



## Department of Corrections Zero Tolerance Policy Increases Offender Scrutiny But Is Not Based on Risk to Public Safety

### *at a glance*

The Department of Corrections established a “zero tolerance policy” in 2003 requiring its probation officers to report every offender who violates any condition of supervision. It covers both new criminal offenses and technical violations such as missing appointments with probation officers or treatment counselors, missing curfew, and leaving the house for an unauthorized reason while under house arrest. As a result of this policy, the number of technical violation reports has increased by 54%.

The zero tolerance policy has enhanced public safety by increasing scrutiny of offenders and incarceration of those who commit new offenses. However, in addition to removing dangerous offenders from the community, the policy requires a significant amount of resources to be spent on offenders who commit minor technical violations and who pose little threat to public safety. All offenders reported for violations are now subject to arrest and court hearings are held to resolve the violations. As a result, the policy has had a significant impact on the courts, law enforcement, and those offenders who are subsequently released without further sanction.

The state should consider alternatives to handling technical violations by low-risk offenders in order to better target limited resources at persons who pose the greatest public risk while still holding all offenders responsible for their actions. These alternatives include authorizing probation officers to apply graduated sanctions for minor violations, establishing an internal review process for technical violations, and creating specialized courts to hear technical violation cases.

### Scope

Chapter 2006-25, *Laws of Florida*, directs OPPAGA to conduct a comprehensive review of the Department of Corrections to identify specific deficiencies that diminish agency efficiency or effectiveness. This report is one of a series and examines the department’s “zero tolerance” policy of reporting all violations committed by offenders being supervised in the community.

### Background

The Department of Corrections supervises persons who are sentenced to community supervision for one of three reasons: in lieu of incarceration; in conjunction with a prison term, known as a split sentence; or upon early release from prison through parole or conditional release. The department’s mission is to ensure public safety by providing appropriate supervision to these offenders, who pose varying risks to the public. Persons on community supervision must not commit any new crimes and must abide by conditions set by the courts or Parole Commission.<sup>1</sup> These conditions generally include making monthly contact with their probation officers, submitting to random drug testing, and

<sup>1</sup> The Florida Parole Commission is responsible for offenders on post-prison release supervision, such as parole or conditional release. The department supervises these offenders and reports all violations to the commission. We are excluding the Parole Commission from our analysis because it is responsible for less than 3.5% of the supervised population.

remaining in the county of supervision. Appendix A lists the standard conditions of supervision. Probation officers monitor offenders' compliance and report violations to the courts.

### ***Zero tolerance policy***

Prior to 2003, probation officers were required to report any offender who committed a new crime but they had discretion in reporting technical violations. In March 2003, the department established a "zero tolerance" policy for violent offenders, requiring probation officers to begin reporting all technical violations. The purpose of this policy was to eliminate officer discretion regarding violent offenders and require the courts to decide whether those offenders should receive additional sanctions or be returned to prison. After Carlie Brucia and others were murdered in 2004 by supervised offenders who had committed violations, the department expanded the policy to include all offenders on community supervision.<sup>2</sup>

When probation officers submit a technical violation report to the judge they must also submit an arrest warrant.<sup>3</sup> As a result, all offenders who commit a new crime or technical violation are now subject to arrest before they receive a court hearing.<sup>4</sup>

In March 2006, the department modified its policy to no longer require that non-willful, unintentional technical violations be reported, such as being a few minutes late to an appointment or curfew. This modification was an attempt to reduce the large number of arrests being made for these minor violations. However, as of November 2006, there has not been an appreciable decrease in the number of violations reported.

<sup>2</sup> Joseph Smith, sentenced to death for murdering Carlie Brucia, had violated drug offender probation by using drugs and not attending drug treatment. Troy Victorino, sentenced to death for murdering six people in Deltona, Florida, had violated his probation by being arrested for felony battery.

<sup>3</sup> Judges have discretion in signing arrest warrants or directing that the offender be released on his/her own recognizance, so all violations reports do not result in arrest. The department does not collect data on the number of arrest warrants signed for violations of supervision.

<sup>4</sup> Probation officers are authorized to immediately arrest any violent offender who commits a new crime or any offender who commits a violent crime without an arrest warrant.

### ***Methodology***

To assess the policy's impact, we analyzed department data representing three and one-half years before and after zero tolerance was implemented in March 2003.<sup>5</sup> We also analyzed sentencing and admission data compiled by the Criminal Justice Estimating Conference.<sup>6</sup> Due to limitations in the department's data, we were unable to analyze the relationship between the nature of technical violations and the risk of the offenders committing them.

## **Findings**

Violations of community supervision should be handled swiftly to protect public safety and hold offenders accountable. Further, the response to the violation should be commensurate with the severity of the violation, as well as the offender's intent, criminal history, and risk to public safety. However, the department's zero tolerance policy requires that persons who commit new crimes and those who commit minor technical violations be handled in the same way, meaning all are subject to arrest. Consequently, in addition to removing dangerous offenders from the community, the policy requires the state and local governments to expend a significant amount of resources on offenders who commit minor violations and do not necessarily pose a threat to public safety.

### ***Submitting reports for all technical offenses increases scrutiny of offenders***

The zero tolerance policy has increased the scrutiny of offenders, which may have prevented new crimes by persons on community supervision. A portion of the offenders who were brought before the courts because they committed technical violations may have otherwise gone on to commit new crimes, although the extent of this deterrent impact is difficult to determine.

The zero tolerance policy has considerably increased the number of violation reports

<sup>5</sup> We analyzed data from August 1999 to February 2003 to represent pre-zero tolerance and March 2003 to September 2006 to represent the zero tolerance period (both 3.5-year periods).

<sup>6</sup> As authorized in s. 216.136(5), *F.S.*, the Criminal Justice Estimating Conference develops official information relating to the criminal justice system, including forecasts of prison admissions and population, for the state planning and budgeting system.

submitted to the courts. As shown in Exhibit 1, the number of violation reports increased 38% after the policy was implemented. Most of this increase was due to growth in technical violation reports, which grew 54%, as reports submitted for new criminal violations increased by 13%. The population has declined by 4.8% since the policy was adopted.

#### Exhibit 1

##### The Number of Technical Violation Reports Increased by 54% After Inception of the Zero Tolerance Policy

Violations	Before Zero Tolerance	Zero Tolerance	Increase	Percentage Increase
Technical	189,041	291,137	102,096	54.0%
New Law	116,132	131,332	15,200	13.1%
<b>Total</b>	<b>305,173</b>	<b>422,469</b>	<b>117,296</b>	<b>38.4%</b>

Source: Department of Corrections data reflecting periods August 1999 to February 2003 and March 2003 to September 2006.

#### *The number of offenders sentenced to incarceration for technical violations has increased*

Judges determined that jail or prison was the appropriate sanction for approximately one-third of offenders brought before them for technical violations, both before and after the zero tolerance policy was adopted. As shown in Exhibit 2, since the zero tolerance policy was implemented, the number of offenders sentenced to incarceration for technical violations has increased by over 20,000. There was a bigger increase in the number of offenders sentenced to prison than to jail. This results in more of the incarceration costs being shifted to the state, as local jails are responsible for housing offenders who are sentenced to incarceration for one year or less.

#### Exhibit 2

##### The Number of Offenders Sentenced to Jail or Prison for Technical Violations Has Significantly Increased

Incarceration Sanction	Before Zero Tolerance	Zero Tolerance	Increase
Jail	43,691	52,585	8,894
Prison	24,269	36,179	11,910
<b>Total Incarcerations</b>	<b>67,960</b>	<b>88,764</b>	<b>20,804</b>

Source: Department of Corrections data reflecting periods August 1999 to February 2003 and March 2003 to September 2006.

#### *Many technical violations may be minor, as they do not result in court sanctions*

However, judges have released an increasing percentage (almost double the number) of persons brought before them for technical violations without imposing additional court sanctions. As shown in Exhibit 3, of the 291,137 technical violation reports that were submitted in the three and a half years since zero tolerance was adopted, over half (169,050 or 58%) resulted in no additional penalties. That means that 80,703 more technical violations resulted in no additional penalty after the zero tolerance policy was established. This suggests that judges did not conclude that those technical violations were serious enough to warrant a punitive judicial response.<sup>7</sup>

#### Exhibit 3

##### An Increasing Percentage of Technical Violators Have Been Released Without Additional Penalty

	Pre Zero Tolerance		Zero Tolerance	
No Additional Penalty	88,347	46.7%	169,050	58.1%
Increased Sanctions	32,569	17.2%	33,274	11.4%
Jail	43,691	23.1%	52,585	18.1%
Prison	24,269	12.8%	36,179	12.4%
Unknown	165	0.1%	49	0.0%
<b>Total Technical Violations</b>	<b>189,041</b>	<b>100.0%</b>	<b>291,137</b>	<b>100.0%</b>

Source: Department of Corrections data reflecting periods August 1999 to February 2003 and March 2003 to September 2006.

#### *Violation hearings increase court workload*

The growth in technical violation reports associated with zero tolerance has significantly increased the workload of the court system, which must review these reports and conduct hearings to determine whether a violation occurred and whether a penalty shall be imposed. The court system processed 80,703 more technical violations that resulted in no penalty after zero tolerance policy was adopted, or approximately 23,000 additional cases annually. The Office of State Courts Administrator was unable to estimate the fiscal impact of processing these additional cases.

The rise in technical violation reports also increased the workload of state attorneys and public defenders. The Florida Prosecuting Attorneys

<sup>7</sup> The department is unable to determine the number of offenders who received no punitive sanction because judges considered the time served in jail before the hearing as the sanction.

Association reports that it costs an average of \$130 in assistant state attorney resources to resolve a case through a plea agreement and \$200 to resolve a case through a full hearing.<sup>8</sup> Therefore, the state attorneys incurred an estimated \$10.5 to \$16.1 million in costs to process the additional technical violation reports, or \$3 to \$4.6 million annually.

The caseload increase also affected public defenders, who are appointed to represent offenders who cannot afford an attorney. The Florida Public Defender Association estimates that it costs an average of \$155 in assistant public defender resources to resolve a case through a plea agreement and \$265 to resolve a case through a full hearing.<sup>9</sup> Assuming that public defenders represented 80% of the offenders, they incurred an estimated \$10 to \$17.1 million in costs to process the additional technical violation reports that resulted in no penalty, or \$2.9 to \$4.9 million annually.

### ***The zero tolerance policy has a significant impact on local law enforcement, jails, and offenders***

The zero tolerance policy requires that when probation officers submit a technical violation report they must also submit an arrest warrant. The policy thus has had a significant impact on local law enforcement, county jails, and those offenders who are subsequently released without sanction.

Workload for local law enforcement, which handles most arrests, has increased. While probation officers have arrest authority, local law enforcement agencies typically assist with or make the arrest of technical violators and transport these offenders to local jails, as probation officers lack transport authority and resources. While there is no statewide data on the costs incurred by these local law enforcement agencies, several have complained to the department about this additional workload, and some have placed restrictions on the times and circumstances that they will provide transport services.<sup>10</sup>

Policy has contributed to local jail overcrowding. Persons arrested for technical violations who are denied or are unable to pay the bond set by the judge must wait in jail until their hearing. This wait can range from 7 days in judicial circuits with an expedited violation hearing process to 180 days in circuits that use a standard violation hearing process. The per diem cost of housing offenders in county jails ranges from \$30 to \$80 per day and is paid by county governments. Assuming that one-quarter of technical violators spent one month in jail awaiting their hearing, the state's 67 county jails incurred costs of \$18.2 to \$48.4 million to house the 80,703 additional offenders reported for technical violations who did not receive a penalty, or \$5.2 to \$18.3 million annually. Counties report that the increase in the number of offenders being detained before their violation hearings and those who are subsequently sentenced to jail for technical violations has contributed to jail overcrowding. As of June 30, 2006, 34 of Florida's 67 county jails were operating at or over capacity.

Policy can hinder ex-offenders' transition to community. While offenders must be held accountable for violating conditions of their supervision, the arrest and detention of persons who pose little risk and who are subsequently released without sanction can result in them losing their jobs and ability to support their families, as well as disrupt their progress in community counseling and treatment programs. As stated, 58% of offenders reported for a technical violation did not receive further judicial sanction.

### ***The state should consider alternatives to handling technical violations that require fewer resources***

Several other states have developed alternate methods for handling technical violations that hold these persons responsible for violating supervision conditions responsible but do so at a lower cost. Exhibit 4 describes these alternatives. Generally, these alternatives would be appropriate for low-risk, non-violent offenders who commit technical offenses unrelated to their primary offense.

<sup>8</sup> State attorney case costs are based on data reported to OPPAGA in February 2006.

<sup>9</sup> Public Defender case costs are based on data reported to OPPAGA in February 2006.

<sup>10</sup> This issue is further discussed in *Several Deficiencies Hinder the Supervision of Offenders in the Community Corrections Program*, [OPPAGA Report 06-37](#), April 2006.



## Exhibit 4

## Several Alternatives for Handling Technical Violations Require Fewer Resources

Alternative	Description	Advantages	Disadvantages
<i>Alternatives that reduce the number of technical violation reports submitted</i>			
Technical Violation Letters	<b>A notification of a technical violation that does not require the arrest of the violator.</b> These letters, sent to judges by probation officers, are issued for minor technical violations such as failure to report to probation officer, failure to perform public service work, or delinquency in restitution or other monetary obligations. Offenders who are deemed violent, dangerous, or habitual, who have multiple technical violations, or commit technical violations that are associated with the violation offense are ineligible for technical letters. Already used by some Florida courts and the Parole Commission. Already used by some Florida courts, including the 1st, 3rd, 4th, 6th, 7th, and 14th circuits.	Does not result in the arrest of the violator unless directed by the judge upon their review of the technical violation letter. Allows the judge to be informed of a violation without tying up court and jail resources. Provides the opportunity for the judge to reject the notification letter and require the offender to be arrested and formally appear to dispose the violation. Reduces the number of cases handled by the state attorney and public defender.	Does not provide the opportunity for the judge to meet with the offender to determine if he/she is exhibiting behaviors that predict that he or she might be about to commit a new offense. Does not penalize the offender for committing a technical violation unless used in conjunction with graduated sanctions described below.
Determination officer	<b>Probation officers forward all technical violations to a designated officer, who uses established criteria to determine whether or not to submit a violation report.</b> The determination officer would consider the determined risk level of the individual, his or her previous violations, and the nature of the particular violation. To ensure consistency, the department could be required to submit a quarterly report to the courts on the offense and offender types that were processed.	Would likely decrease the number of technical violators being jailed while awaiting hearing. Provides for better consistency in response to technical violations.	Does not penalize the offender for committing a technical violation unless used in conjunction with graduated sanctions described below.
Graduated sanctions	<b>Probation officers apply a continuum of administrative sanctions to technical violations that could include loss of privileges, increased reporting and drug testing, the imposition of curfew, and community service.</b> The guidelines or formal response structure should take into consideration the determined risk level of the individual, his or her previous violations, the nature of the particular violation, and the full range of potential responses. Used in states such as Arizona, Colorado, Indiana, and Georgia.	Less costly than automatic arrest and incarceration for technical violations and allows for a measured and appropriate response to all offenses. Would significantly reduce the number of technical violations processed by the courts, Parole Commission, state attorney, and public defender.	Cannot be used if offender does not admit guilt and waive right to a formal hearing. Would require judges to specify the list of graduated sanctions the probation officers could apply in each case.
<i>Alternative that reduces the number of offenders arrested upon the submission of a technical violation report</i>			
Citations (Notice to Appear)	<b>A written order issued in lieu of physical arrest for technical offenses.</b> The technical violator would be required to appear at a judicial hearing but would not be arrested before such hearing. Already an option for Florida's judges, although it is unknown to what extent judges exercise this option. Used in states such as Delaware, Montana, Ohio, and South Carolina.	Does not result in the arrest of the offender unless the citation is rejected by the judge. Would save a significant amount of jail and law enforcement resources.	Would require a hearing before the judge to dispose the violation. Would require the same amount of resources from the state attorney and public defender.
<i>Alternative that reduces the amount of time it takes to process a technical violation report</i>			
Violation of Probation Court	<b>All technical violations to be heard by a designated judge(s).</b> Cases are docketed much like a regular case, but are processed in an expedited manner. Already used by some Florida courts, including the 7th, 9th, 10th, and 13th circuits.	Decreases the time it takes to dispose of a violation. For example, in Hillsborough County, violations are disposed within seven days, compared to several weeks or months for regular courts. Reduces jail overcrowding because violators spend less time awaiting hearing.	Offenders would still be arrested before the hearing unless used in conjunction with another alternative. Would require more public defenders and state attorney resources because of the increase in the number of cases needing to be processed in a shorter period of time. Could require additional courtrooms.

Source: OPPAGA research.

If the department implements one or more of these alternatives, it should continue to arrest offenders who commit new crimes, are violent or dangerous, pose a risk to public safety, or are deemed to pose a risk to flee from supervision. The department should also increase its oversight of offenders who commit technical violations that are not reported to the courts, such as by requiring these persons to have additional monthly contacts with probation officers.

## Recommendations

The Department of Corrections' should revise its zero tolerance policy to target those offenders who pose the greatest threat to public safety while handling persons who commit minor technical violations of community supervision requirements in a more cost effective manner. Accordingly, we recommend that the Legislature and the department consider alternatives to better allocate limited state and local criminal justice resources.

To improve its ability to assess the effectiveness and impact of its supervision policies, we recommend that the department begin collecting data such as the types of new crimes and technical offenses committed by persons on community supervision. Such data would help the Legislature, department, and other stakeholders more fully assess the effectiveness of zero tolerance policy and the impact it has on low-risk and high-risk offenders.

## Agency Response

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the Secretary of the Department of Corrections for review and response. The chief of staff's written response is reproduced in its entirety in Appendix B.

## Appendix A

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# Standard Conditions of Supervision

Persons on community supervision must not commit any new crimes and must abide by the standard conditions set by the courts. In addition to these standard conditions, the judge can impose additional sanctions, such as curfew and community service. Additional conditions are established for offenders on community control (house arrest) or sex offender probation.

1. Report to the probation office as directed.
2. Pay the State of Florida the specified amount per month set forth by the courts, Parole Commission, and statutes.
3. Remain within a specified place. Do not change residence or employment or leave the county of residence without first procuring the consent of probation officer.
4. Do not possess, carry, or own any firearm or weapon, unless otherwise directed.
5. Live without violating the law. A conviction in a court of law shall not be necessary for such a violation to constitute a violation of probation.
6. Do not associate with any person engaged in any criminal activity.
7. Do not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Do not visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
8. Work diligently at a lawful occupation, insofar as may be possible and advise employer of probation status, and support any dependants, as directed by probation officer.
9. Promptly and truthfully answer all inquiries by the court or the officer, and allow probation officer to visit in home, at employment site, or elsewhere, and comply with all lawful instructions the officer may give.
10. Pay restitution, court costs, fines, or other statutory fees or costs in accordance with the attached orders. Make payments to probation officer and/or to the clerk as directed and comply with the payment plan established by your officer, in accordance with any payment priority instructions.
11. Submit to random urinalysis, breathalyzer, or blood tests at any time requested by probation officer, or the professional staff of any treatment center where receiving treatment, to determine possible use of alcohol, drugs, or controlled substances. Pay for the tests unless qualify for an exemption.
12. Submit to the warrantless search of person, residence, or vehicle.
13. If convicted or previously convicted of an offense or attempted offense enumerated in s. 943.325, *Florida Statutes*, provide two (2) specimens of blood or other biological specimens, pursuant to s. 943.325, *Florida Statutes*.
14. Report in person within 72 hours of release from confinement to the probation office.

Source: Department of Corrections.

## Appendix B



FLORIDA  
DEPARTMENT of  
CORRECTIONS

Governor  
**CHARLIE CRIST**

Secretary  
**JAMES R. McDONOUGH**

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February 19, 2007

Gary R. VanLandingham, Director  
Office of Program Policy & Analysis &  
Government Accountability (OPPAGA)  
Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1475

Dear Director VanLandingham:

In response to your correspondence and report regarding Zero Tolerance in Community Corrections, we thank you for the forthright and objective evaluation. I wish to commend your staff for diligently working with us to understand the complex dynamics involved in reporting violations of offenders under supervision with the department.

The report recommends the department revise its Zero Tolerance policy to target those offenders who pose the greatest threat to public safety while handling persons who commit minor technical violations of community supervision requirements in a more cost effective manner. We agree and have worked towards accomplishing this goal by encouraging judges to authorize the department to use the "Technical Violation Notification Letter" in lieu of submitting a violation report, affidavit, and warrant, to report technical violations on offenders who do not pose a threat to the community. We have been successful in obtaining approval to utilize the "Technical Violation Notification Letters" in thirty-one (31) out of sixty-seven (67) counties so far and circuit administrators are in the process of meeting with the remaining thirty-six chief judges to again discuss the benefits of the technical letter.

In addition, we have made important revisions to the Zero Tolerance policy. On March 22, 2006, Secretary McDonough directed the staff to investigate technical violations so as to delineate the circumstances surrounding the violation to ensure it is a willful violation. The Secretary reminded staff of their duty to report violations in context so that those who will make the decision on incarceration can do so fully informed. Consequently, Community Corrections procedure regarding reporting violations was revised in May 2006, to provide the definition of "willful". Our office is currently developing a lesson plan to provide additional training on reporting willful violations to staff.



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In addition to the "Technical Violation Notification Letters", there are other alternatives to holding the offender in jail when pending probation violations. Once a technical violation is found to be willful, unless the court has authorized use of the "Technical Violation Notification Letter", the officer submits a violation packet to the judge, including the violation report, affidavit, and warrant. The judge may decide to sign the warrant, or request a "Notice to Appear" hearing without a warrant, or handle through pretrial release. If the judge decides to sign the warrant, the judge may indicate on the warrant the bond amount or instructions to release the offender on his/her own recognizance once arrested on the warrant. The department's zero tolerance policy does not mandate arrests or court hearings. It simply mandates that willful violations will be reported consistently throughout the state. It is the sentencing authority's discretion on how to handle the violation. If the court allows a technical violation notification letter, there is no arrest or hearing.

In addition to the Zero Tolerance policy, the department also has other policies regarding offenders who require warrantless arrests (immediate arrest by the probation officer) due to the potential threat the offender may be to the community if not arrested immediately. Therefore, sex offender and violent offender technical violations are not handled in the same manner as offenders on supervision for other offenses.

An issue raised in the report indicates that since the zero tolerance policy was implemented, the number of offenders sentenced to incarceration for technical violations has increased. There are other factors that may have weighted judges' decision to incarcerate on violations, including prior violations, prior record, current charge, and criminal punishment code points. By Florida Statute, it is the courts, not the Department of Corrections that mandates the sanctions imposed on offenders who have disregarded the court's orders.

One final issue raised in the report refers to the increasing percentage of technical violators that have been released without additional penalty. While a footnote was added that indicates that we are not able to determine the number of offenders who received no punitive sanction because judges considered the time served in jail before the hearing as the sanction, the term "No Penalty" is misleading. The courts generally find the offenders in violation, which indicate the violations are substantiated and also indicate the officer was prudent in notifying the courts of the offenders' violation of the court imposed conditions. The "No Penalty" number is therefore misleading, along with the comment that "this would suggest that judges did not conclude that those technical violations were serious enough to warrant a punitive judicial response". Judges could have modified the probation by extending the term of supervision or added additional conditions of supervision or reinstated the supervision, with time served in the jail as the penalty. Data provided by the Bureau of Research and Data Analysis suggests the table is misleading with incorrect numbers.

The Department of Corrections believes that the Zero Tolerance policy as modified in March 2006 is the best approach to ensure consistent enforcement of court imposed sanctions and to ensure continued public safety. We believe it has been successful and consequently will remain in effect for the future. Zero Tolerance, in fact, increases public safety by reporting willful technical violations on offenders who are showing signs of digressing before they revert back to criminal behavior.

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We promise an improved focus on reporting only willful violations to the court or releasing authority in a timely, consistent manner and will continue to work with the judges to discuss alternative methods in reporting and handing specified technical violations on non-violent offenders. The department welcomes the opportunity to work further with you and the legislature to ensure our mission is met.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Prudom", written in a cursive style.

Richard Prudom,  
Chief of Staff



## The Florida Legislature

# *Office of Program Policy Analysis and Government Accountability*



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