dockery and Joyner

The bill subjects persons convicted of knowingly driving while their license is suspended, revoked, or cancelled for underlying violations as enumerated below, to a second degree misdemeanor penalty for the first conviction, and a first degree misdemeanor penalty for the second or subsequent conviction. (Currently, the third conviction is punished as a third degree felony.)

The underlying enumerated violations are as follows:

- Failing to pay child support under s. 322.245 or s. 61.13016, F.S.;
- Failing to pay any other financial obligation under s. 322.245, F.S., (other than those specified criminal offenses in s. 322.245(1), F.S.);
- Failing to comply with a required civil penalty (paying traffic tickets and fees) under s. 318.15, F.S.;
- Failing to maintain required vehicular financial responsibility under ch. 324, F.S.;
- Failing to comply with attendance or other requirements for minors under s. 322.091, F.S.; or
- Having been designated a habitual traffic offender under s. 322.264(1)(d), F.S., (driving with a suspended license three times in five years) as a result of license suspensions for any of the underlying violations listed above.

This newly created first degree misdemeanor penalty is available only to drivers who do not have a prior forcible felony conviction.

The bill also requires the Department of Highway Safety and Motor Vehicles to study the effectiveness of suspending a person's driver's license for the underlying violations listed above and to submit a report to the Governor and Legislature by January 2, 2009.

If approved by the Governor, these provisions take effect July 1, 2008.

Vote: Senate 36-3; House 117-2

LAW ENFORCEMENT

CS/HB 151 — Radio Equipment Using Law Enforcement Frequencies

by Safety and Security Council and Rep. Reed and others (CS/SB 522 by Criminal Justice Committee and Senators Hill and Lynn)

The bill provides that the prohibition on unlawfully installing or transporting radio equipment using an assigned frequency of state or local law enforcement officers does not apply to:

- Any sworn law enforcement officer as defined in s. 943.10(1), F.S., or emergency service employee as defined in s. 496.404(9), F.S., while using personal transportation to and from work.
- An employee of a government agency that holds a valid Federal Communications Commission station license or a valid agreement or contract allowing access to another agency radio station.

If approved by the Governor, these provisions take effect July 1, 2008.

Vote: Senate 39-0; House 116-0

HB 7113 — Department of Law Enforcement

by Safety and Security Council and Rep. Adams (CS/SB 838 by Criminal Justice Committee and Senator Dockery)

The bill makes several changes to the policies and procedures of the Florida Department of Law Enforcement (FDLE) relating to the statewide fingerprint system, administrative expunction, sealing and expunged records, the Criminal and Juvenile Information Systems Council, and Florida Missing Children's Day. The bill provides that if fingerprints submitted to the FDLE for background screening, whether retained or not, are identified with the fingerprints of a person having a criminal history record, such fingerprints may subsequently be available for all purposes and uses authorized for arrest fingerprint cards. This includes entry into the statewide automated fingerprint identification system to augment or replace the fingerprints that identify the criminal history record.

The bill clarifies statutory authority applicable to fees accessed for records of criminal history information. It also provides that a qualified entity can electronically submit to the FDLE a request for screening an employee or volunteer or person applying to be an employee or volunteer. It removes language that might suggest (inaccurately) that the fee assessed to qualified entities for a statewide criminal history check is based on the FDLE's assessment of the actual cost of producing the record information. The fee assessed by the FDLE is actually the fee prescribed by the Legislature, as provided in s. 943.053, F.S.

The bill provides that the endorsement for an application for an administration expunction of a nonjudicial record of an arrest can be made by the designee of the head of the arresting agency or a designee of the state attorney of the judicial circuit in which the arrest occurred. It removes the requirement for an affidavit to be included with the application. It eliminates the requirement to report in the application the name of the arresting officer, but requires that the application include the offender-based tracking system number, be on the submitting agency's letterhead, and be signed by the head of the submitting agency or a designee. It also provides that if the person was arrested on a warrant, *capias*, or pick-up order, a request for an administrative expunction may be made by the sheriff (or his or her designee) of the county where the warrant, *capias*, or pick-up order was issued, or by the state attorney (or his or her designee) of the judicial circuit where the warrant, *capias*, or pick-up order was issued or his or her designee.

The bill provides that those seeking employment with the Agency for Health Care Administration or the Agency for Persons with Disabilities cannot deny or fail to acknowledge an expunged or sealed arrest. A sealed criminal history record is made available to state court judges to assist them in their case-related decisionmaking responsibilities.

The bill adds the Secretary of the Department of Children and Family Services or the Secretary's designated assistant as a member of the Criminal and Juvenile Justice Information Systems (CJJIS) Council. It also amends CJJIS Council statutes to reflect technological advances and address privacy issues as they relate to increased availability of shared data.

The bill authorizes the FDLE to establish a citizen support organization (CSO) to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day. It defines the CSO, specifies how it is organized and its function, specifies authorized activities of and limitations on the CSO, authorizes the FDLE to adopt rules with which the CSO must comply; specifies that money received from rentals of facilities and properties managed by the FDLE is to be held in the FDLE's operating trust fund or in a separate depository account (in the name of the CSO and subject to the provisions of a letter of agreement with the FDLE), specifies that funds held in a separate depository account must revert to the FDLE if the CSO is no longer approved by the FDLE to operate in the best interests of the state, and requires the CSO to provide an annual financial audit.

If approved by the Governor, these provisions take effect July 1, 2008.

Vote: Senate 40-0; House 117-0

PUBLIC SAFETY

CS/HB 29 — DNA Testing

by Safety and Security Council and Rep. Snyder and others (CS/SB 472 by Criminal and Civil Justice Appropriations Committee and Senators Dean, Haridopolos, Bullard, Dockery, and Lynn)

In 1989, the Legislature enacted s. 943.325, F.S., which required the Florida Department of Law Enforcement (FDLE) to establish and maintain a statewide DNA data bank. Originally, the statute only required persons convicted of offenses relating to sexual battery or lewd and lascivious conduct to submit blood samples to the FDLE. Since that time, qualifying offenses have been added at a measured pace. This bill (Chapter 2008-27, L.O.F.) adds certain misdemeanor offenses for inclusion in the database.

Offenders who are convicted of misdemeanor violations of ss. 784.048, 810.14, 847.011, 847.013, 847.0135, or 877.26, F.S., or have previously been convicted and are still under some form of incarceration, juvenile commitment, or court-ordered supervision, will be required to submit biological specimens.

The misdemeanor offenses currently prohibited by these sections of law are:

- Section 784.048(2), F.S. – Stalking
- Section 810.14(1), F.S. – Voyeurism

- Section 847.011, F.S. – Prohibition of certain acts in connection with obscene, lewd, etc., materials
- Section 847.013, F.S. – Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations
- Section 847.0135, F.S. – Computer pornography
- Section 877.26, F.S. – Direct observation, videotaping, or visual surveillance of customers in merchant's dressing room

The bill would also require DNA sample collection from persons who have been found by the court to have committed offenses for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang. The definition of criminal street gang is found in s. 874.03(1), F.S., which states: "Criminal street gang" means a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols and have two or more members who, individually or collectively, engage in or have engaged in a pattern of criminal street gang activity.

If approved by the Governor, these provisions take effect July 1, 2008.

Vote: Senate 39-0; House 116-0

CS/HB 503 — Right to Keep and Bear Arms in Motor Vehicles

by Environment and Natural Resources Council and Rep. Evers and others (CS/SB 1130 by Judiciary Committee and Senators Peaden and Baker)

This bill (Chapter 2008-7, L.O.F.) creates the "Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008," which will codify legislative policy regarding statutory rights of lawful firearm owners and carriers as contrasted with the statutory rights of public or private employers.

The bill provides the following definitions:

- "Parking lot" means any property that is used for parking motor vehicles and is available to customers, employees, or invitees for temporary or long-term parking or storage of motor vehicles.
- "Motor vehicle" means any automobile, truck, minivan, sports utility vehicle, motor home, recreational vehicle, motorcycle, motor scooter, or any other vehicle operated on the roads of this state and required to be registered under state law.

- "Employee" means any person who possesses a valid concealed weapon or firearm license and who
 - Works for salary, wages, or other remuneration;
 - Is an independent contractor; or
 - Is a volunteer, intern, or other similar individual for an employer.
- "Employer" means any business that is a sole proprietorship, partnership, corporation, limited liability company, professional association, cooperative, joint venture, trust, firm, institution, or association, or public-sector entity, that has employees.
- "Invitee" means any business invitee, including a customer or visitor, who is lawfully on the premises of an entity.
- "Firearm" includes ammunition and accouterments attendant to the lawful possession and use of a firearm.

This bill prohibits employers from violating what are called the "constitutional rights" of a customer, employee, or invitee in the following ways:

- Prohibiting the lawful possession of properly secured firearms within or upon a private motor vehicle in the employer's parking lot;
- Inquiring, verbally or in written form, as to the presence of a firearm or by conducting a search of a vehicle for a firearm. Searches are limited to those lawfully conducted by on-duty law enforcement personnel;
- Conditioning employment upon the employee holding or not holding a valid concealed weapon or firearm license, or upon an agreement to not keep a firearm in a motor vehicle;
- Limiting access to the employer's parking lot based upon whether there is a firearm within the vehicle; and
- Discriminating or terminating employment or expelling a customer or invitee because he or she exercises the right to keep and bear arms or lawfully defend oneself.

The prohibitions listed above do not apply, under the bill, to:

- School property as defined in s. 790.115, F.S.;
- Any correctional institution regulated under s. 944.47, F.S., or ch. 957, F.S.;
- Property where substantial activities involving national defense, aerospace, or domestic security are conducted;
- Property where a nuclear-powered electricity generation facility is located;

- Property where combustible or explosive materials regulated under state or federal law are manufactured, used, stored, or transported;
- A motor vehicle owned, leased, or rented by an employer or his landlord; and
- Any other property where possession of a firearm is prohibited by any federal contract, federal law, or general law of this state.

The bill declares that, except for those employers listed above, other public or private employers are relieved of a duty of care insofar as it relates to the actions that they are prohibited from engaging in by the bill.

The bill provides immunity from civil liability to public or private employers based on actions or inactions taken in compliance with the bill. This immunity does not apply to civil actions based on the actions or inactions of employers that are unrelated to compliance with the bill.

The bill provides for enforcement of the act by the Attorney General, who is instructed to commence a civil or administrative action for damages, injunctive relief, civil penalties, and any other relief that may be appropriate. The Attorney General is authorized by the bill to negotiate a settlement on behalf of the aggrieved person. The bill does not prohibit a person from bringing his or her own civil suit for violations of rights protected by the act. In any successful action, the court shall award all court costs, attorney's fees, and reasonable personal costs and losses suffered by the aggrieved party as a result of the violation of rights under this act.

These provisions were approved by the Governor and take effect July 1, 2008, and shall apply to causes of action accruing on or after that date.

Vote: Senate 26-13; House 72-42

CS/SB 1616 — Weapon and Firearm Licenses/Interagency Data Sharing

by Judiciary Committee; Criminal Justice Committee; and Senator Lynn

This bill authorizes the Florida Department of Law Enforcement to share data with the Department of Agriculture and Consumer Services (department) on a routine basis. Currently, the mental health data in the MECOM (mental competency) database is shared, upon request, at the time the department is conducting a background check on the initial application for a concealed weapon or firearm license. Once the application is approved and the license is issued, the department is statutorily required to suspend or revoke the license when a license-holder is adjudicated an incapacitated person or is committed to a mental institution. However, the department does not have routine access to the information necessary to form the basis of a suspension or revocation on mental health grounds. This bill would give the department that access.

Additionally, the bill expands the definition of "committed to a mental institution" to include individuals under court order for involuntary outpatient placement, for purposes of the issuance of concealed weapons and firearms licenses, as well as suspension or revocation of those licenses.

This bill substantially amends s. 790.065, F.S.

If approved by the Governor, these provisions take effect July 1, 2008.

Vote: Senate 40-0; House 115-0

PUBLIC RECORDS

CS/SB 1618 — Open Government Sunset Review/Victims of Child Abuse or Sex Crimes

by Criminal Justice Committee and Senators Bullard and Lynn

The bill reenacts the public record exemption currently found in s. 119.071(2)(h)2., F.S., which is subject to open government sunset review. This provision makes confidential and exempt any criminal intelligence information or criminal investigative information that is a photograph, videotape, or image of any part of the body of a victim of specified sexual offenses. The bill modifies and slightly expands this exemption to include any criminal intelligence information or criminal investigative information that is a photograph, videotape, or image of any part of the body of a victim of a sexual offense under ch. 796, F.S., such as sex trafficking, and a sexual offense under ch. 847, F.S., such as child pornography. The bill also makes the same change to a related exemption currently found in s. 119.071(2)(h)1., F.S., to which s. 119.071(2)(h)2., F.S., is linked. This exemption pertains to criminal intelligence information and criminal investigative information that identifies the victim of child abuse and sexual offenses.

The bill also expands the exemption in s. 119.071(2)(h)1., F.S., by making the records in this exemption confidential and exempt rather than simply exempt.

The bill allows a law enforcement agency to disclose records in s. 119.071(2)(h), F.S., in the following circumstances: in furtherance of the law enforcement agency's official duties and responsibilities; for print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered; and to another governmental agency in the furtherance of its official duties and responsibilities. The bill states that the information provided relevant to missing or endangered persons should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

The bill also deletes chapter law providing for the repeal of s. 119.071(2)(h)2., F.S.; provides that s. 119.071(2)(h), F.S., is subject to the Open Government Sunset Review Act in accordance

with s. 119.15, F.S. (legislative review of exemptions), and stands repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature; and provides a statement of public necessity for the exemptions in s. 119.071(2)(h), F.S.

The bill also amends s. 119.0714, F.S., relating to court records and court files, to make that statute consistent with the changes to s. 119.071(2)(h), F.S., by indicating that criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h), F.S., is an exception from disclosure requirements regarding a public record that was made a part of a court file and that is not specifically closed by court order.

The bill also amends s. 92.56, F.S., relating to court records, to provide that the confidential and exempt status of the information in s. 119.071(2)(h), F.S., must be maintained in court records and in court proceedings. If a petition for access to such confidential and exempt information is filed with the trial court with jurisdiction over the alleged offense, the confidential and exempt status of such information must be maintained by the court if the state or the victim demonstrates that the criteria currently provided in s. 92.56, F.S., are met.

Further, the bill amends s. 92.56, F.S., to provide that a defendant charged with any specified sexual offenses or child abuse offenses under that statute may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h), F.S., or maintained as confidential and exempt pursuant to court order under that statute. Such identifying information concerning the victim may be released to the defendant or his or her attorney in order to prepare the defendant's defense. The confidential and exempt status of such information may not be construed to prevent the disclosure of the victim's identity to the defendant.

Finally, the bill amends s. 794.03, F.S., which provides for a criminal penalty for publishing or broadcasting information identifying the victim of a sexual battery. The amendment creates an exception to the statute for confidential and exempt information disclosed as provided in s. 119.071(2)(h), F.S., or when the court determines that such information is no longer confidential and exempt pursuant to s. 92.56, F.S.

If approved by the Governor, these provisions take effect October 1, 2008.

Vote: Senate 38-0; House 119-0

PRETRIAL RELEASE

CS/CS/SB 2676 — Citizens' Right-to-Know Act/Pretrial Release

by Criminal and Civil Justice Appropriations Committee; Judiciary Committee; and Senator Crist

The bill prescribes reporting requirements for pretrial release programs and also amends several sections related to the posting of bail.

The bill requires pretrial release programs to maintain a register with the clerk of the court which provides detailed information about defendants interviewed and released through the program. It further requires pretrial release programs to make annual reports which provide detailed information related to defendants released through the program and budgetary matters.

The bill provides that any monetary component of pretrial release may be met by a surety bond and prohibits differing amounts from being set for cash bonds, surety bonds, or other forms of pretrial release.

The bill requires cash bond forms to display a notice that any and all parts of a cash bond may be subject to withholding by the clerk of the court to pay court costs, fees, and fines, regardless of who posts the cash bond.

The Office of Program Policy Analysis and Government Accountability is directed to complete annual studies for the presiding officers of the Legislature evaluating the effectiveness and cost-efficiency of pretrial release programs.

This bill substantially amends ss. 903.011 and 903.286, F.S., and creates s. 907.043, F.S.

If approved by the Governor, these provisions take effect July 1, 2008.

Vote: Senate 37-0; House 114-2

VICTIM PROTECTION

HB 313 — Dating Violence

by Rep. Kelly and others (SB 1188 by Senators Dean and Lynn)

This bill creates the "Barwick-Ruschak Act" and provides a variety of requirements that law enforcement officers who are investigating alleged incidents of dating violence must follow. Such requirements include providing victims of dating violence notice of their legal rights and remedies, providing victims information about local domestic violence centers, and including certain information in police reports.

This bill also provides that a person who willfully violates a condition of pretrial release, where the initial arrest was for an act of dating violence, commits a misdemeanor of the first degree and must be held in custody until his or her first appearance.

This bill makes conforming changes to permit a law enforcement officer to make a warrantless arrest when there is probable cause to believe that the person has committed an act of dating violence (similar to domestic violence).

If approved by the Governor, these provisions take effect October 1, 2008.

Vote: Senate 40-0; House 113-0

CS/SB 622 — Orders of No Contact with Victims of Crimes

by Criminal Justice Committee and Senators Dockery and Lynn

The bill adds several violent offenses prescribed in s. 775.084(1)(b)1.a.-o., F.S., to the current crimes requiring a court to issue a no-contact order with the victim when sentencing a convicted offender. These offenses would include the following: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; and aggravated stalking.

Violating a no-contact order remains a third-degree felony under the bill.

If approved by the Governor, these provisions take effect October 1, 2008.

Vote: Senate 40-0; House 119-0

CS/CS/CS/SB 1442 — Exploited Children

by Criminal and Civil Justice Appropriations Committee; Judiciary Committee; Criminal Justice Committee; and Senators Dockery, Baker, and Lynn

This bill provides additional protections in civil and criminal proceedings, as well as a civil remedy for victims of child pornography. Specifically, the bill:

- Allows for the use of a pseudonym in court records and proceedings instead of revealing the victim's name;
- Removes a requirement that the prosecution prove that the person who sells or transfers custody of a minor knew that "force, fraud, or coercion" would be used to cause the minor to engage in prostitution. Instead, the prosecution would only need to prove that the person selling or transferring the custody of a minor knew that the minor being sold

would engage in prostitution, perform naked for compensation, or otherwise participate in the trade of sex trafficking;

- Relocates a provision in s. 800.04(7)(b), F.S., proscribing the offense of lewd or lascivious exhibition live over a computer online service, to the computer pornography statute in s. 847.0135(5), F.S. (This is a technical restructuring; the current criminal penalties are not affected by this transfer.);
- Requires law enforcement officers who recover child pornography images or movies during an investigation to provide these images and other identifying information to the National Center for Missing and Exploited Children, Child Victim Identification Program;
- Requires prosecutors to enter certain information into the Victims in Child Pornography Tracking Repeat Exploitation database to be developed and maintained by the Office of the Attorney General;
- Creates a new state civil remedy, allowing victims of child pornography to recover actual damages and costs against a producer, promoter, or possessor of images involving the victim;
- Provides that these victims of child pornography shall be deemed to have sustained minimum damages of \$150,000;
- Allows the Office of the Attorney General to pursue cases on behalf of child pornography victims, and to seek any reasonable attorney's fees and costs; and
- Allows identified victims of child pornography and child victims of online sexual exploitation who suffer psychiatric or psychological injury as a direct result of the crime to file a victim's compensation claim under ch. 960, F.S.

If approved by the Governor, these provisions take effect October 1, 2008.

Vote: Senate 39-0; House 115-0

