IN THE SUPREME COURT OF FLORIDA

HARRY K. SINGLETARY, :

Appellant, :

v. : CASE NO. 89,325

ROBERT E. VAN METER, JR., :

Appellee. :

_____/

ANSWER BRIEF OF APPELLEE

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ANSWER BRIEF OF APPELLEE

PRELIMINARY STATEMENT

The record on appeal consists of one volume, pages of which shall be referred to as "R#." References to the initial brief of appellant shall be made as "IB#."

STATEMENT OF THE CASE AND FACTS

The initial brief of appellant did not provide sufficient substantive and procedural facts to enable this Court to conduct the proper review. Therefore, pursuant to Florida Rule of Appellate Procedure 9.210(c), the appellee, Robert E. Van Meter Jr., feels compelled to more fully summarize the record.

Mr. Van Meter Jr., a prisoner confined in a State penitentiary, filed a pro se petition for the extraordinary writ of mandamus in the Second Judicial Circuit Court against Harry K. Singletary, Secretary of the Department of Corrections (DOC). R1-93. He alleged that DOC's administrative proceedings violated

various constitutional, statutory, and administrative provisions in adjudicating an alleged disciplinary infraction against him.

A. Administrative proceedings

His petition[1] arose from incidents that transpired after he was transferred in June 1992 from Marion Correctional Institution to Sumter Correctional Institution. When he was transferred, the DOC did not forward all of his books and legal materials as required by law. He pursued that matter through appropriate administrative processes, submitting a list of his missing books and a claim with Risk Management for reimbursement of the books now deemed to be lost. R1-11. A DOC official conducted an investigation on April 14, 1993. R69. On August 8, 1993, he received reimbursement for the books he had listed, including a book called "Case Analysis." R12. On October 1, 1993, Officer Hummel retrieved from the prison library a copy of "Case Analysis," and wrote up a disciplinary report against Mr. Van Meter Jr. for lying to the staff on the theory that he had improperly sought reimbursement for a book that had not been lost. R14, R69. See Fla. Admin. Code R. 33-22.012 § 9-10.

Disciplinary proceedings took place in October 1993, and an administrative hearing was held on October 5. Mr. Van Meter Jr., who is hearing disabled, requested staff assistance in accordance with Florida Administrative Code Rule 33-22.006(1)(d), but he was

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[1] These facts are derived from the petition, which has never been adjudicated on the merits. Allegations in the mandamus petition under these circumstances are to be taken as true. State ex rel. Perkins v. Lee, 142 Fla. 154, 194 So. 315, 317 (1940).

denied assistance. The chairperson told him assistance is provided only for those who cannot read. Thereafter, the disciplinary team found Mr. Van Meter Jr. guilty and punished him with a loss of sixty (60) days gain time and sixty (60) days disciplinary confinement. R15, R71. Also, the Parole Commission advanced his presumptive parole release date by five years due to this disciplinary action. R16.

Mr. Van Meter Jr. administratively appealed the disciplinary action pursuant to Florida Administrative Code Rule 33-29. His appeal alleged that his state and federal legal and constitutional rights had been denied in that: (1) The rule at issue was vague and over broad; (2) No evidence had been presented at the hearing contrary to the requirements of law; (3) He had not lied; (4) The finding of guilt was based on the hearing panel's consideration of evidence never presented, which therefore could not be defended against; (5) The complaint was untimely, filed beyond the legal period of limitations; (6) His hearing impairment, and the denial of his request for assistance in violation of federal and state law, made him unable to adequately defend himself at the hearing and caused or perpetuated a misunderstanding about the missing book, which was the gravamen of the proceedings; and (7) His classification officer was not present at the hearing, a violation of the rules. His administrative appeal was denied by the prison superintendent in November 1993, and by the Secretary of the Department of Corrections on March 21, 1994. R15, R73-76.

In August 1994, Mr. Van Meter Jr. learned he was being transferred again. That caused him to seek to recover his book, "Case Analysis," the purported finding of which by Officer Hummel almost a year earlier had prompted the disciplinary proceedings discussed above. According to the petition, on September 6, 1994, Mr. Van Meter Jr. discovered that the book Officer Hummel had found, and on which DOC had relied to administratively prosecute him, was not even his book. Instead, it was a different edition of the same title and was stamped as law library property. R16. By the time he filed the petition, Mr. Van Meter Jr. still had not recovered the missing book. R16.

B. Judicial Proceedings

1. Circuit Court

On September 27, 1995, Mr. Van Meter Jr. filed his pro se petition for the extraordinary writ of mandamus in the Second Judicial Circuit Court under the procedure set forth in Jones v. Florida Department of Corrections, 615 So. 2d 798 (Fla. 1st DCA 1993). R1. He claimed: (1) His punishment was unlawful because it resulted from oral communications at the hearing which he could not adequately hear or understand; (2) The rule for lying to staff is void for vagueness; (3) He did not receive staff assistance, which was authorized by rule but was denied to him; (4) No evidence had been presented at the hearing contrary to the requirements of law; and (5) The disciplinary complaint was untimely, filed beyond the period of limitations. R17-26. His petition sought expungement of the disciplinary report,

restoration of gain time, and recovery of court costs. R27. The Circuit Court allowed him to proceed as an indigent. R94-98.

The Honorable William L. Gary issued an order to show cause. R101. In his response, Secretary Singletary conceded that Mr. Van Meter Jr. exhausted his administrative remedies. R103. Nonetheless, Secretary Singletary moved to dismiss, arguing that a newly enacted thirty (30)-day statute of limitation provided in section 95.11(8), Florida Statutes (1995), prevented the Circuit Court from considering the merits of Mr. Van Meter Jr.'s petition. R102-07. That statute went into effect on June 15, 1995, 451 days after Mr. Van Meter Jr. exhausted his administrative appeals and 104 days before he filed his petition in the Circuit Court. See ch. 95-283, §§ 2, 61, Laws of Fla.

The Circuit Court dismissed the petition on Secretary Singletary's motion without giving Mr. Van Meter Jr. the opportunity to respond. R108-09. Mr. Van Meter Jr. sought rehearing by raising a number of grounds, including that the statute of limitations could not be applied retroactively and that it was unconstitutional because it violated, among other provisions, separation of powers and rule-making principles embodied in the Florida Constitution. R110-16. The Circuit Court summarily denied rehearing without explanation. R120-21.

2. District Court

Mr. Van Meter Jr. appealed the final order of dismissal to the First District Court of Appeal pursuant to Jones v. Florida Department of Corrections, 615 So. 2d at 798. R131-39. Jones established that Circuit Court denials of mandamus petitions

following DOC disciplinary actions may be appealed as of right to the District Court under Florida Rule of Appellate Procedure 9.110. Mr. Van Meter Jr. proceeded in the District Court pro se as an indigent. R140-45.

The District Court reversed the Circuit Court's order of dismissal in a 2-1 decision. The District Court held unconstitutional section 95.11(8), the statute of limitations on which Secretary Singletary and the Circuit Court had relied. Van Meter Jr. v. Singletary, 682 So. 2d 1162 (Fla. 1st DCA 1996).

First, the District Court reasoned that the statute was intended to apply to prisoners seeking judicial review of DOC disciplinary actions:

> Since July 1, 1992, prisoners seeking judicial review of disciplinary action taken by the Department have been limited to the extraordinary remedies set out in Florida Rule of Civil Procedure 1.630 (i.e., the "writs of mandamus, prohibition, quo warranto, certiorari, and habeas corpus"). Jones v. Department of Corrections, 615 So. 2d 798 (Fla. 1st DCA 1993). Section 95.11(8) became law on June 15, 1995. Ch. 95-283, §§ 2, 61, at 2652, 2690, Laws of Fla. Accordingly, there can be little doubt but that the legislature intended section 95.11(8) to apply to prisoner requests for judicial review of disciplinary action, which seek one of those extraordinary writs. Therefore, we conclude that the legislature intended section 95.11(8) to apply to actions such as appellant's, which seek the extraordinary writ of mandamus.

682 So. 2d at 1164.

Second, the District Court held that the new statute applied retroactively to bar this petition even though the alleged disciplinary infraction, DOC's disciplinary action, and

exhaustion of administrative remedies all occurred long before the statute took effect on June 15, 1995:

> By its express language, the effect of section 95.11(8) was to bar appellant's action seeking mandamus relief on July 15, 1995, some 74 days before the petition was filed.

682 So. 2d at 1164.

Third, the District Court did an historical analysis of this Court's decisions in which it held the Florida Constitution gave an exclusive grant of power to the judicial branch to regulate and grant extraordinary writs, including the writ of mandamus:

> Thus, it is clear that the law relating to writs of mandamus, including that involving the time within which a request for such relief must be made, has been developed by the judiciary.

682 So. 2d at 1164.

Fourth, the District Court declined to infer from the language of Florida Rule of Civil Procedure 1.630(c), which limits the filing of "complaints" to the time "provided by law,"[2] was intended by the Supreme Court to adopt legislatively imposed limitations periods for seeking mandamus relief, especially given

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[2] Florida Rule of Civil Procedure 1.630(c), at the time the mandamus petition was filed, provided as follows:

> Rule 1.630. Extraordinary Remedies
> . . . .
>
> (c) Time. A complaint shall be filed within the time provided by law, except that a complaint for common law certiorari shall be filed within 30 days of rendition of the matter sought to be reviewed.

the total absence of any expression by the Supreme Court that it so intended:

> [W]e are unwilling to presume that the supreme court intended so cavalierly to surrender to the legislature a power which it had zealously guarded for so long. Instead, we believe that the court intended by such language to refer to the judicially developed law regarding the time within which such relief must be sought -- i.e., the concept of laches.

682 So. 2d at 1165.

The District Court concluded that the Legislature's attempt to restrict issuance of the extraordinary writ in section 95.11(8) violated the separation of powers doctrine embodied in article II, section 3 of the Florida Constitution. The District Court reversed and remanded to the Circuit Court for further proceedings. 682 So. 2d at 1165. See also Hubbard v. Singletary, 684 So. 2d 273 (Fla. 1st DCA 1996) (same court later relying on Van Meter to reverse and remand denial of mandamus).

The lone dissent argued that the plain language of Florida Rule of Civil Procedure 1.630 should control. 682 So. 2d at 1165 (Miner, J., dissenting). Nevertheless, the dissent attempted an historical analysis of that rule to bolster its argument. Id. at 1165-68.

3. Supreme Court

Secretary Singletary filed his notice of appeal to seek direct review of the District Court's decision.[3] After Secretary

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[3] In addition to the appellate jurisdiction vested by article V, section 3(b)(1), Florida Constitution, this Court may also have direct and express conflict jurisdiction under article V, section (3)(b)(3), Florida Constitution, due to Kalway v.

Singletary filed his initial brief, Mr. Van Meter Jr. requested the appointment of counsel to assist him. This Court granted that request and appointed the undersigned counsel. Secretary Singletary moved to vacate that appointment on grounds that it was not authorized by chapter 27 of the Florida Statutes (1995). The undersigned appointed counsel responded that separation of powers and the inherent authority of the Court authorize said appointment. This Court subsequently denied Secretary Singletary's motion, and the appeal proceeded.

SUMMARY OF THE ARGUMENT

I: The statute of limitation applied by the Circuit Court and held unconstitutional by the District Court, section 95.11(8), Florida Statutes (1995), did not even apply in this case. The District Court found the statute was retroactive and would have barred the instant petition but for the fact that the statute violated separation of powers. In the absence of clear, express, and manifest intent to narrow a limitation period retroactively, a statute of limitation must be presumed to operate prospectively. Foley v. Morris. There is not one scintilla of evidence in the statute or its legislative history to demonstrate it was intended to be retroactive. Furthermore, interpreting the statute to apply retroactively would violate the guarantee to access to courts. Kluger v. White; Overland Construction Co., Inc. v. Sirmons. The statute was unreasonable even if the Legislature intended to apply it retroactively. Nonetheless,

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Singletary, 685 So. 2d 973 (Fla. 2d DCA 1996), which expressed conflict with Van Meter.

because the statute did not apply to bar the petition, the Circuit Court erred and the District Court did not even have to reach the constitutional question to correctly reverse the Circuit Court. State v. Mozo.

II: The extraordinary writ of mandamus is one of the few remedies expressly provided in the Florida Constitution. Historically and textually all authority with respect to mandamus has always been reserved by the Constitution to the exclusive prerogative of the judicial branch as a core protection against abuse of official government power. The Constitution has never given any other branch of Florida government any authority to interfere in any way with the judiciary's exclusive prerogative. A statute of limitation barring the court's authority to review a mandamus petition certainly interferes with the exclusive judicial authority, thereby violating separation of powers. Palmer v. Johnson; Ex parte Beattie; State ex rel. Buckwalter v. City of Lakeland.

Florida Rule of Civil Procedure 1.630(c) was not intended to abrogate the doctrine of laches and delegate the judiciary's exclusive authority over the writ to the partisan political branches of government whose alleged abuses of power are reviewed under the writ. Also, this Court constitutionally could not have delegated its exclusive authority to another branch of government under nondelegation principles of separation of powers. Larson v. State; Patterson v. State; Smith v. State.

III: This Court adopted Florida Rule of Appellate Procedure 9.100(c)(4) to clarify the procedural effect of section 95.11(8).

That statute, however, is unconstitutional, so the very underpinning of the rule has disappeared. The rule also is unnecessary, unreasonable, and inequitable. It imposes an absolute and inflexible time bar on the class of individuals who, more than any others in the justice system, are burdened with practical problems that will make this rigid rule yield unfair results. The rule should be rescinded or revised to instruct judges to apply equitable principles in reviewing the timeliness of prisoner mandamus petitions.

ARGUMENT

I: WHETHER THE DISTRICT COURT'S DECISION REVERSING DISMISSAL OF THE PETITION SHOULD BE AFFIRMED WITHOUT REACHING THE CONSTITUTIONAL ISSUE BECAUSE THE LEGISLATURE WAS SILENT AS TO ITS INTENT TO APPLY THE LIMITATION TO BAR A PREEXISTING CLAIM, THUS RENDERING ERRONEOUS THE CIRCUIT COURT'S RETROACTIVE APPLICATION OF A PROSPECTIVE STATUTE OF LIMITATION AS THE BASIS TO DISMISS THE PETITION.

The disciplinary infraction allegedly took place on April 14, 1993. DOC discovered the alleged infraction on October 1, 1993. DOC took disciplinary action on October 5, 1993. Mr. Van Meter Jr. exhausted his administrative remedies on March 21, 1994. Section 95.11(8), Florida Statutes (1995), the new 30-day statute of limitations, became law June 15, 1995, 792 days after the alleged infraction, 622 days after the alleged infraction was discovered, 618 days after the prisoner was disciplined, and 451 days after Mr. Van Meter Jr. exhausted his administrative remedies. The Legislature was silent as to whether it intended the statute to apply retroactively to cut off judicial review of

DOC actions already taken, or prospectively to cut off judicial review of only those actions occurring after its effective date. Mr. Van Meter Jr., as a pro se litigant, raised the issue of the presumption of prospectivity in the Circuit Court, R111, and again in the District Court.[4] The Circuit Court did not address the issue. The District Court held the statute applied retroactively, relying on the statute's "express language" without analysis, 682 So. 2d at 1164, thus compelling it to reach the constitutional issue. The District Court's decision on this preliminary issue was incorrect, unconstitutional, and contrary to long existing legal and public policy. Although the District Court correctly reached the ultimate decision that the Circuit Court erred by dismissing the mandamus petition, it need not have relied on separation of powers to do so because the statute did not apply in this case.

A. There is no evidence the Legislature intended the statute to apply retroactively.

The general rule of law strongly disfavors retroactive application of new statutes. Landgraf v. USI Film Products, 511 U.S. 244 (1994); see also Lynce v. Mathis, 117 S. Ct. 891 (1997). Consistent with the general law, Florida law presumes that a new statute is intended to be prospective, not retroactive. E.g. Foley v. Morris, 339 So. 2d 215, 216 (Fla. 1976). That presumption may be overcome only when the Legislature has stated "expressly in clear and explicit language" its intent that the

[4] A copy of Mr. Van Meter Jr.'s Amended Initial Brief filed in the District Court is attached to this answer brief as Appendix A.

statute be applied retroactively. Foley; Gupton v. Village Key & Saw Shop, Inc., 656 So. 2d 475, 477 (Fla. 1995) ("We have held that a substantive law that interferes with vested rights--and thus creates or imposes a new obligation or duty--will not be applied retrospectively."); Alamo Rent-A-Car v. Mancusi, 632 So. 2d 1352, 1358 (Fla. 1994) (substantive statutes apply prospectively absent clear legislative intent to make them retroactive); State v. Lavazzoli, 434 So. 2d 321, 323 (Fla. 1983) ("It is a well-established rule of construction that in the absence of clear legislative expression to the contrary, a law is presumed to operate prospectively.").

Statutes of limitation are substantive law, Boyd v. Becker, 627 So. 2d 481 (Fla. 1993); Bates v. Cook, Inc., 509 So. 2d 1112 (Fla. 1987), and are presumed to apply prospectively, Foley. This Court in Foley held that the presumption against retroactivity is especially strong when the Legislature attempts to shorten a period of limitations to bar a legal process. 339 So. 2d at 216-17; see also, e.g., Dade County v. Ferro, 384 So.2d 1283 (Fla. 1980) (applying same rule to statute of repose). Accordingly, the Legislature's intent to apply a statute of limitation to cut off a legal action arising from facts that already occurred (if it has the constitutional authority to do so) must be expressed so clearly that no "reasonable doubt" remains as to the Legislature's intent to cause such a harsh consequence:

> "[W]here there is reasonable doubt concerning legislative intention to provide for retroactive application of a shortened

> limitation period, the benefit of this doubt should be given to the person with the existing cause of action."

Foley, 339 So. 2d at 217 (quoting Maltempo v. Cuthbert, 288 So. 2d 517 (Fla. 2d DCA), cert. denied, 297 So. 2d 569 (Fla. 1974)).

This Court further stated that

> "in the absence of a clear manifestation of legislative intent to the contrary, statutes of limitation are construed as prospective and not retroactive in their operation, and the presumption is against any intent on the part of the legislature to make such a statute retroactive. Thus, rights accrued, claims arising, proceedings instituted, orders made under the former law, or judgments rendered before the passage of an amended statute of limitations will not be affected by it . . ."

Foley, 339 So. 2d at 217 (quoting 51 Am. Jur. 2d § 57, Limitation of Actions).

Foley applied these standards to chapter 71-254, Laws of Florida, which provided:

> "Section 1. Subsection (6) of Section 95.11, Florida Statutes, is amended to read:
>
> "95.11 Limitations upon actions other than real actions. -- Actions other than those for the recovery of real property can only be commenced as follows:
>
> "(6) WITHIN TWO YEARS. -- An action by another than the state upon a statute for a penalty or forfeiture; an action for libel, slander, assault, battery or false imprisonment; an action arising upon account of an act causing a wrongful death; an action to recover damages for injuries to the person arising from any medical, dental, optometric, podiatric or chiropractic treatment or surgical operation, the cause of action in such case not to be deemed to have accrued until the plaintiff discovers, or through use of reasonable care should have discovered, the injury.

"Section 2. This act shall take effect on July 1, 1972."

Foley, 339 So. 2d at 216-17 (emphasis in original). This Court concluded that "[n]othing in the language of the act manifests an intention by the Legislature to do otherwise than prospectively apply the new two-year statute of limitations." Id. at 217. Therefore, the statute could not retroactively bar an action concerning an incident that had already taken place.

The Foley analysis presuming prospectivity of narrowed limitations periods has been consistently followed. For example, in Dade County v. Ferro, 384 So. 2d 1283 (Fla. 1980), this Court reviewed an amendment to a statute of limitation and repose in section 95.11(4)(b), Florida Statutes (1975), which said:

> An action for medical malpractice shall be commenced within two years from the time the incident giving rise to the action occurred or within two years from the time the incident is discovered, or should have been discovered with the exercise of due diligence: however, in no event shall the action be commenced later than 4 years from the date of the incident or occurrence out of which the cause of action accrued.

The Court applied Foley and concluded the amendment

> evinces no express, clear or manifest intent that it be applied retroactively and, therefore, the four-year limitation period contained therein may not be applied to a medical malpractice claim where the occurrence or incident out of which the claim arose predates the effective date of the statute.

Id. at 1287. Cf. Homemakers, Inc. v. Gonzales, 400 So. 2d 965 (Fla. 1981) (applying Foley to find statute extending period of limitation was prospective and could not resurrect an action in the absence of manifest intent of retroactivity).

The Legislature is capable of making clear, express, and manifest its intent to narrow a limitation period retroactively, and occasionally it has done so by enacting a savings clause. See Ruhl v. Perry, 390 So. 2d 353, 356 (Fla. 1980) (a narrowed statute of limitations was intended to apply retroactively as evinced by a one-year savings clause, which was "a manifest indication that the legislature intended the statute reducing the period of limitation to be retroactive"); Carpenter v. Florida Central Credit Union, 369 So. 2d 935 (Fla. 1979) (concurrent enactment of amendment reducing limitation period for sealed instruments, and savings clause allowing those with existing actions barred by such amendment one year from effective date to file suits and preserve their rights, was clear indication of retroactivity of amendment reducing limitation period).

The Foley analysis is directly on point with the present case. Nowhere in section 95.11(8) did the Legislature state its clear, express, manifest intent to retroactively cut off an action arising from an incident that had already occurred, even if the Legislature had the constitutional authority to do so. Chapter 95-283, section 2, Laws of Florida, adopting section 95.11(8), simply says:

> Section 2. Subsection (8) is added to section 95.11, Florida Statutes, to read:
>
> 95.11. Limitations other than for the recovery of real property.--Actions other than for recovery of real property shall be commenced as follows:
>
> (8) WITHIN 30 DAYS FOR ACTIONS CHALLENGING CORRECTIONAL DISCIPLINARY PROCEEDINGS.--Any court action challenging prisoner disciplinary

> proceedings conducted by the Department of Corrections pursuant to s. 944.28(2) must be commenced within 30 days after final disposition of the prisoner disciplinary proceedings through the administrative grievance process under chapter 33, Florida Administrative Code. Any action challenging prisoner disciplinary proceedings shall be barred by the court unless it is commenced within the time period provided by this section.

(Underscore in original). Chapter 95-283, section 61, Laws of Florida, merely provides:

> Section 61. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

The Legislature clearly did not enact a savings clause in section 95.11(8). Nonetheless, the District Court's rather odd reading of the statute seems to have written one into the statute. The District Court said the statute, which became effective June 15, 1995, barred preexisting actions beginning on July 15, 1995, when the statute's 30-day limitation period elapsed. The Court then concluded Mr. Van Meter's petition was barred on July 15, 74 days before he filed his petition in the Circuit Court. 682 So. 2d at 1164. The District Court's reading necessarily held that section 95.11(8) applied retroactively but provided Mr. Van Meter Jr. (and other aggrieved prisoners with preexisting claims) a 30-day savings clause, until July 15, in which to seek judicial review. It is difficult to see how the District Court could have read the "express language" of the statute, 682 So. 2d at 1164, to include a 30-day savings clause that does not exist, given that the Legislature evinced no intent to provide a savings clause in the text.

Moreover, just as the statutory language is silent as to retroactive intent, so too is the legislative history. See Fla. S. Comm. on Crim. J., CS/SB's 2944 & 2206 (1995), Staff Analysis (April 18, 1995) (on file with committee); Fla. H.R. Comm. on Corr., HB2531 (PCB Cor. 95-08) (1995), Staff Analysis (April 20, 1995) (on file with committee).[5]

Strong doubt, and at the very least, reasonable doubt, exists as to the Legislature's intent to make this statute retroactive. The statute must be presumed to apply prospectively. Certainly all relevant action here occurred long before the statute became law. Because the statute was inapplicable, the Circuit Court erred by relying on it to dismiss the mandamus petition, and the District Court erred by holding the statute applied retroactively.[6] Cf. State ex rel. Perkins v. Lee, 142 Fla. 154, 194 So. 315, 317 (1940) (interpreting statute of limitation inapplicable to mandamus action for collection of salary due to state officer).

B. By broadly reading the statute as retroactive, the District Court applied the statute unconstitutionally in violation of article I section 21 of the Florida Constitution.

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[5] A copy of the Senate staff analysis is attached to this answer brief as Appendix B. A copy of the House staff analysis is attached to this brief as Appendix C.

[6] The new amendment to Florida Rule of Appellate Procedure 9.100(c)(4), which adopted a 30-day limitation period, also is inapplicable because that rule did not take effect until January 1, 1997, long after this mandamus action accrued and was filed in the Circuit Court. Amendments to the Florida Rules of Appellate Procedure, 685 So. 2d 773 (Fla. 1996). Furthermore, rules of procedure do not apply retroactively. E.g. Natkow v. Natkow, 22 Fla. L. Weekly S230 (Fla. May 1, 1997).

Whenever possible, statutes are to be construed so as not to conflict with the United States or Florida Constitutions. E.g. State v. Globe Communications Corp., 648 So. 2d 110, 113 (Fla. 1994). The District Court's broad reading of the statute to make it retroactive does more than defy legislative intent; it puts the statute in conflict with Mr. Van Meter Jr.'s right to access the courts under article I section 21 of the Florida Constitution. That provision says:

> **SECTION 21. Access to courts.--** The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

In the polestar case of Kluger v. White, 281 So. 2d 1 (Fla. 1973), this Court held

> that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla.Stat. s 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.

Kluger, 281 So. 2d at 4. Whether or not the Legislature intended section 95.11(8) to be retroactive, applying the statute retroactively does not satisfy Kluger and its progeny.

If the Legislature has the constitutional authority to enact a statute of limitations in a particular context (which, appellee contends, it does not have here), the Legislature may apply that

limitation retroactively under article I section 21 provided it gives individuals with accrued claims a reasonable opportunity to seek redress of their grievances in court. Pivotal in prior decisions of this Court has been the existence of a reasonable savings clause. In Bauld v. J.A. Jones Constr. Co., 357 So. 2d 401 (Fla. 1978), this Court found a savings clause in an amended statute of limitation applied to a negligence action made the statute reasonable enough to comport with Kluger under article I section 21. Likewise, in Ruhl v. Perry, 390 So. 2d 353 (Fla. 1980), a one-year savings clause made reasonable an amendment that narrowed the limitation period in an action to recover for a promissory note under seal. See also Carpenter v. Florida Central Credit Union, 369 So. 2d 935 (Fla. 1979) (same). Contrary to the statutes in those cases, section 95.11(8) did not include any savings clause.

Another relevant case is Blizzard v. W.H. Roof Co., Inc., 573 So. 2d 334 (Fla. 1991). That opinion adopted Blizzard v. W.H. Roof Co., Inc., 556 So. 2d 1237 (Fla. 5th DCA 1990) to uphold, under article I section 21, an amendment narrowing a statute of limitation for claims of negligence against a guaranty association and its insured. Those opinions give scant facts or analyses and therefore do not provide much guidance. However, the adopted opinion held that a retroactive statute of limitation meets constitutional muster as long as it does not operate as "an absolute bar to bringing an action." Id. at 1238. In this case, retroactive application does act as an absolute bar, for the 30-day limitation period became law 451 days after Mr. Van Meter Jr.

exhausted his administrative remedies. The appropriate rule was stated in Overland Construction Co., Inc. v. Sirmons, 369 So. 2d 572, 575 (Fla. 1979), where this Court found a statute that limited the right to seek a remedy in that case constitutionally could not be applied retroactively to bar the action when or before it accrued because doing so would mean "[n]o judicial forum would ever have been available."

Kluger requires the Legislature to provide a reasonable alternative to protect the rights of the people of the State to redress for injuries. Section 95.11(8) wholly omits any such alternative to mandamus, which the courts have held is the way a prisoner must seek a judicial remedy under these circumstances. See Jones v. Florida Department of Corrections, 615 So. 2d 798 (Fla. 1st DCA 1993). The Legislature provided no savings clause or any other means to give those with preexisting claims like Mr. Van Meter Jr. any other reasonable method by which they can seek a judicial remedy. Kluger further requires that in the absence of an alternative remedy, the Legislature must have "overpowering public necessity" to abolish the remedy and must show that no alternative method of meeting such public necessity exists. Neither was established anywhere in the text of Chapter 95-283, Laws of Florida.

An inflexible, hard-and-fast limit of 30 days is not reasonable for a variety of reasons. Prisoners, perhaps more than any other class of individuals in society, are subject to the greatest abuses of government power. Prisoners generally are indigent, poorly educated, and unrepresented. Unrepresented

prisoners must be given some leeway in the arcane procedural maze of the judicial process. E.g. Lewis v. Casey, 135 L. Ed. 2d 606, 633 n.4 (1996) (Thomas, J., concurring) (noting the settled rule that pro se prisoner litigants must be given the benefit of liberal pleading rules). As this Court noted in Haag v. State, 591 So. 2d 614 (Fla. 1992), prisoners have little or no control to exert over the processes affecting them in their respective institutions. Their movements are restricted; they are subject to the vagaries of the prison mail system; they are severely limited in their ability or opportunity to do legal research, photocopying, and other functions so much a part of today's legal process; they are in no position to force their custodians to turn over documents on demand; they can be whisked away at any time by the authorities; etc. An inflexible rule unreasonably fails to take into account the practical problems that necessarily arise under these circumstances.

For example, if a prisoner is taken ill and cannot timely file a petition, he is barred by the rule. An indigent prisoner certainly can't call his lawyer from a hospital bed. Consider another case where a prisoner is transferred shortly after being disciplined and in the course of transfer his papers and possessions do not immediately follow him to the new institution. The record in this case certainly demonstrates the real possibility of that happening. Yet a prisoner in that position would be unable to timely file an adequate petition like the one filed in this case, complete with copies of all relevant orders.

Contrary to the Secretary's assertion, IB10-11, the filing of a petition for extraordinary mandamus relief under a 30-day limitation is not analogous to a standard civil proceeding. Circuit and County Court civil cases are evidentiary in nature, for the complaint merely commences a long process designed to adduce evidence for triers of fact to sort out and apply. A writ of mandamus is determined on the pleadings: If the petition demonstrates a preliminary or prima facie case, the court issues an alternative writ, and after receiving a response, the court decides to issue or deny the writ. Mandamus also differs from standard civil proceedings because every mandamus action effectively is an appeal from an act of omission of a government official, for which judicial review is sought. In essence the Circuit Court is acting in its appellate capacity in mandamus cases.

Petitioning for an extraordinary writ of mandamus is different from standard appellate proceedings, too. One taking an appeal typically has 30 days merely to file a simple piece of paper, the notice to invoke the appellate court's jurisdiction. After that first month expires, the party (usually represented by counsel) has substantial additional time to put the case together in an initial brief. E.g. Fla. R. App. P. 9.110(f) (70 days for appeal of final orders); Fla. R. App. P. 9.130(e) (15 days to appeal non-final orders); Fla. R. App. P. 9.140(f) (in criminal appeal, 30 days after service of record or designation of counsel, whichever is later). Furthermore, once the notice is filed, the party is free to seek an extension of time in which to

file the brief. Compare also Florida Rule of Criminal Procedure 3.850, which gives an indigent unrepresented prisoner two years to file a claim regardless of how simple or complex the record or motion may be.[7] These time frames sharply contrast with mandamus proceedings under section 95.11(8), which requires prisoners to do everything in the first 30 days or be forever barred.

In addition to all these factors, the statute is especially unreasonable insofar as retroactive application is concerned. Prisoners cannot be expected to know new statutes right at the time they become law. Also, the statute says prisoners are expected to both preserve and fully brief their claims in 30 days about something that took place in prison before the law even took effect. That is an unreasonable demand to impose on anybody, no less an unrepresented prisoner.

C. The District Court's decision should be affirmed because it reached the right result despite misreading the statute.

The statute should be read as it was written in accord with legislative intent and constitutional requirements. Even though the Circuit and District Courts wrongly held it to apply against Mr. Van Meter Jr., the District Court reached the right result. Therefore its decision should be affirmed. Doing so would be consistent with the "settled principle of constitutional law that

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[7] The Legislature apparently is hell-bent on denying prisoners equal access to courts. In 1996 it enacted yet another limitation, this time imposing one-year limitations when prisoners file any other petition for an extraordinary writ, and when they file claims relating to the conditions of prison confinement. § 95.11(5)(f) & (g), Fla. Stat. (Supp. 1996). These statutes also are constitutionally suspect.

courts should endeavor to implement the legislative intent of statutes and avoid constitutional issues." State v. Mozo, 655 So. 2d 1115, 1117 (Fla. 1995) (District Court found statutory protection inapplicable but constitutional protection violated; this Court approved the result, finding the statutory protection applied so there was no need to reach the constitutional question decided below).

II: WHETHER THE HISTORY OF THE WRIT, THE TEXT OF THE FLORIDA CONSTITUTION, AND THIS COURT'S PRIOR DECISIONS TOGETHER DEMONSTRATE THAT THE ORGANIC LAW OF THIS STATE HAS RESERVED THE EXTRAORDINARY RELIEF OF THE WRIT OF MANDAMUS TO THE EXCLUSIVE PREROGATIVE OF THE FLORIDA JUDICIARY.

The District Court's disposition of the constitutional issue in this case focused on the separation of powers limitation embodied in article II, section 3 of the Florida Constitution:

> **SECTION 3. Branches of government.--** The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Separation of powers analysis begins by examining various provisions of the Florida Constitution to see in which branch the people reserved certain governmental functions. Encroachment by one branch on the exclusive authority of another violates article II section 3. E.g. State v. Atlantic Coast RR Co., 56 Fla, 617, 632, 47 So. 969, 974 (1908).

The statute of limitation at issue here expressly impairs a citizen's right to file a petition for the extraordinary writ of mandamus to seek redress of grievances. Unlike causes of action that are given the force of law by statutory or common law authority, over which the Legislature may exert some substantive control,[8] the writ of mandamus is constitutionally endowed, and

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[8] Many cases under article II section 3 deal with conflicts between judicial and legislative authority. Those cases rest largely on this Court's determination of whether legislation or judicial rules were substantive or procedural, because article V section 2(a) of the Florida Constitution reserves to the judicial branch the exclusive authority to adopt rules for the practice and procedure of the courts, whereas some other provisions of the Constitution have been read, expressly or impliedly, to confer exclusive authority on the legislative branch, in conjunction with the Governor, to enact substantive law and create substantive rights. See, e.g., Boyd v. Becker, 627 So. 2d 481 (Fla. 1993) (statute of limitations is substantive and under separation of powers it must prevail over shorter limitation prescribed by judicial rule); Smith v. State, 537 So. 2d 982 (Fla. 1989) (sentencing guidelines are substantive, so Court's rules establishing sentencing guidelines are unconstitutional); Benyard v. Wainwright, 322 So. 2d 473 (Fla. 1975) (sentence computation is substantive and cannot be based on rule that unconstitutionally conflicts with sentencing statute).

This Court has held that statutes of limitation are substantive in that they create substantive law or vest substantive rights. E.g. Boyd v. Becker. As a general rule, statutes of limitation that do not unreasonably impair statutory or common law actions are within the Legislature's constitutional prerogative to create. E.g. Blizzard v. W.H. Roof Co., Inc., 573 So. 2d 334 (Fla. 1991) (adopting Blizzard v. W.H. Roof Co., Inc., 556 So. 2d 1237 (Fla. 5th DCA 1990) to uphold amendment narrowing negligence statute of limitation as reasonable enough to pass constitutional muster under access to courts and equal protection provisions); Ruhl v. Perry, 390 So. 2d 353 (Fla. 1980) (one-year savings clause made reasonable an amendment that narrowed limitation period for action to recover for a promissory note under seal, and thus limitation within Legislature's authority).

various provisions of Florida Constitution vest all authority over mandamus to the judiciary.

A. The judicial branch prerogative to issue the writ of mandamus is historically rooted as one of the few exclusive judicial remedies expressly provided by the Florida Constitution.

The writ of mandamus is one of five "prerogative writs" first conceived in English law many centuries ago to protect the crown's jurisdiction by affording extraordinary relief, relief that could not be obtained through other available actions at law or equity.[9] Mandamus was conceived as an "original writ," a mandate of the sovereign who had absolute control, which the sovereign issued directly to subordinates to compel them to perform in accordance with the royal will. As courts gradually began to assume greater independence, the writ evolved: What had been strictly a royal prerogative became a judicial prerogative, a "judicial writ" which the King's Bench would issue -- at its discretion but in the King's name -- to require the performance of an official duty. Centuries of practice and the growth of democracy caused the writ to further evolve as a fundamental protection afforded citizens against abuses of government power, particularly as a remedy for an official's failure to perform a

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But the substantive/procedural dichotomy does not resolve this case because the Legislature has no grant of authority in Florida Constitution to interfere in any way with the judicial branch's express and inherent authority over the writ of mandamus, which has been exclusively reserved to the judicial branch.

[9] The other extraordinary or prerogative writs are habeas corpus, quo warranto, prohibition, and certiorari.

ministerial act. See generally Warren A. Goodrich and Al J. Cone, Mandamus in Florida, 4 U. Fla. L. Rev. 535 (Winter 1951) (and authorities cited therein); Alto Adams and George John Miller, Origins and Current Florida Status of the Extraordinary Writs, 4 U. Fla. L. Rev. 421 (Winter 1951) (and authorities cited therein).

Since Florida's territorial days, Floridians have recognized the significance of the writ of mandamus as a core protection against certain types of wrongful government action and inaction. Rather than leaving this extraordinary remedy to the continuing evolution of common law or the whims of the partisan political branches, the people embodied the writ of mandamus in the organic law of Florida by writing the exclusive judicial prerogative directly into the Florida Constitution.

In the first Florida Constitution, the people said:

> The Supreme Court, except in cases otherwise directed in this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may from time to time, be prescribed by law: provided, that the said court shall always have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and other such remedial and original writs, as may be necessary to give it a general superintendence and control of all other Courts.

Art. V, § 2, Fla. Const. (1838). After Florida became a state, the people readopted the writ provision in article V, section 2, of the Florida Constitution (1861), and again in article V, section 2 of the Florida Constitution (1865). In post-Civil War years, the people reaffirmed and strengthened the judiciary's

constitutional mandate. First, the people readopted Florida Supreme Court's prerogative to issue the writ of mandamus:

> The [supreme] court shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction.

Art. VI, § 5, Fla. Const. (1868). Second, the people extended the exclusive judicial prerogative to the circuit courts:

> The circuit courts and the judges thereof shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, and all other writs proper and necessary to the complete exercise of their jurisdiction . . .

Art. VI, § 8, Fla. Const. (1868). The judicial prerogative remained after the people amended the 1868 constitution. Art. IX, §§ 5, 8, Florida Constitution (1868, as amended, 1875).

The Florida Constitution of 1885 reaffirmed the constitutional underpinning of the writ as an exclusive judicial prerogative. As in all prior constitutions, the people vested the authority in the Supreme Court:

> This Court shall have the power to issue writs of mandamus, certiorari, prohibition, quo warranto, habeas corpus, and also all writs necessary or proper to the complete exercise of its jurisdiction.

Art. V, § 5, Fla. Const. (1885). As in 1868, the people also vested mandamus authority in the circuit courts:

> The Circuit Courts and Judges shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, prohibition, habeas corpus and all writs proper and necessary to the complete exercise of their jurisdiction.

Art. V, § 11, Fla. Const. (1885). Both of these provisions were reaffirmed by amendment in 1956. The Supreme Court's writ authority was rewritten to say:

> The supreme court may issue writs of mandamus and quo warranto when a state officer, board, commission, or other agency authorized to represent the public generally, or any member of such board, commission, or other agency, is named as respondent, and writs of prohibition to commissions established by law, to the district courts of appeal, and to the trial courts when questions are involved upon which a direct appeal to the supreme court is allowed as a matter of right.

Art. V, § 4(2), Fla. Const. (1885, as amended, 1956). The circuit court's authority was amended to say:

> The circuit courts and judges shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of their jurisdiction.

Art. V, § 6(3), Fla. Const. (1885, as amended, 1956).

The people in 1956 created the district courts and extended the judiciary's exclusive writ prerogative to those courts as well:

> A district court of appeal may issue writs of mandamus, certiorari, prohibition, and quo warranto, and also all writs necessary or proper to the complete exercise of its jurisdiction.

Art. V, § 5, Fla. Const. (1885, as amended, 1956).

Article V was not amended with adoption of the 1968 Constitution, but the writ provisions were addressed in 1972 when the people continued to allocate to the judiciary all authority respecting the writ of mandamus. The 1972 revision said the Supreme Court

> May issue writs of mandamus and quo warranto to state officers and state agencies.

Art. V, § 3(b)(5), Fla. Const. (1968, as amended, 1972). The District Courts

> may issue writs of mandamus, certiorari, prohibition, quo warranto, and other writs necessary or proper to the complete exercise of its jurisdiction.

Art. V, § 4(b)(3), Fla. Const. (1968, as amended, 1972). The Circuit Courts

> shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction.

Art. V, § 5(b), Fla. Const. (1968, as amended, 1972).

In 1980 the people amended the Supreme Court's jurisdiction, but left in tact this Court's authority over the writ of mandamus, saying the Supreme Court

> May issue writs of mandamus and quo warranto to state officers and state agencies.

Art. V, § 3(b)(8), Fla. Const. (1968, as amended, 1980).

This historical review of the text of the Constitution demonstrates that Floridians zealously have preserved the exclusive, historic, inherent, extraordinary authority of their courts to reign in government officials who do not fulfill their legal obligations in violation of an established legal right. The judiciary's exclusive prerogative is firmly and expressly entrenched today in article V, sections 3(b)(8), 4(b)(3), and 5(b) of the Florida Constitution.

B. The text of the Florida Constitution, the historical basis of the writ, precedent, and policy directly support the

District Court's conclusion that only the judicial branch may exercise any authority respecting the writ of mandamus.

Article II, section 3 of the Florida Constitution precludes the political branches from exercising any authority over functions exclusively delegated to the judicial branch. As with the writ authority, this constitutionally mandated limitation has historical roots in the text and structure of the Florida Constitution. Art. II, § 2, Fla. Const. (1838); Art. II, § 2, Fla. Const. (1861); Art. II, § 2, Fla. Const. (1865); Art. III, Fla. Const. (1868); Art. II, Fla. Const. (1885); Art. II, Fla. Const. (1885, as amended, 1962); Art. II, § 3, Fla. Const. (1968).

Nowhere in the text of the Florida Constitution have the people ever expressly delegated any authority respecting the extraordinary writ of mandamus to any branch of government other than the judicial branch. There is no reference to the writ in the current legislative article, nor has there ever been any authority over the writ stated anywhere in the organic law outside of article V. Had the people chosen to give the Legislature the authority to cut off a right recognized in the constitution, surely they knew how to do so. See art. VII, § 3(e), Fla. Const. (authorizing Legislature to enact general law limiting the period of time in which one might claim an exemption from certain tax levies).

The specific grant of authority to the judiciary with respect to the writ contrasts sharply with the total omission of any such grant of authority to the Legislature. The Legislature

has no power to abolish, impair, interfere with, or otherwise condition a right or remedy expressly provided by the Constitution, absent any express grant of such authority to the Legislature in the constitution.

This Court has long recognized the text of the Constitution provides to the judiciary exclusive authority respecting the extraordinary writs. In Palmer v. Johnson, 97 Fla. 479, 121 So. 466 (1929), this Court considered the effect of a statute much like the one at issue in the case at bar. The Legislature enacted a statute restricting the right of a party to petition the Supreme Court of Florida to review a Circuit Court's decision rendered in the Circuit Court's appellate capacity. Palmer filed his petition outside the 30-day statutory limit, and Johnson argued the statute barred the petition. This Court said the Legislature could not enact such a law:

> It is doubtful if it was the intention of this provision of the act to circumscribe the power to issue writs of certiorari which this court already possessed under section 5 of article 5 of the Constitution, to review and quash, on common-law certiorari, the proceedings of inferior tribunals, at least where such proceedings were had without jurisdiction and where no appeal or direct mode of reviewing the proceedings exists; but if such was the intent, it would be ineffectual. See J. T. & K. W. Ry. Co. v. Boy, 34 Fla. 389, 16 So. 290; Harrison v. Frink, 75 Fla. 22, 77 So. 663; First National Bank v. Gibbs, 78 Fla. 118, 82 So. 618; Halliday v. Jacksonville, etc., Road Co., 6 Fla. 304. It has been held in other jurisdictions that, though the writ be denied by a statute providing for another mode of review, yet if the inferior tribunal acts without jurisdiction the writ will still lie. 4 Encyc. Pledg. & Prac. 38, and cases cited.

Palmer, 121 So. at 466-67. The Court proceeded to resolve the merits of the petition.

In Ex parte Beattie, 98 Fla. 785, 124 So. 273 (1929), the loser in a race for sheriff, Booth, sought mandamus in the Circuit Court to compel a recount, and the winner, Beattie, claimed the writ was unavailable because the sole method to contest the election was provided by statute. After the Circuit Court issued the alternative writ, Beattie sought prohibition in this Court to prevent prosecution of the mandamus action. This Court ultimately had to determine whether the Legislature had any authority to abrogate the writ of mandamus by passing a law providing and conditioning the right to seek review of an election contest. This Court held the Legislature had no authority to interfere in any way with the judiciary's authority to issue writs of quo warranto or mandamus, although the Legislature was free to provide parties a cumulative or alternative option:

> since the purpose of these writs is restricted and well understood and this court is empowered to issue them under section 5 of article 5 of the Constitution, we do not think it competent for the Legislature to change or modify the scope of either of these remedies.

Ex parte Beattie, 124 So. at 274.

This Court relied on Palmer and Beattie in State ex rel. Buckwalter v. City of Lakeland, 112 Fla. 200, 150 So. 508 (1933), to set aside yet another legislative attempt to restrict the judiciary's exclusive mandamus authority. There, the City of Lakeland issued municipal bonds to Buckwalter and others. Buckwalter sought to cash in 96 interest coupons he held. The

City had enough funds to pay Buckwalter, but it refused to pay because it did not have sufficient funds to pay Buckwalter and all other bondholders in full. Instead, the City wanted to pay Buckwalter only his pro rata share of the funds it had available. Buckwalter filed a petition for a writ of mandamus to compel the City to pay all he was owed. The City rested on a statute in which the Legislature restricted the authority of courts to issue mandamus relief. The statute said in relevant part:

> "Section 1. In any mandamus suit brought by the owner or holder of past due bonds or interest coupons, in any court of this State, seeking to compel payment thereof from money actually on hand in the interest and sinking fund, the peremptory writ, if issued by the court, shall command the respondents to pay to relator only such pro rata portion of the moneys actually on hand in the interest and sinking fund as the relator's amount of past due bonds or interest coupons bear to the whole amount of past due bonds or interest coupons then unpaid and outstanding."

Buckwalter, 150 So. 2d at 509 (quoting Senate Bill No. 63, enacted as ch. 16075, § 1, Laws of Fla. (1933)). This Court found Buckwalter was entitled to full payment, so the question became whether the Legislature had any authority to enact a law that impaired its discretion in issuing a writ of mandamus. The Court held the Florida Constitution gave the Legislature no such authority. To the contrary, the Constitution vests full and complete authority in the courts to issue the writ of mandamus to correct abuses of government power:

> Article 5, § 5, of the Constitution of Florida, provides that the Supreme Court "shall have the power to issue writs of mandamus, certiorari, prohibition, quo warranto, habeas corpus, and also all writs necessary or proper to the complete exercise of its jurisdiction."

Article 5, § 11, makes a similar grant of power to the circuit courts.

A writ of mandamus is a common-law writ used to coerce the performance of any and all official duties where the official charged by law with the performance of such duty refused or failed to perform the same; and, when the Constitution vested in the circuit courts and Supreme Court of Florida the power and authority to issue writs of mandamus, it vested therein full and complete authority to issue such writs to coerce and enforce the full and complete duty devolved by law upon any official to perform.

The provisions of Senate Bill No. 63 would curtail and limit the power of the courts to issue peremptory writs of mandamus, and in such cases by its terms would reduce the power of the court to the coercion and enforcement of only a part of the legal duty devolving upon the respondents.

The statute has not attempted to change the law as to the duty of the officials, and this court has repeatedly held that it is the duty of the proper officials in cases like the one here under consideration to pay from the fund on hand the full amount of the relator's claim as evidenced by the coupons.

In Brinson v. Tharin, 99 Fla. 696, 127 So. 313, 316, when we were considering the validity of a legislative act attempting to extend the scope of the writ of certiorari, and to limit the time in which it might be invoked, this court, speaking through Mr. Justice Ellis, said:

> "It is only the common-law writ of certiorari which may be issued by this court to review the proceedings of the circuit court as an appellate court, and, as that power is secured by the Constitution in this court, it may not be extended, limited, nor regulated by statute. We have seen that the attempt to give it the effect of a writ of error and transferring the appellate jurisdiction of the circuit court to this court is futile. Second Weatherford Case, supra. Likewise vain is the attempt to limit the issuing of a certiorari in the matter of time to a period within thirty days after the judgment of the circuit court. Palmer v. Johnson Const. Co., 97 Fla. 479, 121 So. 466.

"The writ, confined to its legitimate scope, may issue within the court's discretion at any time to correct the procedure of courts wherein they have not observed those requirements of the law which are deemed to be essential to the administration of justice. It is important, however, that the court should not broaden or extend the scope of the writ.

"A judgment void for lack of jurisdiction or a proceeding characterized by a kind of tyranny in the failure to observe essential requirements should be subject to correction at the discretion of the court vested with the power to issue the writ.

"The writ is one which issues on discretion and not as a writ of right. Jacksonville, T.& K. W. Ry. Co. v. Boy, 34 Fla. 389, 16 So. 290; Hunt v. City of Jacksonville, 34 Fla. 504, 16 So. 398, 43 Am. St. Rep. 214; Holmberg v. Toomer, 78 Fla. 116, 82 So. 620; First National Bank of Gainesville v. Gibbs, supra.

"The common-law writ of certiorari cannot be made to serve the purpose of an appellate proceeding in the nature of a writ of error. The writ involves a limited review of the proceedings of an inferior jurisdiction. It is original in the sense that the subject-matter of the suit or proceeding which it bring before the court is not here reinvestigated, tried, and determined upon the merits generally as upon appeal at law or writ of error. Basnet v. City of Jacksonville, 18 Fla. 523."

In the case of Palmer v. Johnson Const. Co., 97 Fla. 479, 121 So. 466, we said:

"If Laws 1925, Extra Sess., c. 11357, creating civil courts of record, vesting circuit courts with appellate jurisdiction and providing that petition for certiorari review in Supreme Court must be filed within 30 days after rendering of judgment by circuit court, was intended to circumscribe Supreme Court's power, under Const. art. 5, § 5, to review and quash, on common-law certiorari, proceedings of inferior tribunals, at least where such proceedings

were had without jurisdiction and where no appeal or direct mode of reviewing such proceedings exist, it would be ineffectual.

"If writ of error to civil court of record was so fatally defective as to render it ineffectual as a means of invoking circuit court's appellate jurisdiction, the Supreme Court could entertain petition for certiorari under Const. art. 5, § 5, and quash judgment of circuit court in spite of fact that petition for certiorari was not filed within 30 days from rendition of such judgment, as required by Laws 1925, Extra Sess., c. 11357."

In Ex parte Beattie, 98 Fla. 785, 124 So. 273, we held that it is not competent for the Legislature to change or modify the scope either of quo warranto or of mandamus.

It may be said as a general rule that whatever power is conferred upon the courts by the Constitution cannot be enlarged or abridged by the Legislature. State ex rel. Robinson v. Durand, 36 Utah, 93, 104 P. 760; 15 C. J. 731; In re Albori, 95 Cal. App. 42, 272 P. 321. This rule is also stated as follows: "The Legislature cannot lawfully interfere with the substance of the judicial power and discretion vested in the courts by the Constitution, nor hamper or hinder the free and independent exercise thereof." See Spafford v. Brevard County, 92 Fla. 617, 110 So. 451, 453.

So it is, after considering the third objection to the validity of the legislative act, we find that in effect it says that the circuit courts and Supreme Court of the state may issue alternative writs of mandamus to coerce and enforce the performance of the full legal duty devolved upon the proper authorities of a taxing unit to pay delinquent interest coupons, or delinquent bonds, from funds on hand acquired for that purpose, but that such courts must ascertain the amount of the fund on hand and also ascertain the amount of the outstanding past-due interest coupons or bonds, for the payment of which the tax was assessed which produced that fund, and thereupon shall be limited in the issuance of the peremptory writ of mandamus to coercing and requiring the payment to the relator only such pro rata of the fund on hand as the amount of the relator's coupons or bonds bears to the aggregate amount of all unpaid coupons, or bonds, for the payment of which the assessment was made by which

> the fund was produced. This is clearly contrary to the law hereinabove cited, being an attempt upon the part of the Legislature to interfere with the judicial power of the courts, and to limit the scope of the writ of mandamus.

Buckwalter, 150 So. at 511-12 (emphases supplied).

These authorities demonstrate conclusively that the Legislature cannot tell citizens how or when they can seek extraordinary relief, cannot condition their right to seek such relief, and cannot interfere with the judiciary's authority over the writ by telling courts in any respect what they can do when petitions for extraordinary relief are filed. As the District Court correctly held in the case at bar, "the effect of section 95.11(8) would be to regulate, and to limit, the power of the courts to issue such extraordinary writs," in violation of the Florida Constitution. Van Meter, 682 So. 2d at 1164. These separation of powers decisions are fully in accord with the rule that mandamus

> is an extraordinary remedy, which will not be allowed in cases of doubtful right, and it is generally regarded as not embraced within statutes of limitation applicable to ordinary actions, but as subject to the equitable doctrine of laches.

State ex rel. Haft v. Adams, 238 So. 2d 843, 844 (Fla. 1970) (quoting State ex rel. Perkins v. Lee, 142 Fla. 154, 194 So. 315, 317 (Fla. 1940)); United States ex rel. Arant v. Lane, 249 U.S. 367, 371 (1919).

The dissent and the Secretary argue that by implementing Florida Rule of Civil Procedure 1.630(c), this Court gave up its authority to time-bar a writ. Their position means this Court blindly wrote a blank check giving the partisan political

branches a free hand to enact a one-hour statute of limitation, or perhaps to bar the action entirely. Their reasoning also means this Court, in one fell swoop and without any explanation, did away with the equitable doctrine of laches even though laches has been applicable to mandamus since the earliest days of English common law. These results are too absurd to accept.

Their view also is undermined by separation of powers itself, for article II section 3 bars one branch of government from delegating its authority to another branch. E.g., B.H. v. State, 645 So. 2d 987 (Fla. 1994), cert. denied, 115 S. Ct. 2559 (1995); Chiles v. Children A, B, C, D, E, & F, 589 So. 2d 260 (1991); Askew v. Cross Key Waterways, 372 So. 2d 913 (Fla. 1978). This doctrine prohibits the judicial branch from delegating its constitutional functions to the legislative and/or executive branches. Larson v. State, 572 So. 2d 1368, 1371 (Fla. 1991) (a court cannot delegate to a probation officer purely judicial function of revoking defendant's probation); Patterson v. State, 513 So. 2d 1257, 1261 (Fla. 1987) (judge cannot delegate to prosecutor responsibility for preparing death penalty sentencing order).

The dissent tries to neatly dispose of this constitutional principle by claiming it was not argued. 682 So. 2d at 1168. However, separation of powers was argued and it is the entire thrust of the case. The Secretary does not take the dissent's position and does not argue procedural bar, contending instead that dissent was wrong in acknowledging the nondelegation doctrine is problematic. IB19. Moreover, this case was brought

by an indigent prisoner pro se. The District Court did not appoint Mr. Van Meter Jr. a lawyer, who perhaps could have better articulated the position. Also, as already noted, pro se pleadings are entitled to a liberal reading. E.g. Lewis v. Casey, 135 L. Ed. 2d 606, 633 n.4 (1996) (Thomas, J., concurring).

The Secretary makes a couple of points requiring brief comment. He claims that because the delegation of authority took place in a court rule, the delegation "cannot violate separation of powers." IB19. In other words, this Court can't be party to violating the constitution of which it is the guardian. Precedent, however, demonstrates the Secretary's position is erroneous. Smith v. State, 537 So. 2d 982 (Fla. 1989) (this Court found its own sentencing guidelines rules unconstitutional in violation of separation of powers under article II section 3).

The Secretary also states "absent §95.11(8), there is *no* time limit on inmate mandamus petitions other than laches." IB23 (italics in original). The Secretary overlooks section 95.11(5)(f), Florida Statutes (Supp. 1996)(effective July 1, 1996), which imposes a one-year limitation on every prisoner petition for mandamus or any other extraordinary writ in every case except where the 30-day limit applies.

Surely the people did not intend for this Court to engage in the unwise public and judicial policy of surrendering to the state's partisan political branches any of the Court's vested constitutional writ authority to oversee and correct abuses of official government power that cause injuries to the state's

citizens. A statute of limitations can act -- and this one was intended to act -- as an absolute and inflexible bar to an indigent who seeks relief from such abuses. Yielding control of the writ to the very authorities who ultimately share responsibility for so much exercise of government power is contrary to the nature of the writ itself. Other statutes of limitation do not have that effect. The effect of this statute is not nearly so narrow as the Secretary would have this Court believe.

Mr. Van Meter Jr. also feels compelled to discuss the recent decision in Amendments to the Florida Rules of Appellate Procedure, 685 So. 2d 773 (Fla. 1996), which was issued after the Secretary filed his initial brief. In relevant part, that decision reaffirms that a criminal defendant has a guaranteed right under article V of the Florida Constitution to file an appeal from a judgment and/or sentence, but adds "we believe that the legislature may implement this constitutional right and place reasonable conditions upon it so long as they do not thwart the litigants' legitimate appellate rights." Id. at 774. Applying that view, the Court found as reasonable the condition that an appellant allege prejudicial error as either a preserved or fundamental error. The Court said the Legislature could not prevent a defendant who pleads guilty or nolo contendere, without reservation of rights, the right to appeal subject matter jurisdiction, illegality of the sentence, failure of the government to abide by a plea agreement; and the voluntary intelligent character of the plea. The Court also found

unreasonable legislatively-imposed conditions preventing a defendant who pleads guilty or nolo contendere, without reservation of rights, from appealing the sentence. Id. at 775.

Unlike the ordinary legal remedy of appeal, the equitable writ of mandamus is extraordinary in every sense. The very nature and history of the writ provides the court with discretion to issue it under the narrowest of circumstances: only when a petition demonstrates an abuse of power or official misbehavior by action or inaction that caused injury; when the official action under review concerns the violation of a clear legal duty rather than a discretionary decision; when no other adequate remedy is available; and when the petition is filed within an equitable period of time based on the facts unique to each case. E.g. Brinson v. Tharin, 99 Fla. 696, 127 So. 313 (1930); Tampa Waterworks Co. v. State ex rel. City of Tampa, 77 Fla. 705, 82 So. 230 (Fla. 1919).

To the extent Amendments may have any bearing on this case at all, the statute unreasonably infringes on the right to seek the writ of mandamus. First, the rigid 30-day limitation is unreasonable for all the reasons stated earlier in this brief, supra, pp.21-24.

Second, the inflexible limitation is excessive compared to the kind of condition this Court found reasonable in Amendments. Certainly it would operate to thwart a litigants' legitimate right to review. The times set for commencing appellate actions are set by this Court in its rules of procedure, and those deadlines are jurisdictional. E.g. Peltz v. District Court of

Appeal, 605 So. 2d 865 (Fla. 1992); Williams v. State, 324 So. 2d 74 (Fla. 1975). Also, the conditions this Court approved in Amendments are inherent in the writ itself, for the writ cannot issue without showing an injury.

Third, Mr. Van Meter contends this Court erred in concluding the Legislature has any authority to impose reasonable conditions on the right of appeal. This Court did not do any textual analysis to support its statement, and nowhere in the constitution has the Legislature been given the "express" authority article II section 3 requires to condition a defendant's article V right to appeal. Moreover, ceding to the Legislature any of the judiciary's authority to condition the constitutional right of appeal constitutes a violation of the nondelegation doctrine. Therefore, Mr. Van Meter Jr. respectfully asks this Court to recede from that portion of its decision in Amendments.

For all of these reasons, this Court should affirm the District Court's decision finding section 95.11(8) unconstitutional.

III: WHETHER THIS COURT'S ADOPTION OF APPELLATE PROCEDURE RULE 9.100(C)(4) SHOULD BE RECONSIDERED BECAUSE IT IS BASED ON AN UNCONSTITUTIONAL STATUTE, IT IMPOSES TOO RIGID A RULE, AND IT ABROGATES THE CASE-SPECIFIC EQUITABLE DOCTRINE OF LACHES WHICH IS PARTICULARLY APPROPRIATE IN PRISONER PETITIONS FOR MANDAMUS RELIEF.

In Amendments to the Florida Rules of Appellate Procedure, 685 So. 2d 773 (Fla. 1996), this Court recently adopted Florida Rule of Appellate Procedure 9.100(c)(4), applying a 30-day period

of limitation much like that the Legislature enacted in section 95.11(8). That rule took effect January 1, 1997, long after this mandamus action accrued. Secretary Singletary anticipated its promulgation and argued in his initial brief that such a rule should be adopted. IB27. Mr. Van Meter Jr. asks this Court to reconsider its adoption of the rule and to rescind it or expressly provide for the application of equitable principles in judicial review of the timeliness of prisoner mandamus petitions.

Historically, aggrieved prisoners in Florida sought judicial redress of their grievances by petitioning the courts for mandamus relief. See Moore v. Probation & Parole Commission, 289 So. 2d 719 (Fla.) (seeking writ in Supreme Court for lawful determination of parole release eligibility), cert. denied, 417 U.S. 935 (1974). When Florida adopted the Administrative Procedures Act in 1974, prisoners were required to seek judicial redress through an administrative appeal authorized by section 120.68, Florida Statutes (Supp. 1974). Chapter 120 was later amended to preclude prisoner appeals, requiring a return to the system of mandamus review, often directly in the appellate courts. See Griffith v. Florida Parole & Probation Commission, 485 So. 2d 818 (Fla. 1986). Jones v. Florida Department of Corrections, 615 So. 2d 798 (Fla. 1st DCA 1993), was a natural progression in the law, applying the mandamus requirement to grievances arising from disciplinary actions. Jones added a little gloss by instructing prisoners to file their petitions in the Circuit Courts.

Meanwhile, as Judge Miner points out throughout his dissenting opinion in Van Meter, Florida has been operating with two rules of procedure applicable to extraordinary writ proceedings, one in the civil procedure rules and another in the appellate rules. Although Jones said rule 1.630 applies to these prisoner mandamus cases filed in the Circuit Court, neither rule 1.630 or rule 9.100 applied a time limit for mandamus, leaving courts to apply laches as they always have done.

In 1995, the Legislature enacted section 95.11(8) imposing the 30-day limit to prisoner mandamus petitions arising from disciplinary proceedings. The Florida Bar Appellate Court Rules Committee recognized that section 95.11(8) was intended to add a 30-day time limit where previously only laches applied. Seeking merely to rectify what it viewed to be a problem in the interplay between Jones and section 95.11(8), the Committee in 1996 asked this Court to adopt an emergency amendment.[10] This Court did so in Amendments by adopting rule 9.100(c)(4), and explaining Jones as its reason in the committee note.

Rule 9.100(c)(4), like section 95.11(8), sets an inflexible limitation period of only 30 days applicable to prisoners who challenge disciplinary proceedings. It is just as unreasonable for this Court to impose an inflexible 30-day limitation as it was for the Legislature to do so. Rather than restating the argument, appellee asks the Court to refer to the argument above, supra, pp.21-24. Additionally, the justification for the rule no

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[10] A copy of the Committee's petition is attached to this brief as Appendix D.

longer exists because the statute responsible for its promulgation is unconstitutional for all the reasons argued in Issue II, supra.

By implementing rule 9.100(c)(4), this Court effectively abrogated the centuries-old equitable doctrine of laches for the most hardship-laden class of litigants in the justice system. This hardly seems fair, reasonable, or protective of prisoners' constitutional rights to access to courts, equal protection, and due process.

Neither the Committee's petition, nor any other materials in this Court's file in the Amendments case, demonstrate that a single thought was given to the constitutionality of the statute underlying the rule; the harsh impact this rule will have; the abrogation of laches; and the propriety of applying the rigid rule under circumstances peculiar to prisoners. Thus, the Court did not consider or dispose of these issues when it adopted the rule in Amendments. This Court should now rescind rule 9.100(c)(4), or at the very least revise to rule to provide courts with the express authority to apply equitable principles in reviewing prisoner petitions.

CONCLUSION

For the reasons stated above, this Court should affirm the decision of the District Court, rescind rule 9.100(c)(4), and remand for further proceedings in the Circuit Court.

CERTIFICATE OF SERVICE

I certify that a copy of this answer brief has been furnished by delivery to counsel for the appellant, Charlie McCoy, Assistant Attorney General, the Capitol, Plaza Level, Tallahassee, FL, 32399-1050; and a copy has furnished by U.S. Mail to the appellee, Robert E. Van Meter Jr., on this 19th day of May, 1997.

Respectfully submitted,

CHET KAUFMAN
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A:\VANMETER.AB

IN THE SUPREME COURT OF FLORIDA

HARRY K. SINGLETARY,

Appellant,

vs. CASE NO. 89,325

ROBERT E. VAN METER, JR.,

Appellee.

_____/

A P P E N D I X
TO
ANSWER BRIEF OF APPELLEE

PAGES

Appendix A

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

ROBERT E. VAN METER, Jr.,
Appellant,

CASE NO. 96-00057

v.

HARRY K. SINGLETARY,
Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT FOR LEON COUNTY, FLORIDA

AMENDED INITIAL BRIEF OF APPELLANT

Robert E. Van Meter, Jr,
Pro'se DC#032518
Madison Correctional Institution
P.O. Box 692
Madison, Florida 32341-0692

The Honorable William L. Gary, Circuit Judge granted the Appellee's Motion Denying Mandamus Relief to the Appellant. See R. 108-109.

The Appellant filed a Petition for Rehearing alleging that ground used, in denying mandamus relief, was unconstitutional. See R. 110-116. Judge Gary denied the motion for rehearing. See R. 120-120.

Appellant filed a timely Notice of Appeal, See R. 131-139, but failed to add one of the parties, Louis A. Vargas, Department of Corrections; after being notified of such error Appellant filed a timely Amended Notice of Appeal to the First DCA and to all parties.

The Appellant filed his Initial brief, but failed to comply with Rule 9.210. Now the Appellant files his Amended Initial Brief based upon the issues that are raised in his Motion for Rehearing. See R. 110-116.

CHRONOLOGICAL LIST OF EVENTS

1. 10-01-93 Received DR
2. 10-05-93 DR Court: Plead Not Guilty
3. 10-19-93 Filed Formal Grievance/Grievance denied 11-01-93
4. 06-15-95 **CHANGE IN LAW** (Florida Statutes s.95.11 (8), Ch. 95-283)
5. 08- -95 Institution received Florida Session Law #6
6. 09-23-95 **Petition for a Writ of Mandamus**
7. 10-30-95 **Order to Show Cause**
8. 11-27-95 Defendant's Motion to Dismiss and Response to Show Cause Order
9. 11-28-95 **Order Denying Mandamus Relief** [Barred by the Statute of Limitation s95.11 (8) F.S.]
10. 12-04-95 **Motion for Rehearing**
11. 12-15-95 Order Denying Motion for Rehearing
12. 12-16-95 **Notice of Appeal**
13. 01-12-96 **Amended Notice of Appeal**
14. 02-16-96 Initial Brief of Appellant
15. 03-21-96 **Amended Initial Brief of Appellant**

The Appellant seeks for the First District Court of Appeal to reverse the lower court's decision in denying mandamus relief to the Appellant.

Appellant points out that there is a conflict between Florida Statute s95.11 (8), 1995 and a Mandamus. Appellant finds not interrelationship between the two that would inform him that s95.11 (8) F.S. would apply to a mandamus, Appellant finds no information in this State that a mandamus has a Statute of Limitation. There is nothing in the new amendment s95.11 (8), 1995, that would lead the Appellant to believe there was a marriage between the two, informing the Appellant that this amendment would apply to a mandamus; not was there information indicating that the Florida Legislature intended for this statute to apply to a mandamus. Therefore this statute should not apply to a mandamus or that this part of the statute is so vague that it is unconstitutional to apply to a mandamus.

If the court rules that statute s95.11 (8) applies to a mandamus, thye Appellant argues in alternative below.

The Florida Constitution gives every citizen (including

prisoner's) a right to be put on Notice. As a prisoner the Appellant is handicapped by his very position of any new statute or amendment. Since this statute was for the Department of Corrections (DOC) benefit; DOC has a duty to notify.

all person under there authority, care, custody and control, of any propose change in law, statute or rule which may have an effect on that person, in a timily manner; which includes written notice to all persons, or posted in prescribe area which all persons are duly notified to read daily. DOC did not inform inmates or the Appellant of this change.

DOC controls the information a prisoner reads. DOC subcribs to West's Florida Session Law, and DOC does not supply any other source to notify of §95.11(8) was changed.

The Appellant did not receive notice of change in the statute until West's Florida Session Law #6 was received in lat October 1995, this was will after the change accured in the statute. Without timily proper notice to effect parties to timely submit argument thereto. By this failure of notice it created a disadvantage to the appellant, and a hardship of staying in prision longer.

The Florida Constitution gives every citizen 60 days after the enactment of a statute, and before the statute takes effect, to get aquainted with the statute (due process). The Appellant ask for this court to rule that the Appellant's 60 days notice began when DOC gave fair notice, in this case, the 60 days would start in October 1995 when the library made West's Session Law #6 available to the inmate population. As for all intent and purpose, this was the first notice given to the Appellant.

WHETHER THE COURT ERRED BY APPLYING §95.11(8) RETROACTIVELY TO THE PETITIONER?

RETROACTIVITY: Under Florida law, "[a] substantive statute is presumed to operate prospectively rather than retrospectively unless the Legislature clearly expresses its intent that the statute is to operate retrospectivily. "Alamo Rent-A-Car Inc. v. Mancuse, 632 So. 2d 1352, 1358 (Fla. 1990). Also "[d]ue process considerations preclude retroactive application of a law that creates a substantive right. "Florida Parient's Comp. Fund v. Scherer, 558 So. 2d 411 (Fla. 1990).

The Petitioner contends that §95.11(8), Ch. 95-283, West's Florida Session Law, No. 6, (1995), violates the petitioner's due process. The Amendment created a new legal burdens and therfore, as a matter of statutory construction and due process, the Amendments must only be applied prospectively - specifically, to the filing of the petitioner's Mandamus. The applicable statute should be §95.11 (1992) not §95.11(8), 1995. The Petitioner's disciplinary proceedings began on 10-1-93, therefor all laws at that time are to be applied to the petitioner.

SUBSTANTIVE APPLICATION: Florida law requires that §95.11(8), 1995 be given substantive application. If a new law is created by the legislature and it conflicts with another statute it has been held not to be applicable to statute of limitations. See 34 Am Jur. §48 (1944) p. 48,n. 2. "Provisions of general

statute of limitation have been held not to be applicable where another statute relating to a particular type of claim prescribes a different limitation or indicates that there is to be no limitation." L.K. Land Corp. v. Gordon, 1 NY 2d 465, 154 NY 2d 32, 136 N 2d 500, 59 ALR 2d 1139, cert den Greenfield v. L.K. Land Cor., 352 U.S. 989, 1 L.Ed. 368, 77 S.Ct. 387 and also see Maki v. George R. Cooke Co., (CCA6th) 124 F.2d 663, 146 ALR 1352, writ of certiorari denied in 316 U.S. 686, 86 L.Ed 1758, 62 S.Ct. 1274.

In determining whether a law is substantive or procedural, was determined in the federal district court. See Sokolowski v. Flanzer, 769 F.2d 975 which states as follows:

> "[4-6] In determining whether a law is substantive or procedural, the federal district court accepts the characterization placed on the involved rule ... In instance where a foreign statute of limitations extinguishes the underlying right ... the foreign statute of limitations is considered substantive and must be applied... Madden, 505 F.Supp. at 571; Slate v. Zitomer, 275 Md. 534, 341 A.2d 789 (1975), cert. denied sub nom. Gasperich v. Church, 423 U.S. 1076, 96 S.Ct. 862, 47 L.Ed.2d 87 (1976)
>
> * * *
>
> [A] limitation period nonetheless may be considered substantive even if it is contained in a different statute so long as it is specifically directed ...

RETROSPECTIVE APPLICATION: In a number of Florida cases the language of the legislature must be "unequivocally imply" For example See Avila South Condominium Ass'n, Inc. v. Kappa Corp., 347 So.2d 599, 605 which states:

> [10-11] * * * But a statute "is not to be given retrospective application unless it is unequivocally implied "Keystone Water Co. v. Bevis, 268 So.2d 606 (Fla.1973). The title of the enactment did not give notice of retroactivity, see Chiapeta v. Jordan, 143 Fla. 788, 16 So.2d 641, 645 (1944), and the language on which appellants-petitioners rely does not "unequivocally imply" a legislative intent that Section 711.66(5)(e) operate retroactivily. See Fleeman v. Case, 342 So. 2d 815 (Fla. 1976)

Historically, courts have indulged in the presumption that the Legislature intended a statute to have prospective effect only. The bias against retroactive legislation is deeply rooted in the Anglo-American Law. 1 Code established the maxim, "Nova conscitutio furturis forman imponcre debet non praeceritas". (A new state of law ought to affect the future, not the past). Blackstone wrote the it was a matter of justice that statutes should operate in futuro. A statute will be construed as prospective only unless the intention of the Legislature to give is a retroactive effect is expressed in language to clear and explicit to admit of reasonable doubt.

It is held in In Re Seven Barrels of Wine, 79 Fla. 1, 83 So. 627, 631 (1920):

> "The rule that statutes are not to be construed retrospectively unless such construction was plainly intended by the Legislature applies with peculiar force to those statutes the retrospective operation of which would impair or destroy vested rights (citations ommitted]."

Also see Foley v. Morris, 339 So. 2d 215 which states:

> "Since the presumption is against retroactive application of a statute where the Legislature has not expressly in clear and explicit language expressed an intention that the statute be so applied and recognizing. the authority of the Legislature to adopt a statute of Limitations which retroactivily shortens a period of limitation...

A retrospective law, in 8 legal sense, is one which takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability.

WHETHER MANDAMUS IS CONTROLLED BY EQUITABLE DOCTRINE OF LACHES OR BY STATUTES OF LIMITATIONS?

Petitioner contends that the statute of limitations does not apply in mandamus proceedings, because mandamus is a equitable doctrine of laches. In 35 Florida Jur. page 305

> §95 . . . The statute of limitation does not apply in mandamus proceedings, such a proceeding not being an "action: or "civil action" within the meaning of limitation statutes.
>
> * * *
>
> There is no rule by which the number of years that will bar relief by mandamus can be fixed; each case must be determined by its own facts and circumstances

It is settled law in this state that mandamus is generally controlled by the equitable doctrine of laches rather then the statutes of limitations. See State v. Green, 88 So. 2d at 495 citing Tampa Waterworks Company v. State ex rel. City of Tamps, 77 Fla. 705, 82 So. 230

The last time the Legislature change or modify the scope of eather quo waranto of mandamus the Supreme Court ruled that the Legislature was infringing on the courts power. See State v. City of Lakeland, 150 So. at 511 state the following:

> "Likewise vain is the attempt to limit the issuing of a certiorari in the matter of time to a period within thirty days . . . Palmer v. Johnson Const. Co., 123 So. 466.
>
> "the writ, confined to its legitimate scope, may issue within the court's discretion at any time...
>
> 6 * *
>
> In the case of Palmer v. Johnson Const. Co., [citing omitted]. "[W]as intended to circumscribe Supreme Court's power,

In Green it went on further to say, citing Beattie, 124 So, 273

> In Ex parte Beattie, 98 Fla. 785, 124 So, 273, we held that it is not competent for the Legislature to change or modify the scope either of quo waranto or of mandamus. [emphasis added]
>
> * * *
>
> "[4] It may be said as a general rule chat whatever power is conferred upon the courts by the Constitution cannot be enlarged or abridge by the Legislature, State ex rel. Robinson v. Durand, 36 Utah 93, 104 P. 760; 15 C.J. 731: In re Albori. 95 Cal. app. 42, 272 P. 321. This rule is also stated as follows: "The Legislature cannot lawfully interfere with the substance of the judicial power and discretion vested in the courts by the Constitution, nor hamper of hinder the free and independent exercise thereof." See Stafford v. Brevard County, 92 Fla. 617, 110 So. 451, 453.

Also see 10 Fla. Jur. §157 Encroachment of Judiciary:

> " It is a will-settled general rule that, except as permitted by the Constitution, judicial power may not be taken away, hampered, enlarged, or abridged by the legislature. Indeed, the Constitution prohibits the legislature from exercising any power properly belonging to the jud-icial branch, and any legislative any which clearly and manifestly exercises power properly belonging to the judicial branch is unconstitutional. [citings omitted].

In 10 Fla. Jur. §160 Interference with judgment or discretion, At one time a mandamus was for the courts discrition. The case at bar represents interference with the courts discretion:

> "It is a general rule that the legislature has no power under the Constitution to regulate the judicial discretion or judgment that is vested in the courts. [citions omitted)

SEPARATION OF POWERS

The Petitioner contends that the Legislature went beyond its authority by enacting §95.11(8), Ch. 95-283, West's Florida Session Law, No. 6, 1995, Page 2082: in violation of Article

II, section 3 and Article V, Section 2(a), of the Florida Constitution because they impermissibly infringe on the power of the judiciary to establish practice and procedure in Florida courts. **See Avila S. Condominium Ass'n v. Kappa Corp., 347** So. 2d 599 (Fla. 1977). at 608:

> "[I]mpermissible incursion by the legislature into the exclusive prerogative of this Court to adopt rules for "practice and procedure in all courts." Article V, Section 2(a), Florida Constitution. As so aptly stated by Mr. Justice Adkins concurring in **In re Florida Rules of Criminal Procedure, 272 So.** 2d 65, 66 (Fla.1972):
>
> > 'Practice and procedure encompass the course form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. "Practice and procedure: may be described as the machinery of the judicial process as opposed to the product thereof..

§95.11 **Florida** Statutes, 1995, is an invasion of the courts rulemaking authority in violation of Article **II, § 3** of the Florida Constitution and therefore unconstitutional.

INTERRELATIONSHIP: The petitioner alleges **chat** there is a failure to give NOTICE of interrelationship with ocher laws (that is if there is an interrelationship) in this case at bar §95.11 does not give notice of an interrelationship with a mandanus, therefore there when §95.11(8), 1995, was enacted the petitioner **never** received notice that the amendment would apply **to mandamus.** Therefore this court should rule that **§95.11 (8), 1995. is unconstitutional for failure to give notice of interelationship. See United Gas Pipe Line Co. v. Bevis, 336 So.2d 560 (Fla. 1976).**

WHETHER THE COURT ERRED BY APPLYING EX POST FACTO LAW OR/AND DID THE FLORIDA LEGISLATURE VIOLATE FLORIDA'S AND FEDERAL EX POST FACTO LAWS BY ENACTING §95.11(8), 1995?

The Petitioner received a disciplinary report (DR) on 10-1-93, and the DR Hearing began on 10-5-95, therefore all laws at that time should be applied to the petitioner.

Section 95.11(8), Ch. 95-283 (1995) No. 6 West's Florida Session Law is an ex post facto law, which is prohibited by Article I, §10, Florida Constitution, is defined "[O]ne which, in its operation, make that criminal which was not so at the time the action was performed, or which increases the punishment, or, in short in relation to the offense or its consequences alters the situation of the party to his disadvantage."Higgin-Bothan v. State, 88 Fla. 26, 31; 31 So. 223, 235 (1924) [emphasis added]. Section 95.11(8) clearly does alter the Petitioner's situation to his disadvantage by preventing to correct a wrong done to him through the courts, and by the lose of the petitioner's gain-time adding more time to his sentence, staying in prison longer.

A law is ex post facto as applied to the petitioner, the case at bar, shows that the DR occurred before the §95.11(8) 1995, was even though of, even if the court could apply this law in other cases it should not apply it to this case, because this law is substantive in its nature even though it is a procedural law. See Alamo Rent-A-Car Inc. v. Mancuse, 632 So. 2d 1358 (Fla. 1990).

CONCLUSION

WHEREFORE, for the foregoing reasons, Appellant respectfully request that the Lower court Order Denying Mandamus Relief be reversed in favor of the Appellant and against Appellee's.

Respectfully submitted

Robert E. Van Meter, Jr. #032518
Madison Correctional Institution
P.O. Box 692 (H-77)
Madison, Florida 32341-0692

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing AMENDED INITIAL BRIEF OF APPELLANT has been furnished by U.S. Mail co Shannon C. Lord, Assistant Attorney General, the Capitol, PL-01, Tallahassee, Florida 32199-1050, and to Louis A. Vargas, Department of Corrections, Legal Bureau. 1311 Winewood Blvd., Tallahassee, Florida 32300-6569, on this 21 day of March 1996.

Robert E. Van Meter

Appendix B

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

DATE: April 18, 1995 REVISED: _____ _____ _____

SUBJECT: Corrections

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barrow		CJ	Favorable/CS
2.			GO	
3.			CA	
4.			NM	

I. SUMMARY:

CS/SB 2944 would make many changes to correctional statutes that are both technical and substantive. The CS would amend, expand, or clarify the authority, duties, rights, benefits, and responsibilities of correctional officers, correctional probation officers, sheriffs, law enforcement, and firefighters. The Cs would amend, expand, limit, or clarify the duties, responsibilities, functions, and authority of tht Department of Corrections and the Parole Commission. The CS would amend, expand, limit, or clarify the authority, functions, requirements, and responsibilities of correctional work programs, including PRIDE; cost of supervision paymtntrt classification of inmates with regard to private correctional facilities: youthful offender institutions; misdemeanor probation services; local detention facilititst and the rights of inmates as they relate to name changes and challenges to disciplinary action decisions. Except as otherwise expressly provided, this CS would take effect upon becoming. law.

This CS would substantially amend, create, or repeal the following sections of the Florida Statutes: 69.08, 95.11, 112.19, 112.08, 117.10, 175.201, 282.1095, 381.695, 408.0365, 776.07, 843.04, 843.08, 921.16, 922.11, 943.10, 943.1397, 944.06, 944.39, 944.095, 944.516, 944.606, 944.703, 944.704, 944.706, 944.707, 945.03. 945.091, 945.28, 945.6037, 946,006, 946.504, 946.41, 946.515, 947.01, 947.141, 948.09, 948.15, 951.23, 951.19, 951.12, 957.06, 958.11, 112.191, 950.051, 950.07, and 950.08.

II. PRESENT SITUATION:

Section 1 - Inmates may petition to have their name changed while incarcerated.

Article III, section 11(a)(14) of the Florida Constitution, addresses name changes and states that "[t]here shall be no special law or gencral law of local application pertaining to ...change of name of any person.,.." Generally, citizens may seek name changes by filing a petition in their county of residence. s. 68.07, F.S. Inmates ate not precluded from seeking a change of name. Neither inmates nor judges are required by law to notify the Department of Corrections that a name change is being sought by an inmate, or that a petition for a change of name has been granted. According to the Bureau of Legal Servictt within the department, if a facially sufficient petition for change of name is filed, the inmate's petition is generally granted.

The problems with this scenario are obvious when considering the department, law enforcement, and the courts. For example, because there are no provisions governing the dissemination of legal name changes for inmates between the department, FDLE, clerks of court, and local law enforcement agencies, it is difficult for such parties to track, serve process/warrants, obtaining and making accurate NCIC/FCIC reports, or make contact with inmates that have legally changed their names. Illustrations of the necessity to know name changes would be in the cases of sexual predators, repeat offenders, and absconders from work release programs or post-release community supervision. The department is able to cite many problems they have had because of inmates obtaining legal name changes. To continue to allow an inmate to be able to change his name while incarcerated could be costly, literally and figuratively.

Section 2 - Inmates appeal administrative grievance decisions through court actions against the department up to 4 years after the final administrative hearing.

Originally, the Administrative Procedures Act (APA) authorized an inmate to challenge a disciplinary proceeding through judicial review within 30 days. Currently, inmates may not directly challenge or seek judicial appellate review for any action/proceedings of the degartment because they do not have standing to do so under the APA. See, s. 120.57, F.S. (Supp. 1994), s. 120.68, F.S. However, generally, an inmate may still indirectly "challenge" the administrative actions/decisions of the department by petitions of extraordinary writ or declaratory judgement, or pursuant to s. 1983 civil rights actions, upon exhausting the administrative grievance process.

If an inmate's challenge of the administrative action/decision of the degartment is indirectly sought through the judicial system, there would be a 4-year statute of limitations, pursuant to s. 95.11(3), F.S., or a 2-year statute of limitations for medical malpractice, Qursuant to s. 95.11(4), P.S. The department conducts an extraordinary number of disciplinary proceedings every year. This number of proceeding8 will continue to grow as the inmate population grows. Although the APA has very limited time constraints on such administrative proceedings, the four year statute of limitations creates the effect that inmate disciplinary decisions may be indirectly challenged and litigated up to 6 years after the decision.

Section 944.28 (2), P.S., authorizes the department to declare a forfeiture of earned gain-time and the right to earn future gain-time if the department finds that the inmate is found to have committed a statutorily enumerated offense or because of the seriousness of a. single instance. or accumulated misconduct.

Sections 3,4, and 5 - Law enforcement officers, correctional officers, and correctional Qrobation officers employed by the state or a political subdivision thereof are eligible for accidental death benefits and firefighters are currently covered by group insurance for public officers under s. 112.08, F.S.

Although pursuant to s. 112.19, F.S. (Supp. 1994), law enforcement officers, correctional officers, and correctional probation officers employed by the state or a political subdivision thereof are generally eligible for accidental death benefits, firefighters are not included in any of these special benefits. Instead, firefighters are ultimately covered under s. 112.08, F.S., which provides the manner in which a unit of local government may provide insurance for officers and employees of the unit Of local government. Section 175.201, F.S., provides the manner in which the heirs and beneficiaries of a firefighter who dies before retirement may receive the contributions made to the firefighter's

pension trust fund, life insurance contract, or annuity by the deceased firefighter.

Section 6 - Correctional probation officers are not statutorily designated as notaries public.

In performing their official duties as probation officers, they are not statutorily designated as notaries public. Currently, law enforcement officers, correctional officers, traffic accident investigation officers, and traffic infraction enforcement officers are statutorily designated notaries public. These other types of officers are so designated because it assists them in performing their duties. Further, correctional probation officers are required to go through training before they are certified to become a probation officer, they are also afforded many of the rights and privileges that law enforcement officers are. Probation officers supervise criminal offenders to ensure the offenders complete their conditions of probation and maintain lawfulness. They are witness to many criminal offenses and such authority would assist them in performing their duties.

Section 7 - The Department of Corrections is not included as a member of the Joint Task Force on State Agency Law Enforcement Communications,

Section 282.1095 (2)(a), F.S. (Supp. 1994), creates a 5 member task force for the purpose of acquiring and implementing a statewide radio communications system to serve law enforcement units of state and local agencies through a mutual aid channel. The task force currently has representation from the Departments of: Business and Professional Regulation (Division of Alcoholic Beverages and Tobacco), Law Enforcement, Highway Safety and Motor Vehicles (Division of Florida Highway Patrol), and Environmental Protection (Division of Law Enforcement). The Department of Corrections does not have access to the mutual aid channel that provides communication with local law enforcement and is not a member of the task force. Such access may prove to be very useful and important in cases of escapes and riots.

Section 8 - The Department of Corrections is not exempted from the certificateof-need process.

The department has one hospital, which is located at the North Florida Reception Center, Lake Butler, Florida. This facility is restricted to providing health care to inmates in the state correctional system. The 1993 Health Care Reform Act did not continue the certificate-of-need exemption for the department's hospital under s. 381.695, P.S. The original bill, SB 1778, contained the exemption, but was changed before it passed. The certificate-of-need process is a stringent process with which the department must comply with currently. As of July 1, 1995, all department health care related projects will be subject to review and the certificate-of-need application would need to be filed with the Agency for Health Care Administration, pursuant to ss. 408.031 through 408.045, F.S.

Sections 9 and 10 - Correctional officers are referred to or defined as "guards" in some statutory sections.

The term "guard" is no longer used by the Department of Corrections to refer to correctional officers.

Section 11 - It is not a felony to falsely "personate" a correctional officer or a correctional probation officer.

Section 843.08, F.S. (Supp. 1994), provides that it is a felony offense to falsely "personate" a sheriff; a deputy sheriff; a state attorney investigator; a coroner; a police officer: a

lottery special agency or lottery investigator: a beverage enforcement agent; a watchman: a member or employee of the Parole Commission; and officers of: the Florida Highway Patrol, the Game and Fresh Water Fish Commission, the Department of Environmental Protection: and employees of the Department of Law Enforcement. However, officers of the Department of Corrections and correctional probation officers have been omitted from this list. The Department of Corrections reports that there are known cases of people impersonating correctional officers and probation officers to accomplish various things and that law enforcement cannot do any thing about it because of the current status of the statute.

Section 12 - In cases of concurrent or co-terminous sentences imposed by other jurisdictions: the department may refuse to accept persons sentenced into the correctional system unless complete documentation is presented by the sheriff or chief correctional officer of the county, the department is not mandated to notify other jurisdictions of their interest in concurrently or co-terminously sentenced inmates, and the department is not prohibited from interfering with the program participation approved for such inmates by other jurisdictions.

For many years Florida courts have sentenced offenders to serve terms of years and ordered the sentence to run concurrently, and some times co-terminously, with sentences in other jurisdictions. Upon the court ordering a sentence to run concurrently or co-terminously, the court directs the sheriff to release the offender to agents from the other jurisdiction, and the commitment documents are forwarded to the department to be placed as "a detainer" with the out-of-state jurisdiction.

Section 921.16, B.S., provides that when this happens, the department "may" stipulate the other jurisdiction as the place of confinement for service of the Florida sentence. Because of the word "may" in this statute, an appellate court has recently held that the department is not under any obligation to stipulate the other jurisdiction as the place of confinement, according to the Department of Corrections. This is the case despite the fact that the court has ordered the sentence served in this manner and has further directed the sheriff to release the offender to the other jurisdiction. It is the department's position that this decision should be made at the "front-end" of the system by the court, state attorney, and defense attorneys. The department has indicated that they do no want to be involved with the decision of co-terminous or concurrent sentences, which could be interpreted as second guessing the parties involved.

Section 13 - Correctional officers are referred to or defined as "guards" in some statutory sections.

The term "guard" is no longer used by the Department of Corrections to refer to correctional officers.

Section 14 - There is no specific authority for auxiliary correctional probation officers.

The department would like to have educational interns and qualified persons to be able to handle probation cases whereby they would provide the required supervision under the direct supervision of an authorized full-time or part-time correctional probation officer. Such specific authority would allow students and trainees to obtain the experience and knowledge of a correctional probation officer. An obvious benefit of authorizing such officers would be that assistance could be provided to the Division of Probation and Parole Services at a fraction Of the amount it would cost the state to train and pay persons to handle the supervision. This type of practice occurs in many different

professions. For instance, state attorney offices and public defenders offices are authorized by the Supreme Court to allow certain students to appear in court and essentially prosecute or defend persons accused of crimes as long as they are supervised by a qualified person.

Section 15 - Applicants that fail the officer certification exam must wait a minimum of 90 days before the applicant may re-take the exam.

Individuals who take the certified officer examinations (police officer, Florida highway patrol, correctional officer, correctional probation officers, etc.) and fail all or part of the examination must wait 90 days before they can re-take the examination, regardless of the score.

According to the department, this statutory requirement presents a problem for the department since it will hire approximately 5000 correctional officers within the next few years. When an officer is hired in a trainee statue and subsequently fails the examination, the department has no choice but to terminate the employee if the re-test cannot be taken within the required time for certification, which is usually 180 days.

Section 16 - The department is not authorized to reimburse employees for damage to their personal vehicles that they use to perform their duties while on official state business.

The department does not have authority to reimburse an employee who's personal vehicle is damaged during the course of official state business. The department has employees that must use their personal vehicles to perform their official duties. Three to four times a year there are vehicles that are damaged while performing official dutiee.

Section 17 - Correctional officers are referred to or defined as "guards" in some statutory sections.

The term "guard" is no longer used by the Department of Correction8 to *refer* to correctional officers.

Section Ib - In order to obtain a site to place a state correctional facility, there are many statutorily required studies and procedures that must occur prior to approaching local governments about a proposed site.

Currently, pursuant to s. 944.095, F.S., the Department of Corrections and the Department of Health and Rehabilitative Services is directed to conduct a statewide comprehensive study to determine current and future needs for all types of correctional facilities, adult and juvenile, in this state. This study must assess, rank, and designate appropriate sites and be reflective of the different purposes and uses *for* all correctional facilities based upon many criteria listed in the statute. The criteria includes current and future estimates of offenders, types of crimes , and current facility capacity in each county; the geographic location of existing state facilities; the available labor market; the total usable and developabfe acreage; accessibility to utilities; transportation: law enforcement; and other services at various sites; and projected population and pattern of growth, among other requirements. The department must recommend certification of the study by the Governor and Cabinet within 2 months of its receipt. Upon their certification, the department must notify those counties that are designated as being in need of a correctional facility.

Procedures are provided in the statute that must be followed upon certification of the study in order to negotiate with local governments to eventually site a state correctional facility.

Section 19 - The department must remit balances of an inmate's bank account by issuing a check, regardless of the amount, upon the transfer, death, or release of an inmate.

The department is required to issue a check to either an inmate, the receiving location, or survivor of a deceased inmate for the balance in the inmate's account. In many instances, these balances are less than $1. This is not cost-effective for the department since the cost of iasuing the check is often more than the amount of the check. This problem is further complicated by the fact that many times an inmate who receives a check for such a small amount often times does not cash the check. When a check is not cashed, administrative costs are increased because of tracing outstanding bank items and ultimately transferring the balances to the department's "dormant account" fund.

Section 20 - County Sheriffs are not specifically authorized to release information about sex offenders upon their release from incarceration.

Section 944.606, P.S., authorizes the notification of sex offender release information from the department, the Parole Commission, and the Control Release Authority to local governments. However, public notification of sexual offender release information by local govenments is not specifically authorized in the law.

The Attorney General, advised in a written opinion that although s. 944.606, F.S., does not specifically address the release of sex offender information by local government agencies, such information would appear to be, by definition, a public record and subject to inspection and copying pursuant to s. 119.07(1), F.S. See, AGO 93-32. Nevertheless, despite the public nature of sex mender records, a possibility of civil liability exists for the abusive or malicious release of such records. See, Williams v. City of Minneola, 575 So.2d 683 (Fla. 5th RCA 1991), rev. den. 589 So.2d 289 (1991).

Sections 21, 22, 23, and 24 - The department is not authorized to provide transition assistance to inmates that are released from a work release program or released to another state.

Sections 944.701 through 944.708, F.S., authorize the department to provide assistance to inmates in the transition back to society. The assistance through Transition Assistance Program (TAR) comes in ths form of job placement and referral services for inmates, except for inmates released from work released programs and inmates released to other states. The TAP program has changed over time and the prohibition on these types of inmates to receive services through this program has never been removed.

According to the department, inmates released from work release programs are generally the most productive inmates and the most likely to benefit from transition assistance because they are involved in marketable skills programs and are the closest to release. The department maintains that the elimination of these exclusions could increase the likelihood of successful transition for these inmates and benefit the community as a whole.

Section 25 - The department-has no written policy or rules regarding nepotism or the hire of relatives at the same correctional institution, facility, or circuit.

Section 112,3135, F.S. (Supp. 1994), provides that a public official, including a member 'of the Legislature, the Governor, and

a member of the Cabinet, or an employee of an agency in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, may not appoint, employ, promote, or advance, or advocate for employment, promotion, or advancement, in the agency in which he is serving or over which he exercises jurisdiction or control over any individual who is a relative of the public official.

Since the repeal of Rule 33-4.010, Fla. Admin. Code, the department currently does not have a rule that implements the provisions of s. 112.3135, F.S. (Supp. 1994), to address the issue of nepotism in hiring practices. With the current and expected expansion, more relatives are being hired by the department to work in the same institutions and facilities. This is particularly prevalent in the rural areas of the state. Therefore, legislative guidance as to the policy that is preferred to be adopted would be beneficial.

Section 26 - The secretary of the department is the only authorized person that may approve requests from inmates to have the limits of confinement extended.

Section 945.091, F.S., requires the secretary to personally review all inmate requests to leave the confines of the institution or program unaccompanied by a custodial agent for a prescribed period of time to go to the statutorily authorized places, thereby "extending the limits of his confinement." The secretary must have reasonable cause to believe that the inmate will honor his trust by authorizing the extension of the limits of confinement for particular purposes. For example, an inmate may be granted a "furlough" to visit a dying relative, attend a relative's funeral, or to arrange for suitable residence or employment upon release, to participate in work release or a rehabilitative program, among other reasons.

Section 27 - The department is not required to provide any prior public notice where it intends to establish a probation and parole office. There are no statutes or rules regarding the siting of a probation and parole office. At least one jurisdiction is known where there was a problem with the location that a probation and parole office was to be placed. The community felt that the location war inappropriate and unsafe due to its proximity to a place where children regularly congregate. The community felt that if notice by the department wae required, the problem could have been eaaily avoided.

Section 28 - The department does not have statutory authority to establish any bank accounts outside the State Treasury.

Upon reviewing the Court Ordered Payment System (COPS), staff from the State Treasurer's office found that the department has no authority to maintain bank accounts outside the State Treasury for the purpose of collecting and disbursing restitution and other court-ordered payments. The department is provided broad authority to collect and disburse court-ordered payments under s. 945.31, F.S. However, the statute is not specific on the amount of banking flexibility the department has in handling such payments.

Section 29 - The department is required to assess an inmate co-payment for medical sercices rendered except under limited circumstances.

In 1994, the Legislature enacted s. 945.6037, F.S. (Supp. 1994), which required the department to assess a co-payment of at least $1 up to $5, as determined by rule, for non-emergency inmate visits to a health care provider which were initiated by the inmate. The co-payments are deducted from the inmates' bank

accounts for the total amount or deducted in increments of 50% of each deposit until the amount owed has been paid. There are several exceptions to the required payment of the co-payment. The exceptions are: when care is rendered in connection with an extraordinary, unforeseeable event; when there is an institution-wide health care measure that is necessary to address the spread of specific infectious or contagious diseases: when the care is rendered under a contractual obligation or it is precluded under agreement with another jurisdiction: or if it was initiated by the health care provider or consists of a routine follow-up.

Section 30 - Inmates who are injured while working in a Prison Industry Enhancement (PIE) program may not be eligible to receive worker's compensation benefits or unemployment benefits.

Under federal law, there are prohibitions on the marketability of state prisoner-made producta. If a state obtains certification from the Bureau of Justice Assistance (BJA) within the U.S. Department of Justice, the certification would exempt the department's cost accounting centers (prison industry operations) from the federal prohibitions. Such an exemption from the prohibitions would authorize the sale of these products in interstate commerce, and the contracting with the agencies of the Federal Government in excess of $10,000. A special condition of Florida's certification by BJA is that our statutes have to conform with U.S.C. requirements, which specifically requires that inmates participating in the BJA program will be provided worker's compensation benefits as set out in the Title 18 W.S.C. 1761 (c)(3). Therefore, to maintain certification by BJA, Florida must enact a subsection under 946.006, F.S. (Supp. 1994) that provides for worker's compensation benefits in order to receive the benefits of the PIE program.

Section 31 - The department contracts with the private sector for substantial involvement in prison industry programs.

Pursuant to s. 946.006, F.S. (Supp. 1994), the department is authorized to contract with the private sector for substantial involvement in prison industry programs (PIE), which includes the operation of direct private sector business within a prison and the hiring of inmate workers. However, there is nothing in the statute which requires the department to cooperate with PRIDE in seeking qualification and in contacting with the private sector for prison industry programs. Because there is no cooperation required, the conflicts between the department and PRIDE are inherently present by virtue of what PRIDE's function is.

Section 32 - There is no statute requiring the obvious notice of inmate work crews working in the community.

There appears that there is no specific statutory authority governing the notice to the public of inmate work crews who are working in their community. It is anticipated that the number of inmate work programs and crews will increase and more frequently work out in the community. Therefore, it is also anticipated that it would be in the best interest of public safety to ensure notice to the community when they are out working. However, it would also be constructive to let the public know that inmates are out working and being productive.

Section 33 - The provisions of Part I, Chapter 287, F.S., do not apply to any purchases of commodities or contractual services made by any state agency from the corporation.

All other subsections of s. 946.515, F.S., reference legislative, executive, or judicial agency of the state except for subsection (4) where it states "state agency."

Section 34 - The Parole Commission is statutorily authorized to have 9 members.

The Parole Commission currently has 7 members and is not operating at the full statutory member capacity. According to the Parole Commission, based on current workloads and responsibilities, it could operate at a smaller number of members.

Section 35 - The Parole Commission may not impose a penalty of short-term incarceration in a county jail for persons who commit violations of conditional release, conditional medical release, or control release.

The contractual arrangement for county jail beds was authorized during the 1993 Special Session C and received an awwrowriation for the program. Ch. 93-406, s. 36, 1993 Laws of Fla. 2967. The amount of the per diem reimbursement was increased during the 1994 regular session to approximately $42. Ch. 94-214, s. 1, 1994 Laws of Fla. 1396, 1397. This per diem reimbursement was authorized stating that the amount "may not exceed the per diem published in the Department of Corrections' most recent annual report for total department facilities." Id.

According to the Department of Corrections, there are currently 7 counties that have contracted with the department as authorized under s. 921.188, F.S. Therefore, the following counties have entered into a contract with the department that could currently take violators of their conditions of supervision on conditional release, control release, or conditional medical release as addressed by this bill:

Jackson County.....40 beds

Wakulla County.....40 beds

Madison County.....30 beds

Dixie County.....30 beds

Hamilton County.....,.....30 beds

Monroe County.....50 beds

Orange County.....40 beds

For suspected violators of conditional release, control release, or conditional medical release, a member of the Commission or an authorized representative of the Commission may issue an arreat warrant if they have reasonable grounds to believe that such persons have violated the terms and conditions of their release. s. 947.141(1), P.S. (Supp. 1994). If the suspected violator was found to be a sexual predator, an arrest warrant must be issued. Id.

If the Commission issues a warrant, the offender must be held in custody pending a revocation hearing that must occur within 45 days. s. 947.141 (3) (Supp. 1994). The offender is afforded rights at the hearing as extended in the statute. Id. Within a reasonable time, an order must be entered based on the findings presented at the hearing.. Id. The order may revoke the release of the offender in a program supervised by the Commission and return the offender to prison, or reinstate the offenders release, or enter any other order the Commission considers proper. Id. However, the Commission is not authorized to impose incarceration in a county jail as a penalty or additional condition for an offender who is found guilty of the violation.

Section 36 - The department is required to disburse payments, regardless of amount, to individual payees established on the court-ordered payment system.

Current law does not permit the department to hold on to very small payments that offenders are ordered to make to certain payees such as victims. As a result, the department must utilize the Court Ordered Payment System (COPS) to disburse very small amounts of money. According to the department, court clerks have expressed concern over the problem and cost of processing small amounts. In addition, victims are frequently insulted when they receive a check for a few cents or dollars. Payees on the COPS plan automatically receive payments on a periodic basis, whether the account has a few cents or a few dollars in it.

Section 37 - Private entities that are providing services to court-ordered participants that charge a fee are not required to register with the county and it is unclear whether public entities may provide misdemeanor probation services.

Section 948.15(2), F.S., provides that private entities providing supervision services for misdemeanor probationers must contract with the county in which services are to be rendered. However, no such contract or registration is required for programs that offer services to persons that may be court-ordered to participate and pay a fee. The Board of County Commissioners for Hillsborough County has expressed concern about the lack of requirements for other programs that are operating in the various counties. A requirement for such programs to register with the county would provide some accountability to the county with regard to which programs are operating in the county and what are the programs established to do, among other basic information.

Further, s. 948.15(2), F.S., is unclear whether public entities may provide misdemeanor probation services. In some counties, such as Volusia County, there are misdemeanor programs operating that are akin to probation. These types of programs are usually operated under the purview of the courts or the Board of County Commissioners.

Section, 38 and 39 - Correctional officers are referred to or defined as "guards" in some statutory sections.

The term "guard" is no longer used by the Department of Corrections to refer to correctional officers.

Section 40 - Offender information collected by the department and county detention facilities lacks specific immigration status information.

Subsection 951.23(2), F.S., establishes criteria for the collection of information about persons processed by county detention facilities. such information is used for administrative and policy-making purposea. With increasing costs associated with the intake of more and more illegal immigrants into state and county correctional facilities, the demand for immigration status information has increased. As a provision of a crime bill passed by the U.S. House of Representatives in the 104th Congressional Session, the federal government is projected to set aside a total of $650 million annually for the next five years to assist states with the high cost of illegal immigration. According to the bill, half of the $650 million will go to states that can prove they are incarcerating criminal immigrants. Based on an estimated 5,500 criminal immigrants annually incarcerated in Florida, the state could be eligible for approximately $80 million per year over the next five years.

According to the Florida Advisory Council on Intergovernmental Relations and the Joint Legislative Management Committee on Economic and Demographic Research, both of which analyze statistical information for legialative policy consideration, current laws do not require the collection of adequate information on immigration status, which may underestimate the need for federal funding assistance. Additionally, other provisions of s. 951.23, F.S., make it difficult to gather useful information on persons processed by county jails and the state prison system.

Section 41 - There are powers and duties of the department that are not delegable to private contractors of private correctional facilities.

Section 957.06, F.S., provides powers and duties that are not delegable to a private contractor by the department. Such nondelegable powers and duties are to: choose the facility to which an inmate is initially assigned or subsequently transferred; develop or adopt disciplinary rules or penalties that differ from the disciplinary rules and penalties that apply to inmates in the department's facilities; make a final determination on a disciplinary action that affects the liberty of the inmate; make a decision that affects the sentence imposed upon or the time served by an inmate, including a decision to award, deny, or forfeit gain-time; make recommendations to the Parole Commission with respect to the denial or granting of parole, control release, conditional release, or conditional medical release; develop and implement requirements that inmates engage in any type of work, except to the extent that those requirements are accepted by the Corrections Privitization Commission; and determine inmate eligibility for any form of conditional, temporary, or permanent release from a correctional facility.

Section 42 - The department is required to institutionally separate youthful offenders into 14-18 year olds and 19-24 year olds.

Chapter 94-209, Laws of Florida, amended the provisions of s. 958.11, F.S., to enhance the designation of separate institutions and programs for youthful offenders by requiring the separation of youthful offenders ages 14-18 from youthful offendera ages 19-24. The law further provides that offenders from these age groups may be commingled only if the populations of their designated institutions exceeds 100 percent of lawful capacity.

According to the department, the provisions of s. 958.11, F.S. (Supp. 1994), prohibit managerial flexibility to make institutional decisions that are in the best interest of the inmates and the department. For example, the department cited that if a 16 year old is exhibiting poor institutional adjustment and has behavior problems which prevent his or her future existence with the 14-18 age group, then the department must move that inmate into the normal adult population. The department does not have the authority to move that inmate into the 19-24 age group.

Section 43 - Families of firefighters receive death penalties as provided in s. 112.191, F.S. (Supp. 1994).

Families of firefighters would receive death benefits pursuant to s. 112.19, F.S. (Supp. 1994) if this CS passer. See, sections 3-5 in this analysis.

Section 44 - Jails must be constructed so male and female prisoners may be separated, counties are statutorily authorized to appropriate county general revenue to remodel their jails to separate classes of prisoners and officers that refuse to comply

the requirement to separate male and female prisoners may be removed from office by the Governor.

Section 950.051, F.S., was enacted in 1965. It requires counties to construct jails to separate males from female county jail inmates. Section 950.061, F.S., specifically states that it is unlawful to confine together or co-mingle male and female inmates in county jails.

Section 950.07, F.S., was enacted in 1909. It specifically authorizes counties to use county general revenues to remodel their jails to separate male and female prisoners.

Section 950.08, F.S., was also enacted in 1909. It requires the Governor to remove from office any board of county commissioners and any sheriff that refuses to separate male and female inmates.

These provisions ace out-dated, and are determined to be unnecessary.

III. EFFECT OF PROPOSED CHANGES:

Section 1:

This section would create a new paragraph that would require a petition for change of name to verify and show the court having jurisdiction over the cause that the petitioner's civil rights have never been suspended, or if the petitioners civil rights have been suspended, full restoration of civil rights has occurred. This means that inmates of the state or federal correctional systems will not be permitted to seek name changes in Florida because they would not be able to swear to either requirement in their their petition. Conversely, courts would be prohibited from changing the name of a petitioning inmate because of the suspension of an inmate's civil rights upon conviction for a felony.

Section 2:

This section would create a 30-day statute of limitations for any court action challenging prisoner disciplinary proceedings conducted by the department pursuant to s. 944.28 (2), F.S. This section would appear to encompass all types of court actions and focus on the substance of the court action. Thus, regardless of how petition or court action is titled, if the petition or action seeks to "appeal" a department administrative disciplinary action that results in the forfeiture of earned and future gain-time, the inmate would be limited to 30 days to do so.

Sections 3, 4, and 5:

These sections would authorize for employed and volunteer firefighters all accidental death benefits that are currently provided to law enforcement officers and correctional officers. It would also clarify that the spouses of correctional probation officers are authorized to receive death benefits under s. 112.19 (2)(g), F.S. (Supp. 1994). This section would clarify that the Bureau of Crime Prevention and Training within the Department of Legal Affairs must adopt rules to implement such benefits in paragraphs (a), (b), and (c) under subsection (2) with respect to law enforcement, correctional and correctional probation officers, and authorizes the Division of the State Fire Marshall in the Department of Insurance to adopt rules to adopt the same for firefighters. Section 4 would remove a reference to s. 112.191, F.S., the statute governing firefighter death benefits, under s. 112.08, F.S., which governs group insurance for local government officers and employees. In addition, section 5 would remove a reference to s. 112.191, F.S. (Supp. 1994), from s. 175.201, F.S.,

which governs refunds of contributions made by a deceased firefighter because of repeal of s. 112.191, F.S. (Supp. 1994). See also, section 42 in this analysis.

Section 6:

This section would amend s. 117.10, F.S., to specifically designate correctional probation officers as notaries public when they are engaged in the performance of their official duties.

Section 7:

This section would amend s. 282.1095 (2)(a), F.S. (Supp. 1994), to include a representative of the Department of Corrections as a member of the Joint Task Force on State Agency Law Enforcement Communications to be appointed by the secretary.

Section 8:

This section would create a certificate-of-need exemption for the department. It would also renumber the section, s. 381.695, F.S., to s. 408.0365, F.S., to place the exemption with the other statutes governing certificates-of-need.

Sections 9 and 10:

These sections would make technical changes by inserting *correctional officer" for the term "guard."

Section 11:

This section would make it a felony offense for a person to personate a correctional officer or a correctional probation officer. This would add and clarify what the department believes was a oversight at the time the statute was written.

Section 12:

This section would clarify that county and circuit courts- are authoriaed to impose sentences that run concurrently with sentences to be imposed in another jurisdiction for defendants convicted of two or more offenses charged in the same affidavits. It would also clarify that sheriffs must forward commitment documents of such convicted offenders to the department.

A subsection would be added to provide that in the event Florida imposes a coterminous or concurrent sentence with another jurisdiction, the department is required to notify the other jurisdiction of their interest, and shall not interfere with any inmate program participation, parole, or other release approved and granted by the other jurisdiction. The department would be required to maintain an interest in the offender until supervision if terminated or the sentence has been satisfied if the offender is paroled or released prior to satisfaction of the Florida sentence.

Section 13:

This section would make a technical change by inserting "correctional officers" for the term "guards."

Section 14:

This section provides authority and defines the term "auxiliary officer" to mean any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time correctional probation officer, has the same authority as a full-

time or part-time correctional probation officer for the purpose of providing supervision of offenders in ths community.

Section 15:

This section would amend s. 943.1397, F.S., to delete the requirement that the applicant must wait 90 days in order to re-take the examination. The section would provide that the Criminal Justice Standards and Training Commission would establish a procedure for re-taking the exam by rule.

It would also authorize the rule to include a remedial training program requirement.

Section 16:

This section would provide specific authority for the department to reimburse employees for damaged sustained by their vehicle while using it on official state business. The statute would limit the amount of the claims to an amount for repairs at the insurance deductible amount. The department would also be authorized to investigate such claims as it deems necessary.

Section 17:

This section would make a technical change by inserting "correctional officer" for the term "officer" or "guard."

Section 18:

This section would delete the requirement that the Department of Corrections and the Department of Health and Rehabilitative Services must conduct a statewide comprehensive study to determine current and future needs for all types of correctional facilities, adult and juvenile, in this state that would assess, rank, and designate appropriate sites and be reflective of the different purposes and uses for all correctional facilities based upon many criteria listed in the statute. The study criteria would likewise be deleted from the statute. In its place, statutory language would be inserted which would state, "[i]t is the intent of the Legislature that the siting of additional correctional facilities shall be achieved in the most cost-efficient manner possible."

Section 19:

This section would authorize the department to deposit the unexpended balance of an inmate's bank account in the amount of less than $1 into the Inmate Welfare Trust Fund upon the transfer, release, death, or escape of an inmate.

Section 20:

Because only the department "releases" an offender, this section would delete the requirement that the Parole Commission and the Control Release Authority release the statutorily enumerated information received about a sex offender prior to the offender's release, but would maintain that this sex offender information must still be released by the department.

This section would create subsection (3) which would specifically authorize any law enforcement agency to release verified information about a sex offender, regardless of the source of the information, in the interest of public safety.

It would also create subsection (4) which would provide circumstances in which immunity from civil liability would be granted for the department, a law enforcement agency, or an

officer or employee thereof for the release of information about persons found to have committed a sexual offense.

Sections 21, 22, 23, and 24:

Sections 21, 23, and 24 would remove the prohibition of inmates released from a work release program or released to another state from participating in the TAP probram and clarify that all inmates that are otherwise eligible under ss. 944.701 through 944.708, F.S. Section 22 would clarify that a "transition assistance officer" will be provided at major institutions by the department.

Section 25:

This section creates s. 945.03(1), F.S., which would provide various relevant definitions for "relatives," "organizational unit," "line of authority," and "direct supervision." This section would also authorize the department to adopt rules prohibiting the employment of relatives in the same organizational unit or in positions in which one employee would be in the line of authority over the other or under the direct supervision of the other, in the interest of security and effective management.

Section 26:

This section would specifically authorize the secretary of the department to appoint the deputy secretary or the regional directors of the department as his designees in determining whether to extend the limits of an inmate's confinement under the statutorily enumerated circumstances.

Section 27:

This section would create a statutory requirement that the department must provide a 30-day public notice by newspaper of general circulation in the county prior to entering into a contract for the lease or purchase of space to be used by the department for a probation and parole office.

Section 28:

The department would be authorized to establish bank accounts outside the State Treasury for court-ordered payments under s. 945.31, F.S. As a result, the department would be able to establish "outside" bank accounts that would not subject victim restitution payments to state surcharges.

Section 29:

This section would provide clarification for the types of illness and circumstances that the department should take seriously in order to avoid the spread of infection and disease and, thus, provide exception for the assessment of the medical co-payment. This section would provide a co-payment exception for: visits initiated by inmates to voluntarily request an HIV test: if the health care produces an outcome that required medical action to protect staff or inmates from a communicable disease: or when an inmate is referred to mental health evaluation or treatment by a correctional officer, correctional probation officer, or other person supervising an inmate worker.

Section 30:

This section would remove obsolete language "if required by federal law," and instead places the federal requirements in the statute section. It would create a new subsection (4), which would require workers compensation coverage for inmates by private sector employers under the PIE program. However, it would

specifically state that inmates are not allowed to participate in unemployment compensation benefits and the subsection does not apply to the correctional work programs operated under Part XI, Chapter 946, F.S. This new subsection would also specifically exempt the PRIDE corporation from the worker's compensation requirement.

Section 31:

This section clarifies the intent of the Legislature that the department cooperate with and assist PRIDE in seeking qualification and in contracting with private sector for substantial involvement in prison industry programs (PIE).

Section 32:

This section would create s. 946.41, F.S., which would require the department, subject to available resources, to promote inmate work programs to the public by clearly displaying signs that identify the inmate work programs to the public that identify the inmate work crews are in the area. The department is also provided the authority to provide a uniform of distinctive design for inmate work crews in the community whether supervised by the department or another entity.

Section 33:

This section would conform the language in subsection (4) with the rest of the subsections under s. 946.515, P.S.

Section 34:

This section would amend the statutory number of members on the Parole Commission from 9 members to 5 members but with special conditions. Effective October 6, 1995, the membership of the Commission shall consist of 6 appointed members. After October 6, 1995, upon the first vacant seat occurring, for any reason other than expiration of term, the membership must be reduced to 5 members,

Section 35:

Upon a hearing for violation of a condition of conditional release, conditional medical release, or control release, the Commission would be authorized to order the placement of the violator into a local detention facility (jail) as a condition of their continued supervision.

The Commission would be authorized to place the violator in a jail for a period of incarceration up to 22 months. During the period of incarceration, the Commission may monitor the releasee who is serving time a in county jail. By such monitoring, the Commission would be authorized to modify the conditions of the supervision or revoke the supervision. If the Commission revokes the supervision, the offender would return to prison for the remainder of the sentence originally imposed.

Prior to the expiration of the jail term, or upon recommendation of the chief county correctional officer, the commission would be required to decide whether. to restore the inmate to supervision, modify tha conditions of supervision, or enter an order of revocation and return the offender to prison.

In order to place a supervised releasee in a county jail for violation of a condition of their release, the proposed CS would require that a contract exists between the "chief correctional officer" of a county and the Department of Corrections. The

contract would provide a per diem reimbursement for each person placed in a jail pursuant to this section.

The Commission would also be authorized to conduct any investigation that it deems proper. It is unclear whether this is an additional power for the Commission, or it is stated to preserve an existing power.

Section 36:

The department would have the authority to hold on to very small payments for restitution that are received through the court-ordered payment system until the cumulative amount is $10 if it so chooses. The department would be required to disburse all court-ordered payments of $10 or over to individual payees upon receipt.

Section 37:

This section would clarify that any private of public entity under the supervision of the board of county commissioners or the court may provide misdemeanor probation services. A new subsection would also be created to require private entities that provide court-ordered services to offenders and that charge a fee must register with the county in which the services are provided. Information that must be provided upon registration includes: the length of time the program has been operating in the county; a list of the staff and a summary of staff qualifications; a summary of the program's services, and the fees court-ordered offenders are charged.

Sections 38 and 39:

These sections would make technical changes by inserting "correctional officer(s)" for the term "guard(s)."

Section 40:

This section would expand offender information collection requirements pursuant to s. 951.23(2), F.S., by the department and county detention facilities, and would require collection of additional information regarding offender immigration status in order to provide proof for federal reimbursement.

Section 41:

This section would create a new subsection under s. 957.06, F.S. (Supp. 1994), which would specifically authorize the department to make the final determination on the custody classification of an inmate for privatized correctional facilities. The subsection would authorize the private contractor to submit a recommendation for a custody change of an inmate, but the recommendation must be in compliance with the department's custody classification system.

Section 42:

This section amends s. 958.11, F.S. (Supp. 1994), by inserting language which would authorize the designation of youthful offender placement in a facility for the 14-18 age group or the 19-24 age group by determining the age "at the time of reception." It would authorize the department to assign a youthful offender to a facility in the state correctional system not designated for the care, custody, and control of youthful offenders, or a particular age group, only in certain circumstances.

Changes would be made to the circumstances by clarifying that transfer would be allowed if there are serious management or disciplinary problems in the youthful offenders original assignment. This section would create 3 new subsections to

provide circumstances when the department may reassign or retain a youthful offender. The department would be able to retain a person that turns 19 years in a 14-18 age facility if retention is in the best interest of the youthful offender and the department. The department would be able to transfer a person originally assigned to a 19-24 age facility to a 14-18 age facility if a youthful offender is mentally or physically vulnerable by such original placement. The department would be able to transfer a person that was originally assigned to a 14-18 age facility to a 19-24 age facility if it is determined that the youthful offender is disruptive, incorrigible, or uncontrollable and the reassignment would best serve the interests of the person and the department. Monthly reports on assignments will be reduced to quarterly reports.

Section 43:

Section 112.191, F.S. (Supp. 1994), is repealed because of the inclusion of families of firefighters to receive death benefits under s. 112.19, F.S. (Supp. 1994). See also, sections 3-5 in this analysis.

Section 44:

Sections 950.051, 950.07, and 950.08, B.S., is repealed because they were determined to contain unnecessary or obsolete: language.

Section 45:

This section would provide an effective date for this proposed CS to be upon becoming law, except as otherwise expressed in the act.

IV. CONSTITUTIONAL ISSUES:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. ECONOMIC IMPACT AND FISCAL NOTE:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 2: Inmates would be indeterminately impacted if they are limited in the amount of time they would be able to challenge departmental disciplinary proceedings.

Section 3: The families or beneficiaries of firefighters would receive the accidental death benefits that are currently provided to families and beneficiaries of law enforcement, correctional, and correctional probation officers. They would receive $25,000 for accidental death occurring during performance of duties and $75,000 for a death that was a result of an unlawful or intentional act by another.

Section 28: Crime victims would experience a positive fiscal impact because their victim restitution payments would not be

subjected to state surcharges placed in bank accounts established within the State Treasury.

Section 29: Private entities participating in the PIE program would be negatively impacted because they would be required to obtain worker's compensation coverage for participating inmates. However, private entities that comply with this requirement will receive a larger positive fiscal benefit because they will be exempted under federal laws that would allow the products made by inmates to be sold in interstate commerce.

C. Government Sector Impact:

Overall , the fiscal impact of this bill on the Department of Corrections and other public entities is minimal.

NEGATIVE FISCAL IMPACTS:

Section 3: Families of firefighters would receive accidental death benefits that are statutorily consistent with family members of law enforcement officers, correctional officers, and correctional probation officers employed by the state or a political subdivision thereof , which would be payable by such governmental entities. The amounts to be paid by such entities would be $25,000 for accidental deaths and $75,000 for deaths resulting from an unlawful or intentional act of another.

Section 28: The state would experience an indeterminate negative fiscal impact because of a reduction in or inability to assess surcharges on such accounts because they are not within the State Treasury. Such surcharges would normally go into the state's General Revenue.

Section 36: Private entities may experience a small negative impact as a result of being required to register with the county if they provide court-ordered services to offenders and charge a fee.

Section 39: This section requires the department, in conjunction with the administrators of county detention facilities, to collect a wide range of information on the offender population from each facility. To maintain the collection of such information, it would be necessary to fund 1 FTE in the Office of the Inspector General. Currently, the Office is able to accomodate the expansion of the information collection program that is proposed by this bill. However, SB 2926, along with the 1995 Senate Appropriations Bill, eliminates the function of jail inspections in the Office of the Inspector General and makes many personnel cuts. These cuts would also remove funding for 1 FTE that would need to remain in order to collect the information and publish a monthly population report. The total cost associated with funding 1 FTE and publishing the report, including salary and benefits, expenses* and OCO, would be $51,649, according to the department.

POSITIVE FISCAL IMPACTS:

All other sections would be deemed to have a neutral or positive fiscal impact on the department or other public entities.

Section 1: The department would have an indeterminate positive fiscal impact as a result of avoiding the administrative complications and costs related to inmates changing their names.

Section 2: Limiting inmate court actions that challenge departmental disciplinary actions would have an indeterminate positive fiscal impact on the department by reducing the amount of inmate litigation.

Section 6: The department would experience an indeterminate positive fiscal impact as a result of authorizing correctional probation officers to be notaries public. The impact will be realized by not having to hire a person to work within a probation office to notarize signatures for the officers.

Section 8: The department would experience an indeterminate positive fiscal impact as a result of authorizing an exemption from the certificate-of-need process that is required for the DOC hospital at Lake Butler.

Section 14: The department would experience an indeterminate positive fiscal impact as a result of specifically authorizing auxillary correctional probation officera. These auxiliary officers would provide substantial assistance to alleviate the caseload within some probation and parole offices and provide training for future probation officers.

Section 15 : The department would experience an indeterminate positive fiscal impact as a result of removing the 90-day waiting period before a failed test may be re-taken by a prospective correctional officer and authorizing the Criminal Justice Standards and Training Commission to set the procedurea to re-take exams. The costs of training some officers may be saved if the procedures for re-examination were more flexible.

Section 19: The department would experience an indeterminate positive fiscal impact as a result of authorizing the department to estreat to the Inmate Welfare Trust Fund the remaining balances of transferred or released inmate's bank accounts of less than one $1. Administrative costs will be saved by the department and the trust fund will receive a small amount of money.

Section 26: The department would experience an indeterminate positive fiscal impact in administrative cost savings as a result of authorizing the secretary to designate the deputy secretary and the regional directors to make decisions about the extension of confinement limits.

Section 28: The department would be authorized to establish bank accounts outside the State Treasury for court-ordered payments under s. 945.31, F.S. Thus, it would not subject victim restitution payments to state surcharges and it would assist in alleviating some administrative costs associated with disbursing very small restitution payments made by offenders through correctional probation offices.

Section 34: There would be a positive fiscal impact for the state if the number of members on the Parole Commission are reduced because the Commission's budget would be reduced with regard to the amount needed for member salaries and benefits.

Section 36 : The department would experience an indeterminate positive fiscal impact in administrative cost savings as a result of authorizing the department to hold victim restitution payments ordered through the COPS system until they cumulatively equal $10 or more.

VI. TECHNICAL DEFICIENCIES:

None.

VII. RELATED ISSUES:

None.

VIII. AMENDMENTS:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bills 2944 & 2206

1. Removes the $500 deductible limitation for departmental reimbursement for damage of employee personal vehicles used **on official state** business and limits claim amounts to an amount **for repairs at** the insurance deductible amount.

2. Authorizes sheriffs **and local law enforcement agencies** to release verified sex offender information to the public.

3. Authorizes the secretary of the **department to appoint** the deputy secretary **or the regional directors as his** designees to determine whether to extend **an inmate's** limits **of confinement.**

4. Authorizes the **department** to **establish** bank accounts outside the **State Treasury for court-ordered payments under s. 945.31,** F.S.

5. **Provides waivers of medical** co-pa-pent **assessments** for state inmates in **three (3) additional circumstances.-**

6. Provides for **cooperation and assistance between the department and PRIDE when the department is seeking qualification and contracts with the private sector** for **prison industry programs under s. 946.006(3),** F.S.

7. Requires the department, subject to available resourcea, to promote inmate work programs to **the public by displaying signs and providing inmate uniforms of distinctive design.**

8. Reduces the **statutory number of Parole Commission** members **from 9 to 6 and eventually 5** at **some time after October 6, 1995.**

9. Authorizes the Parole Commission to order the placement of a violator of a condition of **conditional release, conditional medical release,** or **control release into a local jail for up** to **22 months if the jail has a per** diem **contract with the department.**

10. Requires the department to provide a 30-day public notice **by newspaper prior to entering into a contract for lease or purchase of space for the placement of a probation and parole office.**

11. Deletes **obsolete language relating to commingling of male and famale inmates in jails.**

12. Conforms s. 946.515(4) to other subsections by clarifying "state agency" means "legislative, executive, or judicial agency **of the state."**

13. Authorizes the **department** to **make the final determination on the custody classification of an** inmate for **privatixed correctional facilities.**

14. Authorizes the department. to **designate youthful** offenders to **be placed in 14-18 age group facilities or 19-**24 age group facilities as determined **"at** the time of **reception. "**

15. Creates three (3) specific circumstances in which the department may re-assign a youthful offender to a different facility or retain a youthful offender in a particular facility.

Committee on Criminal Justice

Staff Director

(FILE TWO COPIES WITH THE SECRETARY OF **THE** SENATE)

Appendix C

STORAGE NAME: h2531b.
DATE: April 20, 1995

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION

BILL #: HB 2531 (PCB COR 95-08)

RELATING TO: Corrections

SPONSOR(S): Committee on Corrections, Representatives Sindler, Crist, Crady, Healey, Rojas, Casey, B. Saunders, Peaden, D. Prewitt, Trovillion, and Thrasher

STATUTE(S) AFFECTED: ss. 68.07, 95.11, 112.19, 112.08, 175.201, 112.191, 117.10, 282.1095, 381.695, 776.07, 843.04, 843.08, 921.16, 922.11, 943.10, 943.1397, 944.291, 946.006, 944.06, 944.39, 944.095, 944.516, 944.606, 944.703, 944.704, 944.708, 944.707, 945.03, 945.04, 945.091, 945.31, 946.41, 946.515, 948.09, 948.15, 951.032, 951.12, 951.19, 951.23, 958.11, F.S.

COMPANION BILL(S): Similar SB 2944

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1)
(2) CORRECTIONSFINANCEANDTAXATIONYEASYEAS1425NAYSNAYS00
(3) APPROPRIATIONS
(4)

I. SUMMARY:

The omnibus bill includes provisions relating to Corrections Department operations:

- Prohibiting inmates from petitioning to change their names;
- Providing for a payment of $25,000 to the beneficiary of a law enforcement officer, correctional officer, correctional probation officer, or firefighter employed by the state or any political subdivision thereof, who is accidentally killed while on duty or accidentally sustains a fatal injury while on duty, regardless of the time elapsed between the injury and the ensuing death;
- Authorizing state certified law enforcement officers, correctional officers, or correctional probation officers to be eligible for dual employment as officers by a state, county or municipal government agency or political subdivision;
- Requiring private employers marketing inmate produced goods and services on the open market to provide workers' compensation benefits to employed inmates;
- Authorizing any public agency that receives verified information about sex offenders to publicly release such information, and providing immunity from civil liability for such agencies or their employees releasing verified sex offender information.
- Authorizing the department to commingle youthful offenders ages 14-18 with offenders ages 19-24 or older.
- The distribution of $2 of the current court ordered cost of supervision to the Administrative Trust Fund is estimated to increase receipts to the Training Trust Fund by $1.0 million, but decrease General Revenue receipts by ($1 .0m). (See Amendments Section.)

The Committee on Finance and Taxation adopted one amendment which is travelling with the bill. The amendment deletes the provision relating to the $2 surcharge on the cost of

supervision and the distribution of cost of supervision monies for firearms. This amendment eliminates the fiscal impact on the General Revenue Fund. (See Amendments Section.)

II. **SUBSTANTIVE ANALYSIS**:

A. PRESENT SITUATION:

Inmates may petition for name change
Article III, s. 11 (a)(14), Florida Constitution, pertains to name changes, and states in relevant part that, "[t]here shall be no special law or general law of local application pertaining to...change of name of any person...." Section 68.07, F.S., permits citizens to seek name changes by filing a petition in their county of residence. Inmates are not precluded from seeking a change of name. Neither inmates, nor judges are required by law to notify the department that a change of name is being sought, or that a petition for change of name was granted. Problems arise when names are changed. For example, because there are no provisions governing the dissemination of legal names of inmates between the department, Florida Department of Law Enforcement (FDLE), Clerks of Court, and local law enforcement agencies, it is difficult for law enforcement to track released inmates with new legal names, which would be critical in the case of a repeat offender. See Comments section.

Law enforcement officers, correctional officers, correctional probation officers, and firefighters are eligible for accidental death benefits
Section 112.19(2)(a), F.S., provides that $25,000 shall be paid to the beneficiary of a law enforcement, correctional, or correctional probation officer employed by the state or a political subdivision thereof, who is accidentally killed while on duty or sustains an accidental bodily injury while on duty which results in the loss of the officer's life within one year. Section 112.191(2)(a), F.S., provides the same accidental death benefits to firefighters.

Correctional probation officers are not designated notaries public
Section 117.10, F.S., designates that law enforcement, correctional, traffic accident investigation, and traffic infraction enforcement officers must be notaries public when engaging in the performance of official duties. Correctional probation officers are not included.

Joint Task Force on State Agency Law Enforcement Communications does not include a representative from the Department of Corrections
Section 282.1095(2)(a), F.S., 1994 Supplement, establishes a five member task force for the purpose of acquiring and implementing a statewide radio communications system to serve law enforcement units of state and local agencies through a mutual aid channel. The task force includes representation from the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, the Department of Highway Safety and Motor Vehicles, Division of Florida Highway Patrol, the Department of Law Enforcement, the Game and Fresh Water Fish Commission, and the Department of Environmental Protection, Division of Law Enforcement. The Department of Corrections is not a member of the task force and does not have access to the mutual aid channel that provides communication with local law enforcement.

As of July 1,1995, the department's health-care-related projects will not be exempt from the certificate-of-need process
Section 381.695, F.S., exempts the department from health-care-related projects from the certificate-of-need requirements of chapter 381, F.S.; however, unless exempted

from s. 408.036(1), F.S., as of July 1, 1995, all department health-care-related projects will be subject to review and the department must file an application for a certificate-of-need with the Agency for Health Care Administration, pursuant to the provisions of ss. 408.031-408.045, F.S. The department has one hospital located at the North Florida Reception Center, which is restricted to providing health care to the state correctional system.

"Correctional officers" are defined as "guards" by several sections of law.
The term "guard" is no longer used to refer to officers of the department.

It is not a felony offense to falsely personate correctional or correctional probation officers.
Section 843.08, F.S., 1994 Supplement, provides that it is a felony offense to falsely personate a sheriff, deputy sheriff, state attorney investigator, coroner, police officer, lottery special agent or lottery investigator, beverage enforcement agent, watchman, a member or employee of the Parole Commission, officers of the Florida Highway Patrol, the Game and Fresh Water Fish Commission, the Department of Environmental Protection, and employees of the Department of Law Enforcement. However, officers of the Department of Corrections and correctional probation officers have been omitted from this list. The department reports that law enforcement officers are aware of persons impersonating correctional officers, but have no recourse because such officers are not included in s. 843.08, F.S.

In the case of concurrent or co-terminous sentences imposed by other jurisdictions, the Department of Corrections may refuse to accept such persons sentenced into the state correctional system unless complete doc[redacted]n is presented by the sheriff or chief correctional officer; the department is not mandated to notify other jurisdictions of its interest in concurrently or co-terminously sentenced inmates; and, the department is not prohibited from interfering with the program participation approved for such inmates by other jurisdictions.
For many years Florida courts have sentenced offenders to serve a term of years and ordered the sentence to run concurrently or co-terminously with a sentence in another jurisdiction. The court directs the sheriff to release an offender to agents from the other jurisdictions. Commitment documents then are forwarded to the department to be placed as a detainer with the out-of-state jurisdiction. Although the department informs other jurisdictions of their interest in persons sentenced concurrently and co-terminously with Florida sentences, and does not make it a practice to interfere with the programs recommended for participation by other jurisdictions, current law does not mandate either practice. The term "concurrent" refers to sentences served simultaneously, but may not end simultaneously. The term "co-terminous" refers to concurrent sentences that end simultaneously.

Correctional officers and correctional probation officers are not eligible for dual employment.
Article II, s. 5(a), Florida Constitution, states that "[no] person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein...." Therefore, officers certified by the Criminal Justice Standards and Training Commission, and employed by a state, county, or municipal government agency, political subdivision, or private entity contracting with such governmental

agencies, are-not eligible for dual employment as certified officers. The department reports several instances where state correctional officers work for county detention facilities during off-duty hours to supplement their incomes. In this state, correctional officers' annual salaries range from approximately $16,000 at entry level to a maximum of approximately $30,000.

Applicants that fail the officer certification examination must wait 90 days prior to re-examination

Section 943.1397(2), F.S., requires individuals who take the certified officer examination given by the Criminal Justice Standards and Training Commission and fail all or part of the examination, to wait at least 90 days before retaking the examination. The department projects that this provision may cause a problem over the next few years considering the anticipated hiring of over 5,000 correctional officers during that time. When an officer is hired in a trainee status and subsequently fails the examination, the department has no choice but to terminate the employee if the retest cannot be taken within the required time for certification (usually 180 days). Termination of such employees places a hardship on the department.

Inmates participating in correctional work programs are not eligible for workers' compensation benefits

Chapter 946, F.S., establishes guidelines for correctional work programs, which may include private industry employers involved in the Prison industries Enhancement Certification Program (PIE), or the not-for-profit corporation Prison Rehabilitative Industries and Diversified Enterprises (PRIDE). Inmates may be compensated for work performed, and such monies received to be used to satisfy court-ordered restitution, reimbursement of department expenses, and personal needs. However, if inmates sustain incapacitating injuries while on the job, they are not eligible for workers' compensation or unemployment compensation benefits.

PIE involves joint ventures between prisons and private companies in which prisoners produce goods and services to be sold competitively on the open market. Federal law requires that companies participating in PIE must provide inmates the right to participate in benefits made available by the federal or state government to other individuals on the basis of their employment, such as workers' compensation. PRIDE markets prisoner produced goods and services to state and local governments, but does not currently market such goods and services on the open market. However, should PRIDE participate in PIE programs in the future, it would be subject to federal law requiring workers' compensation for inmate employees.

For workers' compensation claims settled prior to incarceration, subsection 440.15(8), F.S., provides that on becoming an inmate of a public institution, no benefits shall be paid to the inmate; however, payments may be made to the inmate's dependents while the person is incarcerated.

Department employees are not covered for damage occurring to personal vehicles while on official business

The department has no means to reimburse an employee for damages occurring to personal vehicles during the course of official state business. Historically, the department has attempted to reimburse those employees for out-of-pocket expenses for insurance deductible amounts. This has been an ongoing problem for the department and other

states agencies who employ individuals required to use their personal vehicles in the course of official state business. The department reports that the fiscal impact of this problem is minimal, and that reimbursement may be needed only two or three times per year.

The department is required to disburse amounts of $1 or less from inmate bank accounts upon inmate transfer or release

Pursuant to s. 944.516, F.S., upon the transfer or release of inmates, the department is required to issue a check either to the inmate or to the receiving location, for the balance of the inmate's bank account. The department often reports that these balances are less than $1. Consequently, numerous checks are prepared and issued for amounts less than $1, which is often less than the cost of issuing the check. These small checks are often not cashed, which results in the added cost of tracing outstanding bank items and ultimately transferring the balances to the department's dormant account fund.

The department, the Parole Commission, and the Control Release Authority are authorired bv law to release information on sex offenders to local governments; however, local governments are not specifically authorized by law to publicly release such information

Section 944.606, F.S., authorizes the notification of sex offender release information from the department, the Parole Commission, and the Control Release Authority to local governments; however, public notification of sexual offender release information by local governments is not authorized by law. As with other types of offenders, sex offenders have been found to engage in sex offenses after incarceration or commitment, and may pose a threat to society upon release. See Comments section.

The department has no rule prohibiting the hiring of relatives at the samg institution, facility, or within the same circuit

Section 112.3135, F.S., 1994 Supplement, provides that a public official, including a member of the Legislature, the Governor, and a member of the Cabinet, or an employee of an agency in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, may not appoint, employ, promote, advance, or advocate for employment, promotion, or advancement, in or to a position in the agency in which he is serving or over which he exercises jurisdiction or control, any individual who is a relative of the public official.

In 1992, the department had Rule 33-4.010, Fla. Admin. Code, which implemented s. 112.3135, F.S. At that time, advisory opinions from the Commission on Ethics and the Attorney General and a case from the 1st District Court of Appeal, See Slauahter v. City of Jacksonville, 338 So.2d 902 (Fla. 1st DCA 1976), supported the position that s. 112.3135, F.S., prohibited only "promotion or advancement" of relatives, but did not preclude a supervisory/subordinate relationship which was already in existence and did not address other aspects of supervisory authority. Employees who were in supervisory/subordinate relationships with relatives or otherwise were not removed from their positions, but the subordinate could not be promoted thereafter by the relative supervisor or on the recommendation of the related supervisor. Rule 334.010, Fla. Admin. Code, has been repealed. The department does not currently have a rule implementing s. 112.3135, F.S., 1994 Supplement, to address the issue of nepotism in hiring practices. With the department's current and expected expansions, the department

is promoting and hiring more and more relatives at the same institution, circuit and facility.

The department is not required to assign to correctional work programs inmates with he least amount of time remaining on their sentences
Although s. 946.009, F.S., establishes guidelines for correctional work programs, it does not require the department to use a majority of inmates with less time remaining on their sentences than the minority of inmates assigned. The section requires an analysis of inmates' education, work experience, emotional and mental abilities, physical capabilities, and lengths of sentence before assigning inmates to work programs. Section 946.006, F.S., states that the emphasis of correctional work programs should be to provide inmates with useful work experience, and appropriate job-skills that will facilitate their re-entry into society, and provide an economic benefit to the public. Therefore, current law implies that inmates who are closest to their tentative release dates should be assigned to correctional work programs because they may benefit the most from vocational training.

The Secretary of the department is responsible for approving all requests for inmates leaving their place of confinement unaccompanied bv a custodial agent
Section 945.091, F.S., requires the Secretary of the department to review all inmate requests for participation in community work release programs. The department reports that it is no longer feasible for the Secretary to personally review and rule on the over 6,000 recommendations received each year.

The department does not have specific statutory authority to establish bank accounts outside of the State Treasury
During fiscal year 1993-94, staff from the State Treasurer's office reviewed the Court-Ordered Payment System (COPS), and found that the department has no authority to maintain bank accounts outside the State Treasury for the purpose of collecting and disbursing restitution and other court-ordered payments. Although s. 945.31, F.S., provides the department with broad authority to collect and disburse such funds, it does not specify the department's banking flexibility.

The department must disburse payments, regardless of amount. to individual payees established on the Court Ordered Payment System (COPS)
Current law does not permit the department to hold onto small payments that offenders are ordered to make to payees. As a result, the department must through its Court Ordered Payment System (COPS) to disburse very small amounts. According to the department, the clerks of the courts have voiced strong concerns over the problem of processing small amounts. In addition, payees have reportedly been insulted by these checks. Payees on the payment plan automatically receive payments on a periodic basis, whether the account has a few cents in it or a few dollars.

Private entities providing services to persons assigned to court-ordered supervision programs that charge a fee are not required to contract for such services with the county
Subsection 948.15(2), F.S., provides that private entities providing supervisory services for misdemeanor probationers must contract with the county in which the services are to be rendered; however, no such contract is required when persons are ordered by the court to participate in such services.

The law does not specify how county or municipal detention facilities incurring costs for inmate medical care. treatment, hospitalization, or related transportation may seek reimbursement from inmates, insurance companies, or other sourceg
Section 951,032, F.S., authorizes county or municipal detention facilities to seek reimbursement for inmate medical care, treatment, hospitalization or related transportation costs. Such entities are currently deducting amounts from, or placing liens on; inmate bank accounts or personal property for reimbursement purposes. Pursuant to **s.** 948.03, F.S., 1994 Supplement, as **a** condition of probation or community control, the court may order inmates to pay for the costs of victim restitution or reparation prior to reimbursing county or municipal detention facilities.

Although inmates have limited sources of funds to deposit into their bank accounts to pay for such costs, public policy with regards to state inmates requires inmates to pay as much of their expenses as possible. For example, the department has implemented s. 945.6037, F.S., which requires inmates to make co-payments of not less than $1, nor more than $5, for non-emergency health care services. The department reports that this policy has significantly reduced the number of inmate visits to health clinics.

Offender information collected by the department, in conjunction with county detention facilities, lacks specific immigration status information
Subsection **951.23(2),** F.S., establishes criteria for the collection of information about persons processed by county detention facilities. Such information is used for administrative and policy-making purposes. Increasing costs associated with the intake of more and more illegal immigrants into state and county correctional facilities has increased the demand for immigration **status** information. As **a** provision of **a** crime bill passed by the U.S. House of Representatives in the 104th Congressional Session, the federal government is projected to set aside **a** total of $650 million annually for the next five years to assist states with the high cost of illegal immigration. According to the bill, half of the $650 million will go to states that can prove they are incarcerating criminal immigrants. Based on an estimated 5,500 criminal immigrants incarcerated annually in Florida, the state could be eligible for approximately $80 million per year over the next **five years.**

According to the Advisory Committee on Intergovernmental Relations and the Joint Legislative Management Committee on Economic and Demographic Research, both of which analyze statistical information for legislative policy consideration, current laws do not require the collection of adequate information on immigration status. Thus, the need for federal funding may be underestimated. Additionally, other provisions of **s.** 951.23, **F .S.,** make it difficult to gather useful information on persons processed by county jails and the state prison system.

The department is authorized to collect a $2 monthly post-release supervision surcharge to be used for correctional probation officer training and equipment
Prior to 1994 legislation, s. 948.09, F.S. 1993, required offenders who were subjected or committed to probation, drug offender probation, community control, parole, control release provisional release supervision, pre-trial intervention, or conditional release supervision to pay the cost of supervision (COS). The sentencing court would then set the amount. The field probation officer had the responsibility of monitoring the activities of an offender, including his employment and criminal conduct. According to the Department of Corrections, it generally took a probation **officer** more than 25% of his

time to process administrative documents to recover the cost of supervision. The large caseload of each probation officer made it very difficult to collect cost of supervision fees. Furthermore, if an offender was indigent or unemployed, the probation officer had the authority to waive the cost of supervision.

All COS monies collected were deposited into General Revenue. Officers received 40 hours of in-service training and the necessary basic equipment, paid from the Criminal Justice Standards and Training Trust Fund. Funds were generated from forfeiture dollars such as speeding tickets, etc. Probation officers carrying a firearm purchase their own ammunition and communication equipment.

Chapter 94-290, Laws of Florida, created subparagraph 2 of s. 948.09(1)(a), F.S. 1994, authorizing the department to impose and collect a $2 surcharge in addition to the $50 monthly cost of supervision charge imposed by the court, the department, or the Parole Commission. Surcharge proceeds pay for correctional probation officer training and equipment, including radios and firearms. Correctional probation officers are responsible for collecting the surcharge from probationers and parolees. According to the department, proceeds collected are not adequate to pay for training and equipment needs.

The department is not authorized to provide transition assistance to inmates released from work release programs

Sections 944.701-944.708, F.S., authorize the department to provide assistance to inmates in the form of job placement and referral services upon release of an inmate from the custody of the department, with the exception of inmates released from work release programs and inmates released to other states. According to the department, inmates released from work release programs are generally the most productive inmates and the most likely to benefit from transition assistance because they are involved in marketable skills programs and are the closest to release. The department has Transition Assistance Officers at the major institutions, which could service inmates participating in work release programs if authorized by law.

Inmates can appeal grievances and initiate court actions against the department for up to four years after the final agency action

Inmates have been removed from party standing under the Administrative Procedures Act (APA) and, therefore, may not challenge any action of the department through s. 120.57, F.S., proceedings or seek appellate review of any action through s. 120.68, F.S. Instead, an inmate is limited to bringing direct court challenges to actions of the department, either by extraordinary writ proceedings, declaratory judgment, or civil rights actions, generally after exhausting the administrative grievance process.

Generally, court challenges to agency action would need to be brought within the four-year statute of limitations, pursuant to s. 95.11(3), F.S., or the two-year statute of limitations for medical malpractice. The department conducts thousands of disciplinary proceedings annually. As the inmate population continues to grow, the number of proceedings is likely to grow. According to the department, disciplinary proceedings are conducted on a strict time-line and must be grieved on a strict time-line. However, because the general four-year statute of limitations applies to these actions, there is a long window available for challenging disciplinary actions in court proceedings. When coupled with the right of appellate review, this can draw a disciplinary action out for a

period of five or six years. Under the APA, inmates had a 30 day window after final agency action to-challenge a disciplinary proceeding through judicial review.

The department is required to institutionally separate youthful offenders 14-18 years old from offenders 19-24 years old

Chapter 94-209, Laws of Florida, created the Department of Juvenile Justice, and amended the provisions of s. 958.11, F.S., to enhance the designation of separate institutions and programs for youthful offenders by requiring the separation of youthful offenders ages 14-18 from offenders ages 19-24. The law further provides that offenders from these age groups may be commingled only if the populations of their designated institutions exceeds 100 percent of lawful capacity.

According to the department, the provisions of s. 958.11, F.S., 1994 Supplement, prohibit managerial flexibility to make institutional decisions that are in the best interest of the inmates and the department. For example, the department cited that if a 16 year old is exhibiting poor institutional adjustment and has behavioral problems which prevent his or her future existence with the 14-18 age group, then the department must move that inmate into the normal adult population. The department does not have the authority to move that inmate into the 19-24 age group.

B. EFFECT OF PROPOSED CHANGES:

Inmates, and other persons with suspended civil rights, are indirectly prohibited from petitioning to legally change their names.

An agency of the state or political subdivision thereof, employing law enforcement, correctional, or correctional probation officers, or firefighters, shall provide for a payment of $25,000 to an officer's or firefighter's beneficiary if the officer or firefighter is killed while engaged in the performance of his duties or dies as a result of an injury sustained while engaged in the performance of his duties, regardless of the time elapsed between the injury and the ensuing death.

Correctional probation officers are designated as notaries public while engaged in official duties.

A representative from the Department of Corrections is added to the Joint Task Force on State Agency Law Enforcement Communications.

Department of Corrections' health-care-related projects are exempted from the certificate-of-need requirements administered by the Agency for Health Care Administration.

The statutory term "guard(s)" is redefined as the term "correctional officer(s)".

A new felony offense is created to prohibit falsely personating an officer of the Department of Corrections or a correctional probation officer.

County or circuit courts of this state are authorized to impose sentences concurrent with sentences of other jurisdictions, and local Sheriffs are required to forward commitment papers to the department.

The department is required to notify other jurisdictions of their interest in offenders sentenced to co-terminous as well as concurrent sentences, and such interest shall not interfere with program participation, parole or other release approved by another jurisdiction, and the department shall maintain interest in such inmates until the sentence has been satisfied.

Law enforcement officers, correctional officers, and correctional probation officers certified by the Criminal Justice Standards and Training Commission are exempt from Article II, s. 5(a), of the State Constitution, for the purposes of being eligible for dual-employment with state, county or municipal government agencies or political subdivisions.

The Criminal Justice Standards and Training Commission is required to establish procedures for retaking the officer certification examination, and the 90 waiting period prior to retesting is eliminated.

Private industry employers who participate in correctional work programs and sell inmate produced goods and services on the open market, must provide workers' compensation to employed inmates.

The department is authorized to reimburse employees for the cost of automobile insurance deductible expenses, up to $500 per incident, for damages occurring to an employee's vehicle during the course of official state business.

The bill provides for the siting of additional correctional facilities to be achieved at the most cost-efficient manner possible.

The department is not required to disburse amounts of less than $1 from an inmate's bank account upon release, transfer, escape, or death, and may deposit such amounts in the Inmate **Welfare Trust Fund.**

Public agencies and their personnel are authorized to publicly release verified information about sex offenders, and agencies and persons authorized to release such information are immune from civil liability.

The department is required to adopt rules prohibiting the employment of relatives in the same organizational unit, in the line of authority, or under the direct supervision of another relative, except in the best interest of the department.

The department is required to attempt to assign inmates to correctional work programs who have between 1 and 5 years remaining on their sentences; the department must assign at least 60% of inmates to work programs who have less than 10 years remaining on their sentence; and, the department is prohibited from removing inmates assigned to work programs unless requested by the employer, or for security reasons.

The secretary of the department may appoint a designee to approve requests for extensions on limits of confinement, or community work release requests.

The department is authorized to establish bank accounts outside the State Treasury for the purposes of collecting and disbursing restitution and other court-ordered payments.

The department is not required to disburse payments of less than $10 to individual payees established on the Court Ordered Payment System (COPS).

Private entities providing services to persons assigned to court-ordered supervision programs that charge a fee must contract with the county in which the services are to be rendered.

County or municipal detention facilities in this state are authorized to deduct from an inmate's bank account, or place a lien on an inmate's personal property, for the cost of medical care, treatment, hospitalization, or related transportation services.

County detention facilities are required to report additional inmate immigration status information to the department.

The department is authorized to spend $2 from each $50 collected monthly for court-ordered supervision costs for the payment of correctional probation officer training and equipment, including radios and firearms. (See Amendments Section)

The department is not required to place prisoners under post-release supervision.

The department shall provide inmate transition assistance programs at major institutions, and is authorized to provide such programs to inmates released from work release. programs or released to other states.

Inmates are prohibited from any court action challenging disciplinary proceedings conducted by the department, pursuant to the administrative grievance process, unless action is commenced within 30 days of final disposition.

The department is required upon reception to institutionally separate youthful offenders 14-18 years old from youthful offenders 19-24 years old; therefore, the department may commingle inmates from these age groups once incarcerated. The department may also assign youthful offenders to adult offender institutions. The department is required to submit annual, rather than monthly, youthful offender institutional assignment reports to the Legislature.

"Auxiliary correctional probation officers" are defined by law.

Any state legislative, executive, or judicial agency's purchase of commodities or contractual services from PRIDE are exempt from the laws governing the state procurement of personal property or services.

The department shall promote to the public inmates working in the community by displaying signage identifying inmate work crews as inmates and vehicles commonly used to transport inmate work crews.

C. SECTION-BY-SECTION ANALYSIS:

SECTION 1 adds paragraph (k) to s. 68.07, F.S., 1994 Supplement, providing that only persons who have not had their civil rights suspended, or who have had full restoration of their civil rights can petition to have their name legally changed.

SECTION 2 adds subsection (8) to s. 95.11, F.S., prohibiting any inmate court action challenging disciplinary proceedings conducted by the department, pursuant to chapter 33, Fla. Admin. Code, unless it is commenced within 30 days of final disposition.

SECTION 3 combines the provisions of s. 112.191, F.S., 1994 Supplement, with the provisions of s. 112.19, F.S.

Subsection (2)(a) of new s. 121.19, F.S., is amended to provide that a state employer, or any state political subdivision employer, shall provide for a payment of $25,000 to a law enforcement, correctional, or correctional probation officer's beneficiary, or a firefighter's beneficiary, if the officer or firefighter is killed while engaged in the performance of his duties, or dies of an accidental death as a result of an injury sustained while engaged in the performance of his duties.

SECTION 4 amends s. 112.08(4)(b), F.S., deleting a reference to s. 121.191, F.S., 1994 Supplement.

SECTION 5 amends s. 175.201, F.S., deleting a reference to s. 121.191, F.S., 1994 Supplement.

SECTION 6 repeals s. 121.191, F.S., 1994 Supplement.

SECTION 7 amends s. 117.10, F.S., authorizing correctional probation officers to be notaries public while engaged in the performance of official duties.

SECTION 8 amends s. 282.1095(2)(a), ES., 1994 Supplement, increasing the number of Joint Task Force on State Agency Law Enforcement Communications members from five to six, by adding a representative from the Department of Corrections.

SECTION 9 renumbers s. 381.695, F.S, as s. 408.0365, F.S., providing exemption for the department's health-care-related projects from the certificate-of-need requirements administered by the Agency for Health Care Administration.

New section 408.0365, F.S., is amended to provide a cross-reference to laws governing the Correctional Medical Authority, ss. 945.601-945.6035, F.S.

SECTION 10 amends s. 776.07, F.S., redefining the term "guard" as "correctional officer."

SECTION 11 amends s. 843.04(1), F.S., redefining the term "'guards" as "correctional officers."

SECTION 12 amends s. 843.08, F.S., 1994 Supplement, providing that persons who falsely personate officers of the Department of Corrections or correctional probation officers have committed a third degree felony offense, punishable as provided in s. 775.082 or s. 775.083.

SECTION 13 amends subsection 921.16(2), F.S., authorizing county and circuit courts of this state to impose sentences, concurrently with sentences to be imposed in another jurisdiction for defendants convicted of two or more offenses charged in the same indictment, information, or affidavit, or in consolidated indictments, informations, or affidavits, and requires sheriffs to forward commitment documents of such convicted offenders to the department.

Subsection (3) is added to s. 921.16, F.S., to provide that in the event Florida imposes a co-tenninous or concurrent sentence with another jurisdiction, the department is required to notify the other jurisdiction of their interest, and shall not interfere with any inmate program participation approved, and parole or release granted by said jurisdiction. The subsection further requires the department to maintain interest until the supervision is terminated or the sentence has been satisfied.

SECTION 14 amends s. 922.11(2), F.S., redefining the term "guards" as "correctional officers."

SECTION 15 adds subsection (18) to s. 943.10, F.S., providing a definition for the term "auxiliary correctional probation officer," to mean any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time correctional probation officer, while under the supervision of a full-time or part-time correctional probation officer, has the same authority as a full-time or part-time correctional probation officer for the purposes of providing supervision of offenders in the community.

Section 943.10, F.S., is further amended to provide that any person holding certification from the Criminal Justice Standards and Training Commission as a law enforcement officer, correctional officer, or correctional probation officer, and is employed or appointed by a state, county or municipal government agency or political subdivision, or private entity contracting with the state or county for the operation and maintenance of a non-juvenile detention facility, shall not be considered as holding an "office" for the purposes of the Constitutional provision prohibiting dual employment of such officers.

SECTION 16 amends s. 943.1397(2), F.S., requiring the Criminal Justice Standards and Training Commission to establish, by rule, a procedure for administering re-examinations for applicants that fail the officer certification examination, and the rule may include a remedial training program. Subsection (2) is further amended to delete language requiring failed applicants to wait 90 days before retaking the examination.

SECTION 17 amends the title of s. 944.291, F.S., to provide a reference to conditional release supervision, and delete a reference to prisoner attainment of a provisional release date.

Subsection (1) is amended to delete a reference to prisoner attainment of a provisional release date. The subsection is further amended to provide that the department may, upon release, place prisoners under further supervision and control.

SECTION 18 adds subsection 946.006(4), F.S., 1994 Supplement, providing that private sector employers participating in correctional work programs, and that market inmate produced goods and services to the open market, must provide workers' compensation to employed inmates.

SECTION 19 creates s. 944.06, F.S., providing that department employees who are required to use their personal vehicles for work may file automobile insurance deductible claims with the department, not to exceed $500 per incident, for damage made to their vehicles that occurred while on official state business. The section further provides that the department shall investigate such claims as it considers necessary.

SECTION 20 amends s. 944.39, F.S., redefining the term "guard" as "correctional officer."

SECTION 21 amends s. 944.095(1), F.S., deleting language that required the Department of Corrections and the Department of Management Services to conduct a statewide comprehensive study to determine the current and future needs for correctional facilities. The subsection further provides that it is the intent of the Legislature that the siting of additional correctional facilities shall be achieved in the most cost-efficient manner possible.

Subsections 944.095(2), (3) and (4), F.S, are deleted, removing obsolete language referring to the aforementioned study, and subsections (5) through (13) are renumbered as subsections (2) through (10).

New subsection 944.095(6)(c), is amended, deleting an obsolete reference to the aforementioned study.

SECTION 22 adds subsection (5) to s. 944.516, F.S., providing that when an inmate is transferred, released, dies, or escapes, that the department is not required to disburse balances of less than $1 from inmate cash accounts. The subsection further provides that such balances shall be transferred to the Inmate Welfare Trust Fund.

SECTION 23 adds subsection (3) to s. 944.606, F.S., authorizing any public agency that receives verified information about sex offenders, described in subsection (2), to publicly release such information in the interest of public safety.

Subsection (4) is added to s. 944.606, F.S., providing immunity from civil liability for public agencies or their personnel releasing verified information about sex offenders described in subsection (2). The subsection further provides that a computerized criminal history is not considered to be sufficient verification.

SECTION 24 amends s. 944.703, F.S., deleting language precluding prisoners released from a work release program or to another state, from receiving transition assistance from the department, pursuant to ss. 944.701-944.708.

SECTION 25 amends s. 944.704, F.S., providing that the department shall provide a Transition Assistance Officer at major institutions.

Subsection (1) is amended to conform release assistance to transition assistance.

SECTION 26 amends s. 944.706, F.S., to conform release assistance to transition assistance. The section is further amended to delete nonconforming language precluding inmates released from work release programs from transition assistance.

SECTION 27 amends s. 944.707(1), F.S., deleting a reference to eligible releases, and providing that every release, identified by the department's prerelease assessment, shall be provided post release and job placement services.

Subsection (2) is amended to delete a specific reference to the department with regard to forwarding job placement and referral information to the Department of Labor and Employment Security.

SECTION 28 creates s. 945.03(1), F.S., providing that for the purpose of this section the term "department" shall mean the Department of Corrections; the term "relative" shall mean an individual who is related to another as a father, mother, son, daughter, brother, sister, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister; the term "organizational unit" shall mean a unit of a state correctional institution, a work camp, boot camp, or other annex of a state correctional institution, regional offices, correctional work centers, probation and parole circuit offices, or any bureau offices; the term "line of authority" shall mean any position having supervisory authority within the direct chain of command or supervisory path which organizationally links any position to the secretary: and, the term "direct supervision" shall mean being an employee's immediate supervisor, or the rater or reviewer of the employee's performance.

Subsection (2) is created to further provides that the department shall adopt rules prohibiting the employment of relatives in the same organizational unit, in the line of authority, or under the direct supervision of the other relative. The section further provides that exceptions are permitted in the best interest of the department.

SECTION 29 adds subsection (4) to s. 945.04, F.S., providing that the department shall exert it best efforts to assign inmates to correctional work programs, under Parts I and II of chapter 946, F.S., who have between 1 and 5 years remaining on their sentence, and that at least 60% of assigned inmates shall have less than 10 years remaining before their tentative release dates.

Subsection (5) is added to s. 945.04, F.S., providing that the department may not remove an inmate from an assigned work program unless requested by the private employer, or unless safety or security reasons are specifically set forth in writing to the corporation by the department.

SECTION 30 amends s. 945.091, F.S., authorizing the secretary of the department to appoint a designee to approve inmates leaving their place of confinement.

SECTION 31 amends s. 945.31, F.S., authorizing the department to establish bank accounts outside the State Treasury for the purposes of collecting and disbursing restitution and court-ordered payments to payees.

SECTION 32 creates s. 946.41, F.S., providing that the department shall to the extent possible, and within available resources, promote to the public inmates working in the community by displaying **signage** identifying work crews and vehicles commonly used to transport inmate work crews. The section further provides that the department **may** also provide uniforms of distinct design for inmate work crews in the community.

SECTION 33 amends s. **946.515(4),** F.S., to provide that the provisions of part I of chapter 287 do not apply to any purchases of commodities or contractual services made by any legislative, executive, or judicial agency of the state from the corporation, as described by s. **946.504(1)** to carry out the provisions of ss. 946.502-946.517, relating to inmate labor and correctional work programs.

SECTION 34 amends s. **948.09(1)(a)1.,** F.S., deleting language that authorizes the department to impose a $2 surcharge, in addition any other cost of supervision imposed by the **s. 948.09(1),** to pay for correctional probation **officer** training and equipment. The paragraph further authorizes the department to utilize $2 of each monthly cost of supervision payment to pay for correctional **officer** training and equipment, including radios and firearms. (See Amendments Section)

Subsection (7) is amended to provide that the department is not required to disburse payments of less than $10 to individual payees established on the Court Ordered Payment System (COPS).

SECTION 35 amends s. **948.15(2),** F.S., requiring that private entities providing services to persons assigned to court-ordered supervision programs that charge a fee must contract with the county in which the services are to be rendered.

SECTION 36 amends s. **951.032(1)(a),** F.S., authorizing county or municipal detention facilities to deduct from **a** prisoner's bank account, or in the event insufficient funds exist, place **a** lien on **a** prisoner's future bank account balances, or on a prisoner's personal property for the cost of medical **care,** treatment, hospitalization, or related transportation services rendered to the prisoner. The section further provides that liens may be carried over to future incarcerations, **as** long as the incarceration occurs in the county originating the lien and within 3 years of its originating **date.**

Subsection **951.032(2), F.S.,** is amended, authorizing the county or municipal detention facility to place **a** lien on **a** prisoner's bank account or other personal property for the costs **of** medical **care,** treatment, hospitalization, or related transportation services rendered to the prisoner, if **a** prisoner is unwilling to cooperate with reimbursement efforts.

SECTION 37 amends s. 951.12, F.S., redefining the term "guard" as "correctional **officer."**

SECTION 38 amends s. 951 **.19,** F.S., redefining the term "guards" as "correctional **officers."**

SECTION 39 amends s. **951.23(2),** F.S., expanding offender information collection requirements by the department and county detention facilities, and requiring collection of additional information regarding offender immigration status.

SECTION 40 amends s. 958.1 l(l), F.S., providing that youthful offenders 14-18 years of age shall be separated by institution at the time of reception from offenders 19-24 years of age.

Subsection (3) is amended to provide the department may assign a youthful offender to a correctional facility that is not designated for the care, custody, control, and supervision of the youthful offender's age group.

Subsection (3)(b) is amended to delete a reference to youthful offender assignments to the youthful offender program, and to conform to the provisions of subsections (1) and (3).

Subsection (4) is amended to provide a cross reference to s. 958.04(1)(a) and (c).

Subsection (6) is amended to provide that the department shall provide the Legislature with annual rather than monthly youthful offender institutional assignment reports.

SECTION 41 provides that except as otherwise provided, this act shall take effect on July 1, 1995.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

The repeal of the monthly $2 surcharge on the cost of supervision is estimated to reduce the Training Trust Fund by an indeterminate amount annually. The distribution of $2 of the current court ordered cost of supervision of $50 is estimated to increase the Training Trust Fund by $1.0 million in FY 1995-96 and thereafter. The General Revenue Fund will be reduced by ($1 .O) million in FY 1995-96 and thereafter. (See Amendments Section)

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurrina Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth.

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See fiscal comments.

2. Direct Private Sector Benefits:

See fiscal comments.

3. Effects on Competition, Private Enterprise and Emblovment Markets:

See fiscal comments.

D. FISCAL COMMENTS:

SECTION 2 - Significantly reducing the amount of time that inmates are permitted to appeal disciplinaryactions through judicial review may have a positive fiscal impact on the department's budget for litigation. No estimates have been provided by the department.

SECTION 3 - Requiring state agencies or political subdivision agencies of the state to extend their commitment beyond one year for the payment of $25,000 to the beneficiaries of law enforcement, correctional, and correctional probation officers, and firefighters sustaining a fatal injury while on duty may have a negative fiscal impact on such agencies or their insurance carriers. For example, extending the payment beyond one year would apply to an officer or firefighter that sustains a fatal injury while on duty, however, is kept alive through medical technology longer than one year. No information on the frequency of such situations has been provided. Legal problems may occur if death benefit claims are made beyond the one year period that are difficult to directly link to the injury sustained while on the job.

SECTION 18 - Requiring private industry employers that participate in the Prison Industries Enhancement Certification Program (PIE) to provide workers' compensation will have a indeterminate fiscal impact on participating companies. Providing such benefits are considered a cost of doing business and are dependent on the number of inmates employed by participating companies.

SECTION 19 - According to the department, providing automobile insurance deductible payments of up to $500 per incident for department employees that incur automobile damage while on official state business will not have a significant fiscal impact on the department. The department reports that automobile accidents involving employees on official business may occur once or twice per year.

SECTION 22 - Eliminating the requirement of the department to disburse sums of less than $1 from cash accounts when an inmate is transferred, released, escapes or dies, will generate an insignificant amount of revenue for the Inmate Welfare Trust Fund.

SECTIONS 24-27 - According to the department, Transition Assistance Officers exist at every major institution; however, there may be some instances where such officers are not available at a work release camp, or there may be instances where transition assistance is being provided by persons not certified as officers. The department has not provided cost information related to the need for additional Transition Assistance Officers. There is a provision in HB 2535, relating to the Inmate Welfare Trust Fund, that would authorize the department to expend monies from the Trust Fund for transition assistance programs and personnel.

SECTION 32 - Requiring the department to develop signage for inmates working on work crews in the community should have an insignificant fiscal impact on the department. No estimates have been provided by the department.

SECTION 34 - Authorizing the department to use $2 from every $50 collected monthly for the cost of post-release supervision to pay for correctional probation officer training and equipment will have a negative fiscal impact on General Revenue. No information has been provided by the department on the estimated costs associated with training and equipping correctional probation officers. (See Amendments Section)

Eliminating the requirement of the department to disburse sums of less than $10 for court-ordered payments may generate a minimal cost avoidance for the department. The fiscal impact on payees not receiving payments of less than $10 is indeterminate.

SECTION 36 - Authorizing county detention facilities to recover medical related costs from inmate cash accounts may reduce the amount of inmate funds available to pay other expenses after court-ordered costs, such as victim restitution, are paid. If reimbursed from cash accounts or from liens on inmate's personal property, county detention facilities should realize a cost avoidance of an indeterminate amount.

IV. **CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:**

A. APPLICABILITY OF THE MANDATES PROVISION:

This act does not require expenditures by local governments.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the revenue raising authority of local governments.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This act does not reduce the state shared tax with local governments.

V. **COMMENTS:**

SECTION 1 - Although petitioners for name changes need not present reasons why a change is being sought, the department reports that a common reason for inmates filing petitions is because they have converted to the muslim religion, and desire a muslim name. The Religious Freedom Restoration Act of 1993 provides an exception for government substantially burdening a person's exercise of religion only if it demonstrates that application of the burden to the person furthers a compelling government interest and is the least restrictive means for furthering that interest. However, if the legislation does not affect religious exercise, a more lenient test applies. See Turner v. Safley, 482 US. 78,89,107 S. Ct. 2254, 2261, 96 L. Ed. 2d 64 (1987) ("when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests").

SECTION 3 - Pursuant to s. 943.10(3), F.S., correctional probation officers are defined as employees of the state and not employees of any political subdivision of the state as required by the provisions of s. 112.19(2)(g), 1994 Supplement; therefore, the proposed amendment to s. 112.19(2)(g), F.S., 1994 Supplement, is not applicable.

SECTION 20 - An opinion by the Attorney General (AGO 93-32), dated April 22, 1993, states that although s. 944.606, F.S., does not specifically address the release of sex offender information by local government agencies, such information would appear to be, by definition, a public record, subject to inspection and copying pursuant to s. 119.07(1), F.S. The Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge, See Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So.2d 633, 640 (Fla. 1980). All such materials, regardless of whither they are in final form, are open for public inspection unless the Legislature has exempted them from disclosure, See Wait v. Florida Power & Light Company, 372 So.2d 420 (Fla. 1979). According to the Attorney General, sex offender records made available to local governmental agencies, pursuant to s. 944.606, F.S., are public records open to inspection and copying by the public. However, despite the public nature of sex offender records, a possibility of civil liability exists for the abusive or malicious release of such records, See Williams v. City of Minneola 575 So.2d 683 (5 D.C.A. Fla. 1991), *rev. denied, 589* So.2d 289 (Fla. 1991). Further, while the Florida Constitution recognizes a right of privacy for Florida

citizens in Art. I, s. 23, Florida Constitution, it also states that "[t]his section shall not be construed to limit the public's right of access to public records and meetings as provided by law." finally, Florida courts have determined that no federal or state right of privacy prevents access to public records, See Michel v. Douglas 484 So.2d 545 (Fla. 1985). Therefore, it is the opinion of the Attorney General that sex offender records are public records within the scope of s. 119.07(1), F.S., and that a local law enforcement agency which has received released information pursuant to s. 944.606, F.S., on a sex offender may disclose that information to other public agencies or to private groups or individuals based on a reasonable belief that the public safety is at risk.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Finance and Taxation Committee adopted one amendment which is travelling with the bill. That amendment deletes from the bill the provision relating to the $2 surcharge on the cost of supervision and the distribution of cost of supervision monies for firearms. This amendment eliminates the fiscal impact on the General Revenue Fund.

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

Prepared by:	Staff Director:
Russell M. Frinks	Amanda Cannon

AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:	Staff Director:
Joe McVaney	Christian Weiss

Appendix D

O.A. 6-3-96 097

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: 87,134

IN RE: AMENDMENT TO FLORIDA RULE OF APPELLATE PROCEDURE 9.130(a)(3)C) (vi) AND FLORIDA RULE OF APPELLATE PROCEDURE 9.100(c) .

PETITION TO ADOPT ON AN EMERGENCY BASIS AN AMENDMENT TO FLORIDA RULE OF APPELLATE PROCEDURE 9.130(a)(3)(C)(vi) AND FLORIDA RULE OF APPELLATE PROCEDURE RULE 9.100(c)

The Florida Bar Appellate Court Rules Committee petitions this Court to adopt an amendment to Rule 9.130(a)(3)(C)(vi) on an emergency basis. Rule 9.130 specifies which interlocutory orders may be appealed prior to final judgment. The subsection to which the Committee now recommends amendment provides for appeal from a non-final order that determines as a matter of law that a party is not entitled to workers' compensation immunity. Because of the confusion as to the type of non-final orders appealable under this rule which has apparently resulted from the present wording of the rule, the Committee proposes that the rule be amended to more clearly reflect the Committee's intent when it first proposed the adoption of Rule 9.130(a)(3)(C)(vi). The amendment to subdivision (a)(3)(C)(vi) moves the phrase "as a matter of law" from the end of the subdivision to its beginning. This is to resolve the confusion evidenced in Breakers Palm Beach

v. Gloger, 646 So. 2d 237 (Fla. 4th DCA 1994), City of Lake Mary v. Franklin, 668 So. 2d 712 (Fla. 5th DCA 1996), and their progeny by clarifying that this subdivision was not intended to grant a right of non-final review if the lower tribunal denies a motion for summary judgment based on the existence of a material fact dispute.

This motion to amend Rule 9.130(a)(3)(C)(vi) was adopted by a vote of 34-0. The Board of Governors of The Florida Bar approved the amendment by a vote of 43-0. The complete text of the proposed amendment in the required format is attached hereto as an appendix and specifically incorporated herein.

The Committee further requests this Court to adopt an amendment to Rule 9.100(c) as an emergency amendment. The amendment adds a new subdivision (c) (4) to provide that a petition for review challenging an order of the Department of Corrections in prisoner disciplinary proceedings must be filed within thirty days of rendition of the order being reviewed. This amendment is proposed to rectify a problem created by the recent adoption of section 95.11(8), Florida Statutes (1995). The problem involves the interplay of Rule 9.100, the opinion in Jones v. Department of Corrections, 615 So. 2d 798 (Fla. 1st DCA 1993) and section 95.11(8). In Jones, the court held that a prisoner seeking review of an order denying an administrative appeal of a disciplinary report must proceed by petition for extraordinary relief in the circuit court under Florida Rule of Civil Procedure 1.630. Our amendments during the just-concluded four-year cycle

transferred most relief formerly available under Rule 1.630 to Rule 9.100. As a result of our rule revisions, the types of actions described in Jones will now proceed under Rule 9.100. under Rule 9.100, however, a Jones proceeding could be filed at any time because it would not come within the types of review that must be sought within thirty days under Rule 9.100(c). Contrasted with the open-ended relief provided in Rule 9.100 as it now stands, section 95.11(8), Florida Statutes (1995), provides that "any court action challenging prisoner disciplinary proceedings" must be brought within thirty days of final disposition.

The Committee voted 29-1 to adopt this amendment. The Board of Governors of The Florida Bar voted 43-0 to adopt this amendment on an emergency basis. The complete text of the proposed amendments in the required format is attached hereto as an appendix and specifically incorporated herein.

Respectfully submitted by,

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