CHAPTER 99-3

House Bill No. 1043

An act relating to the Florida Statutes; amending ss. 618.08, 620.78, 620.782, 620.783, 620.7851, 620.786, 620.788, 620.7885, 620.7887, 624.01, 624.123, 624.408, 624.439, 624.461, 624.502, 624.5092, 624.610, 625.52, 626.041, 626.101, 626.9541, 626.9543, 626.973, 627.0612, 627.162, 627.4147, 627.5515, 627.6617, 627.6699, 627.7295, 627.733, 627.848, 627.912, 627.9407, 628.461, 628.4615, 628.6013, 628.6016, 628.6017, 628.721, 629.401, 631.0515, 631.112, 631.57, 631.914, 633.161, 633.72, 641.2018, 641.20185, 641.30, 641.31071, 641.459, 641.495, 641.51, 641.512, 641.515, 658.2953, 658.90, 660.29, 663.16, 671.105, 678.1021, 678.5031, 694.14, 697.05, 704.05, 713.01, 713.32, 718.103, 718.111, 719.106, 719.618, 721.84, 723.085, 734.1025, 741.01, 742.107, 743.0645, 743.065, 744.641, 744.704, 765.113, 766.1115, 766.207, 766.304, 766.316, 772.102, 773.02, 773.05, 775.0877, 784.07, 784.075, 790.0655, 794.024, 810.14, 812.014, 828.27, 901.15, 914.16, 914.17, 918.16, 921.0022, 921.0024, 922.095, 943.0435, 943.0585, 943.059, 943.14, 944.10, 944.606, 944.801, 948.01, 948.03, 948.08, 957.04, 960.003, 984.03, 984.226, 985.04, 985.203, 985.227, 985.231, 985.304, 985.31, 985.3141, 985.317, 985.401, 985.404, 985.41, 985.413, and 985.414, Florida Statutes; reenacting and amending ss. 641.3007 and 985.23, Florida Statutes; and reenacting ss. 624.610(3), 626.321(1), 626.730, 626.939, 743.07, 794.011, 831.31, 907.041(4), 925.037(5), 984.03(41), and 985.311(3), Florida Statutes, pursuant to s. 11.242, Florida Statutes; deleting provisions which have expired, have become obsolete, have had their effect, have served their purpose, or have been impliedly repealed or superseded; replacing incorrect cross-references and citations; correcting grammatical, typographical, and like errors; removing inconsistencies, redundancies, and unnecessary repetition in the statutes; improving the clarity of the statutes and facilitating their correct interpretation; and confirming the restoration of provisions unintentionally omitted from republication in the acts of the Legislature during the amendatory process.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 618.08, Florida Statutes, is amended to read:

618.08 Corporations may mortgage farm supplies.—A mortgage, executed by a cooperative association, may cover its stock of farm supplies, changing in specifics, which stock mortgagor is permitted to retain in its possession and sell in the usual course of business. The lien of such mortgage shall be lost on all farm supplies sold up to the time of foreclosure, and shall attach to the farm supplies acquired to replenish the stock. No such mortgage shall be invalid as to creditors of the mortgagor because the mortgagor is permitted to retain possession and sell such mortgaged property in the usual course of business; provided, the mortgagor replenishes such property

from the proceeds of sale or applies such proceeds in payment of the mortgage debt. In all other respects the laws relating to chattel mortgages shall be applicable to such mortgages. ~~The provisions of this section shall not be construed as, in anywise, affecting the Bulk Sales Law.~~

Reviser's note.—Amended to conform to the repeal of sections constituting the Bulk Sales Law by ch. 65-254, Laws of Florida.

Section 2. Subsections (4), (5), and (6) of section 620.78, Florida Statutes, are amended to read:

620.78 Registered limited liability partnerships.—

(4) A statement of registration or statement of renewal of registration must include either:

(a) A copy of an insurance policy demonstrating that the partnership complies with s. 620.7851(1)(a) ~~620.82(1)(a)~~; or

(b) An affidavit sworn to by a majority in voting interest of the partners or by one or more partners authorized by a majority in voting interest of the partners that the partnership complies with s. 620.7851(1)(b) ~~620.82(1)(b)~~.

(5) The Department of State shall register any partnership as a registered limited liability partnership, and shall renew the registration of any registered limited liability partnership, that submits a completed statement of registration or statement of renewal of registration accompanied by the required fee. A partnership becomes a registered limited liability partnership at the time of the filing of the initial statement of registration with the department or at any later date or time specified in the statement of registration if, in either case, there has been compliance with the requirements of ss. 620.78-620.789 ~~620.78-620.85~~. A partnership continues as a registered limited liability partnership if there has been compliance with the requirements of ss. 620.78-620.789 ~~620.78-620.85~~.

(6) Registration is effective for 1 year after the date the statement of registration is filed, unless voluntarily canceled by filing with the Department of State a statement of cancellation of registration under s. 620.781 ~~620.785~~. Registration, whether pursuant to an original statement of registration or a statement of renewal of registration as a registered limited liability partnership, is renewed if the partnership files with the Department of State a statement of renewal of registration. An initial statement of renewal of registration expires 1 year after the date an original statement of registration would have expired if the statement of renewal of registration had not been filed; a subsequent statement of renewal of registration expires 1 year after the date the preceding statement of renewal of registration would have expired if such subsequent statement of renewal of registration had not been filed. The status of the registered limited liability partnership shall not be affected by subsequent changes in the information contained in the statement of registration or statement of renewal of registration after its filing.

Reviser's note.—Amended to conform to the redesignation of s. 620.82 as s. 620.7851, s. 620.85 as s. 620.789, and s. 620.785 as s. 620.781, respec-

tively, by the reviser incident to the compilation of the Florida Statutes 1995.

Section 3. Subsections (3) and (5) of section 620.782, Florida Statutes, are amended to read:

620.782 Partner's liability.—

(3) Subsection (1) does not affect the individual liability of a partner in a registered limited liability partnership if the registered limited liability partnership is not in compliance with s. 620.7851 ~~620.82~~ at the time of the occurrence giving rise to partnership liability.

(5) Sections 620.78-620.789 ~~620.78-620.85~~ do not affect the liability of the registered limited liability partnership when such liability arises out of debts, obligations, or liabilities of the partnership or the acts and omissions of the partners, employees, agents, or other representatives of the partnership which are chargeable to the partnership.

Reviser's note.—Amended to conform to the redesignation of s. 620.82 as s. 620.7851 and s. 620.85 as s. 620.789, respectively, by the reviser incident to the compilation of the Florida Statutes 1995.

Section 4. Section 620.783, Florida Statutes, is amended to read:

620.783 Liability; governing law.—

(1) The liability of partners of a registered limited liability partnership formed and registered under ss. 620.78-620.789 ~~620.78-620.85~~ must be determined solely by ss. 620.78-620.789 ~~620.78-620.85~~ and the laws of this state.

(2) If a conflict arises between the laws of this state and the laws of any other jurisdiction with regard to the liability of a partner of a registered limited liability partnership formed and registered under ss. 620.78-620.789 ~~620.78-620.85~~ for the debts, obligations, or liabilities of the partnership or for the errors, omissions, negligence, malpractice, or wrongful acts of another partner, employee, agent, or representative of the partnership, the laws of this state shall govern in determining such liability.

Reviser's note.—Amended to conform to the redesignation of s. 620.85 as s. 620.789 by the reviser incident to the compilation of the Florida Statutes 1995.

Section 5. Subsections (1) and (4) of section 620.7851, Florida Statutes, are amended to read:

620.7851 Insurance of registered limited liability partnerships.—

(1) A registered limited liability partnership must:

(a) Carry at least the minimum coverage amount of liability insurance that covers the errors, omissions, negligence, malpractice, or wrongful acts for which liability is limited by s. 620.782(1) ~~620.79(1)~~ and which liability

insurance may not have a deductible or self-insured retention per claim of more than 10 percent of the per-claim policy limit unless the difference between the maximum permitted deductible or self-insured retention and the actual deductible or self-insured retention under the liability insurance is otherwise funded as provided in paragraph (b); or

(b) Provide at least the minimum coverage amount in funds specifically designated and segregated for the satisfaction of judgments against the partnership or its partners based on the types of errors, omissions, negligence, incompetence, malpractice, or wrongful acts for which liability is limited by s. 620.782(1) ~~620.79(1)~~. Such funds must be provided by obtaining or maintaining an unexpired, irrevocable letter of credit for an amount no less than the minimum coverage amount. The letter of credit must be payable to the partnership, or to a paying agent of the partnership, as beneficiary for payment to creditors under a final judgment or settlement arising from the types of errors, omissions, negligence, incompetence, malpractice, or wrongful acts for which liability is limited by s. 620.782(1) ~~620.79(1)~~. The letter of credit shall be payable upon presentation of a final judgment indicating liability and awarding damages to be paid by the partnership or upon presentment of a settlement agreement signed by all parties to the agreement when the final judgment or settlement is a result of a claim against the partnership. The letter of credit must be irrevocable, nonassignable, and nontransferable, except that the letter of credit may be replaced by liability insurance that complies with paragraph (a). Such letter of credit must have been issued by any bank or savings association organized and existing under the laws of this state or any bank or savings association organized under the laws of the United States that has its principal place of business in this state or has a branch office that is authorized under the laws of this state or of the United States to receive deposits in this state.

(4) The minimum coverage amount requirements of this section do not limit the liability of or damages recoverable from a registered limited liability partnership or of any person or entity whose liability is not otherwise limited as provided in ss. 620.78-620.789 ~~620.78-620.85~~.

Reviser's note.—Amended to conform to the redesignation of s. 620.79 as s. 620.782 and s. 620.85 as s. 620.789, respectively, by the reviser incident to the compilation of the Florida Statutes 1995.

Section 6. Subsection (1) of section 620.786, Florida Statutes, is amended to read:

620.786 Effect of statement of registration and renewal thereof.—

(1) If a registered limited liability partnership or a foreign registered limited liability partnership dissolves and its business is continued without the termination of the partnership, the registration of the dissolved partnership as a registered limited liability partnership or a foreign registered limited liability partnership remains applicable to the partnership continuing the business, and it is not necessary to make a new filing under s. 620.78 or s. 620.7885 ~~620.84~~ until the registration must be renewed or canceled.

Reviser's note.—Amended to conform to the redesignation of s. 620.84 as s. 620.7885 by the reviser incident to the compilation of the Florida Statutes 1995.

Section 7. Paragraph (b) of subsection (2) and subsection (4) of section 620.788, Florida Statutes, are amended to read:

620.788 Domestic limited partnership as a registered limited liability partnership.—

(2) A domestic limited partnership is a registered limited liability partnership as well as a domestic limited partnership if it:

(b) Complies with s. 620.7851 ~~620.82~~.

(4) If a domestic limited partnership is a registered limited liability partnership, s. 620.782 ~~620.79~~ applies to its general partners and to any of its limited partners who, under the provisions of part I, the Florida Revised Uniform Limited Partnership Act, are liable for the debts, obligations, or liabilities of the limited partnership.

Reviser's note.—Amended to conform to the redesignation of s. 620.82 as s. 620.7851 and s. 620.79 as s. 620.782, respectively, by the reviser incident to the compilation of the Florida Statutes 1995.

Section 8. Subsection (2) of section 620.7885, Florida Statutes, is amended to read:

620.7885 Foreign registered limited liability partnership.—

(2) Except as otherwise provided in subsection (3), a foreign registered limited liability partnership must comply with s. 620.78, and the provisions of that section govern the registration, renewal of registration, and amendment of registration of a foreign registered limited liability partnership. For purposes of s. 620.78(4), a foreign registered limited liability partnership that obtains, pursuant to the laws or regulations of another jurisdiction, liability insurance that covers, or funds specifically designated and segregated for the satisfaction of judgments against the partnership or its partners based on, errors, omissions, negligence, incompetence, malpractice, wrongful acts, and such other conduct for which the liability of partners is limited under the law of the jurisdiction in which the foreign registered liability partnership is organized, shall be deemed to comply with s. 620.7851 ~~620.82~~ if the amount thereof is equal to or greater than the minimum coverage amount as defined in s. 620.7851(2) ~~620.82(2)~~. A foreign registered limited liability partnership shall be deemed to comply with s. 620.7851(1)(b) ~~620.82(1)(b)~~ if the letter of credit is issued by any bank or savings association organized under the laws of the United States or the State of Florida.

Reviser's note.—Amended to conform to the redesignation of s. 620.82 as s. 620.7851 by the reviser incident to the compilation of the Florida Statutes 1995.

Section 9. Subsection (1) of section 620.7887, Florida Statutes, is amended to read:

620.7887 Cancellation of registration as a foreign registered limited liability partnership.—

(1) A foreign registered limited liability partnership registered under s. 620.7885 ~~620.84~~ may cancel its registration to conduct business in this state by filing with the Department of State a statement of cancellation of registration as a foreign registered limited liability partnership executed by a majority in voting interest of the partners or by one or more partners authorized by a majority in voting interest of the partners.

Reviser's note.—Amended to conform to the redesignation of s. 620.84 as s. 620.7885 by the reviser incident to the compilation of the Florida Statutes 1995.

Section 10. Section 624.01, Florida Statutes, is amended to read:

624.01 Short title.—Chapters 624 through 632, 634, 635, ~~637, 638,~~ 641, 642, 648, and 651 constitute the "Florida Insurance Code."

Reviser's note.—Amended to conform to the repeal of chapters 637 and 638 by s. 57, ch. 93-148, Laws of Florida.

Section 11. Subsection (1) of section 624.123, Florida Statutes, 1998 Supplement, is amended to read:

624.123 Certain international health insurance policies; exemption from code.—

(1) International health insurance policies and applications may be solicited and sold in this state at any international airport to a resident of a foreign country. Such international health insurance policies shall be solicited and sold only by a licensed health insurance agent and underwritten ~~unwritten~~ only by an admitted insurer. For purposes of this subsection:

(a) "International airport" means any airport in Florida with United States Customs service, which enplanes more than 1 million passengers per year.

(b) "International health insurance policy" means health insurance, as defined in s. 627.6561(5)(a)2., which is offered to an individual, covering only a resident of a foreign country on an annual basis.

(c) "Resident of a foreign country" does not include any United States citizen, any natural person maintaining his or her residence in this country, or any natural person staying in this state continuously for more than 120 days.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 12. Paragraph (b) of subsection (1) of section 624.408, Florida Statutes, is amended to read:

624.408 Surplus as to policyholders required; new and existing insurers.—

(1)

(b) For any property and casualty insurer holding a certificate of authority on December 1, 1993, the following amounts apply instead of the $4 million required by subparagraph (a)5.:

~~1. On December 31, 1994, and until December 30, 1995, $1.65 million.~~

~~2. On December 31, 1995, and until December 30, 1996, $1.8 million.~~

~~3. On December 31, 1996, and until December 30, 1997, $1.95 million.~~

~~4. On December 31, 1997, and until December 30, 1998, $2.1 million.~~

1.~~5.~~ On December 31, 1998, and until December 30, 1999, $2.25 million.

2.~~6.~~ On December 31, 1999, and until December 30, 2000, $2.5 million.

3.~~7.~~ On December 31, 2000, and until December 30, 2001, $2.75 million.

4.~~8.~~ On December 31, 2001, and until December 30, 2002, $3 million.

5.~~9.~~ On December 31, 2002, and until December 30, 2003, $3.25 million.

6.~~10.~~ On December 31, 2003, and until December 30, 2004, $3.6 million.

7.~~11.~~ On December 31, 2004, and thereafter, $4 million.

Reviser's note.—Amended to delete provisions that have served their purpose.

Section 13. Subsection (4) of section 624.439, Florida Statutes, is amended to read:

624.439 Filing of application.—The sponsoring association shall file with the department an application for a certificate of authority upon a form to be furnished by the department, signed under oath by officers of the trust, which shall include or have attached the following:

(4) A copy of the policy, contract, certificate, summary plan description, or other evidence of the benefits and coverages provided to covered employees, which shall be in accordance with s. 627.651(4) ~~627.651(5)~~, and which shall include a table of the rates charged, or proposed to be charged, for each form of such contract. A qualified actuary shall certify that:

(a) The rates are not inadequate.

(b) The rates are appropriate for the class of risks for which they have been computed.

(c) An adequate description of the rating methodology has been filed with the department and such methodology follows consistent and equitable actuarial principles.

Reviser's note.—Amended to conform to the redesignation of subunits of s. 627.651 by s. 61, ch. 92-318, Laws of Florida.

Section 14. Section 624.461, Florida Statutes, is amended to read:

624.461 Definition.—For the purposes of the Florida Insurance Code, "self-insurance fund" means both commercial self-insurance funds organized under s. 624.462 and group self-insurance funds organized under s. 624.4621. The term "self-insurance fund" does not include a governmental self-insurance pool created under s. 768.28(15) ~~768.28(14)~~.

Reviser's note.—Amended to conform to the redesignation of s. 768.28(14) as s. 768.28(15) by s. 70, ch. 94-209, Laws of Florida.

Section 15. Section 624.502, Florida Statutes, is amended to read:

624.502 Service of process fee.—In all instances as provided in any section of the insurance code and s. ~~ss.~~ 48.151(3) ~~and 638.161~~ in which service of process is authorized to be made upon the Insurance Commissioner and Treasurer, the plaintiff shall pay to the department a fee of $15 for such service of process, which fee shall be deposited into the Insurance Commissioner's Regulatory Trust Fund.

Reviser's note.—Amended to conform to the repeal of chapter 638 by s. 57, ch. 93-148, Laws of Florida.

Section 16. Subsection (3) of section 624.5092, Florida Statutes, is amended to read:

624.5092 Administration of taxes; payments.—

(3) This section is applicable to taxes imposed by ss. 624.4621 ~~624.5091~~, 624.475, 624.509-624.515, 627.357, 629.5011, ~~440.57,~~ and 636.066.

Reviser's note.—Amended to conform to the redesignation of s. 440.57 as s. 624.4621 by s. 79, ch. 93-415, Laws of Florida.

Section 17. Subsection (3) of section 624.610, Florida Statutes, 1998 Supplement, is reenacted and subsection (10) of that section is amended to read:

624.610 Reinsurance.—

(3)(a) If a ceding insurer reinsures all or any part of any particular risk or class of risks with an approved reinsurer, the ceding insurer may receive credit in accounting and financial statements on account of such reinsurance ceded. An approved reinsurer is:

1. An assuming insurer authorized by the department to transact such line of insurance or reinsurance in this state. Subject to the other requirements of this code, credit may be taken for reinsurance with an authorized insurer.

2. An assuming insurer approved by the department to transact such line of reinsurance in this state. The department shall approve only solvent

insurers meeting the criteria established for authorized insurers in this state. From time to time, the department shall publish a list of insurers approved pursuant to this subsection. Subject to the other requirements of this code, credit may be taken for reinsurance with an approved reinsurer.

3. An assuming underwriting member of an insurance exchange domiciled in any other state or jurisdiction in the United States, which insurance exchange was licensed and in operation on or before January 1, 1993, provided the insurance exchange presents to the department for its approval, and maintains, satisfactory evidence that such assuming underwriting member maintains the standards and meets the financial requirements applicable to an authorized insurer. Subject to the other requirements of this section, credit may be taken for reinsurance with members approved under this subsection by the department.

4. A group of individual, unincorporated, or incorporated alien insurers which maintains funds in an amount not less than $50 million held in trust for United States policyholders and beneficiaries in a bank or trust company that is subject to supervision by any state of the United States or that is a member of the Federal Reserve System and which group satisfies the department by annually filing evidence that it can meet its obligations under its reinsurance agreements. Subject to the other requirements of this section, credit may be taken for reinsurance with a group approved under this subsection by the department.

(b) Credit in accounting and financial statements on account of reinsurance ceded to a nonapproved reinsurer may be allowed only:

1. When it is demonstrated by the ceding insurer to the satisfaction of the department that such reinsurer maintains the standards and meets the financial requirements applicable to an authorized insurer;

2. To the extent of deposits by, or funds withheld from, such reinsurer pursuant to express provision therefor in the reinsurance contract as security for the payment of the obligations thereunder if such deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer or such deposits or funds are placed in trust for such purposes in a bank which is a member of the Federal Reserve System if withdrawals from the trust cannot be made without the consent of the ceding insurer. The funds withheld may be cash or securities which are qualified as admitted assets under part II of chapter 625 and which have a market value equal to or greater than the credit taken; or

3. To the extent that the amount of a clean, unconditional, evergreen, and irrevocable letter of credit, issued for a term of not less than 1 year and in conformity with the requirements set forth in this subparagraph, equals or exceeds the liability of an unauthorized or unapproved reinsurer for unearned premiums, outstanding losses, and an adequate reserve for incurred but not reported losses under a specific reinsurance agreement. The requirements are that such a clean and irrevocable letter of credit be issued under arrangements satisfactory to the department as constituting security to the ceding insurer substantially equal to that of a deposit under subparagraph 2. and that the letter be issued by a banking institution which is a

member of the Federal Reserve System and which has financial standing satisfactory to the commissioner. The department may adopt rules requiring that the letter adhere in its wording to a format for letters of credit as the format has been or may be adopted or approved by the National Association of Insurance Commissioners.

4. When the reinsurance is ceded to a reinsurer which maintains a trust fund, in a bank or trust company that is subject to supervision by any state of the United States or that is a member of the Federal Reserve System, for the payment of the valid claims for business written in the United States. The trust shall consist of a trusteed account in an amount not less than the reinsurer's liabilities attributable to reinsurance by ceding insurers for business written in the United States and, in addition, the reinsurer shall maintain a trusteed surplus of not less than $20 million. Such trust shall be established in a form approved, and any amendments to the trust approved, by the insurance commissioner where the trust is domiciled, or the insurance commissioner of another state who, pursuant to the terms of the trust agreement, has accepted principal regulatory oversight of the trust. The trust shall remain in effect for as long as the reinsurer has outstanding obligations due under the reinsurance agreements subject to the trust. The trust assets must be in cash or securities which are qualified as admitted assets under part II of chapter 625 and which have a market value of the required liabilities and trusteed surplus. The reinsurer shall report quarterly to the insurance commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by licensed insurers to enable the insurance commissioner to determine the sufficiency of the trust fund. The trust and the reinsurer shall be subject to examination as determined by the commissioner.

5. The credit permitted by subparagraph (a)4. and the credit permitted by subparagraph (b)2. shall not be allowed unless the assuming insurer in substance agrees in the trust agreement to the following conditions:

a. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by the department or, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of United States trust beneficiaries.

b. The assets shall be distributed by, and claims of United States trust beneficiaries shall be filed with and valued by, the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

c. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the

claims for business written in the United States, the assets or any part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

d. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

(c) For the purposes of this subsection only, the term "ceding insurer" shall include any health maintenance organization operating under a certificate of authority issued under part I of chapter 641.

(10) Any authorized insurer ceding directly written risks of loss under this section shall within 30 days of receipt of a cover note or similar confirmation of coverage, or in no event no later than 6 months after the effective date of the reinsurance treaty, file with the department one copy of a summary statement containing the following information about each treaty:

(a) The contract period;

(b) The nature of the reinsured's business;

(c) An indication as to whether the treaty is proportional, nonproportional, coinsurance, modified coinsurance, or indemnity, as applicable;

(d) The ceding company's loss retention per risk;

(e) The reinsured limits;

(f) Any special contract restrictions;

(g) A schedule of reinsurers assuming the risks of loss;

(h) An indication as to whether payments to the assuming insurer are based on written premiums or earned premiums;

(i) Identification of any intermediary or broker used in obtaining the reinsurance and the commission paid them if known; and

(j) Ceding commissions and allowances.

The summary statement shall be signed and attested to by either the chief executive officer or the chief financial officer of the reporting insurer. In addition to the summary statement, the Insurance Commissioner may require the filing of any supporting information relating to the ceding of such risks as she or he deems necessary. If the summary statement prepared by the ceding insurer discloses that the net effect of a reinsurance treaty or treaties (or series of treaties with one or more affiliated reinsurers entered into for the purpose of avoiding the following threshold amount) at any time results in an increase of more than 25 percent to the insurer's surplus as to policyholders, then the insurer shall certify in writing to the department that the relevant reinsurance treaty or treaties complies with the accounting requirements contained in any rule promulgated by the department pursuant to subsection (11)~~(10)~~ or subsection (13)~~(12)~~. If such certificate is filed after the summary statement of such reinsurance treaty or treaties, the

insurer shall refile the summary statement with the certificate. In any event, the certificate shall state that a copy of the certificate was sent to the reinsurer under the reinsurance treaty. This subsection applies to cessions of directly written risk of loss. This subsection does not apply to contracts of facultative reinsurance or to any ceding insurer with surplus as to policyholder that exceeds $100 million as of the immediately preceding December 31. Additionally, any ceding insurer otherwise subject to this section with less than $500,000 in direct premiums written in this state during the preceding calendar year or with less than 1,000 policyholders at the end of the preceding calendar year is exempt from the requirements of this subsection. However, any ceding insurer otherwise subject to this section with more than $250,000 in direct premiums written in this state during the preceding calendar quarter is not exempt from the requirements of this subsection. The Insurance Commissioner may, upon a showing of good cause, waive the requirements of this subsection.

Reviser's note.—Section 89, ch. 98-199, Laws of Florida, purported to amend and redesignate subsection (2) of s. 624.610 as subsection (3), but failed to republish the subsection to include paragraph (a). In the absence of affirmative evidence that the Legislature intended to repeal paragraph (a), subsection (3) is reenacted to confirm that the omission was not intended. Subsection (10) is amended to conform to the redesignation of subunits of s. 624.610 by s. 89, ch. 98-199.

Section 18. Paragraph (a) of subsection (3) of section 625.52, Florida Statutes, is amended to read:

625.52 Securities eligible for deposit.—

(3) To be eligible for deposit under subsection (1), any certificate of deposit must have the following characteristics:

(a) The certificate of deposit must be issued by a qualified public depository as defined in s. 280.02(17) ~~280.02(15)~~, and the depository must conform to and be bound by all provisions of chapter 280 with regard to such funds.

Reviser's note.—Amended to conform to the redesignation of s. 280.02(15) as s. 280.02(16) by s. 4, ch. 96-216, Laws of Florida, and further redesignation of s. 280.02(16) as s. 280.02(17) by s. 11, ch. 98-409, Laws of Florida.

Section 19. Paragraph (b) of subsection (1) of section 626.041, Florida Statutes, is amended to read:

626.041 "General lines agent" defined.—

(1) For the purposes of this code, a "general lines agent" is one so transacting any one or more of the following kinds of insurance:

(b) Casualty insurance, including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund as defined in s. 624.462, or a workers' compensation self-insurance fund established pursuant to s. 624.4621 ~~440.57~~.

Reviser's note.—Amended to conform to the redesignation of s. 440.57 as s. 624.4621 by s. 79, ch. 93-415, Laws of Florida.

Section 20. Section 626.101, Florida Statutes, is amended to read:

626.101 "Adjuster" ~~and "claims investigator"~~ defined.—For the purposes of this part,~~:~~

~~(1)~~ an "adjuster" means a public adjuster, independent adjuster, or company employee adjuster, as respectively defined in part VI.

~~(2) A "claims investigator" is as defined in s. 626.857.~~

Reviser's note.—Amended to conform to the repeal of s. 626.857, which defined claims investigator, by s. 94, ch. 98-199, Laws of Florida.

Section 21. Subsection (1) of section 626.321, Florida Statutes, 1998 Supplement, is reenacted to read:

626.321 Limited licenses.—

(1) The department shall issue to a qualified individual, or a qualified individual or entity under paragraphs (c), (d), and (e), a license as agent authorized to transact a limited class of business in any of the following categories:

(a) Motor vehicle physical damage and mechanical breakdown insurance.—License covering insurance against only the loss of or damage to any motor vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles. Such license also covers insurance against the failure of an original or replacement part to perform any function for which it was designed. The applicant for such a license shall pass a written examination covering motor vehicle physical damage insurance and mechanical breakdown insurance. No individual while so licensed shall hold a license as an agent or solicitor as to any other or additional kind or class of insurance coverage except as to a limited license for credit life and disability insurances as provided in paragraph (e).

(b) Industrial fire insurance or burglary insurance.—License covering only industrial fire insurance or burglary insurance. The applicant for such a license shall pass a written examination covering such insurance. No individual while so licensed shall hold a license as an agent or solicitor as to any other or additional kind or class of insurance coverage except as to life and health insurances.

(c) Personal accident insurance.—License covering only policies of personal accident insurance covering the risks of travel, except as provided in subparagraph 2. The license may be issued only:

1. To a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency and may authorize the sale of such ticket policies only in connection with the sale of transportation tickets, or to the full-time salaried employee of such an agent. No

such policy shall be for a duration of more than 48 hours or for the duration of a specified one-way trip or round trip.

2. To a full-time salaried employee of a business which offers motor vehicles for rent or lease, or to a business office of a business which offers motor vehicles for rent or lease if insurance sales activities authorized by the license are limited to full-time salaried employees. A business office licensed or a person licensed pursuant to this subparagraph may, as an agent of an insurer, transact insurance that provides coverage for accidental personal injury or death of the lessee and any passenger who is riding or driving with the covered lessee in the rental motor vehicle if the lease or rental agreement is for not more than 30 days, or if the lessee is not provided coverage for more than 30 consecutive days per lease period; however, if the lease is extended beyond 30 days, the coverage may be extended one time only for a period not to exceed an additional 30 days.

(d) Baggage and motor vehicle excess liability insurance.—

1. License covering only insurance of personal effects except as provided in subparagraph 2. The license may be issued only:

a. To a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency, which person is engaged in the sale or handling of transportation of baggage and personal effects of travelers, and may authorize the sale of such insurance only in connection with such transportation; or

b. To the full-time salaried employee of a licensed general lines agent, a full-time salaried employee of a business which offers motor vehicles for rent or lease, or to a business office of a business which offers motor vehicles for rent or lease if insurance sales activities authorized by the license are limited to full-time salaried employees.

The purchaser of baggage insurance shall be provided written information disclosing that the insured's homeowner's policy may provide coverage for loss of personal effects and that the purchase of such insurance is not required in connection with the purchase of tickets or in connection with the lease or rental of a motor vehicle.

2. A business office licensed pursuant to subparagraph 1., or a person licensed pursuant to subparagraph 1. who is a full-time salaried employee of a business which offers motor vehicles for rent or lease, may include lessees under a master contract providing coverage to the lessor or may transact excess motor vehicle liability insurance providing coverage in excess of the standard liability limits provided by the lessor in its lease to a person renting or leasing a motor vehicle from the licensee's employer for liability arising in connection with the negligent operation of the leased or rented motor vehicle, provided that the lease or rental agreement is for not more than 30 days; that the lessee is not provided coverage for more than 30 consecutive days per lease period, and, if the lease is extended beyond 30 days, the coverage may be extended one time only for a period not to exceed an additional 30 days; that the lessee is given written notice that his or her

personal insurance policy providing coverage on an owned motor vehicle may provide additional excess coverage; and that the purchase of the insurance is not required in connection with the lease or rental of a motor vehicle. The excess liability insurance may be provided to the lessee as an additional insured on a policy issued to the licensee's employer.

3. A business office licensed pursuant to subparagraph 1., or a person licensed pursuant to subparagraph 1. who is a full-time salaried employee of a business which offers motor vehicles for rent or lease, may, as an agent of an insurer, transact insurance that provides coverage for the liability of the lessee to the lessor for damage to the leased or rented motor vehicle if:

a. The lease or rental agreement is for not more than 30 days; or the lessee is not provided coverage for more than 30 consecutive days per lease period, but, if the lease is extended beyond 30 days, the coverage may be extended one time only for a period not to exceed an additional 30 days;

b. The lessee is given written notice that his personal insurance policy that provides coverage on an owned motor vehicle may provide such coverage with or without a deductible; and

c. The purchase of the insurance is not required in connection with the lease or rental of a motor vehicle.

(e) Credit life or disability insurance.—License covering only credit life or disability insurance. The license may be issued only to an individual employed by a life or health insurer as an officer or other salaried or commissioned representative, or to an individual employed by or associated with a lending or financing institution or creditor, and may authorize the sale of such insurance only with respect to borrowers or debtors of such lending or financing institution or creditor. However, only the individual or entity whose tax identification number is used in receiving or is credited with receiving the commission from the sale of such insurance shall be the licensed agent of the insurer. No individual while so licensed shall hold a license as an agent or solicitor as to any other or additional kind or class of life or health insurance coverage. An entity other than a lending or financial institution defined in s. 626.988 holding a limited license under this paragraph shall also be authorized to sell credit property insurance.

(f) Credit insurance.—License covering only credit insurance, as such insurance is defined in s. 624.605(1)(i), and no individual so licensed shall, during the same period, hold a license as an agent or solicitor as to any other or additional kind of life or health insurance with the exception of credit life or disability insurance as defined in paragraph (e).

(g) Credit property insurance.—A license covering only credit property insurance may be issued to any individual except an individual employed by or associated with a lending or financial institution defined in s. 626.988 and authorized to sell such insurance only with respect to a borrower or debtor, not to exceed the amount of the loan.

(h) Crop hail and multiple-peril crop insurance.—License covering only crop hail and multiple-peril crop insurance. Notwithstanding any other pro-

vision of law, the limited license may be issued to a bona fide salaried employee of an association chartered under the Farm Credit Act of 1971, 12 U.S.C. ss. 2001 et seq., who satisfactorily completes the examination prescribed by the department pursuant to s. 626.241(5). The limited agent must be appointed by, and his or her limited license requested by, a licensed general lines agent. All business transacted by the limited agent shall be in behalf of, in the name of, and countersigned by the agent by whom he or she is appointed. Sections 626.561 and 626.748, relating to records, apply to all business written pursuant to this section. The limited licensee may be appointed by and licensed for only one general lines agent or agency.

(i) In-transit and storage personal property insurance.—A license covering only the insurance of personal property not held for resale, covering the risks of transportation or storage in rented or leased motor vehicles, trailers, or self-service storage facilities, as the latter are defined in s. 83.803, may be issued, without examination, only to employees or authorized representatives of lessors who rent or lease motor vehicles, trailers, or self-service storage facilities and who are authorized by an insurer to issue certificates or other evidences of insurance to lessees of such motor vehicles, trailers, or self-service storage facilities under an insurance policy issued to the lessor. A person licensed under this paragraph shall give a prospective purchaser of in-transit or storage personal property insurance written notice that his or her homeowner's policy may provide coverage for the loss of personal property and that the purchase of such insurance is not required under the lease terms.

Reviser's note.—Section 18, ch. 98-199, Laws of Florida, purported to amend subsection (1) of s. 626.321, but failed to republish the subsection to include paragraphs (g), (h), and (i). In the absence of affirmative evidence that the Legislature intended to repeal paragraphs (g), (h), and (i), subsection (1) is reenacted to confirm that the omission was not intended.

Section 22. Section 626.730, Florida Statutes, 1998 Supplement, is reenacted to read:

626.730 Purpose of license.—

(1) The purpose of a license issued under this code to a general lines agent, customer representative, or solicitor is to authorize and enable the licensee actively and in good faith to engage in the insurance business as such an agent, customer representative, or solicitor with respect to the public and to facilitate the public supervision of such activities in the public interest, and not for the purpose of enabling the licensee to receive a rebate of premium in the form of commission or other compensation as an agent, customer representative, or solicitor or enabling the licensee to receive commissions or other compensation based upon insurance solicited or procured by or through him or her upon his or her own interests or those of other persons with whom he or she is closely associated in capacities other than that of insurance agent, customer representative, or solicitor.

(2) The department shall not grant, renew, continue, or permit to exist any license or appointment as such agent, customer representative, or solicitor as to any applicant therefor or licensee or appointee thereunder if it finds

that the license or appointment has been, is being, or will probably be used by the applicant, licensee, or appointee for the purpose of securing rebates or commissions on "controlled business," that is, on insurance written on his or her own interests or those of his or her family or of any firm, corporation, or association with which he or she is associated, directly or indirectly, or in which he or she has an interest other than as to the insurance thereof.

(3) A violation of this section shall be deemed to exist or be probable (as to an applicant for appointment) if the department finds that during any 12-month period aggregate commissions or other compensation accruing in favor of the applicant or licensee or appointee based upon the insurance procured or to be procured (in the case of an applicant for appointment) by or through the licensee or appointee with respect to insurance of his or her own interests or those of his or her family or of any firm, corporation, or association with which he or she is associated or in which he or she is interested, as referred to in subsection (2), have exceeded or will exceed 50 percent of the aggregate amount of commissions and compensation accruing or to accrue in his or her favor during the same period as to all insurance coverages procured or to be procured by or through him or her. Except, any general lines agent who, on July 1, 1959, had aggregate commissions or other compensation on controlled business as defined in this section in excess of the aforesaid 50 percent shall be permitted to continue writing such insurance for the same insured or insureds, so long as the agent continues to hold a general lines agent's license and appointment in good standing to transact the same kinds of insurance so written, until the termination of such license or appointment by failure to renew or continue, suspension, or revocation.

(4) This section shall not be deemed to prohibit the licensing under a limited license as to motor vehicle physical damage and mechanical breakdown insurance or the licensing under a limited license for credit property insurance of any person employed by or associated with a motor vehicle sales or financing agency, a retail sales establishment, or a consumer loan office, other than a consumer loan office owned by or affiliated with a financial institution as defined in s. 626.988, with respect to insurance of the interest of such agency in a motor vehicle sold or financed by it or in personal property when used as collateral for a loan. This section does not apply with respect to the interest of a real estate mortgagee in or as to insurance covering such interest or in the real estate subject to such mortgage.

Reviser's note.—Section 36, ch. 98-199, Laws of Florida, purported to amend s. 626.730, but failed to republish the section to include subsections (3) and (4). In the absence of affirmative evidence that the Legislature intended to repeal subsections (3) and (4), s. 626.730 is reenacted to confirm that the omission was not intended.

Section 23. Section 626.939, Florida Statutes, is reenacted to read:

626.939 Records produced on order.—

(1) Every person by or as to whom insurance is procured or placed in an unauthorized insurer, upon the order of the department, shall produce for examination by the department, or by the authorized representative of the

department, all policies and other documents evidencing the insurance and shall disclose to the department the amount of gross premiums paid or agreed to be paid for the insurance. For each refusal to obey such order, such person, upon conviction thereof, shall be liable to a fine of not more than $500.

(2) This section does not apply to life insurance or health insurance.

Reviser's note.—Section 36, ch. 92-146, Laws of Florida, purported to amend s. 626.939, but failed to republish the section to include subsection (2). In the absence of affirmative evidence that the Legislature intended to repeal subsection (2), s. 626.939 is reenacted to confirm that the omission was not intended.

Section 24. Paragraphs (g) and (p) of subsection (1) of section 626.9541, Florida Statutes, are amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(g) Unfair discrimination.—

1. Knowingly making or permitting any unfair discrimination between individuals of the same actuarially supportable class and equal expectation of life, in the rates charged for any life insurance or annuity contract, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

2. Knowingly making or permitting any unfair discrimination between individuals of the same actuarially supportable class and essentially the same hazard, in the amount of premium, policy fees, or rates charged for any policy or contract of accident, disability, or health insurance, in the benefits payable thereunder, in any of the terms or conditions of such contract, or in any other manner whatever.

3. For a health insurer, life insurer, or managed care provider to underwrite a policy, or refuse to issue, reissue, or renew a policy, refuse to pay a claim, cancel or otherwise terminate a policy, or increase rates based solely upon the fact that an insured or applicant who is also the proposed insured has made a claim or sought or should have sought medical or psychological treatment in the past for abuse, protection from abuse, or shelter from abuse, or that a claim was caused in the past by, or might occur as a result of, any future assault, battery, or sexual assault by a family or household member upon another family or household member as defined in s. 741.28(2) ~~741.30(1)(b)~~. An insurer may refuse to underwrite, issue, or renew a policy based on the applicant's medical condition, but shall not consider whether such condition was caused by an act of abuse. For purposes of this section, the term "abuse" means the occurrence of one or more of the following acts:

a. Attempting or committing assault, battery, sexual assault, or sexual battery;

b. Placing another in fear of imminent serious bodily injury by physical menace;

c. False imprisonment;

d. Physically or sexually abusing a minor child; or

e. An act of domestic violence as defined in s. 741.28.

(p) Insurance cost specified in "price package".—

1. When the premium or charge for insurance of or involving such property or merchandise is included in the overall purchase price or financing of the purchase of merchandise or property, the vendor or lender shall separately state and identify the amount charged and to be paid for the insurance, and the classifications, if any, upon which based; and the inclusion or exclusion of the cost of insurance in such purchase price or financing shall not increase, reduce, or otherwise affect any other factor involved in the cost of the merchandise, property, or financing as to the purchaser or borrower.

2. This paragraph does not apply to transactions which are subject to the provisions of part I of chapter 520, entitled "The Motor Vehicle Sales Finance Act."

3. This paragraph does not apply to credit life or credit disability insurance which is in compliance with s. 627.681(4) ~~627.681(3)~~.

Reviser's note.—Paragraph (1)(g) is amended to conform to the deletion of the definition of "family or household member" from s. 741.30(1)(b) by s. 5, ch. 94-134, Laws of Florida, and the addition of the definition in s. 741.28(2) by s. 1, ch. 94-134. Paragraph (1)(p) is amended to conform to the redesignation of s. 627.681(3) as s. 627.681(4) by s. 83, ch. 98-199, Laws of Florida.

Section 25. Subsection (11) of section 626.9543, Florida Statutes, 1998 Supplement, is amended to read:

626.9543 Holocaust victims.—

(11) RULES.—The department, by rule, shall provide for the implementation of the provisions of this section by establishing procedures and related forms for facilitating, monitoring, and verifying compliance with this section and for the establishment of ~~for~~ a restitution program for Holocaust victims, survivors, and their heirs and beneficiaries.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 26. Paragraph (d) of subsection (3) of section 626.973, Florida Statutes, is amended to read:

626.973 Fictitious groups.—

(3) The restrictions and limitations of this section do not extend to property or casualty insurance issued in this state, provided that:

(d) For any personal lines insurance risk, the group is composed of such members and meets the requirements specified in s. 627.552 for employee groups, s. 627.553 for debtor groups, s. 627.554 for labor union groups, s. 627.555 for trustee groups, s. 627.556 for credit union groups, s. 627.5567 ~~627.572~~ for association groups, and s. 627.654 for labor union and association groups; except that any provision of such sections which precludes individual selection of amounts of insurance shall not be applicable to property or casualty insurance.

Reviser's note.—Amended to conform to the redesignation of s. 627.572 as s. 627.5567 by s. 52, ch. 92-318, Laws of Florida.

Section 27. Section 627.0612, Florida Statutes, is amended to read:

627.0612 Administrative proceedings in rating determinations.—In any proceeding to determine whether rates, rating plans, or other matters governed by this part comply with the law, the appellate court shall set aside a final order of the department if the department has violated s. 120.57(1)(k) ~~120.57(1)(i)~~ by substituting its findings of fact for findings of an administrative law judge which were supported by competent substantial evidence.

Reviser's note.—Amended to conform to the redesignation of s. 120.57(1)(i) as s. 120.57(1)(k) by s. 5, ch. 98-200, Laws of Florida.

Section 28. Subsection (6) of section 627.162, Florida Statutes, is amended to read:

627.162 Requirements for premium installments; delinquency, collection, and check return charges; attorney's fees.—

(6) The term "insurer," for purposes of this section, includes a commercial self-insurance fund as defined in s. 624.462, an assessable mutual insurer as defined in s. 628.6011, and a group self-insurer's fund as defined in s. 624.4621 ~~400.57~~.

Reviser's note.—Amended to correct an apparent error. Section 440.57 was redesignated as s. 624.4621 by s. 79, ch. 93-415, Laws of Florida.

Section 29. Paragraph (b) of subsection (1) of section 627.4147, Florida Statutes, is amended to read:

627.4147 Medical malpractice insurance contracts.—

(1) In addition to any other requirements imposed by law, each self-insurance policy as authorized under s. 627.357 or insurance policy providing coverage for claims arising out of the rendering of, or the failure to render, medical care or services, including those of the Florida Medical Malpractice Joint Underwriting Association, shall include:

(b)1. Except as provided in subparagraph 2., a clause authorizing the insurer or self-insurer to determine, to make, and to conclude, without the permission of the insured, any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment, if the offer is within the policy limits. It is against public policy for any insurance or self-insurance policy to contain a clause giving the insured the exclusive right to veto any offer for admission of liability and for arbitration made pursuant to s. 766.106, settlement offer, or offer of judgment, when such offer is within the policy limits. However, any offer of admission of liability, settlement offer, or offer of judgment made by an insurer or self-insurer shall be made in good faith and in the best interests of the insured.

2.a. With respect to dentists licensed under chapter 466, a clause clearly stating whether or not the insured has the exclusive right to veto any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment if the offer is within policy limits. An insurer or self-insurer shall not make or conclude, without the permission of the insured, any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment, if such offer is outside the policy limits. However, any offer for admission of liability and for arbitration made under s. 766.106, settlement offer, or offer of judgment made by an insurer or self-insurer shall be made in good faith and in the best interest of the insured.

b. If the policy contains a clause stating the insured does not have the exclusive right to veto any offer or admission of liability and for arbitration made pursuant to s. 766.106, settlement offer or offer of judgment, the insurer or self-insurer shall provide to the insured or the insured's legal representative by certified mail, return receipt requested, a copy of the final offer of admission of liability and for arbitration made pursuant to s. 766.106, settlement offer or offer of judgment and at the same time such offer is provided to the claimant. A copy of any final agreement reached between the insurer and claimant shall also be provided to the insurer or his or her legal representative by certified <u>mail</u>, return receipt requested not more than 10 days after affecting such agreement.

Reviser's note.—Amended to provide contextual consistency, improve clarity, and facilitate correct interpretation.

Section 30. Paragraph (a) of subsection (2) and subsection (6) of section 627.5515, Florida Statutes, are amended to read:

627.5515 Out-of-state groups.—

(2) This part does not apply to a group life insurance policy issued or delivered outside this state under which a resident of this state is provided coverage if:

(a) The policy is issued to an employee group the composition of which is substantially as described in s. 627.552; a labor union group the composition of which is substantially as described in s. 627.554; a trustee group the composition of which is substantially as described in s. 627.555; a credit union group the composition of which is substantially as described in s.

627.556; an additional group complying with s. 627.5565; an association group the composition of which is substantially as described in s. 627.5567 ~~627.572~~; an association group to cover persons associated in any other common group, which common group is formed primarily for purposes other than providing insurance; a group which is established primarily for the purpose of providing group insurance, provided the benefits are reasonable in relation to the premiums charged thereunder and issuance of the group policy has resulted, or will result, in economies of administration; or a group of insurance agents of an insurer, which insurer is the policyholder;

(6) Any insurer who provides coverage under certificates of insurance issued to residents of this state shall designate one Florida-licensed resident agent as agent of record for the service of such certificates, unless the policy is issued to a group substantially as described in s. 627.552, s. 627.554, s. 627.555, s. 627.556, s. 627.5565, or s. 627.5567 ~~627.572~~.

Reviser's note.—Amended to conform to the redesignation of s. 627.572 as s. 627.5567 by s. 52, ch. 92-318, Laws of Florida.

Section 31. Subsection (1) of section 627.6617, Florida Statutes, is amended to read:

627.6617 Coverage for home health care services.—

(1) Any group health insurance policy providing coverage on an expense-incurred basis shall provide coverage for home health care by a home health care agency licensed pursuant to part IV ~~III~~ of chapter 400. Such coverage may be limited to home health care under a plan of treatment prescribed by a licensed physician. Services may be performed by a registered graduate nurse, a licensed practical nurse, a physical therapist, a speech therapist, an occupational therapist, or a home health aide. Provisions for utilization review may be imposed, provided that similar provisions apply to all other types of health care services.

Reviser's note.—Amended to conform to the redesignation of parts of chapter 400 necessitated by the insertion of a new part I by the reviser incident to the compilation of ch. 93-177, Laws of Florida.

Section 32. Paragraph (n) of subsection (3), paragraph (b) of subsection (6), and paragraph (b) of subsection (11) of section 627.6699, Florida Statutes, 1998 Supplement, are amended to read:

627.6699 Employee Health Care Access Act.—

(3) DEFINITIONS.—As used in this section, the term:

(n) "Modified community rating" means a method used to develop carrier premiums which spreads financial risk across a large population and allows adjustments for age, gender, family composition, tobacco usage, and geographic area as determined under paragraph (5)(j)~~(5)(k)~~.

(6) RESTRICTIONS RELATING TO PREMIUM RATES.—

(b) For all small employer health benefit plans that are subject to this section and are issued by small employer carriers on or after January 1, 1994, premium rates for health benefit plans subject to this section are subject to the following:

1. Small employer carriers must use a modified community rating methodology in which the premium for each small employer must be determined solely on the basis of the eligible employee's and eligible dependent's gender, age, family composition, tobacco use, or geographic area as determined under paragraph (5)(j)~~(5)(k)~~.

2. Rating factors related to age, gender, family composition, tobacco use, or geographic location may be developed by each carrier to reflect the carrier's experience. The factors used by carriers are subject to department review and approval.

3. Small employer carriers may not modify the rate for a small employer for 12 months from the initial issue date or renewal date, unless the composition of the group changes or benefits are changed.

4. Carriers participating in the alliance program, in accordance with ss. 408.70-408.706 ~~408.700-408.707~~, may apply a different community rate to business written in that program.

(11) SMALL EMPLOYER HEALTH REINSURANCE PROGRAM.—

(b)1. The program shall operate subject to the supervision and control of the board.

~~2. Until December 31, 1993, the board shall consist of the commissioner or his or her designee, who shall serve as chair, and seven additional members appointed by the commissioner on or before May 1, 1992, as follows:~~

~~a. One member shall be a representative of the largest health insurer in the state, as determined by market share as of December 31, 1991.~~

~~b. One member shall be a representative of the largest health maintenance organization in the state, as determined by market share as of December 31, 1991.~~

~~c. Three members shall be selected from a list of individuals recommended by the Health Insurance Association of America.~~

~~d. Two members shall be selected from a list of individuals recommended by the Florida Insurance Council.~~

~~The terms of members appointed under this subparagraph expire on December 31, 1993. The appointment of a member under this subparagraph does not preclude the commissioner from appointing the same person to serve as a member under subparagraph 3.~~

~~3. Beginning January 1, 1994, the board shall consist of the commissioner or his or her designee, who shall serve as chair, and eight additional~~

~~members who are representatives of carriers and are appointed by the commissioner.~~

2.~~4.~~ Effective upon this act becoming a law, the board shall consist of the commissioner or his or her designee, who shall serve as the chairperson, and 13 additional members who are representatives of carriers and insurance agents and are appointed by the commissioner and serve as follows:

a. The commissioner shall include representatives of small employer carriers subject to assessment under this subsection. If two or more carriers elect to be risk-assuming carriers, the membership must include at least two representatives of risk-assuming carriers; if one carrier is risk-assuming, one member must be a representative of such carrier. At least one member must be a carrier who is subject to the assessments, but is not a small employer carrier. Subject to such restrictions, at least five members shall be selected from individuals recommended by small employer carriers pursuant to procedures provided by rule of the department. Three members shall be selected from a list of health insurance carriers that issue individual health insurance policies. At least two of the three members selected must be reinsuring carriers. Two members shall be selected from a list of insurance agents who are actively engaged in the sale of health insurance.

b. A member appointed under this subparagraph shall serve a term of 4 years and shall continue in office until the member's successor takes office, except that, in order to provide for staggered terms, the commissioner shall designate two of the initial appointees under this subparagraph to serve terms of 2 years and shall designate three of the initial appointees under this subparagraph to serve terms of 3 years.

3.~~5.~~ The commissioner may remove a member for cause.

4.~~6.~~ Vacancies on the board shall be filled in the same manner as the original appointment for the unexpired portion of the term.

5.~~7.~~ The commissioner may require an entity that recommends persons for appointment to submit additional lists of recommended appointees.

Reviser's note.—Paragraphs (3)(n) and (6)(b) are amended to conform to the redesignation of paragraph (5)(k) as paragraph (5)(j) by s. 15, ch. 97-179, Laws of Florida. Paragraph (6)(b) is further amended to correct an apparent error and facilitate correct interpretation. Information relating to the alliance program can be found in ss. 408.70-408.706. Paragraph (11)(b) is amended to delete language that has served its purpose.

Section 33. Paragraph (b) of subsection (5) of section 627.7295, Florida Statutes, 1998 Supplement, is amended to read:

627.7295 Motor vehicle insurance contracts.—

(5)

(b) To the extent that a licensed general agent's cost of obtaining motor vehicle reports on applicants for motor vehicle insurance is not otherwise

compensated, the agent may, in addition to any other fees authorized by law, charge an applicant for motor vehicle insurance a reasonable, nonrefundable fee to reimburse the agent the actual cost of obtaining the report for each licensed driver when the motor vehicle report is obtained by the agent simultaneously with the preparation of the application for use in the calculation of premium or in the proper placement of the risk. The amount of the fee may not exceed the agent's actual cost in obtaining the report which is not otherwise compensated. Actual cost is the cost of obtaining the report on an individual driver basis when so obtained or the pro rata cost per driver when the report is obtained on more than one driver; however, in no case may actual cost include subscription or access fees associated with obtaining motor vehicle reports on-line through ~~though~~ any electronic transmissions program.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 34. Paragraph (b) of subsection (3) of section 627.733, Florida Statutes, 1998 Supplement, is amended to read:

627.733 Required security.—

(3) Such security shall be provided:

(b) By any other method authorized by s. 324.031(2), (3), or (4) and approved by the Department of Highway Safety and Motor Vehicles as affording security equivalent to that afforded by a policy of insurance or by self-insuring as authorized by s. 768.28(15) ~~768.28(14)~~. The person filing such security shall have all of the obligations and rights of an insurer under ss. 627.730-627.7405.

Reviser's note.—Amended to conform to the redesignation of s. 768.28(14) as s. 768.28(15) by s. 70, ch. 94-209, Laws of Florida.

Section 35. Paragraph (e) of subsection (1) of section 627.848, Florida Statutes, is amended to read:

627.848 Cancellation of insurance contract upon default.—

(1) When a premium finance agreement contains a power of attorney or other authority enabling the premium finance company to cancel any insurance contract listed in the agreement, the insurance contract shall not be canceled unless cancellation is in accordance with the following provisions:

(e) Whenever an insurance contract is canceled in accordance with this section, the insurer shall promptly return the unpaid balance due under the finance contract, up to the gross amount available upon the cancellation of the policy, to the premium finance company and any remaining unearned premium to the agent or the insured, or both, for the benefit of the insured or insureds. The insurer shall notify the insured and the agent of the amount of unearned premium returned to the premium finance company and the amount of unearned commission held by the agent. The premium finance company within 15 days shall notify the insured and the agent of the amount

of unearned premium. Within 15 days of receipt of notification from the premium finance company, the agent shall return such amount including any unearned commission to the insured or with the written approval of the insured apply such amount to the purchase of other insurance products regulated by the department. The department may adopt rules necessary to implement the provisions of this subsection.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 36. Subsection (5) of section 627.912, Florida Statutes, 1998 Supplement, is amended to read:

627.912 Professional liability claims and actions; reports by insurers.—

(5) Any self-insurance program established under s. 240.213 shall report in duplicate to the Department of Insurance any claim or action for damages for personal injuries claimed to have been caused by error, omission, or negligence in the performance of professional services provided by the Board of Regents through an employee or agent of the Board of Regents, including practitioners of medicine licensed under chapter 458, practitioners of osteopathic medicine licensed under chapter 459, podiatric physicians ~~podiatrists~~ licensed under chapter 461, and dentists licensed under chapter 466, or based on a claimed performance of professional services without consent if the claim resulted in a final judgment in any amount, or a settlement in any amount. The reports required by this subsection shall contain the information required by subsection (3) and the name, address, and specialty of the employee or agent of the Board of Regents whose performance or professional services is alleged in the claim or action to have caused personal injury.

Reviser's note.—Amended to provide contextual consistency with s. 627.912(1), which reflects redesignation of podiatrists as podiatric physicians by s. 225, ch. 98-166, Laws of Florida.

Section 37. Paragraph (c) of subsection (3) of section 627.9407, Florida Statutes, 1998 Supplement, is amended to read:

627.9407 Disclosure, advertising, and performance standards for long-term care insurance.—

(3) RESTRICTIONS.—A long-term care insurance policy may not:

(c) Restrict its coverage to care only in a nursing home licensed pursuant to part II ~~I~~ of chapter 400 or provide significantly more coverage for such care than coverage for lower levels of care. The department shall adopt rules defining what constitutes significantly more coverage in nursing homes licensed pursuant to part II ~~I~~ of chapter 400 than for lower levels of care.

Reviser's note.—Amended to conform to the redesignation of parts of chapter 400 necessitated by the insertion of a new part I by the reviser incident to the compilation of ch. 93-177, Laws of Florida.

Section 38. Paragraph (a) of subsection (5) of section 628.461, Florida Statutes, is amended to read:

628.461 Acquisition of controlling stock.—

(5)(a) The acquisition of voting securities shall be deemed approved unless the department disapproves the proposed acquisition within 90 days after the statement required by subsection (1) has been filed. The department may on its own initiate, or if requested to do so in writing by a substantially affected party shall conduct, a proceeding to consider the appropriateness of the proposed filing. The 90-day time period shall be tolled during the pendency of the proceeding. Any written request for a proceeding must be filed with the department within 10 days of the date notice of the filing is given. During the pendency of the proceeding or review period by the department, any person or affiliated person complying with the filing requirements of this section may proceed and take all steps necessary to conclude the acquisition so long as the acquisition becoming final is conditioned upon obtaining departmental approval. The department shall, however, at any time that it finds an immediate danger to the public health, safety, and welfare of the domestic policyholders exists, immediately order, pursuant to s. 120.569(2)(n) ~~120.569(2)(l)~~, the proposed acquisition temporarily disapproved and any further steps to conclude the acquisition ceased.

Reviser's note.—Amended to conform to the redesignation of s. 120.569(2)(l) as s. 120.569(2)(n) by s. 4, ch. 98-200, Laws of Florida.

Section 39. Paragraph (a) of subsection (6) of section 628.4615, Florida Statutes, is amended to read:

628.4615 Specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation.—

(6)(a) The acquisition application shall be reviewed in accordance with chapter 120. The department may on its own initiate, or, if requested to do so in writing by a substantially affected person, shall conduct, a proceeding to consider the appropriateness of the proposed filing. Time periods for purposes of chapter 120 shall be tolled during the pendency of the proceeding. Any written request for a proceeding must be filed with the department within 10 days of the date notice of the filing is given. During the pendency of the proceeding or review period by the department, any person or affiliated person complying with the filing requirements of this section may proceed and take all steps necessary to conclude the acquisition so long as the acquisition becoming final is conditioned upon obtaining departmental approval. The department shall, however, at any time it finds an immediate danger to the public health, safety, and welfare of the insureds exists, immediately order, pursuant to s. 120.569(2)(n) ~~120.569(2)(l)~~, the proposed acquisition disapproved and any further steps to conclude the acquisition ceased.

Reviser's note.—Amended to conform to the redesignation of s. 120.569(2)(l) as s. 120.569(2)(n) by s. 4, ch. 98-200, Laws of Florida.

Section 40. Subsection (2) of section 628.6013, Florida Statutes, is amended to read:

628.6013 Converted self-insurance fund; trade association; board of directors.—

(2) An assessable mutual insurer formed by the conversion of a commercial self-insurance fund pursuant to s. 624.463 or by the conversion of a group self-insurer's fund organized under s. 624.4621 ~~440.57~~ shall be endorsed at the time of conversion by a statewide not-for-profit trade association, industry association, or professional association of employers or professionals which has a constitution or bylaws, which is incorporated under the laws of this state, and which has been organized for purposes other than that of obtaining or providing insurance and operated in good faith for a continuous period of 1 year. The association shall not be liable for any actions of the insurer, nor shall it require the establishment or enforcement of any policy of the insurer. Fees, services, and other aspects of the relationship between the association and the insurer must be reasonable and are subject to contractual agreement.

Reviser's note.—Amended to conform to the redesignation of s. 440.57 as s. 624.4621 by s. 79, ch. 93-415, Laws of Florida.

Section 41. Subsection (1) of section 628.6016, Florida Statutes, is amended to read:

628.6016 Applicability of related laws.—In addition to other provisions of the code cited in ss. 628.6011-628.6018:

(1) Sections 624.155, 624.308, 624.414, 624.415, and 624.416(4); ss. 624.418-624.4211, except s. 624.418(2)(f); ss. 624.464, 624.468(1), (2), (4), (6), and (11), 624.472, 624.473, 624.474, ~~624.478,~~ 624.480, 624.482, 624.484, 624.486, and 624.501;

apply to assessable mutual insurers; however, ss. 628.255, 628.411, and 628.421 do not apply. No section of the code not expressly and specifically cited in ss. 628.6011-628.6018 applies to assessable mutual insurers. The term "assessable mutual insurer" shall be substituted for the term "commercial self-insurer" as appropriate.

Reviser's note.—Amended to conform to the repeal of s. 624.478 by s. 2, ch. 98-399, Laws of Florida.

Section 42. Subsection (2) of section 628.6017, Florida Statutes, is amended to read:

628.6017 Converting assessable mutual insurer.—

(2) An assessable mutual insurer may become a nonassessable mutual pursuant to s. 628.341 if the assessable mutual insurer's ratio of actual annual written premiums, as adjusted in accordance with subsection (3) ~~(2)~~, to current surplus as to policyholders does not exceed 10 to 1 for gross written premiums and does not exceed 4 to 1 for net written premiums.

Reviser's note.—Amended to conform to the redesignation of subsection (2) of s. 628.6017 as subsection (3) by s. 3, ch. 94-133, Laws of Florida.

Section 43. Subsection (3) of section 628.721, Florida Statutes, is amended to read:

628.721 Bylaws.—

(3) The mutual insurance holding company shall file within 30 days with the department a copy, certified by the mutual insurance holding company's secretary, of its bylaws and of every modification thereof or addition thereto. The department shall promptly disapprove any bylaw provision deemed by it to be unlawful, unreasonable, inadequate, unfair, or detrimental to the proper interests or protection of the mutual insurance holding company's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any ~~and~~ bylaw provision disapproved.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 44. Subparagraph 50. of paragraph (b) of subsection (6) of section 629.401, Florida Statutes, is amended to read:

629.401 Insurance exchange.—

(6)

(b) In addition to the insurance laws specified in paragraph (a), the department shall regulate the exchange pursuant to the following powers, rights, and duties:

50. Prohibition of underwriting manager investment.—Any direct or indirect investment in any underwriting manager by a broker member or any affiliated person of a broker member or any direct or indirect investment in a broker member by an underwriting manager or any affiliated person of an underwriting manager is prohibited. "Affiliated person" for purposes of this subparagraph is defined in subparagraph 43. ~~Any direct or indirect investment prohibited by this subparagraph which exists prior to July 2, 1987, shall be dissolved by June 30, 1988.~~

Reviser's note.—Amended to delete language that has served its purpose.

Section 45. Section 631.0515, Florida Statutes, is amended to read:

631.0515 Appointment of receiver; insurance holding company.—A delinquency proceeding pursuant to this chapter constitutes the sole and exclusive method of dissolving, liquidating, rehabilitating, reorganizing, conserving, or appointing a receiver of a Florida corporation which is not insolvent as defined by s. 607.01401(15) ~~607.0140(15)~~; which through its shareholders, board of directors, or governing body is deadlocked in the management of its affairs; and which directly or indirectly owns all of the stock of a Florida domestic insurer. The department may petition for an order directing it to rehabilitate such corporation if the interests of policyholders or the public will be harmed as a result of the deadlock. The department shall use

due diligence to resolve the deadlock. Whether or not the department petitions for an order, the circuit court shall not have jurisdiction pursuant to s. 607.271, s. 607.274, or s. 607.277 to dissolve, liquidate, or appoint receivers with respect to, a Florida corporation which directly or indirectly owns all of the stock of a Florida domestic insurer and which is not insolvent as defined by s. 607.01401(15) ~~607.0140(15)~~.

Reviser's note.—Amended to conform to the redesignation of s. 607.0140 as s. 607.01401 by s. 137, ch. 90-179, Laws of Florida.

Section 46. Section 631.112, Florida Statutes, is amended to read:

631.112 Subordination of claims for noncooperation.—If an ancillary receiver or another person performing the duties associated with an ancillary receiver in another state or foreign country fails to transfer to the domiciliary liquidator in this state any assets within her or his control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be deemed class 9 ~~8~~ claims as defined in s. 631.271(1)(i) ~~631.271(1)(h)~~.

Reviser's note.—Amended to conform to the redesignation of class 8 claims as class 9 claims and s. 631.271(1)(h) as s. 631.271(1)(i) by s. 1, ch. 95-213, Laws of Florida.

Section 47. Paragraph (e) of subsection (3) of section 631.57, Florida Statutes, is amended to read:

631.57 Powers and duties of the association.—

(3)

(e)1.

a. In addition to assessments otherwise authorized in paragraph (a), as a temporary measure related to insolvencies caused by Hurricane Andrew, and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(c) ~~631.55(2)(d)~~, or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 166.111(2), and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the department, upon certification of the board of directors, shall levy assessments upon insurers holding a certificate of authority as follows:

(I) Except as provided in sub-sub-subparagraph (II), the assessments payable under this paragraph by any insurer shall not exceed in any 1 year more than 2 percent of that insurer's direct written premiums, net of refunds, in this state during the preceding calendar year for the kinds of insurance within the account specified in s. 631.55(2)(c) ~~631.55(2)(d)~~.

(II) If the amount levied under sub-sub-subparagraph (I) is less than 2 percent of the insurer's direct written premiums, net of refunds, in this state

during calendar year 1991 for the kinds of insurance within the account specified in s. 631.55(2)(c) ~~631.55(2)(d)~~, in addition to and separate from such assessment, the assessment shall also include the difference between the amount calculated based on calendar year 1991 and the amount determined under sub-sub-subparagraph (I). If this sub-sub-subparagraph is held invalid, the invalidity shall not affect other provisions of this section, and to this end the provisions of this section are declared severable.

(III) In addition to any other insurers subject to this subparagraph, this subparagraph also applies to any insurer that held a certificate of authority on August 24, 1992. If this sub-sub-subparagraph is held invalid, the invalidity shall not affect other provisions of this section, and to this end the provisions of this section are declared severable.

b. Any assessments authorized under this paragraph shall be levied by the department upon insurers referred to in sub-subparagraph a., upon certification as to the need therefor by the board of directors, in 1992 and in each year that bonds issued under s. 166.111(2) are outstanding, in such amounts up to such 2 percent limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any, and interest on, and related costs of, issuance of bonds issued under s. 166.111(2). The assessments provided for in this paragraph are hereby assigned and pledged to a municipality issuing bonds under s. 166.111(2)(b), for the benefit of the holders of such bonds, in order to enable such municipality to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without the necessity of any further action by the association, the department, or any other party. To the extent that bonds are issued under s. 166.111(2), the proceeds of assessments levied under this paragraph shall be remitted directly to and administered by the trustee appointed for such bonds.

c. Assessments under this paragraph shall be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an assessment is levied, and subsequent installments being due not later than the end of each succeeding month.

d. The association shall issue a monthly report on the status of the use of the bond proceeds as related to insolvencies caused by Hurricane Andrew. The report must contain the number of claims paid and the amount of claims paid. The association shall also include an analysis of the revenue generated from the additional assessment levied under this subsection. The report must be sent to the Legislature and the Insurance Commissioner monthly.

2. In order to assure that insurers paying assessments levied under this paragraph continue to charge rates that are neither inadequate nor excessive, within 90 days after being notified of such assessments, each insurer that is to be assessed pursuant to this paragraph shall make a rate filing for coverage included within the account specified in s. 631.55(2)(c) ~~631.55(2)(d)~~ and for which rates are required to be filed under s. 627.062.

If the filing reflects a rate change that, as a percentage, is equal to the difference between the rate of such assessment and the rate of the previous year's assessment under this paragraph, the filing shall consist of a certification so stating and shall be deemed approved when made, subject to the department's continuing authority to require actuarial justification as to the adequacy of any rate at any time. Any rate change of a different percentage shall be subject to the standards and procedures of s. 627.062.

Reviser's note.—Amended to conform to the redesignation of s. 631.55(2)(d) as s. 631.55(2)(c) by s. 18, ch. 97-262, Laws of Florida.

Section 48. Paragraph (c) of subsection (1) of section 631.914, Florida Statutes, is amended to read:

631.914 Assessments.—

(1)

(c)1. Effective July 1, 1999, if assessments otherwise authorized in paragraph (a) are insufficient to make all payments on reimbursements then owing to claimants in a calendar year, then upon certification by the board, the department shall levy additional assessments of up to 1.5 percent of the insurer's net direct written premiums in this state during the calendar year next preceding ~~proceeding~~ the date of such assessments against insurers to secure the necessary funds.

2. To assure that insurers paying assessments levied under this paragraph continue to charge rates that are neither inadequate nor excessive, each insurer that is to be assessed pursuant to this paragraph, or a licensed rating organization to which the insurer subscribes, may make, within 90 days after being notified of such assessments, a rate filing for workers' compensation coverage pursuant to ss. 627.072 and 627.091. If the filing reflects a percentage rate change equal to the difference between the rate of such assessment and the rate of the previous year's assessment under this paragraph, the filing shall consist of a certification so stating and shall be deemed approved when made. Any rate change of a different percentage shall be subject to the standards and procedures of ss. 627.072 and 627.091.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 49. Paragraph (a) of subsection (2) of section 633.161, Florida Statutes, is amended to read:

633.161 Cease and desist orders; orders to correct hazardous conditions; orders to vacate; violation; penalties.—

(2)(a) If, during the conduct of a firesafety inspection authorized by ss. 633.081 and 633.085, it is determined that a violation described in this section exists which poses an immediate danger to the public health, safety, or welfare, the State Fire Marshal may issue an order to vacate the building in question, which order shall be immediately effective and shall be an immediate final order under s. 120.569(2)(n) ~~120.569(2)(l)~~. With respect to

a facility under the jurisdiction of a district school board or community college board of trustees, the order to vacate shall be issued jointly by the district superintendent or college president and the State Fire Marshal.

Reviser's note.—Amended to conform to the redesignation of s. 120.569(2)(l) as s. 120.569(2)(n) by s. 4, ch. 98-200, Laws of Florida.

Section 50. Subsection (2) of section 633.72, Florida Statutes, 1998 Supplement, is amended to read:

633.72 Florida Fire Code Advisory Council.—

(2) ~~Within 30 days of January 1, 1988, the State Fire Marshal shall appoint the members of the advisory council, of whom two members shall serve 4-year terms, two members shall serve 3-year terms, and three members shall serve 2-year terms. Thereafter,~~ Each appointee shall serve a 4-year term. No member shall serve more than one term. No member of the council shall be paid a salary as such member, but each shall receive travel and expense reimbursement as provided in s. 112.061.

Reviser's note.—Amended to delete language that has served its purpose.

Section 51. Subsection (1) of section 641.2018, Florida Statutes, is amended to read:

641.2018 Limited coverage for home health care authorized.—

(1) Notwithstanding other provisions of this chapter, a health maintenance organization may issue a contract that limits coverage to home health care services only. The organization and the contract shall be subject to all of the requirements of this part that do not require or otherwise apply to specific benefits other than home care services. To this extent, all of the requirements of this part apply to any organization or contract that limits coverage to home care services, except the requirements for providing comprehensive health care services as provided in ss. 641.19(4), (12), and (13) ~~641.19(2), (6), and (7)~~, and 641.31(1), except ss. 641.31(9), (12), (17), (18), (19), (20), (21), and (24) and 641.31095.

Reviser's note.—Amended to conform to the redesignation of s. 641.19(2), (6), and (7) as s. 641.19(4), (12), and (13) by s. 13, ch. 96-199, Laws of Florida.

Section 52. Section 641.20185, Florida Statutes, is amended to read:

641.20185 High-deductible contracts for medical savings accounts.—Notwithstanding the provisions of this ~~the~~ part and part III related to the requirement for providing comprehensive coverage, a health maintenance organization may offer a high-deductible contract to employers that establish medical savings accounts, as defined in s. 220(d) of the Internal Revenue Code.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 53. Subsection (2) of section 641.30, Florida Statutes, is amended to read:

641.30 Construction and relationship to other laws.—

(2) Except as provided in this part, the Florida Insurance Code does not apply to health maintenance organizations certificated under this part, and health maintenance organizations certificated under this part are not subject to ~~part I or~~ part II ~~III~~ of this chapter. Any person, entity, or health maintenance organization operating without a subsisting certificate of authority in violation of this part or rules promulgated thereunder or renewing, issuing, or delivering health maintenance contracts without a subsisting certificate of authority in violation of this part or rules promulgated thereunder, in addition to being subject to the provisions of this part, is subject to the provisions of the Florida Insurance Code as defined in s. 624.01.

Reviser's note.—Amended to conform to the redesignation of parts of chapter 641 by the reviser necessitated by the repeal of sections constituting former part I by s. 185, ch. 91-108, Laws of Florida.

Section 54. Section 641.3007, Florida Statutes, is reenacted and amended to read:

641.3007 Human immunodeficiency virus infection and acquired immune deficiency syndrome for contract purposes.—

(1) PURPOSE.—The purpose of this section is to prohibit unfair practices in a health maintenance organization contract with respect to exposure to the human immunodeficiency virus infection and related matters, and thereby reduce the possibility that a health maintenance organization subscriber or applicant may suffer unfair discrimination when subscribing to or applying for the contractual services of a health maintenance organization.

(2) SCOPE.—This section applies to all health maintenance contracts which are issued in this state or which are issued outside this state but cover residents of this state. This section shall not prohibit a health maintenance organization from contesting a contract or claim to the extent allowed by law.

(3) DEFINITIONS.—As used in this section:

(a) "AIDS" means acquired immune deficiency syndrome.

(b) "ARC" means AIDS-related complex.

(c) "HIV" means human immunodeficiency virus identified as the causative agent of AIDS.

(4) UTILIZATION OF MEDICAL TESTS.—

(a) With respect to the issuance of or the underwriting of a health maintenance organization contract regarding exposure to the HIV infection and

sickness or medical conditions derived from such infection, a health maintenance organization shall only utilize medical tests which are reliable predictors of risk. A test which is recommended by the Centers for Disease Control and Prevention or by the federal Food and Drug Administration is deemed to be reliable for the purposes of this section. A test which is rejected or not recommended by the Centers for Disease Control and Prevention or the federal Food and Drug Administration is a test which is deemed to be not reliable for the purposes of this section. If a specific Centers for Disease Control and Prevention or federal Food and Drug Administration recommended test indicates the existence or potential existence of exposure by the HIV infection or a sickness or medical condition related to the HIV infection, before relying on a single test result to deny or limit coverage or to rate the coverage, the health maintenance organization shall follow the applicable Centers for Disease Control and Prevention or federal Food and Drug Administration recommended test protocol and shall utilize any applicable Centers for Disease Control and Prevention or federal Food and Drug Administration recommended followup tests or series of tests to confirm the indication.

(b) Prior to testing, the health maintenance organization must disclose its intent to test the person for the HIV infection or for a specific sickness or medical condition derived therefrom and must obtain the person's written informed consent to administer the test. Written informed consent shall include a fair explanation of the test, including its purpose, potential uses, and limitations, and the meaning of its results and the right to confidential treatment of information. Use of a form approved by the department shall raise a conclusive presumption of informed consent.

(c) An applicant shall be notified of a positive test result by a physician designated by the applicant or, in the absence of such designation, by the Department of Health and Rehabilitative Services. Such notification must include:

1. Face-to-face posttest counseling on the meaning of the test results; the possible need for additional testing; and the need to eliminate behavior which might spread the disease to others;

2. The availability in the geographic area of any appropriate health care services, including mental health care, and appropriate social and support services;

3. The benefits of locating and counseling any individual by whom the infected individual may have been exposed to human immunodeficiency virus and any individual whom the infected individual may have exposed to the virus; and

4. The availability, if any, of the services of public health authorities with respect to locating and counseling any individual described in subparagraph 3.

(d) A medical test for exposure to the HIV infection or for a sickness or medical condition derived from such infection shall only be required of or

given to a person if the test is required or given to all subscribers or applicants or if the decision to require the test is based on the person's medical history. Sexual orientation shall not be used in the underwriting process or in the determination of which subscribers or applicants for enrollment shall be tested for exposure to the HIV infection. Neither the marital status, the living arrangements, the occupation, the gender, the beneficiary designation, nor the zip code or other territorial classification of an applicant shall be used to establish the applicant's sexual orientation.

(e) A health maintenance organization may inquire whether a person has been tested positive for exposure to the HIV infection or been diagnosed as having AIDS or ARC caused by the HIV infection or other sickness or medical condition derived from such infection. A health maintenance organization shall not inquire whether a person has been tested for or has received a negative result from a specific test for exposure to the HIV infection or for a sickness or medical condition derived from such infection.

(f) A health maintenance organization shall maintain strict confidentiality regarding medical test results with respect to the HIV infection or a specific sickness or medical condition derived from such infection. Information regarding specific test results shall not be disclosed outside the health maintenance organization, its employees, its marketing representatives, or its insurance affiliates, except to the person tested and to persons designated in writing by the person tested. Specific test results shall not be furnished to an insurance industry or health maintenance organization data bank if a review of the information would identify the individual and the specific test results.

(g) No laboratory may be used by an insurer or insurance support organization for the processing of HIV-related tests unless it is certified by the United States Department of Health and Human Services under the Clinical Laboratories Improvement Act of 1967, permitting testing of specimens obtained in interstate commerce, and subjects itself to ongoing proficiency testing by the College of American Pathologists, the American Association of Bio Analysts, or an equivalent program approved by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

(5) RESTRICTIONS ON CONTRACT EXCLUSIONS AND LIMITATIONS.—

(a) A health maintenance organization contract shall not exclude coverage of a member of a subscriber group because of a positive test result for exposure to the HIV infection or a specific sickness or medical condition derived from such infection, either as a condition for or subsequent to the issuance of the contract, provided that this prohibition shall not apply to persons applying for enrollment where individual underwriting is otherwise allowed by law.

(b) No health maintenance organization contract shall exclude or limit coverage for exposure to the HIV infection or a specific sickness or medical condition derived from such infection, except as provided in a preexisting condition clause.

Reviser's note.—Reenacted to conform to the apparent intent of s. 187, ch. 91-108, Laws of Florida, which nullified the scheduled expiration of provisions in chapter 641 in accordance with s. 11.61. Section 641.3007 was scheduled to expire on October 1, 1991, pursuant to s. 54, ch. 88-380, Laws of Florida, which required legislative review, but not specifically pursuant to s. 11.61. Paragraphs (4)(a) and (g) are amended to conform to the redesignation of the Centers for Disease Control as the Centers for Disease Control and Prevention by Pub. L. No. 102-531.

Section 55. Paragraph (b) of subsection (4) of section 641.31071, Florida Statutes, is amended to read:

641.31071 Preexisting conditions.—

(4)

(b) Subparagraphs (a)1. ~~1.~~ and 2. do not apply to an individual after the end of the first 63-day period during all of which the individual was not covered under any creditable coverage.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Paragraph (4)(b) is not divided into subparagraphs.

Section 56. Subsection (1) of section 641.459, Florida Statutes, is amended to read:

641.459 Construction and relationship to other laws.—

(1) Except as provided in this part, the Florida Insurance Code, as defined in s. 624.01, does not apply to prepaid health clinics certificated under this part; and prepaid health clinics certificated under this part are not subject to ~~former part I or~~ part I ~~II~~ of this chapter.

Reviser's note.—Amended to conform to the redesignation of parts of chapter 641 by the reviser necessitated by the repeal of sections constituting former part I by s. 185, ch. 91-108, Laws of Florida.

Section 57. Subsection (4) of section 641.495, Florida Statutes, 1998 Supplement, is amended to read:

641.495 Requirements for issuance and maintenance of certificate.—

(4) The organization shall ensure that the health care services it provides to subscribers, including physician services as required by s. 641.19(13)(d) and (e) ~~641.19(7)(d) and (e)~~, are accessible to the subscribers, with reasonable promptness, with respect to geographic location, hours of operation, provision of after-hours service, and staffing patterns within generally accepted industry norms for meeting the projected subscriber needs.

Reviser's note.—Amended to conform to the redesignation of s. 641.19(7)(d) and (e) as s. 641.19(13)(d) and (e) by s. 13, ch. 96-199, Laws of Florida.

Section 58. Paragraph (c) of subsection (4) of section 641.51, Florida Statutes, is amended to read:

641.51 Quality assurance program; second medical opinion requirement.—

(4)

(c) For second opinions provided by contract physicians the organization is prohibited from charging a fee to the subscriber in an amount in excess of the subscriber fees established by contract for referral contract physicians. The organization shall pay the amount of all charges, which are usual, reasonable, and customary in the community, for second opinion services performed by a physician not under contract with the organization, but may require the subscriber to be responsible for up to 40 percent of such amount. The organization may require that any tests deemed necessary by a noncontract physician shall be conducted by the organization. The organization may deny reimbursement rights granted under this section in the event the subscriber seeks in excess of three such referrals per year if such subsequent referral costs are deemed by the organization to be evidence that the subscriber has unreasonably overutilized the second opinion privilege. A subscriber thus denied reimbursement under this section shall have recourse to grievance procedures as specified in ss. 408.7056 ~~641.311~~, 641.495, and 641.511. The organization's physician's professional judgment concerning the treatment of a subscriber derived after review of a second opinion shall be controlling as to the treatment obligations of the health maintenance organization. Treatment not authorized by the health maintenance organization shall be at the subscriber's expense.

Reviser's note.—Amended to conform to the redesignation of s. 641.311 as s. 408.7056 by s. 76, ch. 93-129, Laws of Florida.

Section 59. Subsection (3) of section 641.512, Florida Statutes, is amended to read:

641.512 Accreditation and external quality assurance assessment.—

(3) A representative of the department shall accompany the accreditation or review organization throughout the accreditation or assessment process, but shall not participate in the final accreditation or assessment determination. The accreditation or review organization shall monitor and evaluate the quality and appropriateness of patient care, the organization's pursuance of opportunities to improve patient care and resolve identified problems, and the effectiveness of the internal quality assurance program required for health maintenance organization and prepaid health clinic certification pursuant to s. 641.49(3)(p) ~~641.49(3)(o)~~.

Reviser's note.—Amended to conform to the redesignation of s. 641.49(3)(o) as s. 641.49(3)(p) by s. 31, ch. 96-199, Laws of Florida.

Section 60. Subsection (1) of section 641.515, Florida Statutes, is amended to read:

641.515 Investigation by the agency.—

(1) The agency shall investigate further any quality of care issue contained in recommendations and reports submitted pursuant to ss. 408.7056

~~641.311~~ and 641.511. The agency shall also investigate further any information that indicates that the organization does not meet accreditation standards or the standards of the review organization performing the external quality assurance assessment pursuant to reports submitted under s. 641.512. Every organization shall submit its books and records and take other appropriate action as may be necessary to facilitate an examination. The agency shall have access to the organization's medical records of individuals and records of employed and contracted physicians, with the consent of the subscriber or by court order, as necessary to carry out the provisions of this part.

Reviser's note.—Amended to conform to the redesignation of s. 641.311 as s. 408.7056 by s. 76, ch. 93-129, Laws of Florida.

Section 61. Subsection (6) of section 658.2953, Florida Statutes, is amended to read:

658.2953 Interstate branching.—

(6) AUTHORITY OF STATE BANKS TO ESTABLISH INTERSTATE BRANCHES BY MERGER.—Beginning May 31, 1997, with the prior written approval of the department, a state bank may establish, maintain, and operate one or more branches in a state other than this state pursuant to an interstate merger transaction in which the state bank is the resulting bank. No later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank regulatory agency, the applicant state bank shall file an application on a form prescribed by the department accompanied by the required fee pursuant to s. 658.73. The applicant shall also comply with the provisions of ss. 658.40-658.45. ~~branching.—~~

Reviser's note.—Amended to delete extraneous language at the end of subsection (6) as amended by s. 11, ch. 97-30, Laws of Florida, to improve clarity and facilitate correct interpretation.

Section 62. Section 658.90, Florida Statutes, is amended to read:

658.90 Receivers or liquidators under supervision of department.—The provisions of ss. 658.79-658.96 ~~658.79-658.99~~ shall apply to all receivers or liquidators of any bank or trust company heretofore appointed by the order of any circuit court, and all such receivers or liquidators, both those hereunder and those hereafter appointed by the circuit court, shall at all times be under the supervision and control of the department and subject at all times to summary discharge and dismissal by it. Any vacancy in such receivership may be filled by the department at any time.

Reviser's note.—Amended to conform to the repeal of s. 658.99 by s. 189, ch. 92-303, Laws of Florida.

Section 63. Section 660.29, Florida Statutes, is amended to read:

660.29 Use of personnel and facilities.—To the extent not prohibited by law, the trust department of a bank or association, for or in connection with

any of its fiduciary functions or trust business or related activities, may utilize personnel, facilities, and services of the commercial department of that bank or the nontrust departments of that association and of any business organization which is a bank holding company under the provisions of the Bank Holding Company Act of 1956, as amended (12 U.S.C. ss. 1841 et seq.), or a savings and loan holding company of which that bank is a subsidiary as defined in said act or that association is a subsidiary, or of any other such subsidiary of that bank or savings and loan holding company; and, to the same extent, the commercial department of a bank or the nontrust departments of an association or any such bank or savings and loan holding company of which that bank or association is a subsidiary, or any other subsidiary of such bank or savings and loan holding company, for or in connection with any of the business activities or functions of such commercial department or nontrust departments, bank or savings and loan holding company, or other subsidiary, may utilize personnel, facilities, and services of the trust department of such bank or association.

Reviser's note.—Amended to conform to the complete title of the act.

Section 64. Subsection (9) of section 663.16, Florida Statutes, is amended to read:

663.16 Definitions; ss. 663.17-663.181.—As used in ss. 663.17-663.181, the term:

(9) "Global ~~payment~~ net payment obligation" means the amount, if any, owed by an international banking corporation as a whole to a party, after giving effect to the netting provisions of a qualified financial contract, with respect to all transactions subject to netting under such qualified financial contract.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 65. Paragraph (d) of subsection (2) of section 671.105, Florida Statutes, 1998 Supplement, is amended to read:

671.105 Territorial application of the code; parties' power to choose applicable law.—

(2) When one of the following provisions of this code specifies the applicable law, that provision governs; and a contrary agreement is effective only to the extent permitted by the law (including the conflict-of-laws rules) so specified:

(d) Applicability of the chapter on investment securities. (s. 678.1101 ~~678.1061~~)

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Applicability provisions for the chapter on investment securities are found in s. 678.1101, created by s. 1, ch. 98-11, Laws of Florida.

Section 66. Paragraph (g) of subsection (1) of section 678.1021, Florida Statutes, 1998 Supplement, is amended to read:

678.1021 Definitions.—

(1) In this chapter:

(g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of s. 678.5011(2)(b) or (c) ~~678.5011(3)(b) or (c)~~, that person is the entitlement holder.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 678.5011(3) is not divided into paragraphs, and acquisition of a security entitlement is described in s. 678.5011(2).

Section 67. Subsection (3) of section 678.5031, Florida Statutes, 1998 Supplement, is amended to read:

678.5031 Property interest of entitlement holder in financial asset held by securities intermediary.—

(3) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) ~~(a)~~ may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under ss. 678.5051-678.5081.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Subsection (1) corresponds to (a) in the model act in the Uniform Commercial Code.

Section 68. Section 694.14, Florida Statutes, is amended to read:

694.14 Validation of deeds executed by guardians appointed under Veterans' Guardianship Law.—Any deed of conveyance, executed bona fide and for a valuable consideration authorized and approved by order of the probate court, by any limited guardian who was appointed as guardian under the Veterans' Guardianship Law of Florida and who acted under that law and the order of the probate court in the execution of the deed of conveyance is hereby cured and shall be deemed and taken as if properly executed, notwithstanding the fact that the deed was executed to property that the mentally incompetent veteran did not directly or otherwise acquire with money received by the veteran from the United States Department of Veteran's Affairs ~~Veterans Administration~~, and notwithstanding the fact that the conveyance is to property acquired by the mentally incompetent veteran before she or he became a veteran or was declared insane, and notwithstanding the fact that some of the information required by the Veterans' Guardianship Law was not set out in the petition for appointment of the guardian, and notwithstanding the fact that the guardian did not publish the notice of application for an order of sale as required by s. 744.631, and notwithstanding any other defect in any part of the guardianship proceeding that resulted in the court-authorized and court-approved proceeding which resulted in the execution of such guardian's deed.

Reviser's note.—Amended to conform to the redesignation of the Veterans Administration as the United States Department of Veteran's Affairs by Pub. L. No. 102-83, s. 2, (d)(1), 105 Stat. 402 (1991).

Section 69. Paragraphs (b) and (c) of subsection (4) of section 697.05, Florida Statutes, are amended to read:

697.05 Balloon mortgages; scope of law; definition; requirements as to contents; penalties for violations; exemptions.—

(4) This section does not apply to the following:

(b) Any first mortgage, excluding a mortgage in favor of a home improvement contractor defined in s. 520.61(11) the execution of which is required solely by the terms of a home improvement contract which is governed by the provisions of ss. 520.60-520.98 ~~520.60-520.992~~;

(c) Any mortgage created for a term of 5 years or more, excluding a mortgage in favor of a home improvement contractor defined in s. 520.61(11) the execution of which is required solely by the terms of a home improvement contract which is governed by the provisions of ss. 520.60-520.98 ~~520.60-520.992~~;

Reviser's note.—Amended to conform to the repeal of s. 520.992 by s. 31, ch. 87-91, Laws of Florida.

Section 70. Subsection (2) of section 704.05, Florida Statutes, is amended to read:

704.05 Easements and rights of entry.—

(2) Any person claiming such a right of entry or easement may preserve and protect the same from extinguishment by the operation of this act by filing a notice in the form and in accordance with the procedures set forth in ss. 712.05 and 712.06. ~~If the period for filing the notice would expire prior to January 1, 1977, the period shall be extended to January 1, 1977.~~

Reviser's note.—Amended to delete language that has served its purpose.

Section 71. Subsection (9) of section 713.01, Florida Statutes, 1998 Supplement, is amended to read:

713.01 Definitions.—As used in this part, the term:

(9) "Engineer" means a person or firm that is authorized to practice engineering pursuant to chapter 471 or a general contractor who provides engineering services under a design-build contract authorized by s. 471.003(2)(i) ~~471.003(2)(j)~~.

Reviser's note.—Amended to conform to the redesignation of s. 471.003(2)(j) as s. 471.003(2)(i) necessitated by the repeal of s. 471.003(2)(f) by s. 65, ch. 98-287, Laws of Florida.

Section 72. Section 713.32, Florida Statutes, is amended to read:

713.32 Insurance proceeds liable for demands.—The proceeds of any insurance that by the terms of the policy contract are payable to the owner of

improved real property or a lienor and actually received or to be received by him or her because of the damage, destruction, or removal by fire or other casualty of an improvement on which lienors have furnished labor or services or materials shall, after the owner or lienor, as the case may be, has been reimbursed therefrom for any premiums paid by him or her, be liable to liens or demands for payment provided by this part to the same extent and in the same manner, order of priority, and conditions as the real property or payments under a direct contract would have been, if the improvement had not been so damaged, destroyed, or removed. The insurer may pay the proceeds of the policy of insurance to the insured named in the policy and thereupon any liability of the insurer under this part shall cease. The named insured who receives any proceeds of the policy shall be deemed a trustee of the proceeds, and the proceeds shall be deemed trust funds for the purposes designated by this section for a period of 1 year from the date of receipt of the proceeds. This section shall not apply to that part of the proceeds of any policy of insurance payable to a person, including a mortgagee, who holds a lien perfected before the recording of the notice of commencement or recommencement.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 73. Subsection (22) of section 718.103, Florida Statutes, 1998 Supplement, is amended to read:

718.103 Definitions.—As used in this chapter, the term:

(22) "Residential condominium" means a condominium consisting of condominium units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use. With respect to a timeshare condominium, the timeshare instrument as defined in s. 721.05(30) ~~721.05(28)~~ shall govern the intended use of each unit in the condominium. If a condominium is a residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium. A condominium which contains both commercial and residential units is a mixed-use condominium subject to the requirements of s. 718.404.

Reviser's note.—Amended to conform to the redesignation of s. 721.05(28) as s. 721.05(29) by s. 2, ch. 95-274, Laws of Florida, and further redesignation as s. 721.05(30) by s. 2, ch. 98-36, Laws of Florida.

Section 74. Paragraph (b) of subsection (7) of section 718.111, Florida Statutes, 1998 Supplement, is amended to read:

718.111 The association.—

(7) TITLE TO PROPERTY.—

(b) Subject to the provisions of s. 718.112(2)(m) ~~718.112(2)(n)~~, the association, through its board, has the limited power to convey a portion of the common elements to a condemning authority for the purposes of providing utility easements, right-of-way expansion, or other public purposes, whether negotiated or as a result of eminent domain proceedings.

Reviser's note.—Amended to conform to the redesignation of s. 718.112(2)(n) as s. 718.112(2)(m) by s. 3, ch. 98-322, Laws of Florida.

Section 75. Paragraph (e) of subsection (1) of section 719.106, Florida Statutes, 1998 Supplement, is amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(e) Budget procedures.—

1. The board of administration shall mail, or hand deliver to each unit owner at the address last furnished to the association, a meeting notice and copies of the proposed annual budget of common expenses to the unit owners not less than 14 days prior to the meeting at which the budget will be considered. Evidence of compliance with this 14-day notice must be made by an affidavit executed by an officer of the association or the manager or other person providing notice of the meeting and filed among the official records of the association. The meeting must be open to the unit owners.

2. If an adopted budget requires assessment against the unit owners in any fiscal or calendar year which exceeds 115 percent of the assessments for the preceding year, the board upon written application of 10 percent of the voting interests to the board, shall call a special meeting of the unit owners within 30 days, upon not less than 10 days' written notice to each unit owner. At the special meeting, unit owners shall consider and enact a budget. Unless the bylaws require a larger vote, the adoption of the budget requires a vote of not less than a majority of all the voting interests.

3. The board of administration may, in any event, propose a budget to the unit owners at a meeting of members or by writing, and if the budget or proposed budget is approved by the unit owners at the meeting or by a majority of all voting interests in writing, the budget is adopted. If a meeting of the unit owners has been called and a quorum is not attained or a substitute budget is not adopted by the unit owners, the budget adopted by the board of directors goes into effect as scheduled.

4. In determining whether assessments exceed 115 percent of similar assessments for prior years, any authorized provisions for reasonable reserves for repair or replacement of cooperative property, anticipated expenses by the association which are not anticipated to be incurred on a

regular or annual basis, or assessments for betterments to the cooperative property must be excluded from computation. However, as long as the developer is in control of the board of administration, the board may not impose an assessment for any year greater than 115 percent of the prior fiscal or calendar year's assessment without approval of a majority of all voting interests.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 76. Paragraph (a) of subsection (1) of section 719.618, Florida Statutes, is amended to read:

719.618 Converter reserve accounts; warranties.—

(1) When existing improvements are converted to ownership as a residential cooperative, the developer shall establish reserve accounts for capital expenditures and deferred maintenance, or give warranties as provided by subsection (6), or post a surety bond as provided by subsection (7). The developer shall fund the reserve accounts in amounts calculated as follows:

(a)1. When the existing improvements include an air-conditioning system serving more than one unit or property which the association is responsible to repair, maintain, or replace, the developer shall fund an air-conditioning reserve account. The amount of the reserve account shall be the product of the estimated current replacement cost of the system, as disclosed and substantiated pursuant to s. 719.616(3)(b) ~~719.613(3)(b)~~, multiplied by a fraction, the numerator of which shall be the lesser of the age of the system in years or 9, and the denominator of which shall be 10. When such air-conditioning system is within 1,000 yards of the seacoast, the numerator shall be the lesser of the age of the system in years or 3, and the denominator shall be 4.

2. The developer shall fund a plumbing reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the plumbing component, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the plumbing in years or 36, and the denominator of which shall be 40.

3. The developer shall fund a roof reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the roofing component, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the roof in years or the numerator listed in the following table. The denominator of the fraction shall be determined based on the roof type, as follows:

	Roof Type	Numerator	Denominator
a.	Built-up roof without insulation	4	5
b.	Built-up roof with insulation	4	5
c.	Cement tile roof	45	50
d.	Asphalt shingle roof	14	15
e.	Copper roof		
f.	Wood shingle roof	9	10
g.	All other types	18	20

Reviser's note.—Amended to provide contextual consistency within paragraph (1)(a). Section 719.613 does not exist.

Section 77. Paragraph (b) of subsection (5) of section 721.84, Florida Statutes, 1998 Supplement, is amended to read:

721.84 Appointment of a registered agent; duties.—

(5) A registered agent may resign his agency appointment for any obligor for which he serves as registered agent, provided that:

(b) A successor registered agent is appointed and such successor registered agent executes an acceptance of appointment as successor registered agent and satisfies all of the requirements of subsection (1). The resigning registered agent may designate the successor registered agent; however, if the resigning registered agent fails to designate a successor registered agent or the designated successor registered agent fails to accept, the successor registered agent for the affected obligors may be designated by the mortgagee as to the mortgage ~~mortgagee~~ lien and by the association of the timeshare plan as to the assessment lien; and

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 78. Subsection (1) of section 723.085, Florida Statutes, is amended to read:

723.085 Rights of lienholder on mobile homes in rental mobile home parks.—

(1) It shall be unlawful for a mobile home park owner to execute on a writ of possession of a mobile home that is either undergoing foreclosure of a lien for unpaid purchase price or first lien, properly noticed pursuant to this act, or that has been foreclosed on by the lienholder, and the lienholder is the titleholder of the mobile home, so long as the lot rental amount is paid in accordance with s. 723.084(6) ~~section 1(5)~~.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. The original reference in H.B. 2179 (1992) was to subsection (5) of section 11 of the bill which was subsequently moved to subsection (6) of s. 16 of the bill, which became s. 723.084(6).

Section 79. Subsection (2) of section 734.1025, Florida Statutes, is amended to read:

734.1025 Nonresident decedent's estate with property not exceeding $25,000 in this state; determination of claims.—

(2) After complying with the foregoing requirements, the domiciliary personal representative shall cause a notice to be served and published according to the requirements of s. 731.111 ~~733.111~~, notifying all persons having claims or demands against the estate to file them.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 733.111 does not exist, and s. 731.111 concerns notice to creditors.

Section 80. Subsections (3) and (4) of section 741.01, Florida Statutes, 1998 Supplement, are amended to read:

741.01 County court judge or clerk of the circuit court to issue marriage license; fee.—

(3) Further, the fee charged for each marriage license issued in the state shall be increased by an additional sum of $7.50 to be collected upon receipt of the application for the issuance of a marriage license. The clerk shall transfer such funds monthly to the State Treasury for deposit in the Displaced Homemaker Trust Fund created in s. 446.50 ~~410.30~~.

(4) An additional fee of $25 shall be paid to the clerk upon receipt of the application for issuance of a marriage license. The moneys collected shall be forwarded by the clerk to the Supreme Court, monthly, for deposit in the Family Courts Trust Fund ~~or in the Grants and Donations Trust Fund, if the Family Courts Trust Fund is not created by general law~~.

Reviser's note.—Subsection (3) is amended to conform to the redesignation of s. 410.30 as s. 446.50 by s. 89, ch. 95-418, Laws of Florida. Subsection (4) is amended to conform to the creation of the Family Courts Trust Fund by s. 1, ch. 94-223, Laws of Florida.

Section 81. Subsection (4) of section 742.107, Florida Statutes, is amended to read:

742.107 Determining paternity of child with mother under 16 years of age when impregnated.—

(4) When the information provided by the applicant or recipient who was impregnated while under age 16 indicates that such person is the victim of child abuse as provided in s. 827.04(3) ~~827.04(4)~~, the Department of Revenue or the Department of Health and Rehabilitative Services shall notify the

county sheriff's office or other appropriate agency or official and provide information needed to protect the child's health or welfare.

Reviser's note.—Amended to revise the reference to s. 827.04(4) as created by s. 2, ch. 96-215, Laws of Florida, to conform to the redesignation of subunits of s. 827.04 by s. 10, ch. 96-322, Laws of Florida.

Section 82. Subsection (3) of section 743.0645, Florida Statutes, 1998 Supplement, is amended to read:

743.0645 Other persons who may consent to medical care or treatment of a minor.—

(3) The Department of Children and Family Services or the Department of Juvenile Justice caseworker, juvenile probation officer ~~case manager~~, or person primarily responsible for the case management of the child, the administrator of any facility licensed by the department under s. 393.067, s. 394.875, or s. 409.175, or the administrator of any state-operated or state-contracted delinquency residential treatment facility may consent to the medical care or treatment of any minor committed to it or in its custody under chapter 39, chapter 984, or chapter 985, when the person who has the power to consent as otherwise provided by law cannot be contacted and such person has not expressly objected to such consent. There shall be maintained in the records of the minor documentation that a reasonable attempt was made to contact the person who has the power to consent as otherwise provided by law.

Reviser's note.—Amended to conform to the redesignation of intake counselor or case manager as juvenile probation officer by ss. 6 and 7, ch. 98-207, Laws of Florida.

Section 83. Subsection (3) of section 743.065, Florida Statutes, is amended to read:

743.065 Unwed pregnant minor or minor mother; consent to medical services for minor or minor's child valid.—

(3) Nothing in this act shall affect the provisions of s. 390.0111 ~~390.001~~.

Reviser's note.—Amended to conform to the redesignation of s. 390.001 as s. 390.0111 by s. 2, ch. 97-151, Laws of Florida, and s. 1, ch. 98-1, Laws of Florida.

Section 84. Section 743.07, Florida Statutes, is reenacted to read:

743.07 Rights, privileges, and obligations of persons 18 years of age or older.—

(1) The disability of nonage is hereby removed for all persons in this state who are 18 years of age or older, and they shall enjoy and suffer the rights, privileges, and obligations of all persons 21 years of age or older except as otherwise excluded by the State Constitution immediately preceding the effective date of this section and except as otherwise provided in the Beverage Law.

(2) This section shall not prohibit any court of competent jurisdiction from requiring support for a dependent person beyond the age of 18 years when such dependency is because of a mental or physical incapacity which began prior to such person reaching majority or if the person is dependent in fact, is between the ages of 18 and 19, and is still in high school, performing in good faith with a reasonable expectation of graduation before the age of 19.

(3) This section shall operate prospectively and not retrospectively, and shall not affect the rights and obligations existing prior to July 1, 1973.

Reviser's note.—Section 8, ch. 91-246, Laws of Florida, purported to amend s. 743.07, but failed to republish subsections (1) and (3). In the absence of affirmative evidence that the Legislature intended to repeal subsections (1) and (3), s. 743.07 is reenacted to confirm that the omission was not intended.

Section 85. Section 744.641, Florida Statutes, is amended to read:

744.641 Guardian's compensation; bond premiums.—The amount of compensation payable to a guardian shall not exceed 5 percent of the income of the ward during any year and may be taken, by the guardian, on a monthly basis. In the event of extraordinary services rendered by such guardian, the court may, upon petition and after hearing on the petition, authorize additional compensation for the extraordinary services, payable from the estate of the ward. Provided that extraordinary services approved by the United States Department of Veteran's Affairs ~~Veterans Administration~~ do not require a court hearing for approval of the fees, but shall require an order authorizing the guardian to withdraw the amount from the guardianship account. No compensation shall be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of her or his ward reasonable premiums paid by the guardian to any corporate surety upon the guardian's bond.

Reviser's note.—Amended to conform to the redesignation of the Veterans Administration as the United States Department of Veteran's Affairs by Pub. L. No. 102-83, s. 2, (d)(1), 105 Stat. 402 (1991).

Section 86. Subsection (7) of section 744.704, Florida Statutes, is amended to read:

744.704 Powers and duties.—

(7) A public guardian shall not commit a ward to a mental health treatment facility, as defined in s. 394.455(30) ~~394.455(29)~~, without an involuntary placement proceeding as provided by law.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 394.455(30) as redesignated by s. 2, ch. 96-169, Laws of Florida, defines treatment facility.

Section 87. Subsection (2) of section 765.113, Florida Statutes, is amended to read:

765.113 Restrictions on providing consent.—Unless the principal expressly delegates such authority to the surrogate in writing, or a surrogate or proxy has sought and received court approval pursuant to rule 5.900 of the Florida Probate Rules, a surrogate or proxy may not provide consent for:

(2) Withholding or withdrawing life-prolonging procedures from a pregnant patient prior to viability as defined in s. 390.0111(4) ~~390.001(5)~~.

Reviser's note.—Amended to conform to the redesignation of s. 390.001(5) as s. 390.0111(4) by s. 2, ch. 97-151, Laws of Florida, and s. 1, ch. 98-1, Laws of Florida.

Section 88. Subsection (8) of section 766.1115, Florida Statutes, 1998 Supplement, is amended to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

(8) REPORT TO THE LEGISLATURE.—Annually, ~~beginning January 1, 1993,~~ the department shall report to the President of the Senate, the Speaker of the House of Representatives, and the minority leaders and relevant substantive committee chairpersons of both houses, summarizing the efficacy of access and treatment outcomes with respect to providing health care services for low-income persons pursuant to this section.

Reviser's note.—Amended to delete language that has served its purpose.

Section 89. Subsection (2) of section 766.207, Florida Statutes, is amended to read:

766.207 Voluntary binding arbitration of medical negligence claims.—

(2) Upon the completion of presuit investigation with preliminary reasonable grounds for a medical negligence claim intact, the parties may elect to have damages determined by an arbitration panel. Such election may be initiated by either party by serving a request for voluntary binding arbitration of damages within 90 days after service of the claimant's notice of intent to initiate litigation upon the defendant. The evidentiary standards for voluntary binding arbitration of medical negligence claims shall be as provided in ss. 120.569(2)(g) ~~120.569(2)(e)~~ and 120.57(1)(c).

Reviser's note.—Amended to conform to the redesignation of s. 120.569(2)(e) as s. 120.569(2)(g) by s. 4, ch. 98-200, Laws of Florida.

Section 90. Section 766.304, Florida Statutes, 1998 Supplement, is amended to read:

766.304 Administrative law judge to determine claims.—The administrative law judge shall hear and determine all claims filed pursuant to ss. 766.301-766.316 and shall exercise the full power and authority granted to her or him in chapter 120, as necessary, to carry out the purposes of such sections. The administrative law judge has exclusive jurisdiction to determine whether a claim filed under this act is compensable. No civil action

may be brought until the determinations under s. 766.309 have been made by the administrative law judge. If the administrative law judge determines that the claimant is entitled to compensation from the association, no civil action may be brought or continued in violation of the exclusiveness of remedy provisions of s. 766.303. If it is determined that a claim filed under this act is not compensable, neither the doctrine of ~~neither~~ collateral estoppel nor res judicata shall prohibit the claimant from pursuing any and all civil remedies available under common law and statutory law. The findings of fact and conclusions of law of the administrative law judge shall not be admissible in any subsequent proceeding; however, the sworn testimony of any person and the exhibits introduced into evidence in the administrative case are admissible as impeachment in any subsequent civil action only against a party to the administrative proceeding, subject to the Rules of Evidence. An action may not be brought under ss. 766.301-766.316 if the claimant recovers or final judgment is entered. The division may adopt rules to promote the efficient administration of, and to minimize the cost associated with, the prosecution of claims.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 91. Section 766.316, Florida Statutes, 1998 Supplement, is amended to read:

766.316 Notice to obstetrical patients of participation in the plan.—Each hospital with a participating physician on its staff and each participating physician, other than residents, assistant residents, and interns deemed to be participating physicians under s. 766.314(4)(c), under the Florida Birth-Related Neurological Injury Compensation Plan shall provide notice to the obstetrical patients as to the limited no-fault alternative for birth-related neurological injuries. Such notice shall be provided on forms furnished by the association and shall include a clear and concise explanation of a patient's rights and limitations under the plan. The hospital or the participating physician may elect to have the patient sign a form acknowledging receipt of the notice form. Signature of the patient acknowledging receipt of the notice form raises a rebuttable presumption that the notice requirements of this section have been met. Notice need not be given to a patient when the patient has an emergency medical condition as defined in s. 395.002(9)(b) ~~395.002(8)(b)~~ or when notice is not practicable.

Reviser's note.—Amended to conform to the redesignation of subunits of s. 395.002 by s. 23, ch. 98-89, Laws of Florida, and s. 37, ch. 98-171, Laws of Florida.

Section 92. Paragraph (a) of subsection (1) of section 772.102, Florida Statutes, is amended to read:

772.102 Definitions.—As used in this chapter, the term:

(1) "Criminal activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime which is chargeable by indictment or information under the following provisions:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 414.39, relating to public assistance fraud.

3. Section 440.105 or s. 440.106, relating to workers' compensation.

4. Part IV of chapter 501, relating to telemarketing.

5. Chapter 517, relating to securities transactions.

6. Section 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing.

7. Chapter 550, relating to jai alai frontons.

8. Chapter 552, relating to the manufacture, distribution, and use of explosives.

9. Chapter 562, relating to beverage law enforcement.

10. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

11. Chapter 687, relating to interest and usurious practices.

12. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

13. Chapter 782, relating to homicide.

14. Chapter 784, relating to assault and battery.

15. Chapter 787, relating to kidnapping.

16. Chapter 790, relating to weapons and firearms.

17. Section ~~796.01, s.~~ 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

18. Chapter 806, relating to arson.

19. Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.

20. Chapter 812, relating to theft, robbery, and related crimes.

21. Chapter 815, relating to computer-related crimes.

22. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

23. Section 827.071, relating to commercial sexual exploitation of children.

24. Chapter 831, relating to forgery and counterfeiting.

25. Chapter 832, relating to issuance of worthless checks and drafts.

26. Section 836.05, relating to extortion.

27. Chapter 837, relating to perjury.

28. Chapter 838, relating to bribery and misuse of public office.

29. Chapter 843, relating to obstruction of justice.

30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

32. Chapter 893, relating to drug abuse prevention and control.

33. Section 914.22 or s. 914.23, relating to witnesses, victims, or informants.

34. Section 918.12 or s. 918.13, relating to tampering with jurors and evidence.

Reviser's note.—Amended to conform to the repeal of s. 796.01 by s. 2, ch. 93-258, Laws of Florida.

Section 93. Section 773.02, Florida Statutes, is amended to read:

773.02 General provisions.—Except as provided in s. 773.03 ~~section 3~~, an equine activity sponsor, an equine professional, or any other person, which shall include a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities and, except as provided in s. 773.03 ~~section 3~~, no participant nor any participant's representative shall have any claim against or recover from any equine activity sponsor, equine professional, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of equine activities.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. The provisions which became ss. 773.01-773.05 were added to C.S. for S.B. 1658 by Senate amendment at Journal of the Senate 1993, pp. 674-675. Section 3, which became s. 90 of the bill, relating to limitation on liability for equine activity and exceptions to that limitation, was codified as s. 773.03.

Section 94. Section 773.05, Florida Statutes, is amended to read:

773.05 Limitation on liability of persons making land available to public for recreational purposes.—Nothing in ss. 773.01-773.05 ~~this act~~ shall be

construed to limit in any way the limitation of liability granted to private citizens who allow the public to use their land for recreational purposes, as provided in s. 375.251.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. The provisions which became ss. 773.01-773.05 were added to C.S. for S.B. 1658 by Senate amendment at Journal of the Senate 1993, pp. 674-675.

Section 95. Subsection (1) of section 775.0877, Florida Statutes, is amended to read:

775.0877 Criminal transmission of HIV; procedures; penalties.—

(1) In any case in which a person has been convicted of or has pled nolo contendere or guilty to, regardless of whether adjudication is withheld, any of the following offenses, or the attempt thereof, which offense or attempted offense involves the transmission of body fluids from one person to another:

(a) Section 794.011, relating to sexual battery,

(b) Section 826.04, relating to incest,

(c) Section 800.04(1), (2), and (3), relating to lewd, lascivious, or indecent assault or act upon any person less than 16 years of age,

(d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d), relating to assault,

(e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b), relating to aggravated assault,

(f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c), relating to battery,

(g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a), relating to aggravated battery,

(h) Section 827.03(1), relating to child abuse,

(i) Section 827.03(2), relating to aggravated child abuse,

(j) Section 825.102(1), relating to abuse of an elderly person or disabled adult,

(k) Section 825.102(2), relating to aggravated abuse of an elderly person or disabled adult,

(l) Section 827.071, relating to sexual performance by person less than 18 years of age,

(m) Sections 796.03, 796.07, and 796.08, relating to prostitution, or

(n) Section 381.0041(11)(b), relating to donation of blood, plasma, organs, skin, or other human tissue,

the court shall order the offender to undergo HIV testing, to be performed under the direction of the Department of Health and Rehabilitative Services in accordance with s. 381.004, unless the offender has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(3)(h)6. ~~381.004(3)(i)6.~~ or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal offenders or inmates, subsequent to her or his arrest for an offense enumerated in paragraphs (a)-(n) for which she or he was convicted or to which she or he pled nolo contendere or guilty. The results of an HIV test performed on an offender pursuant to this subsection are not admissible in any criminal proceeding arising out of the alleged offense.

Reviser's note.—Amended to conform to the redesignation of s. 381.004(3)(i)6. as s. 381.004(3)(h)6. by s. 2, ch. 98-171, Laws of Florida.

Section 96. Subsection (2) of section 784.07, Florida Statutes, 1998 Supplement, is amended to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a traffic accident investigation officer as described in s. 316.640, a traffic infraction enforcement officer as described in s. 316.640 ~~318.141~~, a parking enforcement specialist as defined in s. 316.640, or a security officer employed by the board of trustees of a community college, while the officer, firefighter, emergency medical care provider, intake officer, traffic accident investigation officer, traffic infraction enforcement officer, parking enforcement specialist, public transit employee or agent, or security officer is engaged in the lawful performance of his or her duties, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

(c) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.

(d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

Reviser's note.—Amended to conform to the repeal of s. 318.141, which described traffic infraction enforcement officers, by s. 44, ch. 96-350, Laws of Florida, and the addition of the description of a traffic infraction enforcement officer in s. 316.640 by s. 37, ch. 96-350.

Section 97. Section 784.075, Florida Statutes, 1998 Supplement, is amended to read:

784.075 Battery on detention or commitment facility staff.—A person who commits a battery on a ~~an~~ juvenile probation officer ~~intake counselor or case manager~~, as defined in s. 984.03(33) or s. 985.03(32) ~~984.03(31) or s. 985.03(30)~~, on other staff of a detention center or facility as defined in s. 984.03(19) or s. 985.03(19), or on a staff member of a commitment facility as defined in s. 985.03(46) ~~985.03(45)~~, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this section, a staff member of the facilities listed includes persons employed by the Department of Juvenile Justice, persons employed at facilities licensed by the Department of Juvenile Justice, and persons employed at facilities operated under a contract with the Department of Juvenile Justice.

Reviser's note.—Amended to conform to the incorporation into ss. 984.03 and 985.03, through the directive in s. 122, ch. 97-238, Laws of Florida, of the redesignation of intake counselor or case manager as juvenile probation officer by ss. 6 and 7, ch. 98-207, Laws of Florida. The subsections within ss. 984.03 and 985.03 were further redesignated by ss. 6 and 7, ch. 98-207.

Section 98. Paragraph (a) of subsection (1) of section 790.0655, Florida Statutes, is amended to read:

790.0655 Purchase and delivery of handguns; mandatory waiting period; exceptions; penalties.—

(1)(a) There shall be a mandatory 3-day waiting period, which shall be 3 days, excluding weekends and legal holidays, between the purchase and the delivery at retail of any handgun. "Purchase" means the transfer of money or other valuable consideration to the retailer. "Handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. "Retailer" means and includes every person engaged in the business of making sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in s. 212.02(13) ~~212.02(14)~~.

Reviser's note.—Amended to conform to the redesignation of s. 212.02(14) as s. 212.02(13) necessitated by the repeal of subsection (12) by s. 31, ch. 95-146, Laws of Florida.

Section 99. Section 794.011, Florida Statutes, is reenacted to read:

794.011 Sexual battery.—

(1) As used in this chapter:

(a) "Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.

(b) "Mentally defective" means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

(c) "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

(d) "Offender" means a person accused of a sexual offense in violation of a provision of this chapter.

(e) "Physically helpless" means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

(f) "Retaliation" includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.

(g) "Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.

(h) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

(i) "Victim" means a person who has been the object of a sexual offense.

(j) "Physically incapacitated" means bodily impaired or handicapped and substantially limited in ability to resist or flee.

(2)(a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082 and 921.141.

(b) A person less than 18 years of age who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury commits a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the following circumstances, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) When the victim is physically helpless to resist.

(b) When the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and

the victim reasonably believes that the offender has the present ability to execute the threat.

(c) When the offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.

(d) When the offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim.

(e) When the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact.

(f) When the victim is physically incapacitated.

(g) When the offender is a law enforcement officer, correctional officer, or correctional probation officer as defined by s. 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under the provisions of s. 943.1395 or is an elected official exempt from such certification by virtue of s. 943.253, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

(5) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) The offense described in subsection (5) is included in any sexual battery offense charged under subsection (3) or subsection (4).

(7) A person who is convicted of committing a sexual battery on or after October 1, 1992, is not eligible for basic gain-time under s. 944.275. This subsection may be cited as the "Junny Rios-Martinez, Jr. Act of 1992."

(8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:

(a) Solicits that person to engage in any act which would constitute sexual battery under paragraph (1)(h) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Engages in any act with that person while the person is 12 years of age or older but less than 18 years of age which constitutes sexual battery under paragraph (1)(h) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery under paragraph (1)(h), or in an attempt to commit sexual battery injures the sexual organs of such person commits a capital or life felony, punishable pursuant to subsection (2).

(9) For prosecution under paragraph (4)(g), acquiescence to a person reasonably believed by the victim to be in a position of authority or control does not constitute consent, and it is not a defense that the perpetrator was not actually in a position of control or authority if the circumstances were such as to lead the victim to reasonably believe that the person was in such a position.

(10) Any person who falsely accuses any person listed in paragraph (4)(g) or other person in a position of control or authority as an agent or employee of government of violating paragraph (4)(g) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Reviser's note.—Section 3, ch. 93-156, Laws of Florida, purported to amend s. 794.011, but failed to republish the section to include the amendment to subsection (5) by s. 3, ch. 92-135, Laws of Florida. In the absence of affirmative evidence that the Legislature intended to repeal the amendment by s. 3, ch. 92-135, s. 794.011 is reenacted as amended by s. 3, ch. 92-135, and s. 3, ch. 93-156, to confirm that the omission was not intended.

Section 100. Subsection (1) of section 794.024, Florida Statutes, is amended to read:

794.024 Unlawful to disclose identifying information.—

(1) A public employee or officer who has access to the photograph, name, or address of a person who is alleged to be the victim of an offense described in this chapter, chapter 800, s. 827.03, s. 827.04, or s. 827.071 may not willfully and knowingly disclose it to a person who is not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, or a person specified in an order entered by the court having jurisdiction of the alleged offense, or to organizations authorized to receive such information pursuant to s. 119.07(3)(f) ~~119.07(3)(h)~~.

Reviser's note.—Amended to conform to the redesignation of s. 119.07(3)(h) as s. 119.07(3)(f) by s. 9, ch. 95-398, Laws of Florida.

Section 101. Subsection (2) of section 810.14, Florida Statutes, 1998 Supplement, is amended to read:

810.14 Voyeurism prohibited; penalties.—

(2) A person who violates this section commits a misdemeanor of the first degree for the first violation, punishable as provided in s. 775.082~~,~~ or s. 775.083~~, or s. 775.084~~.

Reviser's note.—Amended to conform to the deletion of all reference to misdemeanors in s. 775.084 by s. 6, ch. 88-131, Laws of Florida.

Section 102. Paragraph (c) of subsection (2) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(2)

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at $300 or more, but less than $5,000.

2. Valued at $5,000 or more, but less than $10,000.

3. Valued at $10,000 or more, but less than $20,000.

4. A will, codicil, or other testamentary instrument.

5. A firearm.

6. A motor vehicle, except as provided in paragraph ~~subparagraph~~ (2)(a).

7. Any commercially farmed animal, including any animal of the equine, bovine, or swine class, or other grazing animal, and including aquaculture species raised at a certified aquaculture facility. If the property stolen is aquaculture species raised at a certified aquaculture facility, then a $10,000 fine shall be imposed.

8. Any fire extinguisher.

9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 103. Paragraph (f) of subsection (1) and paragraph (f) of subsection (2) of section 828.27, Florida Statutes, are amended to read:

828.27 Local animal control or cruelty ordinances; penalty.—

(1) As used in this section, the term:

(f) "Citation" means a written notice, issued to a person by an officer, that the officer has probable cause to believe that the person has committed a civil infraction in violation of a duly enacted ordinance and that the county court will hear the charge. The citation must contain:

1. The date and time of issuance.

2. The name and address of the person.

3. The date and time the civil infraction was committed.

4. The facts constituting probable cause.

5. The ordinance violated.

6. The name and authority of the officer.

7. The procedure for the person to follow in order to pay the civil penalty, to contest the citation, or to appear in court as required under subsection (6) ~~(5)~~.

8. The applicable civil penalty if the person elects to contest the citation.

9. The applicable civil penalty if the person elects not to contest the citation.

10. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, the person shall be deemed to have waived his or her right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

11. A conspicuous statement that if the person is required to appear in court as mandated by subsection (6) ~~(5)~~, he or she does not have the option of paying a fine in lieu of appearing in court.

(2) The governing body of a county or municipality is authorized to enact ordinances relating to animal control or cruelty, which ordinances must provide:

(f) That, if a person fails to pay the civil penalty, fails to appear in court to contest the citation, or fails to appear in court as required by subsection (6) ~~(5)~~, the court may issue an order to show cause upon the request of the governing body of the county or municipality. This order shall require such persons to appear before the court to explain why action on the citation has not been taken. If any person who is issued such order fails to appear in response to the court's directive, that person may be held in contempt of court.

Reviser's note.—Amended to conform to the redesignation of subsection (5) of s. 828.27 as subsection (6) by s. 6, ch. 94-339, Laws of Florida.

Section 104. Section 831.31, Florida Statutes, is reenacted to read:

831.31 Counterfeit controlled substance; sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver.—

(1) It is unlawful for any person to sell, manufacture, or deliver, or to possess with intent to sell, manufacture, or deliver, a counterfeit controlled substance. Any person who violates this subsection with respect to:

(a) A controlled substance named or described in s. 893.03(1), (2), (3), or (4) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(5) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) For purposes of this section, "counterfeit controlled substance" means:

(a) A controlled substance named or described in s. 893.03 which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or number, or any likeness thereof, of a manufacturer other than the person who in fact manufactured the controlled substance; or

(b) Any substance which is falsely identified as a controlled substance named or described in s. 893.03.

Reviser's note.—Section 102, ch. 97-264, Laws of Florida, purported to reenact s. 831.31, but failed to republish the reenacted section to include paragraph (1)(b). In the absence of affirmative evidence that the Legislature intended to repeal paragraph (1)(b), s. 831.31 is reenacted to confirm that the omission was not intended.

Section 105. Paragraph (b) of subsection (7) of section 901.15, Florida Statutes, 1998 Supplement, is amended to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

(7) There is probable cause to believe that the person has committed:

(b) Child abuse, as defined in s. 827.04(1) and (2) ~~827.04(2) and (3)~~.

With respect to an arrest for an act of domestic violence, the decision to arrest shall not require consent of the victim or consideration of the relationship of the parties. It is the public policy of this state to strongly discourage arrest and charges of both parties for domestic violence on each other and to encourage training of law enforcement and prosecutors in this area. A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection, under s. 741.31(4) or s. 784.047, or pursuant to a foreign order of protection accorded full faith and credit pursuant to s. 741.315, is immune from civil liability that otherwise might result by reason of his or her action.

Reviser's note.—Amended to conform to the deletion of former s. 827.04(2) and redesignation of former s. 827.04(3) as s. 827.04(1) and (2) by s. 10, ch. 96-322, Laws of Florida.

Section 106. Subsection (4) of section 907.041, Florida Statutes, is reenacted to read:

907.041 Pretrial detention and release.—

(4) PRETRIAL DETENTION.—

(a) As used in this subsection, "dangerous crime" means any of the following:

1. Arson;

2. Aggravated assault;

3. Aggravated battery;

4. Illegal use of explosives;

5. Child abuse or aggravated child abuse;

6. Abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult;

7. Hijacking;

8. Kidnapping;

9. Homicide;

10. Manslaughter;

11. Sexual battery;

12. Robbery;

13. Carjacking;

14. Lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years;

15. Sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority;

16. Burglary of a dwelling;

17. Stalking and aggravated stalking;

18. Act of domestic violence as defined in s. 741.28; and

19. Attempting or conspiring to commit any such crime; and home-invasion robbery.

(b) The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in s. 903.046, and any other relevant facts, that:

1. The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant's appearance at subsequent proceedings;

2. The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or

judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process;

3. The defendant is charged with trafficking in controlled substances as defined by s. 893.135, that there is a substantial probability that the defendant has committed the offense, and that no conditions of release will reasonably assure the defendant's appearance at subsequent criminal proceedings; or

4. The defendant poses the threat of harm to the community. The court may so conclude if it finds that the defendant is presently charged with a dangerous crime, that there is a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons. In addition, the court must find that at least one of the following conditions is present:

a. The defendant has previously been convicted of a crime punishable by death or life imprisonment.

b. The defendant has been convicted of a dangerous crime within the 10 years immediately preceding the date of his or her arrest for the crime presently charged.

c. The defendant is on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time of the current arrest.

(c) When a person charged with a crime for which pretrial detention could be ordered is arrested, the arresting agency shall promptly notify the state attorney of the arrest and shall provide the state attorney with such information as the arresting agency has obtained relative to:

1. The nature and circumstances of the offense charged;

2. The nature of any physical evidence seized and the contents of any statements obtained from the defendant or any witness;

3. The defendant's family ties, residence, employment, financial condition, and mental condition; and

4. The defendant's past conduct and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.

(d) When a person charged with a crime for which pretrial detention could be ordered is arrested, the arresting agency may detain such defendant, prior to the filing by the state attorney of a motion seeking pretrial detention, for a period not to exceed 24 hours.

(e) The court shall order detention only after a pretrial detention hearing. The hearing shall be held within 5 days of the filing by the state

attorney of a complaint to seek pretrial detention. The defendant may request a continuance. No continuance shall be for longer than 5 days unless there are extenuating circumstances. The defendant may be detained pending the hearing. The state attorney shall be entitled to one continuance for good cause.

(f) The state attorney has the burden of showing the need for pretrial detention.

(g) The defendant is entitled to be represented by counsel, to present witnesses and evidence, and to cross-examine witnesses. The court may admit relevant evidence without complying with the rules of evidence, but evidence secured in violation of the United States Constitution or the Constitution of the State of Florida shall not be admissible. No testimony by the defendant shall be admissible to prove guilt at any other judicial proceeding, but such testimony may be admitted in an action for perjury, based upon the defendant's statements made at the pretrial detention hearing, or for impeachment.

(h) The pretrial detention order of the court shall be based solely upon evidence produced at the hearing and shall contain findings of fact and conclusions of law to support it. The order shall be made either in writing or orally on the record. The court shall render its findings within 24 hours of the pretrial detention hearing.

(i) If ordered detained pending trial pursuant to subparagraph (b)4., the defendant may not be held for more than 90 days. Failure of the state to bring the defendant to trial within that time shall result in the defendant's release from detention, subject to any conditions of release, unless the trial delay was requested or caused by the defendant or his or her counsel.

(j) A defendant convicted at trial following the issuance of a pretrial detention order shall have credited to his or her sentence, if imprisonment is imposed, the time the defendant was held under the order, pursuant to s. 921.161.

(k) The defendant shall be entitled to dissolution of the pretrial detention order whenever the court finds that a subsequent event has eliminated the basis for detention.

Reviser's note.—Section 7, ch. 93-212, Laws of Florida, purported to amend subsection (4) of s. 907.041, but failed to republish the subsection to include paragraphs (c) through (k). In the absence of affirmative evidence that the Legislature intended to repeal paragraphs (c) through (k), subsection (4) is reenacted to confirm that the omission was not intended.

Section 107. Section 914.16, Florida Statutes, is amended to read:

914.16 Child abuse and sexual abuse of victims under age 16 or persons with mental retardation; limits on interviews.—The chief judge of each judicial circuit, after consultation with the state attorney and the public defender for the judicial circuit, the appropriate chief law enforcement officer, and any other person deemed appropriate by the chief judge, shall

provide by order reasonable limits on the number of interviews that a victim of a violation of s. 794.011, s. 800.04, or s. 827.03 who is under 16 years of age or a victim of a violation of s. 794.011, s. 800.02, s. 800.03, or s. 825.102 who is a person with mental retardation as defined in s. 393.063(44) ~~393.063(41)~~ must submit to for law enforcement or discovery purposes. The order shall, to the extent possible, protect the victim from the psychological damage of repeated interrogations while preserving the rights of the public, the victim, and the person charged with the violation.

Reviser's note.—Amended to conform to the redesignation of s. 393.063(41) as s. 393.063(42) by s. 3, ch. 94-154, Laws of Florida; as s. 393.063(43) by s. 1, ch. 95-293, Laws of Florida; and as s. 393.063(44) by s. 23, ch. 98-171, Laws of Florida.

Section 108. Subsection (2) of section 914.17, Florida Statutes, is amended to read:

914.17 Appointment of advocate for victims or witnesses who are minors or persons with mental retardation.—

(2) An advocate shall be appointed by the court to represent a person with mental retardation as defined in s. 393.063(44) ~~393.063(41)~~ in any criminal proceeding if the person with mental retardation is a victim of or witness to abuse or neglect, or if the person with mental retardation is a victim of a sexual offense or a witness to a sexual offense committed against a minor or person with mental retardation. The court may appoint an advocate in any other criminal proceeding in which a person with mental retardation is involved as either a victim or a witness. The advocate shall have full access to all evidence and reports introduced during the proceedings, may interview witnesses, may make recommendations to the court, shall be noticed and have the right to appear on behalf of the person with mental retardation at all proceedings, and may request additional examinations by medical doctors, psychiatrists, or psychologists. It is the duty of the advocate to perform the following services:

(a) To explain, in language understandable to the person with mental retardation, all legal proceedings in which the person shall be involved;

(b) To act, as a friend of the court, to advise the judge, whenever appropriate, of the person with mental retardation's ability to understand and cooperate with any court proceedings; and

(c) To assist the person with mental retardation and the person's family in coping with the emotional effects of the crime and subsequent criminal proceedings in which the person with mental retardation is involved.

Reviser's note.—Amended to conform to the redesignation of s. 393.063(41) as s. 393.063(42) by s. 3, ch. 94-154, Laws of Florida; as s. 393.063(43) by s. 1, ch. 95-293, Laws of Florida; and as s. 393.063(44) by s. 23, ch. 98-171, Laws of Florida.

Section 109. Section 918.16, Florida Statutes, is amended to read:

918.16 Sex offenses; testimony of person under age 16 or person with mental retardation; courtroom cleared; exceptions.—In the trial of any case, civil or criminal, when any person under the age of 16 or any person with mental retardation as defined in s. 393.063(44) ~~393.063(41)~~ is testifying concerning any sex offense, the court shall clear the courtroom of all persons except parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, court reporters, and at the request of the victim, victim or witness advocates designated by the state attorney's office.

Reviser's note.—Amended to conform to the redesignation of s. 393.063(41) as s. 393.063(42) by s. 3, ch. 94-154, Laws of Florida; as s. 393.063(43) by s. 1, ch. 95-293, Laws of Florida; and as s. 393.063(44) by s. 23, ch. 98-171, Laws of Florida.

Section 110. Paragraphs (a), (e), (f), and (g) of subsection (3) of section 921.0022, Florida Statutes, 1998 Supplement, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
		(a) LEVEL 1
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than $300 but less than $20,000.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
322.212(1)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver's license; possession of simulated identification.
322.212(4)	3rd	Supply or aid in supplying unauthorized driver's license or identification card.
322.212(5)(a)	3rd	False application for driver's license or identification card.
370.13(3)(a) ~~370.13(4)(a)~~	3rd	Molest any stone crab trap, line, or buoy which is property of licenseholder.
370.135(1)	3rd	Molest any blue crab trap, line, or buoy which is property of licenseholder.

Florida Statute	Felony Degree	Description
372.663(1)	3rd	Poach any alligator or crocodilia.
414.39(2)	3rd	Unauthorized use, possession, forgery, or alteration of food stamps, Medicaid ID, value greater than $200.
414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than $200.
443.071(1)	3rd	False statement or representation to obtain or increase unemployment compensation benefits.
458.327(1)(a)	3rd	Unlicensed practice of medicine.
466.026(1)(a)	3rd	Unlicensed practice of dentistry or dental hygiene.
509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than $300.
517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
562.27(1)	3rd	Possess still or still apparatus.
713.69	3rd	Tenant removes property upon which lien has accrued, value more than $50.
812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
815.04(4)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
826.01	3rd	Bigamy.
828.122(3)	3rd	Fighting or baiting animals.
831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
832.041(1)	3rd	Stopping payment with intent to defraud $150 or more.
832.05 (2)(b)&(4)(c)	3rd	Knowing, making, issuing worthless checks $150 or more or obtaining property in return for worthless check $150 or more.

Florida Statute	Felony Degree	Description
838.015(3)	3rd	Bribery.
838.016(1)	3rd	Public servant receiving unlawful compensation.
838.15(2)	3rd	Commercial bribe receiving.
838.16	3rd	Commercial bribery.
843.18	3rd	Fleeing by boat to elude a law enforcement officer.
847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
849.01	3rd	Keeping gambling house.
849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
849.23	3rd	Gambling-related machines; "common offender" as to property rights.
849.25(2)	3rd	Engaging in bookmaking.
860.08	3rd	Interfere with a railroad signal.
860.13(1)(a)	3rd	Operate aircraft while under the influence.
893.13(2)(a)2.	3rd	Purchase of cannabis.
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
		(e) LEVEL 5
316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
316.1935(4)	2nd	Aggravated fleeing or eluding.
322.34(6) ~~322.34(3)~~	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
790.01(2)	3rd	Carrying a concealed firearm.

Florida Statute	Felony Degree	Description
790.162	2nd	Threat to throw or discharge destructive device.
790.163	2nd	False report of deadly explosive.
790.165(2)	3rd	Manufacture, sell, possess, or deliver hoax bomb.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms or electronic weapons or devices.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
874.05(2)	2nd	Encouraging or recruiting another to join a criminal street gang; second or subsequent offense.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c), (3), or (4) drugs) within 1,000 feet of a child care facility or school.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs) within 200 feet of university or public park.

Florida Statute	Felony Degree	Description
893.13(1)(e)	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c), (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), or (2)(b) drugs) within 200 feet of public housing facility.
893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c), (3), or (4) drugs).
		(f) LEVEL 6
316.027(1)(b)	2nd	Accident involving death, failure to stop; leaving scene.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
775.21(10) ~~775.21(9)~~	3rd	Sexual predators; failure to register; failure to renew driver's license or identification card.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.

Florida Statute	Felony Degree	Description
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report of deadly explosive or act of arson or violence to state property.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
812.014(2)(b)	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $20,000.
827.03(1)	3rd	Abuse of a child.
827.03(3)(c)	3rd	Neglect of a child.
827.071(2)&(3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill or do bodily injury.
843.12	3rd	Aids or assists person to escape.

Florida Statute	Felony Degree	Description
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
943.0435(9) ~~943.0435(6)~~	3rd	Sex offenders; failure to comply with reporting requirements.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
		(g) LEVEL 7
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
409.920(2)	3rd	Medicaid provider fraud.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	3rd	Killing of human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	3rd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).

Florida Statute	Felony Degree	Description
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
796.03	2nd	Procuring any person under 16 years for prostitution.
800.04	2nd	Handle, fondle, or assault child under 16 years in lewd, lascivious, or indecent manner.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
812.014(2)(a)	1st	Property stolen, valued at $100,000 or more; property stolen while causing other property damage; 1st degree grand theft.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.

Florida Statute	Felony Degree	Description
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $20,000 or more, but less than $100,000.
827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3) ~~827.04(4)~~	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
872.06	2nd	Abuse of a dead human body.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b)) within 1,000 feet of a child care facility or school.
893.13(1)(e)	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b), within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 50 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135 (1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.

Florida Statute	Felony Degree	Description
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.

Reviser's note.—Paragraph (3)(a) is amended to conform to the redesignation of s. 370.13(4)(a) as s. 370.13(3)(a) necessitated by the repeal of former subsection (2) by s. 18, ch. 98-227, Laws of Florida. Paragraph (3)(e) is amended to conform to the redesignation of s. 322.34(3) as s. 322.34(6) by s. 40, ch. 97-300, Laws of Florida. Paragraph (3)(f) is amended to conform to the redesignation of s. 775.21(9) as s. 775.21(10) by s. 3, ch. 98-81, Laws of Florida, and the redesignation of s. 943.0435(6) as s. 943.0435(9) by s. 7, ch. 98-81. Paragraph (3)(g) is amended to conform to the creation of s. 827.04(4) by s. 2, ch. 96-215, Laws of Florida, and its redesignation as s. 827.04(3) necessitated by the redesignation of subunits by s. 10, ch. 96-322, Laws of Florida.

Section 111. Paragraph (b) of subsection (1) of section 921.0024, Florida Statutes, 1998 Supplement, is amended to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(1)

(b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the court for sentencing. Four (4) sentence points are assessed for an offender's legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation, and each successive community sanction violation; however, if the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for such violation, and for each successive community sanction violation involving a new felony conviction. Multiple counts of community sanction violations before the sentencing court shall not be a basis for multiplying the assessment of community sanction violation points.

Prior serious felony points: If the offender has a primary offense or any additional offense ranked in level 8, level 9, or level 10, and one or more prior serious felonies, a single assessment of 30 points shall be added. For purposes of this section, a prior serious felony is an offense in the offender's prior record that is ranked in level 8, level 9, or level 10 under s. 921.0022 or s. 921.0023 and for which the offender is serving a sentence of confinement, supervision, or other sanction or for which the offender's date of release from

confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offense was committed.

Prior capital felony points: If the offender has one or more prior capital felonies in the offender's criminal record, points shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. A prior capital felony in the offender's criminal record is a previous capital felony offense for which the offender has entered a plea of nolo contendere or guilty ~~to~~ or has been found guilty; or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

Possession of a firearm, semiautomatic firearm, or machine gun: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his possession: a firearm as defined in s. 790.001(6), an additional 18 sentence points are assessed; or if the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(3) while having in his possession a semiautomatic firearm as defined in s. 775.087(3) or a machine gun as defined in s. 790.001(9), an additional 25 sentence points are assessed.

Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(3), (4), (5), (6), (7), or (8), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement Protection Act under s. 775.0823(9) or (10), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

Criminal street gang member: If the offender is convicted of the primary offense and is found to have been a member of a criminal street gang at the time of the commission of the primary offense pursuant to s. 874.04, the subtotal sentence points are multiplied by 1.5.

Domestic violence in the presence of a child: If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in s. 741.28, which was committed in the presence of a child under 16 years of age who is a family household member as defined in s. 741.28(2) with the victim or perpetrator, the subtotal sentence points are multiplied, at the discretion of the court, by 1.5.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 112. Section 922.095, Florida Statutes, is amended to read:

922.095 Grounds for death warrant.—A person who is convicted and sentenced to death must pursue all possible collateral remedies in state and federal court in a timely manner. If any court refuses to grant relief in a collateral postconviction proceeding, the convicted person has 90 days in which to seek further collateral review. Failure to seek further collateral review within the 90-day period constitutes grounds for issuance of a death warrant under s. 922.052 ~~922.09~~ or s. 922.14.

Reviser's note.—Amended to conform to the redesignation of s. 922.09 as s. 922.052 by s. 1, ch. 96-213, Laws of Florida.

Section 113. Subsection (5) of section 925.037, Florida Statutes, is reenacted to read:

925.037 Reimbursement of counties for fees paid to appointed counsel; circuit conflict committees.—

(5)(a) The clerk of the circuit court in each county shall submit to the Justice Administrative Commission a statement of conflict counsel fees at least annually. Such statement shall identify total expenditures incurred by the county on fees of counsel appointed by the court pursuant to this section where such fees are taxed against the county by judgment of the court. On the basis of such statement of expenditures, the Justice Administrative Commission shall pay state conflict case appropriations to the county. The statement of conflict counsel fees shall be on a form prescribed by the Justice Administrative Commission in consultation with the Legislative Committee on Intergovernmental Relations and the Comptroller. Such form also shall provide for the separate reporting of total expenditures made by the county on attorney fees in cases in which other counsel were appointed by the court where the public defender was unable to accept the case as a result of a stated lack of resources. To facilitate such expenditure identification and reporting, the public defender, within 7 days of the appointment of such counsel by the court, shall report to the clerk of circuit court case-related information sufficient to permit the clerk to identify separately county expenditures on fees of such counsel. No county shall be required to submit any additional information to the commission on an annual or other basis in order to document or otherwise verify the expenditure information provided on the statement of conflict counsel fees form, except as provided in paragraph (c).

(b) Before September 30 of each year, the clerk of the circuit court in each county shall submit to the Justice Administrative Commission a report of conflict counsel expenses and costs for the previous local government fiscal year. Such report shall identify expenditures incurred by the county on expenses and costs of counsel appointed by the court pursuant to this section where such expenses and costs are taxed against the county by judgment of the court. Such report of expenditures shall be on a form prescribed by the commission in consultation with the Legislative Committee on Intergovernmental Relations and the Comptroller, provided that such form shall at a minimum separately identify total county expenditures for witness fees and expenses, court reporter fees and costs, and defense counsel travel and per diem. Such form also shall provide for the separate reporting of total county expenditures on attorney expenses and costs in cases in which other counsel were appointed by the court where the public defender was unable to accept the case as a result of a stated lack of resources. To facilitate such expenditure identification and reporting, the public defender, within 7 days of the appointment of such counsel by the court, shall report to the clerk of the circuit court case-related information sufficient to permit the clerk to identify separately county expenditures on expenses and costs of such counsel. No county shall be required to submit any additional information to the Justice Administrative Commission on an annual or other basis in order to document or otherwise verify the expenditure information provided on the report of conflict counsel expenses and costs form, except as provided in paragraph (c).

(c) Before September 30 of each year, each county shall submit to the Justice Administrative Commission a statement of compliance from its independent certified public accountant, engaged pursuant to chapter 11, that each of the forms submitted to the Justice Administrative Commission, as provided for in paragraphs (a) and (b), accurately represent county expenditures incurred in public defender conflict-of-interest cases during each reporting period covered by the statements. The statement of compliance also shall state that the expenditures made and reported were in compliance with relevant portions of Florida law. Such statement may be reflected as part of the annual audit. In the event that the statements are found to be accurate and the expenditures noted thereon to have been made in compliance with relevant portions of Florida law, no additional information or documentation shall be required to accompany the standardized statement of compliance submitted to the commission. If the statement of compliance submitted by the independent certified public accountant indicates that one or more of the forms contained inaccurate expenditure information or if expenditures incurred were not in compliance with relevant portions of Florida law, the commission may require the submission of additional information as may be necessary to identify the nature of the problem.

(d) Upon the failure of a clerk of the circuit court or county to submit any report or information required by this section, the Justice Administrative Commission may refuse to honor any claim until such clerk or county is determined by the commission to be in compliance with such requirements. In the event that the statement of compliance submitted by a county pursuant to paragraph (c) indicates that the clerk of the circuit court claimed more

than was actually expended by the county, the Justice Administrative Commission may require the clerk to submit complete supporting documentation of the county's expenditures on conflict-of-interest cases for the ensuing 3-year period.

Reviser's note.—Section 8, ch. 96-311, Laws of Florida, purported to amend subsection (5), but failed to republish the subsection to include paragraphs (c) and (d). In the absence of affirmative evidence that the Legislature intended to repeal paragraphs (5)(c) and (d), subsection (5) is reenacted to confirm that the omission was not intended.

Section 114. Subsection (8) of section 943.0435, Florida Statutes, 1998 Supplement, is amended to read:

943.0435 Sexual offenders required to register with the department; penalty.—

(8) A sexual offender who indicates his or her intent to reside in another state or jurisdiction and later decides to remain in this state shall, within 48 hours after the date upon which the sexual offender indicated he or she would leave this state, notify the sheriff or department, whichever agency is the agency to which the sexual offender reported the intended change of residence, of his or her intent to remain in this state. If the sheriff is notified by the sexual offender that he or she intends to remain in this state, the sheriff shall promptly report this information to the department. A sexual offender who reports his or her intent to reside in another state or jurisdiction but who remains in this state without reporting to the sheriff or the department in the manner required by this subsection ~~paragraph~~ commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 115. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, 1998 Supplement, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839, s. 893.135, or a violation enumerated in s. 907.041 may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have

committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063(15)

~~393.063(14)~~, s. 394.4572(1), s. 397.451, s. 402.302(3) ~~402.302(8)~~, s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.1075(4), s. 985.407, or chapter 400; or

6. Is seeking to be employed or licensed by the Office of Teacher Education, Certification, Staff Development, and Professional Practices of the Department of Education, any district school board, or any local governmental entity that licenses child care facilities.

Reviser's note.—Amended to conform to the redesignation of s. 393.063(14) as s. 393.063(15) by s. 23, ch. 98-171, Laws of Florida, and s. 402.302(8) as s. 402.302(3) by s. 1, ch. 97-63, Laws of Florida.

Section 116. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, 1998 Supplement, is amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839, s. 893.135, or a violation enumerated in s. 907.041 may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, or to those entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063(15) ~~393.063(14)~~, s. 394.4572(1), s. 397.451, s. 402.302(3) ~~402.302(8)~~, s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, s. 985.407, or chapter 400; or

6. Is seeking to be employed or licensed by the Office of Teacher Education, Certification, Staff Development, and Professional Practices of the Department of Education, any district school board, or any local governmental entity which licenses child care facilities.

Reviser's note.—Amended to conform to the redesignation of s. 393.063(14) as s. 393.063(15) by s. 23, ch. 98-171, Laws of Florida, and s. 402.302(8) as s. 402.302(3) by s. 1, ch. 97-63, Laws of Florida.

Section 117. Subsection (6) and paragraph (b) of subsection (7) of section 943.14, Florida Statutes, are amended to read:

943.14 Criminal justice training schools; certificates and diplomas; exemptions; injunctive relief; fines.—

(6) Criminal justice training schools and courses which are licensed and operated in accordance with the rules of the State Board of Education and the rules of the commission are exempt from the requirements of subsections (1)-(5) ~~(1)-(6)~~. However, any school which instructs approved commission courses must meet the requirements of subsections (1)-(5) ~~(1)-(6)~~.

(7)

(b) All other criminal justice sciences or administration courses or subjects which are a part of the curriculum of any accredited college, university, community college, or vocational-technical center of this state, and all full-time instructors of such institutions, are exempt from the provisions of subsections (1)-(5) ~~(1)-(6)~~.

Reviser's note.—Amended to conform to the redesignation of subsection (6) of s. 943.14 as subsection (5) necessitated by the repeal of former subsection (6) by s. 3, ch. 89-205, Laws of Florida.

Section 118. Paragraphs (a) and (b) of subsection (4) of section 944.10, Florida Statutes, 1998 Supplement, are amended to read:

944.10 Department of Corrections to provide buildings; sale and purchase of land; contracts to provide services and inmate labor.—

(4)(a) Notwithstanding s. 253.025 or s. 287.057, whenever the department finds it to be necessary for timely site acquisition, it may contract without the need for competitive selection with one or more appraisers whose names are contained on the list of approved appraisers maintained by the Division of State Lands of the Department of Environmental Protection in accordance with s. 253.025(6)(b) ~~253.025(7)(b)~~. In those instances in which the department directly contracts for appraisal services, it must also contract with an approved appraiser who is not employed by the same appraisal firm for review services.

(b) Notwithstanding s. 253.025(6) ~~253.025(7)~~, the department may negotiate and enter into an option contract before an appraisal is obtained. The option contract must state that the final purchase price cannot exceed the maximum value allowed by law. The consideration for such an option contract may not exceed 10 percent of the estimate obtained by the department or 10 percent of the value of the parcel, whichever amount is greater.

Reviser's note.—Amended to conform to the redesignation of s. 253.025(7) as s. 253.025(6) by s. 2, ch. 94-240, Laws of Florida.

Section 119. Paragraph (b) of subsection (1) of section 944.606, Florida Statutes, 1998 Supplement, is amended to read:

944.606 Sexual offenders; notification upon release.—

(1) As used in this section:

(b) "Sexual offender" means a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 787.01 or s. 787.02 ~~782.02~~, where the victim is a minor and the defendant is not the victim's parent; s. 787.025; chapter 794; s. 796.03; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0145; or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this

subsection, when the department has received verified information regarding such conviction; an offender's computerized criminal history record is not, in and of itself, verified information.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 782.02 pertains to justifiable use of deadly force, not to criminal offenses. Section 787.02 relates to false imprisonment, including false imprisonment of a minor under age 13 with aggravating circumstances, including sexual battery and lewd, lascivious, or indecent assault or acts.

Section 120. Paragraph (g) of subsection (3) of section 944.801, Florida Statutes, is amended to read:

944.801 Education for state prisoners.—

(3) The responsibilities of the Correctional Education Program shall be to:

(g) Develop and maintain complete and reliable statistics on the number of general educational development (GED) certificates and vocational certificates issued by each institution in each skill area, the change in inmate literacy levels, and the number of inmate admissions to and withdrawals from education courses. The compiled statistics shall be summarized and analyzed in the annual report of correctional education activities required by paragraph (f) ~~(e)~~.

Reviser's note.—Amended to conform to the redesignation of the paragraphs of s. 944.801(3) by s. 2, ch. 96-314, Laws of Florida.

Section 121. Paragraph (b) of subsection (11) of section 948.01, Florida Statutes, 1998 Supplement, is amended to read:

948.01 When court may place defendant on probation or into community control.—

(11) The court may also impose a split sentence whereby the defendant is sentenced to a term of probation which may be followed by a period of incarceration or, with respect to a felony, into community control, as follows:

(b) If the offender does not meet the terms and conditions of probation or community control, the court may revoke, modify, or continue the probation or community control as provided in s. 948.06. If the probation or community control is revoked, the court may impose any sentence that it could have imposed at the time the offender was placed on probation or community control. The court may not provide credit for time served for any portion of a probation or ~~of~~ community control term toward a subsequent term of probation or community control. However, the court may not impose a subsequent term of probation or community control which, when combined with any amount of time served on preceding terms of probation or community control for offenses pending before the court for sentencing, would exceed the maximum penalty allowable as provided in s. 775.082. Such term of incarceration shall be served under applicable law or county ordinance

governing service of sentences in state or county jurisdiction. This paragraph does not prohibit any other sanction provided by law.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 122. Subsection (11) of section 948.03, Florida Statutes, 1998 Supplement, is amended to read:

948.03 Terms and conditions of probation or community control.—

(11) Any order issued pursuant to subsection (10) ~~(9)~~ shall also require the convicted person to reimburse the appropriate agency for the costs of drawing and transmitting the blood specimens to the Florida Department of Law Enforcement.

Reviser's note.—Amended to conform to the redesignation of subsection (9), as created by s. 53, ch. 95-283, Laws of Florida, as subsection (10) necessitated by the creation of new subunits by ss. 53 and 59, ch. 95-283.

Section 123. Paragraph (d) of subsection (6) of section 948.08, Florida Statutes, is amended to read:

948.08 Pretrial intervention program.—

(6)

(d) Any entity, whether public or private, providing a pretrial substance abuse education and treatment intervention program under this subsection must contract with the county or appropriate governmental entity, and the terms of the contract must include, but need not be limited to, the requirements established for private entities under s. 948.15(3) ~~948.15(2)~~.

Reviser's note.—Amended to conform to the redesignation of s. 948.15(2) as s. 948.15(3) by s. 42, ch. 95-283, Laws of Florida.

Section 124. Subsections (6) and (7) of section 957.04, Florida Statutes, are amended to read:

957.04 Contract requirements.—

(6) Notwithstanding s. 253.025(7) ~~253.025(8)~~, the Board of Trustees of the Internal Improvement Trust Fund need not approve a lease-purchase agreement negotiated by the commission if the commission finds that there is a need to expedite the lease-purchase.

(7)(a) Notwithstanding s. 253.025 or s. 287.057, whenever the commission finds it to be in the best interest of timely site acquisition, it may contract without the need for competitive selection with one or more appraisers whose names are contained on the list of approved appraisers maintained by the Division of State Lands of the Department of Environmental Protection in accordance with s. 253.025(6)(b) ~~253.025(7)(b)~~. In those instances when the commission directly contracts for appraisal services, it shall also contract with an approved appraiser who is not employed by the same appraisal firm for review services.

(b) Notwithstanding s. 253.025(6) ~~253.025(7)~~, the commission may negotiate and enter into lease-purchase agreements before an appraisal is obtained. Any such agreement must state that the final purchase price cannot exceed the maximum value allowed by law.

Reviser's note.—Amended to conform to the redesignation of subunits within s. 253.025 by s. 2, ch. 94-240, Laws of Florida.

Section 125. Paragraph (a) of subsection (5) of section 960.003, Florida Statutes, is amended to read:

960.003 Human immunodeficiency virus testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.—

(5) EXCEPTIONS.—The provisions of subsections (2) and (4) do not apply if:

(a) The person charged with or convicted of or alleged by petition for delinquency to have committed or been adjudicated delinquent for an offense described in subsection (2) has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(3)(h)6. ~~381.004(3)(i)6.~~ or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal defendants, inmates, or juvenile offenders, subsequent to his or her arrest, conviction, or delinquency adjudication for the offense for which he or she was charged or alleged by petition for delinquency to have committed; and

Reviser's note.—Amended to conform to the redesignation of s. 381.004(3)(i) as s. 381.004(3)(h) by s. 2, ch. 98-171, Laws of Florida.

Section 126. Paragraph (d) of subsection (29) of section 984.03, Florida Statutes, 1998 Supplement, is amended, and subsection (41) of that section is reenacted, to read:

984.03 Definitions.—When used in this chapter, the term:

(29) "Habitually truant" means that:

(d) The failure or refusal of the parent or legal guardian or the child to participate, or make a good faith effort to participate, in the activities prescribed to remedy the truant behavior, or the failure or refusal of the child to return to school after participation in activities required by this subsection, or the failure of the child to stop the truant behavior after the school administration and the Department of Juvenile Justice have worked with the child as described in s. 232.19(3) and (4) shall be handled as prescribed in s. 232.19.

(41) "Parent" means a woman who gives birth to a child and a man whose consent to the adoption of the child would be required under s. 63.062(1)(b). If a child has been legally adopted, the term "parent" means the adoptive mother or father of the child. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged

or prospective parent, unless the parental status falls within the terms of either s. 39.503 or s. 63.062(1)(b).

Reviser's note.—Paragraph (29)(d) is amended to conform to the redesignation of s. 232.19(3) as s. 232.19(3) and (4) by s. 9, ch. 97-234, Laws of Florida. Subsection 41 is reenacted to confirm the citation in the subsection to s. 39.503 by s. 165, ch. 98-403, Laws of Florida. Section 64, ch. 98-280, Laws of Florida, a reviser's bill, revised the cite in subsection (41) from s. 39.4051(7) to s. 39.4051(1) to conform to the appropriate subsections for the subject matter referenced. Section 64, chapter 98-403, transferred s. 39.4051 to s. 39.503.

Section 127. Subsection (6) of section 984.226, Florida Statutes, 1998 Supplement, is amended to read:

984.226 Pilot program for a physically secure facility; contempt of court.—

(6) The Juvenile Justice Accountability ~~Advisory~~ Board shall monitor the operation of the pilot program and issue a preliminary evaluation report to the Legislature by December 1, 1998. The Department of Juvenile Justice and the Juvenile Justice Accountability ~~Advisory~~ Board shall issue a joint final report to the Legislature, including any proposed legislation, by December 1, 1999.

Reviser's note.—Amended to conform to the redesignation of the Juvenile Justice Advisory Board as the Juvenile Justice Accountability Board by s. 12, ch. 98-136, Laws of Florida.

Section 128. Paragraph (a) of subsection (3) and paragraph (a) of subsection (4) of section 985.04, Florida Statutes, 1998 Supplement, are amended to read:

985.04 Oaths; records; confidential information.—

(3)(a) Except as provided in subsections (2), (4), (5), and (6), and s. 943.053, all information obtained under this part in the discharge of official duty by any judge, any employee of the court, any authorized agent of the Department of Juvenile Justice, the Parole Commission, the Juvenile Justice Accountability ~~Advisory~~ Board, the Department of Corrections, the district juvenile justice boards, any law enforcement agent, or any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile is confidential and may be disclosed only to the authorized personnel of the court, the Department of Juvenile Justice and its designees, the Department of Corrections, the Parole Commission, the Juvenile Justice Accountability ~~Advisory~~ Board, law enforcement agents, school superintendents and their designees, any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile, and others entitled under this chapter to receive that information, or upon order of the court. Within each county, the sheriff, the chiefs of police, the district school superintendent, and the department shall enter into an interagency agreement for the purpose of sharing information about juvenile offenders among all parties.

The agreement must specify the conditions under which summary criminal history information is to be made available to appropriate school personnel, and the conditions under which school records are to be made available to appropriate department personnel. Such agreement shall require notification to any classroom teacher of assignment to the teacher's classroom of a juvenile who has been placed in a community control or commitment program for a felony offense. The agencies entering into such agreement must comply with s. 943.0525, and must maintain the confidentiality of information that is otherwise exempt from s. 119.07(1), as provided by law.

(4)(a) Records in the custody of the Department of Juvenile Justice regarding children are not open to inspection by the public. Such records may be inspected only upon order of the Secretary of Juvenile Justice or his or her authorized agent by persons who have sufficient reason and upon such conditions for their use and disposition as the secretary or his or her authorized agent deems proper. The information in such records may be disclosed only to other employees of the Department of Juvenile Justice who have a need therefor in order to perform their official duty; to other persons as authorized by rule of the Department of Juvenile Justice; and, upon request, to the Juvenile Justice Accountability ~~Advisory~~ Board and the Department of Corrections. The secretary or his or her authorized agent may permit properly qualified persons to inspect and make abstracts from records for statistical purposes under whatever conditions upon their use and disposition the secretary or his or her authorized agent deems proper, provided adequate assurances are given that children's names and other identifying information will not be disclosed by the applicant.

Reviser's note.—Amended to conform to the redesignation of the Juvenile Justice Advisory Board as the Juvenile Justice Accountability Board by s. 12, ch. 98-136, Laws of Florida.

Section 129. Subsections (2) and (3) of section 985.203, Florida Statutes, are amended to read:

985.203 Right to counsel.—

(2) If the parents or legal guardian of an indigent child are not indigent but refuse to employ counsel, the court shall appoint counsel pursuant to s. 27.52(2)(d) ~~27.52(2)(e)~~ to represent the child at the detention hearing and until counsel is provided. Costs of representation shall be assessed as provided by ss. 27.52(2)(d) ~~27.52(2)(e)~~ and 938.29. Thereafter, the court shall not appoint counsel for an indigent child with nonindigent parents or legal guardian but shall order the parents or legal guardian to obtain private counsel. A parent or legal guardian of an indigent child who has been ordered to obtain private counsel for the child and who willfully fails to follow the court order shall be punished by the court in civil contempt proceedings.

(3) An indigent child with nonindigent parents or legal guardian may have counsel appointed pursuant to s. 27.52(2)(d) ~~27.52(2)(e)~~ if the parents or legal guardian have willfully refused to obey the court order to obtain counsel for the child and have been punished by civil contempt and then still have willfully refused to obey the court order. Costs of representation shall be assessed as provided by ss. 27.52(2)(d) ~~27.52(2)(e)~~ and 938.29.

Reviser's note.—Amended to conform to the redesignation of s. 27.52(2)(e) as s. 27.52(2)(d) by s. 4, ch. 97-107, Laws of Florida.

Section 130. Paragraph (b) of subsection (2) and subsection (4) of section 985.227, Florida Statutes, are amended to read:

985.227 Prosecution of juveniles as adults by the direct filing of an information in the criminal division of the circuit court; discretionary criteria; mandatory criteria.—

(2) MANDATORY DIRECT FILE.—

(b) Notwithstanding subsection (1), regardless of the child's age at the time the alleged offense was committed, the state attorney must file an information with respect to any child who previously has been adjudicated for offenses which, if committed by an adult, would be felonies and such adjudications occurred at three or more separate delinquency adjudicatory hearings, and three of which resulted in residential commitments as defined in s. 985.03(46) ~~985.03(45)~~.

(4) DIRECT-FILE POLICIES AND GUIDELINES.—Each state attorney shall develop and annually update written policies and guidelines to govern determinations for filing an information on a juvenile, to be submitted to the Executive Office of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Juvenile Justice Accountability ~~Advisory~~ Board not later than January 1 of each year.

Reviser's note.—Paragraph (2)(b) is amended to conform to the redesignation of s. 985.03(45) as s. 985.03(46) by the reviser incident to the compilation of the 1998 Supplement to the Florida Statutes 1997. Subsection (4) is amended to conform to the redesignation of the Juvenile Justice Advisory Board as the Juvenile Justice Accountability Board by s. 12, ch. 98-136, Laws of Florida.

Section 131. Section 985.23, Florida Statutes, 1998 Supplement, is reenacted and amended to read:

985.23 Disposition hearings in delinquency cases.—When a child has been found to have committed a delinquent act, the following procedures shall be applicable to the disposition of the case:

(1) Before the court determines and announces the disposition to be imposed, it shall:

(a) State clearly, using common terminology, the purpose of the hearing and the right of persons present as parties to comment at the appropriate time on the issues before the court;

(b) Discuss with the child his or her compliance with any home release plan or other plan imposed since the date of the offense;

(c) Discuss with the child his or her feelings about the offense committed, the harm caused to the victim or others, and what penalty he or she should be required to pay for such transgression; and

(d) Give all parties present at the hearing an opportunity to comment on the issue of disposition and any proposed rehabilitative plan. Parties to the case shall include the parents, legal custodians, or guardians of the child; the child's counsel; the state attorney; representatives of the department; the victim if any, or his or her representative; representatives of the school system; and the law enforcement officers involved in the case.

(2) The first determination to be made by the court is a determination of the suitability or nonsuitability for adjudication and commitment of the child to the department. This determination shall be based upon the predisposition report which shall include, whether as part of the child's multidisciplinary assessment, classification, and placement process components or separately, evaluation of the following criteria:

(a) The seriousness of the offense to the community. If the court determines that the child was a member of a criminal street gang at the time of the commission of the offense, which determination shall be made pursuant to chapter 874, the seriousness of the offense to the community shall be given great weight.

(b) Whether the protection of the community requires adjudication and commitment to the department.

(c) Whether the offense was committed in an aggressive, violent, premeditated, or willful manner.

(d) Whether the offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.

(e) The sophistication and maturity of the child.

(f) The record and previous criminal history of the child, including without limitations:

1. Previous contacts with the department, the former Department of Health and Rehabilitative Services, the Department of Children and Family Services, the Department of Corrections, other law enforcement agencies, and courts;

2. Prior periods of probation or community control;

3. Prior adjudications of delinquency; and

4. Prior commitments to institutions.

(g) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child if committed to a community services program or facility.

(3)(a) If the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the department, such determination shall be in writing or on the record of the hearing. The determination shall include a specific finding of the reasons for the

decision to adjudicate and to commit the child to the department, including any determination that the child was a member of a criminal street gang.

(b) If the court determines that commitment to the department is appropriate, the juvenile probation officer shall recommend to the court the most appropriate placement and treatment plan, specifically identifying the restrictiveness level most appropriate for the child. If the court has determined that the child was a member of a criminal street gang, that determination shall be given great weight in identifying the most appropriate restrictiveness level for the child. The court shall consider the department's recommendation in making its commitment decision.

(c) The court shall commit the child to the department at the restrictiveness level identified or may order placement at a different restrictiveness level. The court shall state for the record the reasons which establish by a preponderance of the evidence why the court is disregarding the assessment of the child and the restrictiveness level recommended by the department. Any party may appeal the court's findings resulting in a modified level of restrictiveness pursuant to this paragraph.

(d) The court may also require that the child be placed in a community control program following the child's discharge from commitment. Community-based sanctions pursuant to subsection (4) may be imposed by the court at the disposition hearing or at any time prior to the child's release from commitment.

(e) The court shall be responsible for the fingerprinting of any child at the disposition hearing if the child has been adjudicated or had adjudication withheld for any felony in the case currently before the court.

(4) If the court determines not to adjudicate and commit to the department, then the court shall determine what community-based sanctions it will impose in a community control program for the child. Community-based sanctions may include, but are not limited to, participation in substance abuse treatment, restitution in money or in kind, a curfew, revocation or suspension of the driver's license of the child, community service, and appropriate educational programs as determined by the district school board.

(5) After appropriate sanctions for the offense are determined, the court shall develop, approve, and order a plan of community control which will contain rules, requirements, conditions, and rehabilitative programs that are designed to encourage responsible and acceptable behavior and to promote both the rehabilitation of the child and the protection of the community.

(6) The court may receive and consider any other relevant and material evidence, including other written or oral reports or statements, in its effort to determine the appropriate disposition to be made with regard to the child. The court may rely upon such evidence to the extent of its probative value, even though such evidence may not be technically competent in an adjudicatory hearing.

(7) The court shall notify any victim of the offense, if such person is known and within the jurisdiction of the court, of the hearing and shall notify and summon or subpoena, if necessary, the parents, legal custodians, or guardians of the child to attend the disposition hearing if they reside in the state.

It is the intent of the Legislature that the criteria set forth in subsection (2) are general guidelines to be followed at the discretion of the court and not mandatory requirements of procedure. It is not the intent of the Legislature to provide for the appeal of the disposition made pursuant to this section ~~subsection~~.

Reviser's note.—Section 18, ch. 98-207, Laws of Florida, purported to amend paragraph (3)(b), but failed to republish the paragraph to include the flush left language at the end of the section. In the absence of affirmative evidence that the Legislature intended to repeal the flush left language, s. 985.23 is reenacted to confirm that the omission was not intended. Section 985.23 is amended to improve clarity.

Section 132. Paragraph (a) of subsection (1) and subsection (2) of section 985.231, Florida Statutes, 1998 Supplement, are amended to read:

985.231 Powers of disposition in delinquency cases.—

(1)

(a) The court that has jurisdiction of an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing:

1. Place the child in a community control program or an aftercare program under the supervision of an authorized agent of the Department of Juvenile Justice or of any other person or agency specifically authorized and appointed by the court, whether in the child's own home, in the home of a relative of the child, or in some other suitable place under such reasonable conditions as the court may direct. A community control program for an adjudicated delinquent child must include a penalty component such as restitution in money or in kind, community service, a curfew, revocation or suspension of the driver's license of the child, or other nonresidential punishment appropriate to the offense and must also include a rehabilitative program component such as a requirement of participation in substance abuse treatment or in school or other educational program. Upon the recommendation of the department at the time of disposition, or subsequent to disposition pursuant to the filing of a petition alleging a violation of the child's conditions of community control or aftercare supervision, the court may order the child to submit to random testing for the purpose of detecting and monitoring the use of alcohol or controlled substances.

a. A restrictiveness level classification scale for levels of supervision shall be provided by the department, taking into account the child's needs and risks relative to community control supervision requirements to reasonably ensure the public safety. Community control programs for children

shall be supervised by the department or by any other person or agency specifically authorized by the court. These programs must include, but are not limited to, structured or restricted activities as described in this subparagraph, and shall be designed to encourage the child toward acceptable and functional social behavior. If supervision or a program of community service is ordered by the court, the duration of such supervision or program must be consistent with any treatment and rehabilitation needs identified for the child and may not exceed the term for which sentence could be imposed if the child were committed for the offense, except that the duration of such supervision or program for an offense that is a misdemeanor of the second degree, or is equivalent to a misdemeanor of the second degree, may be for a period not to exceed 6 months. When restitution is ordered by the court, the amount of restitution may not exceed an amount the child and the parent or guardian could reasonably be expected to pay or make. A child who participates in any work program under this part is considered an employee of the state for purposes of liability, unless otherwise provided by law.

b. The court may conduct judicial review hearings for a child placed on community control for the purpose of fostering accountability to the judge and compliance with other requirements, such as restitution and community service. The court may allow early termination of community control for a child who has substantially complied with the terms and conditions of community control.

c. If the conditions of the community control program or the aftercare program are violated, the agent supervising the program as it relates to the child involved, or the state attorney, may bring the child before the court on a petition alleging a violation of the program. Any child who violates the conditions of community control or aftercare must be brought before the court if sanctions are sought. A child taken into custody under s. 985.207 for violating the conditions of community control or aftercare shall be held in a consequence unit if such a unit is available. The child shall be afforded a hearing within 24 hours after being taken into custody to determine the existence of probable cause that the child violated the conditions of community control or aftercare. A consequence unit is a secure facility specifically designated by the department for children who are taken into custody under s. 985.207 for violating community control or aftercare, or who have been found by the court to have violated the conditions of community control or aftercare. If the violation involves a new charge of delinquency, the child may be detained under s. 985.215 in a facility other than a consequence unit. If the child is not eligible for detention for the new charge of delinquency, the child may be held in the consequence unit pending a hearing and is subject to the time limitations specified in s. 985.215. If the child denies violating the conditions of community control or aftercare, the court shall appoint counsel to represent the child at the child's request. Upon the child's admission, or if the court finds after a hearing that the child has violated the conditions of community control or aftercare, the court shall enter an order revoking, modifying, or continuing community control or aftercare. In each such case, the court shall enter a new disposition order and, in addition to the sanctions set forth in this paragraph, may impose any sanction the court could have imposed at the original disposition hearing. If the child is

found to have violated the conditions of community control or aftercare, the court may:

(I) Place the child in a consequence unit in that judicial circuit, if available, for up to 5 days for a first violation, and up to 15 days for a second or subsequent violation.

(II) Place the child on home detention with electronic monitoring. However, this sanction may be used only if a residential consequence unit is not available.

(III) Modify or continue the child's community control program or aftercare program.

(IV) Revoke community control or aftercare and commit the child to the department.

d. Notwithstanding s. 743.07 and paragraph (d), and except as provided in s. 985.31, the term of any order placing a child in a community control program must be until the child's 19th birthday unless he or she is released by the court, on the motion of an interested party or on its own motion.

2. Commit the child to a licensed child-caring agency willing to receive the child, but the court may not commit the child to a jail or to a facility used primarily as a detention center or facility or shelter.

3. Commit the child to the Department of Juvenile Justice at a restrictiveness level defined in s. 985.03(46) ~~985.03(45)~~. Such commitment must be for the purpose of exercising active control over the child, including, but not limited to, custody, care, training, urine monitoring, and treatment of the child and furlough of the child into the community. Notwithstanding s. 743.07 and paragraph (d), and except as provided in s. 985.31, the term of the commitment must be until the child is discharged by the department or until he or she reaches the age of 21.

4. Revoke or suspend the driver's license of the child.

5. Require the child and, if the court finds it appropriate, the child's parent or guardian together with the child, to render community service in a public service program.

6. As part of the community control program to be implemented by the Department of Juvenile Justice, or, in the case of a committed child, as part of the community-based sanctions ordered by the court at the disposition hearing or before the child's release from commitment, order the child to make restitution in money, through a promissory note cosigned by the child's parent or guardian, or in kind for any damage or loss caused by the child's offense in a reasonable amount or manner to be determined by the court. The clerk of the circuit court shall be the receiving and dispensing agent. In such case, the court shall order the child or the child's parent or guardian to pay to the office of the clerk of the circuit court an amount not to exceed the actual cost incurred by the clerk as a result of receiving and dispensing restitution payments. The clerk shall notify the court if restitu-

tion is not made, and the court shall take any further action that is necessary against the child or the child's parent or guardian. A finding by the court, after a hearing, that the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts absolves the parent or guardian of liability for restitution under this subparagraph.

7. Order the child and, if the court finds it appropriate, the child's parent or guardian together with the child, to participate in a community work project, either as an alternative to monetary restitution or as part of the rehabilitative or community control program.

8. Commit the child to the Department of Juvenile Justice for placement in a program or facility for serious or habitual juvenile offenders in accordance with s. 985.31. Any commitment of a child to a program or facility for serious or habitual juvenile offenders must be for an indeterminate period of time, but the time may not exceed the maximum term of imprisonment that an adult may serve for the same offense. The court may retain jurisdiction over such child until the child reaches the age of 21, specifically for the purpose of the child completing the program.

9. In addition to the sanctions imposed on the child, order the parent or guardian of the child to perform community service if the court finds that the parent or guardian did not make a diligent and good faith effort to prevent the child from engaging in delinquent acts. The court may also order the parent or guardian to make restitution in money or in kind for any damage or loss caused by the child's offense. The court shall determine a reasonable amount or manner of restitution, and payment shall be made to the clerk of the circuit court as provided in subparagraph 6.

10. Subject to specific appropriation, commit the juvenile sexual offender to the Department of Juvenile Justice for placement in a program or facility for juvenile sexual offenders in accordance with s. 985.308. Any commitment of a juvenile sexual offender to a program or facility for juvenile sexual offenders must be for an indeterminate period of time, but the time may not exceed the maximum term of imprisonment that an adult may serve for the same offense. The court may retain jurisdiction over a juvenile sexual offender until the juvenile sexual offender reaches the age of 21, specifically for the purpose of completing the program.

(2) Following a delinquency adjudicatory hearing pursuant to s. 985.228 and a delinquency disposition hearing pursuant to s. 985.23 which results in a commitment determination, the court shall, on its own or upon request by the state or the department, determine whether the protection of the public requires that the child be placed in a program for serious or habitual juvenile offenders and whether the particular needs of the child would be best served by a program for serious or habitual juvenile offenders as provided in s. 985.31. The determination shall be made pursuant to ss. 985.03(48) ~~985.03(47)~~ and 985.23(3).

Reviser's note.—Amended to conform to the redesignation of s. 985.03(45) as s. 985.03(46) and s. 985.03(47) as s. 985.03(48) by the reviser

incident to the compilation of the 1998 Supplement to the Florida Statutes 1997.

Section 133. Subsection (7) of section 985.304, Florida Statutes, 1998 Supplement, is amended to read:

985.304 Community arbitration.—

(7) REVIEW.—Any child or his or her parent or legal custodian or guardian who is dissatisfied with the disposition provided by the community arbitrator or the community arbitration panel may request a review of the disposition to the appropriate juvenile probation officer ~~intake counselor~~ within 15 days after the community arbitration hearing. Upon receipt of the request for review, the juvenile probation officer ~~intake counselor~~ shall consult with the state attorney who shall consider the request for review and may file formal juvenile proceedings or take such other action as may be warranted.

Reviser's note.—Amended to conform to the redesignation of intake counselor or case manager as juvenile probation officer by ss. 6 and 7, ch. 98-207, Laws of Florida.

Section 134. Paragraph (e) of subsection (3) and paragraph (a) of subsection (4) of section 985.31, Florida Statutes, 1998 Supplement, are amended to read:

985.31 Serious or habitual juvenile offender.—

(3) PRINCIPLES AND RECOMMENDATIONS OF ASSESSMENT AND TREATMENT.—

(e) After a child has been adjudicated delinquent pursuant to s. 985.228, the court shall determine whether the child meets the criteria for a serious or habitual juvenile offender pursuant to s. 985.03(48) ~~985.03(47)~~. If the court determines that the child does not meet such criteria, the provisions of s. 985.231(1) shall apply.

(4) ASSESSMENTS, TESTING, RECORDS, AND INFORMATION.—

(a) Pursuant to the provisions of this section, the department shall implement the comprehensive assessment instrument for the treatment needs of serious or habitual juvenile offenders and for the assessment, which assessment shall include the criteria under s. 985.03(48) ~~985.03(47)~~ and shall also include, but not be limited to, evaluation of the child's:

1. Amenability to treatment.

2. Proclivity toward violence.

3. Tendency toward gang involvement.

4. Substance abuse or addiction and the level thereof.

5. History of being a victim of child abuse or sexual abuse, or indication of sexual behavior dysfunction.

6. Number and type of previous adjudications, findings of guilt, and convictions.

7. Potential for rehabilitation.

Reviser's note.—Amended to conform to the redesignation of s. 985.03(47) as s. 985.03(48) by the reviser incident to the compilation of the 1998 Supplement to the Florida Statutes 1997.

Section 135. Subsection (3) of section 985.311, Florida Statutes, 1998 Supplement, is reenacted to read:

985.311 Intensive residential treatment program for offenders less than 13 years of age.—

(3) PRINCIPLES AND RECOMMENDATIONS OF ASSESSMENT AND TREATMENT.—

(a) Assessment and treatment shall be conducted by treatment professionals with expertise in specific treatment procedures, which professionals shall exercise all professional judgment independently of the department.

(b) Treatment provided to children in designated facilities shall be suited to the assessed needs of each individual child and shall be administered safely and humanely, with respect for human dignity.

(c) The department may promulgate rules for the implementation and operation of programs and facilities for children who are eligible for an intensive residential treatment program for offenders less than 13 years of age. The department must involve the following groups in the promulgation of rules for services for this population: local law enforcement agencies, the judiciary, school board personnel, the office of the state attorney, the office of the public defender, and community service agencies interested in or currently working with juveniles. When promulgating these rules, the department must consider program principles, components, standards, procedures for intake, diagnostic and assessment activities, treatment modalities, and case management.

(d) Any provider who acts in good faith is immune from civil or criminal liability for his or her actions in connection with the assessment, treatment, or transportation of an intensive offender less than 13 years of age under the provisions of this chapter.

(e) After a child has been adjudicated delinquent pursuant to s. 985.228(5), the court shall determine whether the child is eligible for an intensive residential treatment program for offenders less than 13 years of age pursuant to s. 985.03(7). If the court determines that the child does not meet the criteria, the provisions of s. 985.231(1) shall apply.

(f) After a child has been transferred for criminal prosecution, a circuit court judge may direct a juvenile probation officer to consult with designated staff from an appropriate intensive residential treatment program for offenders less than 13 years of age for the purpose of making recommendations to the court regarding the child's placement in such program.

(g) Recommendations as to a child's placement in an intensive residential treatment program for offenders less than 13 years of age may be based on a preliminary screening of the child at appropriate sites, considering the child's location while court action is pending, which may include the nearest regional detention center or facility or jail.

(h) Based on the recommendations of the multidisciplinary assessment, the juvenile probation officer shall make the following recommendations to the court:

1. For each child who has not been transferred for criminal prosecution, the juvenile probation officer shall recommend whether placement in such program is appropriate and needed.

2. For each child who has been transferred for criminal prosecution, the juvenile probation officer shall recommend whether the most appropriate placement for the child is a juvenile justice system program, including a child who is eligible for an intensive residential treatment program for offenders less than 13 years of age, or placement in the adult correctional system.

If treatment provided by an intensive residential treatment program for offenders less than 13 years of age is determined to be appropriate and needed and placement is available, the juvenile probation officer and the court shall identify the appropriate intensive residential treatment program for offenders less than 13 years of age best suited to the needs of the child.

(i) The treatment and placement recommendations shall be submitted to the court for further action pursuant to this paragraph:

1. If it is recommended that placement in an intensive residential treatment program for offenders less than 13 years of age is inappropriate, the court shall make an alternative disposition pursuant to s. 985.309 or other alternative sentencing as applicable, utilizing the recommendation as a guide.

2. If it is recommended that placement in an intensive residential treatment program for offenders less than 13 years of age is appropriate, the court may commit the child to the department for placement in the restrictiveness level designated for intensive residential treatment program for offenders less than 13 years of age.

(j) The following provisions shall apply to children in an intensive residential treatment program for offenders less than 13 years of age:

1. A child shall begin participation in the reentry component of the program based upon a determination made by the treatment provider and approved by the department.

2. A child shall begin participation in the community supervision component of aftercare based upon a determination made by the treatment provider and approved by the department. The treatment provider shall give written notice of the determination to the circuit court having jurisdiction

over the child. If the court does not respond with a written objection within 10 days, the child shall begin the aftercare component.

3. A child shall be discharged from the program based upon a determination made by the treatment provider with the approval of the department.

4. In situations where the department does not agree with the decision of the treatment provider, a reassessment shall be performed, and the department shall utilize the reassessment determination to resolve the disagreement and make a final decision.

(k) Any commitment of a child to the department for placement in an intensive residential treatment program for offenders less than 13 years of age shall be for an indeterminate period of time, but the time shall not exceed the maximum term of imprisonment which an adult may serve for the same offense. Any child who has not completed the residential portion of the intensive residential treatment program for offenders less than 13 years of age by his or her fourteenth birthday may be transferred to another program for committed delinquent offenders.

Reviser's note.—Section 23, ch. 98-207, Laws of Florida, purported to amend subsection (3), but failed to republish the subsection to include paragraphs (j) and (k). In the absence of affirmative evidence that the Legislature intended to repeal paragraphs (j) and (k), subsection (3) is reenacted to confirm that the omission was not intended.

Section 136. Subsection (2) of section 985.3141, Florida Statutes, 1998 Supplement, is amended to read:

985.3141 Escapes from secure detention or residential commitment facility.—An escape from:

(2) Any residential commitment facility described in s. 985.03(46) ~~985.03(45)~~, maintained for the custody, treatment, punishment, or rehabilitation of children found to have committed delinquent acts or violations of law; or

constitutes escape within the intent and meaning of s. 944.40 and is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Reviser's note.—Amended to conform to the redesignation of s. 985.03(45) as s. 985.03(46) by the reviser incident to the compilation of the 1998 Supplement to the Florida Statutes 1997.

Section 137. Subsection (5) of section 985.317, Florida Statutes, 1998 Supplement, is amended to read:

985.317 Literacy programs for juvenile offenders.—

(5) EVALUATION AND REPORT.—The Juvenile Justice Accountability ~~Advisory~~ Board shall evaluate the literacy program outcomes as part of its annual evaluation of program outcomes under s. 985.401. The department,

in consultation with the Department of Education, shall develop and implement an evaluation of the program in order to determine the impact of the programs on recidivism. The department shall submit an annual report on the implementation and progress of the programs to the President of the Senate and the Speaker of the House of Representatives by January 1 of each year.

Reviser's note.—Amended to conform to the redesignation of the Juvenile Justice Advisory Board as the Juvenile Justice Accountability Board by s. 12, ch. 98-136, Laws of Florida.

Section 138. Paragraph (b) of subsection (4) of section 985.401, Florida Statutes, 1998 Supplement, is amended to read:

985.401 Juvenile Justice Accountability Board.—

(4)

(b) In developing the standard methodology, the board shall consult with the department, the Office ~~Division~~ of Economic and Demographic Research, contract service providers, and other interested parties. It is the intent of the Legislature that this effort result in consensus recommendations, and, to the greatest extent possible, integrate the goals and legislatively approved measures of performance-based program budgeting provided in chapter 94-249, Laws of Florida, the quality assurance program provided in s. 985.412, and the cost-effectiveness model provided in s. 985.404(11). The board shall notify the Office of Program Policy Analysis and Government Accountability of any meetings to develop the methodology.

Reviser's note.—Amended to conform to the redesignation of the Division of Economic and Demographic Research as the Office of Economic and Demographic Research by Joint Rule 3.1 as revised by S.C.R. 2536, 1998.

Section 139. Paragraphs (a), (c), (d), and (e) of subsection (11) of section 985.404, Florida Statutes, 1998 Supplement, are amended to read:

985.404 Administering the juvenile justice continuum.—

(11)(a) The Department of Juvenile Justice, in consultation with the Juvenile Justice Accountability ~~Advisory~~ Board, the Office ~~Division~~ of Economic and Demographic Research, and contract service providers, shall develop a cost-effectiveness model and apply the model to each commitment program. Program recommitment rates shall be a component of the model. The cost-effectiveness model shall compare program costs to client outcomes and program outputs. It is the intent of the Legislature that continual development efforts take place to improve the validity and reliability of the cost-effectiveness model and to integrate the standard methodology developed under s. 985.401(4) for interpreting program outcome evaluations.

(c) Based on reports of the Juvenile Justice Accountability ~~Advisory~~ Board on client outcomes and program outputs and on the department's most recent cost-effectiveness rankings, the department may terminate a program operated by the department or a provider if the program has failed

to achieve a minimum threshold of program effectiveness. This paragraph does not preclude the department from terminating a contract as provided under s. 985.412 or as otherwise provided by law or contract, and does not limit the department's authority to enter into or terminate a contract.

(d) In collaboration with the Juvenile Justice Accountability ~~Advisory~~ Board, the Office ~~Division~~ of Economic and Demographic Research, and contract service providers, the department shall develop a work plan to refine the cost-effectiveness model so that the model is consistent with the performance-based program budgeting measures approved by the Legislature to the extent the department deems appropriate. The department shall notify the Office of Program Policy Analysis and Government Accountability of any meetings to refine the model.

(e) Contingent upon specific appropriation, the department, in consultation with the Juvenile Justice Accountability ~~Advisory~~ Board, the Office ~~Division~~ of Economic and Demographic Research, and contract service providers, shall:

1. Construct a profile of each commitment program that uses the results of the quality assurance report required by s. 985.412, the outcome evaluation report compiled by the Juvenile Justice Accountability ~~Advisory~~ Board under s. 985.401, the cost-effectiveness report required in this subsection, and other reports available to the department.

2. Target, for a more comprehensive evaluation, any commitment program that has achieved consistently high, low, or disparate ratings in the reports required under subparagraph 1.

3. Identify the essential factors that contribute to the high, low, or disparate program ratings.

4. Use the results of these evaluations in developing or refining juvenile justice programs or program models, client outcomes and program outputs, provider contracts, quality assurance standards, and the cost-effectiveness model.

Reviser's note.—Amended to conform to the redesignation of the Juvenile Justice Advisory Board as the Juvenile Justice Accountability Board by s. 12, ch. 98-136, Laws of Florida, and the Division of Economic and Demographic Research as the Office of Economic and Demographic Research by Joint Rule 3.1 as revised by S.C.R. 2536, 1998.

Section 140. Paragraph (b) of subsection (15) of section 985.41, Florida Statutes, 1998 Supplement, is amended to read:

985.41 Siting of facilities; study; criteria.—

(15)

(b) Notwithstanding ss. 255.25(1)(b) and 255.25001(2), the department may enter into lease-purchase agreements to provide juvenile justice facilities for the housing of committed youths contingent upon available funds.

The facilities provided through such agreements shall meet the program plan and specifications of the department. The department may enter into such lease agreements with private corporations and other governmental entities. However, notwithstanding the provisions of s. 255.25(3)(a) ~~255.255(3)(a)~~, no such lease agreement may be entered into except upon advertisement for the receipt of competitive bids and award to the lowest and best bidder except when contracting with other governmental entities.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Relevant information relating to lease agreements and competitive bids is found in s. 255.25(3)(a).

Section 141. Paragraph (d) of subsection (3) of section 985.413, Florida Statutes, 1998 Supplement, is amended to read:

985.413 District juvenile justice boards.—

(3) DISTRICT JUVENILE JUSTICE BOARDS.—

(d) A district juvenile justice board has the purpose, power, and duty to:

1. Advise the district juvenile justice manager and the district administrator on the need for and the availability of juvenile justice programs and services in the district.

2. Develop a district juvenile justice plan that is based upon the juvenile justice plans developed by each county within the district, and that addresses the needs of each county within the district.

3. Develop a district interagency cooperation and information-sharing agreement that supplements county agreements and expands the scope to include appropriate circuit and district officials and groups.

4. Coordinate the efforts of the district juvenile justice board with the activities of the Governor's Juvenile Justice and Delinquency Prevention Advisory Committee and other public and private entities.

5. Advise and assist the district juvenile justice manager in the provision of optional, innovative delinquency services in the district to meet the unique needs of delinquent children and their families.

6. Develop, in consultation with the district juvenile justice manager, funding sources external to the Department of Juvenile Justice for the provision and maintenance of additional delinquency programs and services. The board may, either independently or in partnership with one or more county juvenile justice councils or other public or private entities, apply for and receive funds, under contract or other funding arrangement, from federal, state, county, city, and other public agencies, and from public and private foundations, agencies, and charities for the purpose of funding optional innovative prevention, diversion, or treatment services in the district for delinquent children and children at risk of delinquency, and their families. To aid in this process, the department shall provide fiscal agency services for the councils.

7. Educate the community about and assist in the community juvenile justice partnership grant program administered by the Department of Juvenile Justice.

8. Advise the district health and human services board, the district juvenile justice manager, and the Secretary of Juvenile Justice regarding the development of the legislative budget request for juvenile justice programs and services in the district and the commitment region, and, in coordination with the district health and human services board, make recommendations, develop programs, and provide funding for prevention and early intervention programs and services designed to serve children in need of services, families in need of services, and children who are at risk of delinquency within the district or region.

9. Assist the district juvenile justice manager in collecting information and statistical data useful in assessing the need for prevention programs and services within the juvenile justice continuum program in the district.

10. Make recommendations with respect to, and monitor the effectiveness of, the judicial administrative plan for each circuit pursuant to Rule 2.050, Florida Rules of Judicial Administration.

11. Provide periodic reports to the health and human services board in the appropriate district of the Department of Children and Family Services. These reports must contain, at a minimum, data about the clients served by the juvenile justice programs and services in the district, as well as data concerning the unmet needs of juveniles within the district.

12. Provide a written annual report on the activities of the board to the district administrator, the Secretary of Juvenile Justice, and the Juvenile Justice Accountability ~~Advisory~~ Board. The report should include an assessment of the effectiveness of juvenile justice continuum programs and services within the district, recommendations for elimination, modification, or expansion of existing programs, and suggestions for new programs or services in the juvenile justice continuum that would meet identified needs of children and families in the district.

Reviser's note.—Amended to conform to the redesignation of the Juvenile Justice Advisory Board as the Juvenile Justice Accountability Board by s. 12, ch. 98-136, Laws of Florida.

Section 142. Paragraph (b) of subsection (2) of section 985.414, Florida Statutes, 1998 Supplement, is amended to read:

985.414 County juvenile justice councils.—

(2)

(b) The duties and responsibilities of a county juvenile justice council include, but are not limited to:

1. Developing a county juvenile justice plan based upon utilization of the resources of law enforcement, the school system, the Department of Juvenile

Justice, the Department of Children and Family Services, and others in a cooperative and collaborative manner to prevent or discourage juvenile crime and develop meaningful alternatives to school suspensions and expulsions.

2. Entering into a written county interagency agreement specifying the nature and extent of contributions each signatory agency will make in achieving the goals of the county juvenile justice plan and their commitment to the sharing of information useful in carrying out the goals of the interagency agreement to the extent authorized by law. The interagency agreement must include as parties, at a minimum, local school authorities or representatives, local law enforcement agencies, state attorneys, public defenders, and local representatives of the Department of Juvenile Justice and the Department of Children and Family Services. The agreement must specify how community entities will cooperate, collaborate, and share information to achieve the goals of the county juvenile justice plan.

3. Applying for and receiving public or private grants, to be administered by one of the community partners, that support one or more components of the county juvenile justice plan.

4. Designating the county representatives to the district juvenile justice board pursuant to s. 985.413.

5. Providing a forum for the presentation of interagency recommendations and the resolution of disagreements relating to the contents of the county interagency agreement or the performance by the parties of their respective obligations under the agreement.

6. Assisting and directing the efforts of local community support organizations and volunteer groups in providing enrichment programs and other support services for clients of local juvenile detention centers.

7. Providing an annual report and recommendations to the district juvenile justice board, the Juvenile Justice Accountability ~~Advisory~~ Board, and the district juvenile justice manager.

Reviser's note.—Amended to conform to the redesignation of the Juvenile Justice Advisory Board as the Juvenile Justice Accountability Board by s. 12, ch. 98-136, Laws of Florida.

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