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# Judiciary Committee

**Thursday, February 25, 2016  
1:00 p.m. – 4:00 p.m.  
Sumner Hall (404 HOB)**

**MEETING PACKET**

**Steve Crisafulli  
Speaker**

**Charles McBurney  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Judiciary Committee

**Start Date and Time:** Thursday, February 25, 2016 01:00 pm  
**End Date and Time:** Thursday, February 25, 2016 04:00 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 3.00 hrs

#### Consideration of the following bill(s):

CS/HB 231 Motor Vehicle Manufacturer Licenses by Business & Professions Subcommittee, Trujillo  
CS/HB 331 Compensation of Victims of Wrongful Incarceration by Appropriations Committee, DuBose  
CS/HB 685 Victim Assistance by Criminal Justice Subcommittee, Slosberg  
CS/HB 889 Contraband Forfeiture by Criminal Justice Subcommittee, Metz, Caldwell  
CS/CS/HB 1043 Interviews of Victims, Suspects, or Defendants with Autism Spectrum Disorder by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Hager  
HM 1191 Regulation Freedom Amendment by Raulerson  
CS/HB 1227 Crustaceans by Agriculture & Natural Resources Subcommittee, Raschein  
HB 1333 Sexual Offenders by Baxley  
HB 7075 Victim and Witness Protection by Criminal Justice Subcommittee, Trujillo  
CS/HB 7085 Juvenile Civil Citation and Similar Diversion Programs by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Trujillo

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Wednesday, February 24, 2016.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, February 24, 2016.

**NOTICE FINALIZED on 02/23/2016 4:18PM by Ingram.Michele**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 231 Motor Vehicle Manufacturer Licenses  
**SPONSOR(S):** Business & Professions Subcommittee; Trujillo  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 430

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 1 N, As CS	Anderson	Anstead
2) Judiciary Committee		Aziz <i>PA</i>	Havlicak <i>RL</i>

### SUMMARY ANALYSIS

The bill provides additional grounds to deny, suspend, or revoke a license held by a motor vehicle manufacturer, factory branch, distributor, or importer ("manufacturer"). The bill prohibits manufacturers from taking certain actions against motor vehicle dealers and requires certain procedures be followed by the manufacturer when dealing with motor vehicle dealers. Specifically, the manufacturer:

- Is limited to a 12-month period following the date a claim was paid to perform audits of warranty, maintenance, service-related payments and incentive payments and can only deny such a claim if the manufacturer proves that the claim is false or fraudulent;
- May not take adverse action against a motor vehicle dealer due to a delivered motor vehicle being resold or exported by the customer unless the manufacturer provides written notification to the dealer within 12 months;
- Must pay a dealer for temporary replacement vehicles provided to customers during service or repair provided the dealer complies with the manufacturer's written vehicle eligibility requirements relating to loaner vehicles; and
- May not require or coerce a dealer to purchase goods or services from a vendor selected by the manufacturer without first making available to the dealer the option to obtain the goods or services from a vendor chosen by the dealer.

The bill provides that the act shall apply to all franchise agreements entered into, renewed, or amended subsequent to October 1, 1988.

The bill provides for severability of provisions if any provision is determined to be invalid.

The bill has an indeterminate fiscal impact on state government.

The bill shall take effect upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Motor Vehicle Manufacturers and Franchise Dealerships – Generally:**

Manufacturers, distributors, and importers (“manufacturers”) enter into contractual agreements with motor vehicle dealers to sell particular vehicles that they manufacture, distribute, or import. Florida law, chapter 320, F.S., has regulated the relationship between motor vehicle manufacturers and motor vehicle dealers since 1970. Existing law requires the licensing of motor vehicle manufacturers, and regulates numerous aspects of the contracts between manufacturers and motor vehicle dealers.

Section 320.64, F.S., currently provides thirty-eight grounds for the denial, suspension, or revocation of the license of a manufacturer.

Section 320.61(1), F.S., states, in part, “[n]o manufacturer, factory branch, distributor, or importer shall engage in business in this state without a license therefor . . . .” Section 320.61(2), F.S., allows the Department of Highway Safety and Motor Vehicles (“DHSMV”) to prescribe renewal applications pursuant to s. 320.63, F.S., which requires a manufacturer to submit the following documents to determine fitness:

- Information relating to solvency and financial standing;
- A certified copy of any warranty connected with the motor vehicles sold or any component;
- A copy of the written agreement and all supplements thereto between the motor vehicle dealer and the manufacturer;
- A list of authorized dealers or distributors and their addresses;
- An affidavit acknowledging that the provisions of an agreement are not contrary to the provisions contained in ss. 320.60-320.70, F.S.;
- A certified copy of all applicable preparation and delivery charge obligations of the dealer;
- An affidavit stating the rates which the manufacturer pays or agrees to pay any authorized motor vehicle dealer licensed in this state for the parts and labor advanced or incurred by such authorized motor vehicle dealer for or on account of any delivery and preparation obligations imposed on its dealers or relating to warranty obligations;
- An annual license fee; and
- Any other information needed to safeguard the public interest which DHSMV may, by rule, prescribe.

The requirements regulating the contractual business relationship between a motor vehicle dealer and a manufacturer are primarily found in ss. 320.60-320.071, F.S., (the Florida Automobile Dealers Act).<sup>1</sup> These sections of law specify, in part:

- The conditions and situations under which the DHSMV may grant, deny, suspend, or revoke a license;
- The process, timing, and notice requirements for manufacturers to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a change;
- The procedures a manufacturer must follow if it wants to add a dealership in an area already served by a dealer, the protest process, and the DHSMV’s role in these circumstances;

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<sup>1</sup>Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058 (2002) (No section of the statute provides a short title; however, many courts have referred to the provisions as such.), <http://www.law.fsu.edu/journals/lawreview/downloads/293/Forehand.pdf>.

- Amounts of damages that can be assessed against a manufacturer in violation of Florida statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

***Prohibitions for Manufacturers - Current Situation:***

There are currently 38 different criteria that could lead the DHSMV to take action against a motor vehicle manufacturer. A violation of any of these provisions entitles a motor vehicle dealer to rights and remedies contained within the Florida Automobile Dealers Act, including an administrative protest, obtaining an injunction against the manufacturer, and receiving treble damages and attorney's fees, if the manufacturer is found to have violated the Act.

A manufacturer is prohibited from coercing or attempting to coerce a motor vehicle dealer into accepting delivery of motor vehicles, parts or accessories, or any other commodities which have not been ordered by the dealer.

A manufacturer is precluded from requiring a dealer to relocate, expand, improve, remodel, renovate, or alter previously approved facilities unless the requirements are reasonable and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations, and market.

A manufacturer cannot withhold a bonus or other incentive that is available to its other same line-make Florida dealers if the manufacturer offers to enter into an agreement or to selectively offer incentive programs to dealers in Florida, other regions, or other states. A manufacturer may not discriminate against a dealer with respect to a program, bonus, incentive, or other benefit within a zone or region that includes Florida.

A manufacturer may periodically audit the transactions of a motor vehicle dealer relating to certain financial operations by the dealer. Audits of warranty payments may only be performed during the one-year period immediately following the date a warranty claim was paid. Audits of incentive payments may only be performed during an 18-month period immediately following the date the incentive was paid.

Section 320.64(26), F.S., details the types of actions against a dealer by a manufacturer if the dealer distributes cars for foreign export. This section provides that, in a legal challenge, the manufacturer must prove that the motor vehicle dealer had "actual knowledge that the customer's intent was to export or resell the motor vehicle." This section also states that if the disputed vehicle is titled in any state of the United States, there is a "conclusive presumption"<sup>2</sup> that the dealer had no actual knowledge that the customer intended to export or resell the motor vehicle.

***Prohibitions for Manufacturers - Effect of Proposed Changes:***

The bill address several issues related to motor vehicle manufacturers, distributors, and importers, and the franchise contracts between these businesses and motor vehicle dealers. The bill provides that these provisions shall apply to all franchise agreements entered into, renewed, or amended subsequent to October 1, 1988,<sup>3</sup> and provides for severability of the provisions if any provision is determined to be invalid.

<sup>2</sup> BLACK'S LAW DICTIONARY, p. 263 (5th ed. 1979) (Defines conclusive presumption to mean "a presumption that cannot be overcome by any additional evidence or argument.").

<sup>3</sup> The DHSMV has held in an administrative decision that amendments to the Florida Automobile Dealers Act do not apply to dealers having franchise agreements which were signed prior to the effective date of the amendment. *See Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-0935 (Fla. DOAH Dec. 9, 2009). In this holding, the DHSMV ruled that a 2006 amendment to the Florida Automobile Dealers Act, which requires that if a dealer's franchise agreement is terminated the manufacturer must buyback from the dealer its unsold vehicles, parts, signs, special tools, and other items, does not apply to a dealer terminated in 2008 because the dealer's franchise agreement was entered into prior to the effective date of the amendment. This Final

The bill amends s. 320.64, F.S., to specify that a manufacturer is prohibited from committing certain actions against motor vehicle dealers and requires certain procedures be followed by the manufacturer when dealing with motor vehicle dealers. The bill amends three existing provisions and adds three additional provisions. Specifically, the manufacturer:

- Is limited to a 12-month period following the date a claim was paid, pursuant to warranty provisions, to perform audits of warranty, maintenance, other service-related payments and incentive payments;
- May not deny or charge back any payment related to a warranty, maintenance, or other service-related claim or incentive claim or a portion of such claim, until the manufacturer has "proven" the claim or portion of such claim to be false or fraudulent or that the dealer failed to substantially comply with the reasonable, written, and uniformly applied procedures of the manufacturer;
- May not take adverse action against a motor vehicle dealer due to a motor vehicle being resold or exported by the customer unless the manufacturer provides written notification to the dealer of such resale or export within 12 months;
- Must pay the dealer for temporary replacement vehicles provided to customers by the dealer as a loaner vehicle during service or repair even if the dealer owns the vehicle, provided that the dealer complies with written and uniformly enforced vehicle eligibility requirements; and
- May not require or coerce a dealer to purchase goods or services from a vendor selected by the manufacturer without first making available to the dealer the option to obtain the goods or services from a vendor chosen by the dealer and may not unreasonably withhold consent to allow the dealer to use alternative goods or services. The term "goods or services" does not include material subject to the intellectual property rights of the manufacturer, required special tools or training, parts to be used in repairs, goods or services paid for entirely by the manufacturer, or a manufacturer's architectural review service.

#### B. SECTION DIRECTORY:

Section 1 amends s. 320.64, F.S., relating to denial, suspension, or revocation of license.

Section 2 provides that the act shall apply to all franchise agreements entered into, renewed, or amended subsequent to October 1, 1988, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or United States Constitution.

Section 3 provides for severability of provisions if any provision is determined to be invalid.

Section 4 provides that the bill shall take effect upon becoming a law.

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Order was initially appealed but was later voluntarily dismissed. *See also, In re Am. Suzuki Motor Corp.*, 494 B.R. 466, 480 (Bankr. C.D. Cal. 2013) (The DHSMV has indicated it will be applying this holding to every amendment to the Florida Automobile Dealers Act. That means dealers have different protections under the law depending on when they signed their franchise agreement.). The bill also adds the phrase "notwithstanding the terms of any franchise agreement" to a number of sections, which may or may not be interpreted to apply to contracts previously entered into between the manufacturers and dealers.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DHSMV already regulates this industry, so the additional grounds proposed in the bill for regulatory actions may result in no additional state impact. However, it is possible DHSMV may experience an increase in the number of administrative hearings as a result of the bill. DHSMV anticipates that it may experience a positive impact on its revenues from the collection of additional motor vehicle dealer fees if lesser regulation on motor vehicle dealers leads to more motor vehicle dealers being in business.<sup>4</sup> The bill may have an indeterminate fiscal impact.<sup>5</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent the agreements between dealers and motor vehicle manufacturers, distributors, and importers change due to compliance with existing laws, the parties may be positively or negatively impacted. Dealers may experience increased revenue from new limitations and procedures governing the incentives, bonuses, and other benefit programs. The bill may make it easier and more affordable for dealers to comply with manufacturer's requirements which, in turn, may make it easier for new dealership franchises to open and for current dealership franchises to remain in business.<sup>6</sup>

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

The Federal Contracts Clause provides that no state shall pass any law impairing the obligation of contracts. U.S. Const. art I s. 10. However, the Contracts Clause prohibition must be weighed against the State's inherent power to safeguard its people's interests. Three factors are considered when evaluating a claim that the Contracts Clause has been violated: (1) whether the law substantially impairs a contractual relationship; (2) whether there is a significant and legitimate public

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<sup>4</sup> Florida Department of Highway Safety and Motor Vehicles, Agency Analysis of 2016 House Bill 231, p. 5 (Oct. 19, 2015).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at p. 3.



purpose for the law; and (3) whether the adjustments of rights and responsibilities of the contracting parties are based upon reasonable conditions and are of an appropriate nature.<sup>7</sup>

Some state laws regulating contracts between automobile manufacturers and dealers have been found to have violated the constitution while other laws have been upheld as constitutional.<sup>8</sup>

**B. RULE-MAKING AUTHORITY:**

The DHSMV already regulates this industry, and has rulemaking authority. The additional grounds proposed in the bill for regulatory actions may result in some additional rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 2, 2016, the Business & Professions Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Deletes language that would have prohibited a manufacturer from refusing to pay a dealer who participated in a bonus program related to facility improvements or signs any increase in benefits between the program that the dealer participated in and a new program offered within 10 years that the dealer does not participate in; and
- Deletes language that would have prohibited a manufacturer from requiring a motor vehicle dealer to participate in a dealer advertising or marketing pool, threatening to take adverse action against the dealer for refusing to do so, and precluding a motor vehicle dealer from establishing a voluntary motor vehicle dealer advertising or marketing pool.

This staff analysis is drafted to reflect the committee substitute.

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<sup>7</sup> *Vesta Fire Ins. Corp. v. State of Fla.*, 141 F.3d 1427, 1433 (11th Cir. 1998).

<sup>8</sup> *See Alliance of Auto. Mfrs., Inc. v. Currey*, 984 F. Supp. 2d 32 (D. Conn. 2013) (upholding state law that revised statutory method for calculating reasonable compensation for vehicle warranty work and prohibited manufacturers from recovering any additional cost of the new method from the dealers); *Arapahoe Motors, Inc. v. Gen. Motors Corp.*, No. CIV.A. 99 N 1985, 2001 WL 36400171, at 13 (D. Colo. Mar. 28, 2001) (the retroactive application of state law would be unconstitutional as it would create a new obligation or impose a new duty upon General Motors).

1 A bill to be entitled  
2 An act relating to motor vehicle manufacturer  
3 licenses; amending s. 320.64, F.S.; revising  
4 provisions for denial, suspension, or revocation of  
5 the license of a manufacturer, factory branch,  
6 distributor, or importer of motor vehicles; revising  
7 provisions for certain audits of service-related  
8 payments or incentive payments to a dealer by an  
9 applicant or licensee and the timeframe for the  
10 performance of such audits; defining the term  
11 "incentive"; revising provisions for denial or  
12 chargeback of claims; revising provisions that  
13 prohibit certain adverse actions against a dealer that  
14 sold or leased a motor vehicle to a customer who  
15 exported the vehicle to a foreign country or who  
16 resold the vehicle; revising conditions for taking  
17 such adverse actions; prohibiting failure to make  
18 certain payments to a motor vehicle dealer for  
19 temporary replacement vehicles under certain  
20 circumstances; prohibiting requiring or coercing a  
21 dealer to purchase goods or services from a vendor  
22 designated by the applicant or licensee unless certain  
23 conditions are met; providing procedures for approval  
24 of a dealer to purchase goods or services from a  
25 vendor not designated by the applicant or licensee;  
26 defining the term "goods or services"; providing

27 retroactive applicability; providing for severability;  
 28 providing an effective date.

29  
 30 Be It Enacted by the Legislature of the State of Florida:

31  
 32 Section 1. Subsections (25) and (26) of section 320.64,  
 33 Florida Statutes, are amended, and subsections (39) and (40) are  
 34 added to that section, to read:

35 320.64 Denial, suspension, or revocation of license;  
 36 grounds.—A license of a licensee under s. 320.61 may be denied,  
 37 suspended, or revoked within the entire state or at any specific  
 38 location or locations within the state at which the applicant or  
 39 licensee engages or proposes to engage in business, upon proof  
 40 that the section was violated with sufficient frequency to  
 41 establish a pattern of wrongdoing, and a licensee or applicant  
 42 shall be liable for claims and remedies provided in ss. 320.695  
 43 and 320.697 for any violation of any of the following  
 44 provisions. A licensee is prohibited from committing the  
 45 following acts:

46 (25) The applicant or licensee has undertaken or engaged  
 47 in an audit of warranty, maintenance, and other service-related  
 48 payments or incentive payments, including payments to a motor  
 49 vehicle dealer under any licensee-issued program, policy, or  
 50 other benefit, which were previously ~~have been~~ paid to a motor  
 51 vehicle dealer in violation of this section or has failed to  
 52 comply with any of its obligations under s. 320.696. An

53 applicant or licensee may reasonably and periodically audit a  
 54 motor vehicle dealer to determine the validity of paid claims as  
 55 provided in s. 320.696. Audits of warranty, maintenance, and  
 56 other service-related payments shall be performed by an  
 57 applicant or licensee only during the 12-month ~~1-year~~ period  
 58 immediately following the date the claim was paid. ~~Audits~~ Audit  
 59 of incentive payments shall ~~only~~ be performed only during the  
 60 12-month ~~for an 18-month~~ period immediately following the date  
 61 the incentive was paid. As used in this section, the term  
 62 "incentive" includes any bonus, incentive, or other monetary or  
 63 nonmonetary consideration. After such time periods have elapsed,  
 64 all warranty, maintenance, and other service-related payments  
 65 and incentive payments shall be deemed final and  
 66 incontrovertible for any reason notwithstanding any otherwise  
 67 applicable law, and the motor vehicle dealer shall not be  
 68 subject to any chargeback ~~charge-back~~ or repayment. An applicant  
 69 or licensee may deny a claim or, as a result of a timely  
 70 conducted audit, impose a chargeback ~~charge-back~~ against a motor  
 71 vehicle dealer for warranty, maintenance, or other service-  
 72 related payments or incentive payments only if the applicant or  
 73 licensee can show that the warranty, maintenance, or other  
 74 service-related claim or incentive claim was false or fraudulent  
 75 or that the motor vehicle dealer failed to substantially comply  
 76 with the reasonable written and uniformly applied procedures of  
 77 the applicant or licensee for such repairs or incentives, but  
 78 only for that portion of the claim so shown. Notwithstanding the

79 terms of any franchise agreement, guideline, program, policy, or  
 80 procedure, an applicant or licensee may deny or charge back only  
 81 that portion of a warranty, maintenance, or other service-  
 82 related claim or incentive claim which the applicant or licensee  
 83 has proven to be false or fraudulent or for which the dealer  
 84 failed to substantially comply with the reasonable written and  
 85 uniformly applied procedures of the applicant or licensee for  
 86 such repairs or incentives, as set forth in this subsection. An  
 87 applicant or licensee may not charge back a motor vehicle dealer  
 88 ~~back~~ subsequent to the payment of a warranty, maintenance, or  
 89 service-related claim or incentive claim unless, within 30 days  
 90 after a timely conducted audit, a representative of the  
 91 applicant or licensee first meets in person, by telephone, or by  
 92 video teleconference with an officer or employee of the dealer  
 93 designated by the motor vehicle dealer. At such meeting the  
 94 applicant or licensee must provide a detailed explanation, with  
 95 supporting documentation, as to the basis for each of the claims  
 96 for which the applicant or licensee proposed a chargeback  
 97 ~~charge-back~~ to the dealer and a written statement containing the  
 98 basis upon which the motor vehicle dealer was selected for audit  
 99 or review. Thereafter, the applicant or licensee must provide  
 100 the motor vehicle dealer's representative a reasonable period  
 101 after the meeting within which to respond to the proposed  
 102 chargebacks ~~charge-backs~~, with such period to be commensurate  
 103 with the volume of claims under consideration, but in no case  
 104 less than 45 days after the meeting. The applicant or licensee

105 is prohibited from changing or altering the basis for each of  
 106 the proposed chargebacks ~~charge-backs~~ as presented to the motor  
 107 vehicle dealer's representative following the conclusion of the  
 108 audit unless the applicant or licensee receives new information  
 109 affecting the basis for one or more chargebacks ~~charge-backs~~ and  
 110 that new information is received within 30 days after the  
 111 conclusion of the timely conducted audit. If the applicant or  
 112 licensee claims the existence of new information, the dealer  
 113 must be given the same right to a meeting and right to respond  
 114 as when the chargeback ~~charge-back~~ was originally presented.  
 115 After all internal dispute resolution processes provided through  
 116 the applicant or licensee have been completed, the applicant or  
 117 licensee shall give written notice to the motor vehicle dealer  
 118 of the final amount of its proposed chargeback ~~charge-back~~. If  
 119 the dealer disputes that amount, the dealer may file a protest  
 120 with the department within 30 days after receipt of the notice.  
 121 If a protest is timely filed, the department shall notify the  
 122 applicant or licensee of the filing of the protest, and the  
 123 applicant or licensee may not take any action to recover the  
 124 amount of the proposed chargeback ~~charge-back~~ until the  
 125 department renders a final determination, which is not subject  
 126 to further appeal, that the chargeback ~~charge-back~~ is in  
 127 compliance with the provisions of this section. In any hearing  
 128 pursuant to this subsection, the applicant or licensee has the  
 129 burden of proof that its audit and resulting chargeback ~~charge-~~  
 130 ~~back~~ are in compliance with this subsection.

131 (26) Notwithstanding the terms of any franchise agreement,  
 132 including any licensee's program, policy, or procedure, the  
 133 applicant or licensee has refused to allocate, sell, or deliver  
 134 motor vehicles; charged back or withheld payments or other  
 135 things of value for which the dealer is otherwise eligible under  
 136 a sales promotion, program, or contest; prevented a motor  
 137 vehicle dealer from participating in any promotion, program, or  
 138 contest; or has taken or threatened to take any adverse action  
 139 against a dealer, including chargebacks ~~charge-backs~~, reducing  
 140 vehicle allocations, or terminating or threatening to terminate  
 141 a franchise because the dealer sold or leased a motor vehicle to  
 142 a customer who exported the vehicle to a foreign country or who  
 143 resold the vehicle, unless the licensee proves that the dealer  
 144 knew or reasonably should have known that the customer intended  
 145 to export or resell the motor vehicle. There is a rebuttable  
 146 presumption that the dealer neither knew nor reasonably should  
 147 have known of its customer's intent to export or resell the  
 148 vehicle if the vehicle is titled or registered in any state in  
 149 this country. A licensee may not take any action against a motor  
 150 vehicle dealer, including reducing its allocations or supply of  
 151 motor vehicles to the dealer, or charging back to a dealer any  
 152 ~~for an~~ incentive payment previously paid, unless the licensee  
 153 first meets in person, by telephone, or video conference with an  
 154 officer or other designated employee of the dealer. At such  
 155 meeting, the licensee must provide a detailed explanation, with  
 156 supporting documentation, as to the basis for its claim that the

157 dealer knew or reasonably should have known of the customer's  
 158 intent to export or resell the motor vehicle. Thereafter, the  
 159 motor vehicle dealer shall have a reasonable period,  
 160 commensurate with the number of motor vehicles at issue, but not  
 161 less than 15 days, to respond to the licensee's claims. If,  
 162 following the dealer's response and completion of all internal  
 163 dispute resolution processes provided through the applicant or  
 164 licensee, the dispute remains unresolved, the dealer may file a  
 165 protest with the department within 30 days after receipt of a  
 166 written notice from the licensee that it still intends to take  
 167 adverse action against the dealer with respect to the motor  
 168 vehicles still at issue. If a protest is timely filed, the  
 169 department shall notify the applicant or licensee of the filing  
 170 of the protest, and the applicant or licensee may not take any  
 171 action adverse to the dealer until the department renders a  
 172 final determination, which is not subject to further appeal,  
 173 that the licensee's proposed action is in compliance with the  
 174 provisions of this subsection. In any hearing pursuant to this  
 175 subsection, the applicant or licensee has the burden of proof on  
 176 all issues raised by this subsection. An applicant or licensee  
 177 may not take any adverse action against a motor vehicle dealer  
 178 because the dealer sold or leased a motor vehicle to a customer  
 179 who exported the vehicle to a foreign country or who resold the  
 180 vehicle unless the applicant or licensee provides written  
 181 notification to the motor vehicle dealer of such resale or  
 182 export within 12 months after the date the dealer sold or leased



183 the vehicle to the customer.

184 (39) Notwithstanding any agreement, program, incentive,  
 185 bonus, policy, or rule, an applicant or licensee may not fail to  
 186 make any payment pursuant to any agreement, program, incentive,  
 187 bonus, policy, or rule for any temporary replacement motor  
 188 vehicle loaned, rented, or provided by a motor vehicle dealer to  
 189 or for its service or repair customers, even if the temporary  
 190 replacement motor vehicle has been leased, rented, titled, or  
 191 registered to the motor vehicle dealer's rental or leasing  
 192 division or an entity that is owned or controlled by the motor  
 193 vehicle dealer, provided that the motor vehicle dealer or its  
 194 rental or leasing division or entity complies with the written  
 195 and uniformly enforced vehicle eligibility, use, and reporting  
 196 requirements specified by the applicant or licensee in its  
 197 agreement, program, policy, bonus, incentive, or rule relating  
 198 to loaner vehicles.

199 (40) Notwithstanding the terms of any franchise agreement,  
 200 the applicant or licensee may not require or coerce, or attempt  
 201 to require or coerce, a motor vehicle dealer to purchase goods  
 202 or services from a vendor selected, identified, or designated by  
 203 the applicant or licensee, or one of its parents, subsidiaries,  
 204 divisions, or affiliates, by agreement, standard, policy,  
 205 program, incentive provision, or otherwise, without making  
 206 available to the motor vehicle dealer the option to obtain the  
 207 goods or services of substantially similar design and quality  
 208 from a vendor chosen by the motor vehicle dealer. If the motor

209 vehicle dealer exercises such option, the dealer must provide  
 210 written notice of its desire to use the alternative goods or  
 211 services to the applicant or licensee, along with samples or  
 212 clear descriptions of the alternative goods or services that the  
 213 dealer desires to use. The licensee or applicant shall have the  
 214 opportunity to evaluate the alternative goods or services for up  
 215 to 30 days to determine whether it will provide a written  
 216 approval to the motor vehicle dealer to use said alternative  
 217 goods or services. Approval may not be unreasonably withheld by  
 218 the applicant or licensee. If the motor vehicle dealer does not  
 219 receive a response from the applicant or licensee within 30  
 220 days, approval to use the alternative goods or services is  
 221 deemed granted. If a dealer using alternative goods or services  
 222 complies with this subsection and has received approval from the  
 223 licensee or applicant, the dealer is not ineligible for all  
 224 benefits described in the agreement, standard, policy, program,  
 225 incentive provision, or otherwise solely for having used such  
 226 alternative goods or services. As used in this subsection, the  
 227 term "goods or services" is limited to such goods and services  
 228 used to construct or renovate dealership facilities or furniture  
 229 and fixtures at the dealership facilities. The term does not  
 230 include:

231 (a) Any intellectual property of the applicant or  
 232 licensee, including signage incorporating the applicant's or  
 233 licensee's trademark or copyright, or facility or building  
 234 materials to the extent that the applicant's or licensee's

235 trademark is displayed thereon;

236 (b) Any special tool and training as required by the  
 237 licensee or applicant;

238 (c) Any part to be used in repairs under warranty  
 239 obligations of an applicant or licensee;

240 (d) Any good or service paid for entirely by the applicant  
 241 or licensee; or

242 (e) Any applicant's or licensee's design or architectural  
 243 review service.

244

245 A motor vehicle dealer who can demonstrate that a violation of,  
 246 or failure to comply with, any of the preceding provisions by an  
 247 applicant or licensee will or can adversely and pecuniarily  
 248 affect the complaining dealer, shall be entitled to pursue all  
 249 of the remedies, procedures, and rights of recovery available  
 250 under ss. 320.695 and 320.697.

251 Section 2. This act applies to all franchise agreements  
 252 entered into, renewed, or amended after October 1, 1988, except  
 253 to the extent that such application would impair valid  
 254 contractual agreements in violation of the State Constitution or  
 255 the United States Constitution.

256 Section 3. If any provision of this act or its application  
 257 to any person or circumstance is held invalid, the invalidity  
 258 does not affect other provisions or applications of this act  
 259 which can be given effect without the invalid provision or  
 260 application, and to this end the provisions of this act are

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2016

261 | severable.

262 |       Section 4. This act shall take effect upon becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 331 Compensation of Victims of Wrongful Incarceration

**SPONSOR(S):** Appropriations Committee; DuBose

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 122

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Aziz	White
2) Appropriations Committee	21 Y, 3 N, As CS	McAuliffe	Leznoff
3) Judiciary Committee		Aziz PA	Havlicak RN

### SUMMARY ANALYSIS

In 2008, the Legislature passed the "Victims of Wrongful Incarceration Compensation Act" (Act) to compensate persons determined to be actually innocent of a felony offense they were accused of committing and for which they were wrongfully convicted and imprisoned. The Act provides a process by which persons whose conviction and sentence has been vacated based upon exonerating evidence may petition the court to seek and obtain compensation. In order to apply for compensation, an applicant must not have a prior felony conviction, pled guilty to a felony, or entered a plea of nolo contendere to a felony. In addition, the applicant must not have received a felony conviction while incarcerated or while serving parole or supervised release for the wrongful incarceration.

Because of the provision barring applicants with prior felonies, several wrongfully incarcerated individuals have filed claim bills, which may be granted in the Legislature's discretion. For example, in 2012, William Dillon received a claim bill for his 27 years of wrongful incarceration. Because Dillon had a single felony conviction for possession of a quaalud, he was ineligible for compensation under the Act.

This bill changes the eligibility requirement under the Act to bar only applicants who have any prior violent felony convictions or more than one prior nonviolent felony conviction, or any violent felony convictions or more than one nonviolent felony conviction while wrongfully incarcerated. The Act defines violent felony as a felony listed under s. 775.084(1)(c)1. or s. 948.06(8)(c), F.S. These felonies include violent acts such as: murder, robbery, kidnapping and sexual battery. Thus, an applicant who has only one felony conviction that is not defined as a violent felony would be able to apply for compensation under the Act. However, the applicant still must demonstrate actual innocence before a Division of Administrative Hearings judge if the prosecution objects to the application. The bill also provides that changes made by the bill apply only to persons who are determined to be wrongfully incarcerated after the effective date of this act.

This bill expands the pool of persons who could be determined to be a wrongfully incarcerated person and therefore could increase the number of persons seeking compensation from the state. The number of persons who may qualify as a wrongfully incarcerated person and the amount of funding required to compensate them, cannot be determined (See Fiscal Impact Statement). The bill does not appear to have a fiscal impact on local governments.

The bill is effective October 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Victims of Wrongful Incarceration Compensation Act**

In Florida, 13 people have been exonerated or released from incarceration since 2000 as a result of post-conviction DNA testing.<sup>1</sup> According to the National Registry of Exonerations<sup>2</sup> 57 people have been exonerated in Florida, and according to the Department of Corrections, 53 of those have served time in state prison of which 13 have already been compensated. During the regular session of 2008, the Legislature passed the “Victims of Wrongful Incarceration Compensation Act” (Act) to compensate persons determined to be actually innocent of a felony offense they were accused of committing and for which they were wrongfully convicted and imprisoned.<sup>3</sup>

The Act provides a process by which persons whose conviction and sentence has been vacated based upon exonerating evidence may petition the court to seek and obtain compensation as a “wrongfully incarcerated person”<sup>4</sup> who is “eligible for compensation.”<sup>5</sup>

The Act has a definitions section found at s. 961.02, F.S., and four other primary components:

- The Petition Process: s. 961.03, F.S., provides the process for determining whether a petitioner is a “wrongfully incarcerated person” and is “eligible for compensation.”
- Eligibility: s. 961.04, F.S., specifies criteria that render a petitioner ineligible for compensation.
- Application: s. 961.05, F.S., provides the process by which an eligible person may apply for compensation.
- Compensation: s. 961.06, F.S., provides for the entitlement to compensation and other benefits for an eligible person and directs the Chief Financial Officer to purchase an annuity on behalf of the eligible person.

##### *The Petition Process*

In order to receive compensation under the Act, a person must return to the court where the judgment and sentence were vacated and file a petition seeking status as a “wrongfully incarcerated person.” Section 961.03(1)(a), F.S., requires that a petition must:

- State that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence; and

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<sup>1</sup> Frank Lee Smith, Jerry Townsend, Wilton Dedge, Luis Diaz, Alan Crotzer, Orlando Boquete, Larry Bostic, Chad Heins, Cody Davis, William Dillon, James Bain, Anthony Caravella, and Derrick Williams are the thirteen people released from prison or exonerated in this state based on DNA testing. Florida Innocence Project, [http://floridainnocence.org/content/?page\\_id=34](http://floridainnocence.org/content/?page_id=34) (last visited on February 2, 2016).

<sup>2</sup> The National Registry of Exonerations, A project of the University of Michigan Law School. <https://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View={b8342ae7-6520-4a32-8a06-4b326208baf8}&SortField=State&SortDir=Asc>

<sup>3</sup> Ch. 2008-39, Laws of Fla.

<sup>4</sup> Section 961.02(4), F.S., defines a “wrongfully incarcerated person” as a “person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and, with respect to whom pursuant to the requirements of s. 961.03, F.S., the original sentencing court has issued its order finding that the person neither committed the act nor the offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.”

<sup>5</sup> Section 961.02(5), F.S., defines “eligible for compensation” to mean “a person who meets the definition of ‘wrongfully incarcerated person’ and is not disqualified from seeking compensation under the criteria prescribed in s. 961.04.” The Act does not currently provide a definition of “actual innocence”; instead some provisions of the Act repeat a lengthy description of a concept of actual innocence. See ss. 961.02(4), 961.03(3), and (7), F.S.

- State that the person is not disqualified, under the provisions of s. 961.04, F.S., from seeking compensation under the Act.

A copy of the petition must be provided to the prosecuting authority of the felony for which the petitioner was incarcerated. In response to the petition, the prosecuting authority may either:

- Stipulate to the petitioner's innocence and eligibility for compensation;
- Contest the evidence of actual innocence; or
- Contest the eligibility of the petitioner to compensation.<sup>6</sup>

Without a stipulation from the prosecuting authority of the petitioner's innocence and eligibility, the original sentencing court, based on the pleadings and the supporting documents, must determine whether the petitioner's eligibility for compensation has been established by a preponderance of the evidence. If the court finds the petitioner is not eligible for compensation, it must dismiss the petition.<sup>7</sup>

If the court finds the petitioner is eligible for compensation and the prosecuting authority contests the actual innocence of the petitioner, the court must set forth its findings and transfer the petition to the Division of Administrative Hearings (DOAH) for a hearing before an administrative law judge. The administrative law judge must make factual findings regarding the petitioner's actual innocence and draft a recommended order on the determination of whether the petitioner has established by clear and convincing evidence that he or she is a wrongfully incarcerated person.<sup>8</sup> The administrative law judge must file its findings and recommended order within 45 days of the hearing's adjournment.<sup>9</sup> The original sentencing court must review the findings and recommendation of the administrative law judge and issue its own order declining or adopting the recommended order within 60 days.<sup>10</sup>

If, after review of the administrative law judge's findings and recommendations, the court determines that the person is a wrongfully incarcerated person eligible for compensation, the court must include in its order a certification stating:

- That:
  - The administrative law judge found that the petitioner met his or her burden required under the act by clear and convincing evidence; or
  - The court declines to adopt the findings and recommendation of the administrative law judge that the petitioner did not meet his or her burden and that the court makes its own findings that the petitioner has met his or her burden as required under the act; and
- That the findings and recommendations on which its order is based is supported by competent, substantial evidence.<sup>11</sup>

### *Eligibility*

To be eligible for compensation, a wrongfully incarcerated person must not have a disqualifying felony conviction, which is:

- The person had a prior conviction or pled guilty or nolo contendere to a felony offense in this state, a federal offense that is a felony, or to an offense in another state that would be a felony in this state;
- The person was convicted of, or pled guilty or nolo contendere to, a felony offense while wrongfully incarcerated; or
- While wrongfully incarcerated, the person was serving a concurrent sentence for another felony for which the person was not wrongfully convicted.<sup>12</sup>

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<sup>6</sup> s. 961.03(2)(a) and (b), F.S.

<sup>7</sup> s. 961.03(4)(a), F.S.

<sup>8</sup> s. 961.03(4)(b), F.S.

<sup>9</sup> s. 961.03 (5)(c), F.S.

<sup>10</sup> s. 961.03(5)(d), F.S.

<sup>11</sup> s. 961.03(7), F.S.



## *The Application Process*

A petitioner who is found to be a “wrongfully incarcerated person” under the Act has two years to initiate an application for compensation with the Department of Legal Affairs after the original sentencing court enters its order.<sup>13</sup> Only the petitioner, not his or her estate or personal representative of the estate, may apply for compensation.<sup>14</sup> Section 961.05(4), F.S., lists the content requirements of an application for compensation. In part, it requires that the application include:

- A certified copy of the order vacating the conviction and sentence;
- A certified copy of the original sentencing court's order finding the claimant to be a wrongfully incarcerated person who is eligible for compensation under the Act;
- Certified copies of the original judgment and sentence; and
- Documentation demonstrating the length of the sentence served, including documentation from the Department of Corrections regarding the person's admission into and release from the custody of the Department of Corrections.<sup>15</sup>

## *Compensation*

Under s. 961.06, F.S., a “wrongfully incarcerated person” is entitled to:

- Monetary compensation, at the rate of \$50,000 for each year of wrongful incarceration;
- A waiver of tuition and fees for up to 120 hours of instruction at a public career center, community college, or state university;
- A refund of fines, penalties, and court costs imposed and paid;
- Reasonable attorney's fees and expenses incurred and paid; and
- Immediate expunction, including administrative expunction, of the person's criminal record of the wrongful arrest, conviction, and incarceration.<sup>16</sup>

Total compensation awarded may not exceed \$2 million.<sup>17</sup>

## *Clean Hands Provision*

Since its inception, the Act has been scrutinized for its stringent eligibility requirement of precluding any claimant from applying if they have a felony conviction prior to their wrongful incarceration or a felony conviction while incarcerated. This eligibility requirement is known as “Clean Hands” for requiring the claimant to have clean hands before receiving compensation. For example, a claim bill was passed in 2012 for the wrongful incarceration of William Dillon.<sup>18</sup> Because of a prior felony conviction for possession of a single quaalude, Dillon was barred from seeking compensation under the Act and instead had to come before the Legislature for passage of a claim bill.

Currently, there are 29 states that have a system to compensate wrongfully incarcerated individuals. Out of these states, only nine states have some form of clean hands provision precluding compensation for convictions, including three states that revoke compensation if the person is later convicted of a felony.<sup>19</sup> However, Florida is the only state that bars applicants for a prior felony.

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<sup>12</sup> s. 961.04, F.S.

<sup>13</sup> s. 961.05(1) and (2), F.S.

<sup>14</sup> s. 961.05(2), F.S.

<sup>15</sup> s. 961.05(4), F.S.

<sup>16</sup> s. 961.06(1), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Ch. 2012-229, Laws of Fla.

<sup>19</sup> Alabama, Texas, and Virginia.

## Effect of the Bill

This bill changes the eligibility requirement under the Act to bar only applicants who have any prior violent felony convictions or more than one prior nonviolent felony conviction, or any violent felony convictions or more than one nonviolent felony conviction while wrongfully incarcerated. The Act defines violent felony as a felony listed under s. 775.084(1)(c)1. or s. 948.06(8)(c), F.S. These felonies include

- Kidnapping;
- False imprisonment of a child;
- Luring or enticing a child;
- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- Robbery;
- Carjacking;
- Home invasion robbery;
- Sexual Battery;
- Aggravated battery;
- Armed burglary and other burglary offenses that are first or second degree felonies;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Arson;
- Aggravated assault;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Treason;
- Aggravated stalking;
- Aircraft piracy;
- Abuse of a dead human body;
- Poisoning food or water;
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer;
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer pornography;
- Transmission of child pornography; and
- Selling or buying of minors.<sup>20</sup>

Under the bill, to be eligible for compensation, a wrongfully incarcerated person must not have a disqualifying felony conviction, which is:

- The person had a prior conviction or pled guilty or nolo contendere to any violent felony offense or more than one nonviolent felony in this state, a federal offense that is a violent felony or more than one nonviolent felony, or to an offense in another state that would be a violent felony or more than one nonviolent felony in this state;
- The person was convicted of, or pled guilty or nolo contendere to, a violent felony offense or more than one nonviolent felony while wrongfully incarcerated; or
- While wrongfully incarcerated, the person was serving a concurrent sentence for another felony for which the person was not wrongfully convicted.

Additionally, if a wrongfully incarcerated person is placed on parole or community supervision while serving the sentence resulting from the wrongful incarceration, the wrongfully incarcerated person is

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<sup>20</sup> ss. 775.084(1)(c)(1.), 948.06(8)(c), F.S.

ineligible for compensation if he or she commits a violent felony or more than one nonviolent felony that results in revocation of the parole or community supervision.

Even if a claimant has only one non-violent felony conviction they still have to follow the application procedures under the Act. This includes the opportunity for the State's Attorney to object to the compensation and force the claimant to prove actual innocence to a DOAH judge. The bill also provides that changes made by the bill apply only to persons who are determined to be wrongfully incarcerated after the effective date of this act.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 961.02, F.S., relating to definitions.

Section 2. Amends s. 961.04, F.S., relating to eligibility for compensation for wrongful incarceration.

Section 3. Amends s. 961.06, F.S., relating to compensation for wrongful incarceration.

Section 4. Provides the provisions of the bill apply to those wrongfully incarcerated on or after the effective date of the bill.

Section 5. Reenacts s. 961.03, F.S., relating to determination of status as a wrongfully incarcerated person; determination of eligibility for compensation.

Section 6. Reenacts s. 961.055, F.S., relating to application for compensation for a wrongfully incarcerated person; exemption from application by nolle prosequi.

Section 7. Provides an effective date of October 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

This bill expands the pool of persons who could be determined to be a wrongfully incarcerated person and therefore could increase the number of persons seeking compensation from the state. The number of persons who may qualify as a wrongfully incarcerated person after the effective date of this act and the amount of funding required to compensate them, cannot be determined.

The Office of the State Courts Administrator states "it is unknown how many additional petitions will be filed because of the broadened eligibility criteria. . .the fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to quantifiably establish the bill's impact on judicial workload."<sup>21</sup>

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

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<sup>21</sup> Office of the State Courts Administrator, Agency Analysis of 2016 Senate Bill 122 (Jan. 16, 2016).  
STORAGE NAME: h0331d.JDC.DOCX  
DATE: 2/23/2016

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 16, 2016, the House Appropriations Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides:

- That a person is not eligible for compensation for wrongful incarceration if they were convicted of more than one felony that is not a violent felony; and
- The changes made by the bill apply only to persons who are determined to be wrongfully incarcerated after the effective date of this act.

This analysis is drafted to the committee substitute as passed by the House Appropriations Committee.

1 A bill to be entitled

2 An act relating to compensation of victims of wrongful  
 3 incarceration; reordering and amending s. 961.02,  
 4 F.S.; defining the term "violent felony"; amending s.  
 5 961.04, F.S.; revising the circumstances under which a  
 6 person is disqualified from receiving compensation  
 7 under the Victims of Wrongful Incarceration  
 8 Compensation Act; amending s. 961.06, F.S.; providing  
 9 that a wrongfully incarcerated person who commits a  
 10 violent felony, rather than a felony law violation,  
 11 which results in revocation of parole or community  
 12 supervision is ineligible for compensation; providing  
 13 applicability; reenacting s. 961.03(1)(a), (2), (3),  
 14 and (4), F.S., relating to determination of  
 15 eligibility for compensation, to incorporate the  
 16 amendments made by the act to s. 961.04, F.S., in  
 17 references thereto; reenacting s. 961.055(1), F.S.,  
 18 relating to application for compensation for a  
 19 wrongfully incarcerated person and exemption from  
 20 application by nolle prosequi, to incorporate the  
 21 amendments made by the act to s. 961.06, F.S., in  
 22 references thereto; providing an effective date.

23  
 24 Be It Enacted by the Legislature of the State of Florida:

25  
 26 Section 1. Section 961.02, Florida Statutes, is reordered

27 and amended to read:

28 961.02 Definitions.—As used in ss. 961.01-961.07, the  
29 term:

30 (1) "Act" means the Victims of Wrongful Incarceration  
31 Compensation Act.

32 (2) "Department" means the Department of Legal Affairs.

33 (3) "Division" means the Division of Administrative  
34 Hearings.

35 ~~(4)~~(5) "Eligible for compensation" means that a person  
36 meets the definition of the term "wrongfully incarcerated  
37 person" and is not disqualified from seeking compensation under  
38 the criteria prescribed in s. 961.04.

39 ~~(5)~~(6) "Entitled to compensation" means that a person  
40 meets the definition of the term "eligible for compensation" and  
41 satisfies the application requirements prescribed in s. 961.05,  
42 and may receive compensation pursuant to s. 961.06.

43 (6) "Violent felony" means a felony listed in s.  
44 775.084(1)(c)1. or s. 948.06(8)(c).

45 ~~(7)~~(4) "Wrongfully incarcerated person" means a person  
46 whose felony conviction and sentence have been vacated by a  
47 court of competent jurisdiction and who is the subject of an  
48 order issued by the original sentencing court pursuant to s.  
49 961.03, with respect to whom pursuant to the requirements of s.  
50 961.03, the original sentencing court has issued its order  
51 finding that the person did not commit ~~neither committed~~ the act  
52 or ~~nor~~ the offense that served as the basis for the conviction

53 and incarceration and that the person did not aid, abet, or act  
 54 as an accomplice or accessory to a person who committed the act  
 55 or offense.

56 Section 2. Section 961.04, Florida Statutes, is amended to  
 57 read:

58 961.04 Eligibility for compensation for wrongful  
 59 incarceration.—A wrongfully incarcerated person is not eligible  
 60 for compensation under the act if:

61 (1) Before the person's wrongful conviction and  
 62 incarceration, the person was convicted of, or pled guilty or  
 63 nolo contendere to, regardless of adjudication, any violent  
 64 felony ~~offense~~, or a crime committed in another jurisdiction the  
 65 elements of which would constitute a violent felony in this  
 66 state, or a crime committed against the United States which is  
 67 designated a violent felony, excluding any delinquency  
 68 disposition;

69 (2) Before the person's wrongful conviction and  
 70 incarceration, the person was convicted of, or pled guilty or  
 71 nolo contendere to, regardless of adjudication, more than one  
 72 felony that is not a violent felony, or more than one crime  
 73 committed in another jurisdiction the elements of which would  
 74 constitute a felony in this state, or more than one crime  
 75 committed against the United States which is designated a  
 76 felony, excluding any delinquency disposition;

77 (3)~~(2)~~ During the person's wrongful incarceration, the  
 78 person was convicted of, or pled guilty or nolo contendere to,

79 regardless of adjudication, any violent felony ~~offense~~; ~~or~~  
 80 (4) During the person's wrongful incarceration, the person  
 81 was convicted of, or pled guilty or nolo contendere to,  
 82 regardless of adjudication, more than one felony that is not a  
 83 violent felony; or

84 ~~(5)(3)~~ During the person's wrongful incarceration, the  
 85 person was also serving a concurrent sentence for another felony  
 86 for which the person was not wrongfully convicted.

87 Section 3. Subsection (2) of section 961.06, Florida  
 88 Statutes, is amended to read:

89 961.06 Compensation for wrongful incarceration.—

90 (2) In calculating monetary compensation under paragraph  
 91 (1)(a), a wrongfully incarcerated person who is placed on parole  
 92 or community supervision while serving the sentence resulting  
 93 from the wrongful conviction and who commits one violation that  
 94 is anything less than a violent felony ~~law violation~~ that  
 95 results in revocation of the parole or community supervision is  
 96 eligible for compensation for the total number of years  
 97 incarcerated. A wrongfully incarcerated person who commits one  
 98 violent a felony ~~law violation~~ that results in revocation of the  
 99 parole or community supervision is ineligible for any  
 100 compensation under subsection (1).

101 Section 4. The changes made by this act to ss. 961.02,  
 102 961.04, and 961.06, Florida Statutes, apply only to persons who  
 103 are determined to be wrongfully incarcerated on or after the  
 104 effective date of this act.



105 Section 5. For the purpose of incorporating the amendments  
 106 made by this act to section 961.04, Florida Statutes, in  
 107 references thereto, paragraph (a) of subsection (1) and  
 108 subsections (2), (3), and (4) of section 961.03, Florida  
 109 Statutes, are reenacted to read:

110 961.03 Determination of status as a wrongfully  
 111 incarcerated person; determination of eligibility for  
 112 compensation.—

113 (1)(a) In order to meet the definition of a "wrongfully  
 114 incarcerated person" and "eligible for compensation," upon entry  
 115 of an order, based upon exonerating evidence, vacating a  
 116 conviction and sentence, a person must set forth the claim of  
 117 wrongful incarceration under oath and with particularity by  
 118 filing a petition with the original sentencing court, with a  
 119 copy of the petition and proper notice to the prosecuting  
 120 authority in the underlying felony for which the person was  
 121 incarcerated. At a minimum, the petition must:

122 1. State that verifiable and substantial evidence of  
 123 actual innocence exists and state with particularity the nature  
 124 and significance of the verifiable and substantial evidence of  
 125 actual innocence; and

126 2. State that the person is not disqualified, under the  
 127 provisions of s. 961.04, from seeking compensation under this  
 128 act.

129 (2) The prosecuting authority must respond to the petition  
 130 within 30 days. The prosecuting authority may respond:

131 (a) By certifying to the court that, based upon the  
 132 petition and verifiable and substantial evidence of actual  
 133 innocence, no further criminal proceedings in the case at bar  
 134 can or will be initiated by the prosecuting authority, that no  
 135 questions of fact remain as to the petitioner's wrongful  
 136 incarceration, and that the petitioner is not ineligible from  
 137 seeking compensation under the provisions of s. 961.04; or

138 (b) By contesting the nature, significance, or effect of  
 139 the evidence of actual innocence, the facts related to the  
 140 petitioner's alleged wrongful incarceration, or whether the  
 141 petitioner is ineligible from seeking compensation under the  
 142 provisions of s. 961.04.

143 (3) If the prosecuting authority responds as set forth in  
 144 paragraph (2)(a), the original sentencing court, based upon the  
 145 evidence of actual innocence, the prosecuting authority's  
 146 certification, and upon the court's finding that the petitioner  
 147 has presented clear and convincing evidence that the petitioner  
 148 committed neither the act nor the offense that served as the  
 149 basis for the conviction and incarceration, and that the  
 150 petitioner did not aid, abet, or act as an accomplice to a  
 151 person who committed the act or offense, shall certify to the  
 152 department that the petitioner is a wrongfully incarcerated  
 153 person as defined by this act. Based upon the prosecuting  
 154 authority's certification, the court shall also certify to the  
 155 department that the petitioner is eligible for compensation  
 156 under the provisions of s. 961.04.

157 (4)(a) If the prosecuting authority responds as set forth  
 158 in paragraph (2)(b), the original sentencing court shall make a  
 159 determination from the pleadings and supporting documentation  
 160 whether, by a preponderance of the evidence, the petitioner is  
 161 ineligible for compensation under the provisions of s. 961.04,  
 162 regardless of his or her claim of wrongful incarceration. If the  
 163 court finds the petitioner ineligible under the provisions of s.  
 164 961.04, it shall dismiss the petition.

165 (b) If the prosecuting authority responds as set forth in  
 166 paragraph (2)(b), and the court determines that the petitioner  
 167 is eligible under the provisions of s. 961.04, but the  
 168 prosecuting authority contests the nature, significance or  
 169 effect of the evidence of actual innocence, or the facts related  
 170 to the petitioner's alleged wrongful incarceration, the court  
 171 shall set forth its findings and transfer the petition by  
 172 electronic means through the division's website to the division  
 173 for findings of fact and a recommended determination of whether  
 174 the petitioner has established that he or she is a wrongfully  
 175 incarcerated person who is eligible for compensation under this  
 176 act.

177 Section 6. For the purpose of incorporating the amendments  
 178 made by this act to section 961.06, Florida Statutes, in  
 179 references thereto, subsection (1) of section 961.055, Florida  
 180 Statutes, is reenacted to read:

181 961.055 Application for compensation for a wrongfully  
 182 incarcerated person; exemption from application by nolle

183 | prosecu.-

184 |       (1) A person alleged to be a wrongfully incarcerated  
 185 | person who was convicted and sentenced to death on or before  
 186 | December 31, 1979, is exempt from the application provisions of  
 187 | ss. 961.03, 961.04, and 961.05 in the determination of wrongful  
 188 | incarceration and eligibility to receive compensation pursuant  
 189 | to s. 961.06 if:

190 |       (a) The Governor issues an executive order appointing a  
 191 | special prosecutor to review the defendant's conviction; and

192 |       (b) The special prosecutor thereafter enters a nolle  
 193 | prosequi for the charges for which the defendant was convicted  
 194 | and sentenced to death.

195 |       Section 7. This act shall take effect October 1, 2016.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 685 Victim Assistance  
**SPONSOR(S):** Criminal Justice Subcommittee; Slosberg  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 360

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Keegan	White
2) Justice Appropriations Subcommittee	11 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee		Keegan <i>OK</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Reports frequently surface about people using pawnbrokers to sell stolen jewelry and other goods.

A "pawnbroker" is a person who is engaged in the business of making pawns; who makes a public display using the term "pawn," "pawnbroker," or "pawnshop" or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.

Florida law currently provides for notifying victims regarding a variety of matters that affect them, such as when hearings in the underlying criminal case are scheduled or when a defendant gets released. Such victim notification requirements are not currently required for any entity to notify a victim that his or her property has been located in the possession of a pawnbroker.

The bill amends s. 960.001(1)(h), F.S., to require a law enforcement agency to promptly make reasonable efforts to notify the victim if the victim's property is determined to be in the possession of a pawnbroker. The agency is also required to give the victim the following information:

- The name and location of the pawnshop;
- Instructions outlining the process for an action of replevin; and
- Procedures specified in s. 539.001(15), F.S., for obtaining the property.

The bill may have a minimal fiscal impact on state and local government expenditures due to these new reporting requirements on law enforcement.

The bill is effective July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### Pawnbrokers

Reports frequently surface about people using pawnbrokers to sell stolen jewelry and other goods.<sup>1</sup> A “pawnbroker” is a person engaged in the business of making pawns; who makes a public display using the term “pawn,”<sup>2</sup> “pawnbroker,” or “pawnshop” or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.<sup>3</sup>

Chapter 539, F.S., governs pawnbrokers and provides a specific procedure for a person to make claims against goods held by pawnbrokers when the ownership or rightful possession of the goods is contested.<sup>4</sup> The procedure provides:

- The claimant must notify the pawnbroker by certified mail or in person of the claim to the goods and must be accompanied by the law enforcement report concerning the misappropriation of the goods.<sup>5</sup>
- If the claim isn’t settled within 10 days of the notice, the claimant may file a lawsuit, and must serve the pawnbroker with a copy of the petition.<sup>6</sup>
- If the court finds that the claimant failed to comply with the above procedures,<sup>7</sup> or finds against the claimant on any basis, the claimant is liable for the defendant’s costs, including attorney fees.<sup>8</sup>

##### Victim Notification Statutes

Florida law currently provides for notifying victims regarding a variety of matters that affect them. Section 944.605(1), F.S., requires the state attorney or Department of Corrections to notify victims within six months before the release of an inmate from the Department of Corrections, a private correctional facility, a release program, or parole. Additionally, s. 394.926(1), F.S., requires the Department of Children and Families to notify the victim as soon as practicable when a person is released from involuntary civil commitment under Chapter 394, F.S.

Section 960.001, F.S., places a number of requirements on various government entities to ensure that victims are treated fairly and notified of important matters. For example:

- Victims are generally provided the right to be informed, be present,<sup>9</sup> and be heard when relevant, at all crucial stages of criminal and juvenile proceedings.<sup>10</sup>

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<sup>1</sup> See Highlands Today Staff, *Woman Stole \$20,000 in Jewelry, Deputies Say*, HIGHLANDS TODAY (Dec. 15, 2015), <http://www.highlandstoday.com/hi/local-news/woman-stole-20000-in-jewelry-deputies-say-20151215/> (last visited Jan. 13, 2016); Staff, *ECSO: Pawnbroker Dealt in Stolen Goods*, PENSACOLA NEWS JOURNAL (Aug. 11, 2015), <http://www.pnj.com/story/news/crime/2015/08/11/ecso-pawnbroker-dealt-stolen-goods/31453783/> (last visited Jan 13, 2016); Deanna Bettineschi, *Over 200 Stolen Items Recovered in Pawn Shop Raid*, ACTION NEWS JAX (July 17, 2015), <http://www.actionnewsjax.com/news/news/local/over-200-stolen-items-recovered-pawn-shop-raid/nm2jh/> (last visited Jan. 13, 2015).

<sup>2</sup> “‘Pawn’ means any advancement of funds on the security of pledged goods on condition that the pledged goods are left in the possession of the pawnbroker for the duration of the pawn and may be redeemed by the pledgor on the terms and conditions contained in this section.” s. 539.001(2)(h), F.S.

<sup>3</sup> s. 539.001(2)(i), F.S.

<sup>4</sup> s. 539.001(15), F.S.

<sup>5</sup> s. 539.001(15)(a), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> The procedures that must be complied with are described in detail in s. 539.001(15)(a), F.S.

<sup>8</sup> s. 539.001(15)(c), F.S.

<sup>9</sup> Victims who are incarcerated are provided the right to be informed and to submit written statements. s. 960.001(1)(a)6., F.S.

<sup>10</sup> s. 960.001(1)(a)5., F.S.

- In cases involving specified offenses,<sup>11</sup> the arresting law enforcement officer or victim assistance personnel must request the victim or the victim's next of kin to complete a victim notification card with various contact information.<sup>12</sup> The appropriate party<sup>13</sup> shall make a reasonable attempt to notify the alleged victim or next of kin of the alleged victim within four hours following the defendant's release.<sup>14</sup>
- A victim or witness must be provided information explaining the steps available to law enforcement officers and state attorneys to shield the victim or witness from intimidation.<sup>15</sup>
- Law enforcement agencies and the state attorney shall promptly return the victim's property when there is no compelling law enforcement reason for retaining it.<sup>16</sup>

While Florida requires victim notification for a variety of circumstances, it is not currently required for any entity to notify a victim that his or her property has been located in the possession of a pawnbroker.

### **Effect of the Bill**

The bill amends s. 960.001(1)(h), F.S., to require a law enforcement agency to promptly make reasonable efforts to notify a victim if the victim's property is determined to be in the possession of a pawnbroker. The agency is also required to give the victim the following information:

- The name and location of the pawnshop;
- Instructions outlining the process for an action of replevin; and
- Procedures specified in s. 539.001(15), F.S., for obtaining the property.

The bill is effective July 1, 2016.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 960.001, F.S., relating to guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.

Section 2. Provides an effective date of July 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The bill may have a minimal fiscal impact on state government expenditures due to these new reporting requirements on law enforcement.

<sup>11</sup> This requirement applies in the case of a homicide, pursuant to ch. 782, F.S.; a sexual offense, pursuant to ch. 794, F.S.; an attempted murder or sexual offense, pursuant to ch. 777, F.S.; stalking, pursuant to s. 784.048, F.S.; or domestic violence, pursuant to s. 25.385, F.S.

<sup>12</sup> s. 960.001(1)(b)1., F.S.

<sup>13</sup> The chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility is the appropriate party to provide notice under this subparagraph. s. 960.001(1)(b)3., F.S.

<sup>14</sup> s. 960.001(1)(b)3., F.S.

<sup>15</sup> s. 960.001(1)(c), F.S.

<sup>16</sup> s. 960.001(1)(h), F.S.



**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill may have a minimal fiscal impact on local government expenditures due to these new reporting requirements on law enforcement.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 19, 2016, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the requirement on law enforcement to “immediately notify” a victim and replaces it with “promptly make reasonable efforts to notify” a victim;
- Adds a statutory reference to the definition of “pawnbroker;” and
- Creates consistent terms throughout the bill.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled

2 An act relating to victim assistance; amending s.  
 3 960.001, F.S.; requiring a law enforcement agency to  
 4 promptly make reasonable efforts to notify a victim if  
 5 his or her property is determined to be in the  
 6 possession of a pawnbroker; requiring the law  
 7 enforcement agency to provide specified information to  
 8 the victim; providing an effective date.

9  
 10 Be It Enacted by the Legislature of the State of Florida:

11  
 12 Section 1. Paragraph (h) of subsection (1) of section  
 13 960.001, Florida Statutes, is amended to read:

14 960.001 Guidelines for fair treatment of victims and  
 15 witnesses in the criminal justice and juvenile justice systems.-

16 (1) The Department of Legal Affairs, the state attorneys,  
 17 the Department of Corrections, the Department of Juvenile  
 18 Justice, the Florida Commission on Offender Review, the State  
 19 Courts Administrator and circuit court administrators, the  
 20 Department of Law Enforcement, and every sheriff's department,  
 21 police department, or other law enforcement agency as defined in  
 22 s. 943.10(4) shall develop and implement guidelines for the use  
 23 of their respective agencies, which guidelines are consistent  
 24 with the purposes of this act and s. 16(b), Art. I of the State  
 25 Constitution and are designed to implement s. 16(b), Art. I of  
 26 the State Constitution and to achieve the following objectives:

27 (h) Return of property to victim.-

28 1. A law enforcement agency ~~agencies~~ and the state  
 29 attorney shall promptly return a victim's property held for  
 30 evidentiary purposes unless there is a compelling law  
 31 enforcement reason for retaining it. The trial or juvenile court  
 32 exercising jurisdiction over the criminal or juvenile proceeding  
 33 may enter appropriate orders to implement this subsection,  
 34 including allowing photographs of the victim's property to be  
 35 used as evidence at the criminal trial or the juvenile  
 36 proceeding in place of the victim's property if no related  
 37 substantial evidentiary issue ~~related thereto~~ is in dispute.



38 2. A law enforcement agency shall promptly make reasonable  
 39 efforts to notify the victim if the victim's property is  
 40 determined to be in the possession of a pawnbroker, as defined  
 41 in s. 539.001(2). The law enforcement agency shall give the  
 42 victim the name and location of the pawnshop and instructions  
 43 outlining the process for a replevin action and the procedures  
 44 specified in s. 539.001(15) for obtaining possession of the  
 45 property.

46 Section 2. This act shall take effect July 1, 2016.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 889 Contraband Forfeiture  
**SPONSOR(S):** Criminal Justice Subcommittee; Metz and Caldwell  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 220

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 2 N, As CS	Keegan	White
2) Appropriations Committee	22 Y, 3 N	Smith	Leznoff
3) Judiciary Committee		Keegan 	Havlicak 

### SUMMARY ANALYSIS

Sections 932.701-932.706, F.S., comprise the Florida Contraband Forfeiture Act (hereafter the "Act"), which provides for the seizure and civil forfeiture of property related to criminal and noncriminal violations of law. The forfeiture procedure advances primarily by a two-step process: the seizure or other initial restraint on the property is applied; and the forfeiture itself occurs once it is determined in court that the property can be legally forfeited.

The bill amends the requirements that apply to seizure, the review of seizures, and forfeiture procedures in a number of ways, as follows:

- Property seizure is unauthorized until the arrest of the property owner for a criminal violation that renders the property a contraband article.
- If at least 90 days has elapsed since the property owner's arrest and the seizing agency has failed to locate the owner, the property becomes contraband and may be forfeited.
- The court shall order the seized property forfeited to the seizing agency upon clear and convincing evidence that:
  - The property has been used in violation of a criminal law that renders the property a contraband article;
  - The claimant is the owner of the property; and
  - The owner was prosecuted for the criminal violation that formed the basis for the forfeiture proceeding, and the case has been discharged by any of the enumerated means.
- If the court finds that a perfected security interest applies to the property or the criminal case that formed the basis for the forfeiture proceeding was discharged by acquittal, dismissal, or nolle prosequi, the seizing agency shall return the property to the owner within five days.
- Specified parties in seizing agencies must review forfeiture settlements, perform annual seizure reviews, and review seizures for legal sufficiency. Agencies must address deficiencies raised by a review and create written policies promoting releasing property.
- Law enforcement officer's employment and compensation may not depend on seizure quotas.
- Specified law enforcement officers must receive training on seizure and forfeiture.
- The percentage of proceeds that must be donated to specified causes increases from 15 percent to 25 percent for qualifying agencies that acquire at least \$15,000 through the Act during a fiscal year.
- Any law enforcement agency that does not comply with the reporting requirements is subject to a civil fine up to \$5,000.

The bill would have an indeterminate fiscal impact to state and local revenue.

The bill would have an indeterminate fiscal impact to local expenditures.

This bill would have an insignificant fiscal impact to state expenditures.

The bill is effective July 1, 2016.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0889d.JDC.DOCX

DATE: 2/23/2016

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **The Florida Contraband Forfeiture Act**

Sections 932.701-932.706, F.S., comprise the Florida Contraband Forfeiture Act (hereafter the "Act"), which provides for the seizure and civil forfeiture of property related to criminal and non-criminal violations of law. Contraband and other property may be seized when utilized during or for the purpose of violating the Act. Property constituting a "contraband article" includes:

- A controlled substance as defined in ch. 893, F.S., or a substance, device, paraphernalia, or currency or other means of exchange that was used, attempted, or intended to be used in violation of ch. 893, F.S.;<sup>1</sup>
- Gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, attempted, or intended to be used in violation of Florida gambling laws;
- Equipment, liquid or solid, which was used, attempted, or intended to be used, in violation of Florida beverage or tobacco laws;
- Motor fuel upon which the motor fuel tax has not been paid;
- Personal property that was used or attempted to be used as an instrumentality in, or to aid or abet the commission of, any felony, or which is acquired by proceeds obtained from a violation of the Act;
- Real property that was used or attempted to be used as an instrumentality in, or to aid or abet the commission of, any felony, or which is acquired by proceeds from a violation of the Act;
- Any personal property in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c), F.S.;
- A motor vehicle offered for sale in violation of s. 320.28, F.S.;
- A motor vehicle used in the course of committing a violation of s. 322.34(9)(a), F.S.;
- Photographs, films, or other recorded images, recorded in violation of s. 810.145, F.S., and possessed for amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person;
- Real property which is acquired by the proceeds of Medicaid fraud under ss. 409.920, F.S., or 409.9201, F.S.;
- Personal property in the possession of, or belonging to, any person which is acquired by the proceeds of Medicaid fraud under ss. 409.920, F.S., or 409.9201, F.S.; and
- Personal property that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person's third or subsequent violation of s. 509.144, F.S.<sup>2</sup>

Under the Act, any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the Act or in, upon, or by the means of which a violation of the Act has or is taking place, may be seized.<sup>3</sup> The following criminal and noncriminal acts are specifically prohibited under the Act:

- To transport, carry, or convey any contraband article in, upon, or by means of any vessel, motor vehicle, or aircraft.
- To conceal or possess any contraband article.
- To use any vessel, motor vehicle, aircraft, other personal property, or real property to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article.

<sup>1</sup> The totality of the facts presented by the State must clearly establish probable cause to believe that a nexus exists between the article seized and the narcotics activity. s. 932.701(2)(a)1., F.S.

<sup>2</sup> s. 932.701(2)(a), F.S.

<sup>3</sup> s. 932.703(1), F.S.

- To conceal, or possess, or use any contraband article as an instrumentality in the commission of or in aiding or abetting in the commission of any felony or violation of the Florida Contraband Forfeiture Act.
- To acquire real or personal property by the use of proceeds obtained in violation of the Florida Contraband Forfeiture Act.<sup>4</sup>

The forfeiture procedure advances primarily by a two-step process: the seizure or other initial restraint on the property is applied; and the forfeiture itself occurs once it is determined in court that the property can be legally forfeited.<sup>5</sup>

### Seizure

As mentioned above, the property specified in the Act may be seized and forfeited when the property has been used in violation of the Act, or in, upon, or by means of which a violation of the Act has or is taking place.<sup>6</sup> Personal property may be seized when the violation occurs or after the violation, if the person entitled to be notified<sup>7</sup> is notified at the time of the seizure or by certified mail.<sup>8</sup> Real property can only be seized by the process of *lis pendens*<sup>9</sup> after a violation of the Act has occurred, and prior to when the person entitled to notice has been given the opportunity to attend a preseizure adversarial hearing<sup>10</sup> to determine the validity of the seizure.<sup>11</sup> As soon as a seizure takes place, all rights to, interest in, and title to contraband articles used in violation of the Act shall immediately vest<sup>12</sup> in the law enforcement agency that performed the seizure.<sup>13</sup>

Adversarial preliminary hearings are conducted before or after a seizure to determine whether there is probable cause to believe that the property was used, is being used, was attempted to be used, or was intended to be used in violation of the Act.<sup>14</sup> If the court determines that probable cause is established, the court shall authorize the seizure or continued seizure of the subject contraband.<sup>15</sup>

### Forfeiture Proceedings

The seizing agency must promptly proceed<sup>16</sup> against the property by filing a complaint<sup>17</sup> in the circuit court in the jurisdiction where the seizure or the offense occurred.<sup>18</sup> Forfeiture proceedings must be decided by a jury trial unless the claimant waives that right.<sup>19</sup> Unlike the probable cause standard used in adversarial preliminary hearings, property may not be forfeited unless the seizing agency proves by a preponderance of the evidence<sup>20</sup> that the owner either knew, or should have known that the property

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<sup>4</sup> s. 932.702, F.S.

<sup>5</sup> *Dept. of Law Enforcement v. Real Property*, 588 So. 2d 957 (Fla. 1991).

<sup>6</sup> s. 932.703(1), F.S.

<sup>7</sup> A person entitled to notice includes any owner, entity, bona fide lienholder, or person in possession of the property subject to forfeiture when seized, who is known to the seizing agency after a diligent search and inquiry. s. 932.701(2)(e), F.S.

<sup>8</sup> s. 932.703(2)(a), F.S.

<sup>9</sup> *Lis pendens* is Latin for "a suit pending." In modern usage it means a written notice that a lawsuit has been filed to decide the title to, or property interest in, real property. THE FREE DICTIONARY, *Lis Pendens*, <http://legal-dictionary.thefreedictionary.com/lis+pendens> (last visited Jan. 21, 2016).

<sup>10</sup> Preseizure adversarial hearings are provided under s. 932.703(2)(c) and (d), F.S., discussed in further detail under the Forfeiture section, herein.

<sup>11</sup> s. 932.703(2)(b), F.S.

<sup>12</sup> "Vested" means "[a]ccrued; fixed; settled; absolute; having the character or giving the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. THE LAW DICTIONARY, *Vested*, <http://thelawdictionary.org/vested/> (last visited Jan. 11, 2016).

<sup>13</sup> s. 932.703(c), F.S.

<sup>14</sup> s. 932.703(2)(c), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> s. 932.701(2)(c), F.S.

<sup>17</sup> A "complaint" is a petition for forfeiture filed in the civil division of the circuit court by the seizing agency requesting the court to issue a judgment of forfeiture. s. 932.701(2)(d), F.S.

<sup>18</sup> s. 932.704(4), F.S.

<sup>19</sup> s. 932.704(3), F.S.; *Dept. of Law Enforcement v. Real Property*, 588 So. 2d 967.

<sup>20</sup> "Preponderance of the evidence" is a legal standard that means the evidence presented in court is more convincing of a point or position than other evidence that is presented to the contrary. THE LAW DICTIONARY, *Preponderance of Evidence*, <http://thelawdictionary.org/preponderance-of-evidence/> (last visited Jan. 11, 2016).

was being used or was likely to be used for criminal activity.<sup>21</sup> Upon clear and convincing evidence that the contraband article was being used in violation of the Act, the court shall order the seized property forfeited to the seizing agency.<sup>22</sup> Once this occurs, the right, title, and interest in and to such property shall be perfected in the seizing agency, subject only to the rights of bona fide lienholders.<sup>23</sup>

#### Use and Disposition of Forfeited Assets

Once a seizing agency has been awarded a final judgment granting forfeiture of property, the agency may do any of the following:

- Retain the property for agency use;
- Sell the property at public auction or by sealed bid to the highest bidder, except for real property, which must be sold in a commercially reasonable manner; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.<sup>24</sup>

When the forfeited property has a lien attached to it that is preserved by the court,<sup>25</sup> the agency must either sell the property and apply the proceeds toward satisfying the lien, or satisfy the lien before disposing of the property in one of the ways described above.<sup>26</sup>

Should the seizing agency choose to sell forfeited property, the proceeds may not be used to meet normal operating expenses of the agency.<sup>27</sup> Rather, the proceeds must be distributed with the following priority:

- Satisfaction of any liens preserved by the court during forfeiture proceedings.
- Payment of the cost incurred to the seizing agency for storage, maintenance, security and forfeiture of the property.
- Payment of the court costs incurred from the forfeiture proceeding.
- For the 2015-2016 fiscal year only, the funds in a special law enforcement trust fund established by a municipality may be used to reimburse the general fund of the municipality for advances from the general fund to the special law enforcement trust fund prior to October 1, 2001.<sup>28</sup>

When the seizing agency is a county or municipal agency, the remaining proceeds from a sale of forfeited goods shall be deposited into a special law enforcement trust fund that may be used only for specific expenses.<sup>29</sup> The funds may be expended in accordance with the following requirements:

- The funds may only be used for school resource officer, crime prevention, safe neighborhood programs, drug abuse education, drug prevention programs, or other approved law enforcement purposes.<sup>30</sup>
- The funds may not be used to meet normal operating needs of the law enforcement agency.<sup>31</sup>
- Any local law enforcement agency that acquires at least \$15,000 through the Act within one fiscal year must donate at least 15 percent of the proceeds for the support of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer programs.<sup>32</sup>

#### **Effect of the Bill**

The bill restricts the methods by which a seizing agency may seize and forfeit property.

- A seizure cannot occur until or after the arrest of the owner of the property for a violation of a criminal law that renders the property a contraband article.

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<sup>21</sup> s. 932.703(6)(a), F.S.

<sup>22</sup> s. 932.704(8), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> s. 932.7055, F.S.

<sup>25</sup> s. 932.703(6)(b), F.S.

<sup>26</sup> s. 932.7055(3)(a) and (b), F.S.

<sup>27</sup> s. 932.7055(5)(a), F.S.

<sup>28</sup> s. 932.7055(4), F.S.

<sup>29</sup> s. 932.7055(5)(a), F.S.

<sup>30</sup> s. 932.7055(5)(c)1., F.S.

<sup>31</sup> s. 932.7055(5)(c)2., F.S.

<sup>32</sup> s. 932.7055(5)(c)3., F.S.



- If at least 90 days has elapsed since the arrest of the owner of the property, and the seizing agency has failed to locate the owner of the property after a diligent search, the property may be deemed contraband and forfeited.
- The court shall order the seized property forfeited only upon clear and convincing evidence that:
  - The property has been used in violation of a criminal law that renders the property a contraband article;
  - The claimant is the owner of the property; and
  - The owner was prosecuted for the criminal violation that formed the basis for the forfeiture proceeding, and has been placed into a pretrial intervention program, a diversion program, a confidential informants program, entered a plea of guilty or nolo contendere, or has been found guilty at trial, regardless of adjudication of guilt.
- If the court determines that a perfected security interest applies to the property or the criminal case that formed the basis for the forfeiture proceeding was discharged by acquittal, dismissal, or nolle prosequi, the seizing agency shall return the property to the owner within five days.

The bill amends the reporting and review requirements that apply to property seizure and forfeiture, as follows:

- The head of the seizing agency or a subordinate must review all forfeiture settlements.
- Seizing agencies must review the seizures annually, at a minimum.
- If a review reveals deficiencies, the seizing agency must take prompt action to comply with the Act.
- The employment, salary, promotion, or other compensation of a law enforcement officer may not depend on seizure quotas.
- A supervisor must promptly review the probable cause supporting a seizure. The legal counsel for the seizing agency must be notified of all seizures as soon as possible and must review the seizure for legal sufficiency.
- Seizing agencies shall adopt and implement written policies and procedures promoting the prompt release of seized property in specified circumstances and review each claim of interest in seized property.
- The settlement of any forfeiture action must be consistent with the Act and the seizing agency's policy.
- Law enforcement officers that perform property seizures must receive training and continuing education as required by the Act, and each seizing agency must retain records of compliance.

The bill increases the percentage of proceeds that must be donated from 15 percent to 25 percent for local law enforcement agencies that acquire at least \$15,000 through the Act within one fiscal year.

The bill requires law enforcement agencies to submit reports to the Florida Department of Law Enforcement (FDLE) as follows:

- All law enforcement agencies must submit annual reports to FDLE regarding whether the agency has seized or forfeited property under the Act.
- All law enforcement agencies that received or expended forfeited property or proceeds of forfeited property must submit an annual report by October 10 documenting the receipts and expenditures.
- The report must specify the type, approximate value, court case number, type of offense, disposition of property received, and amount of any proceeds received or expended.

Any law enforcement agency that does not comply with the reporting requirements is subject to a civil fine up to \$5,000. The fine will not apply to agencies that substantially comply with the requirements within 60 days of receipt of the notice of noncompliance from FDLE.

The bill requires FDLE to submit an annual report to the Office of Program Policy Analysis and Government Accountability (OPPAGA) compiling the data in the annual reports submitted by the law enforcement agencies.

The bill corrects statutory references and reenacts a section of statute to reflect the changes made by the bill.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 932.701, F.S., relating to short title; definitions.

Section 2. Amends s. 932.703, F.S., relating to forfeiture of contraband article; exceptions.

Section 3. Amends s. 932.704, F.S., relating to forfeiture proceedings.

Section 4. Amends s. 932.7055, F.S., relating to disposition of liens and forfeited property.

Section 5. Creates s. 932.7061, F.S., relating to reporting seized property for forfeiture.

Section 6. Creates s. 732.7062, F.S., relating to penalty for noncompliance with reporting.

Section 7. Amends s. 322.34, F.S., relating to driving while license suspended, revoked, canceled, or disqualified.

Section 8. Amends s. 323.001, F.S., relating to wrecker operator storage facilities; vehicle holds.

Section 9. Amends s. 328.07, F.S., relating to hull identification number required.

Section 10. Amends s. 817.625, F.S., relating to use of scanning device or reencoder to defraud.

Section 11. Provides an effective date of July 1, 2016.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

The state could receive revenue from civil fines assessed upon law enforcement agencies, payable to the General Revenue Fund, if law enforcement agencies fail to comply with new forfeiture reporting requirements. The number of law enforcement agencies which may fail to comply cannot be accurately determined.

**2. Expenditures:**

This bill increases reporting requirements for FDLE and other state law enforcement agencies. According to the FDLE, 1 FTE would be needed for an additional Government Analyst position, at the expense of \$64,118 in the first year, and \$60,119 annually afterward.<sup>33</sup>

This expense can be absorbed within existing resources.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

Law enforcement agencies could lose funds which would be payable to the General Revenue Fund as civil fines, if law enforcement agencies fail to comply with new forfeiture reporting requirements.

<sup>33</sup> FDLE, "FDLE Legislative Bill Analysis: HB 889", January 22, 2016, On file with the House Appropriations Committee.  
STORAGE NAME: h0889d.JDC.DOCX  
DATE: 2/23/2016

The bill limits the circumstances in which a seizing agency may gain title to property through the Florida Contraband Forfeiture Act. In FY 2013-14, there were 4,210 seizures reported under the Act throughout the state.<sup>34</sup> Approximately 36% of the occurrences resulted in the owner's forfeiture of all seized assets, and 34% resulted in the partial forfeiture of assets, totaling \$18,871,997.<sup>35</sup> This bill could have a significant impact on certain law enforcement agencies which generate a large amount of revenue annually from forfeitures. The precise impact of the bill cannot be accurately determined at this time.

2. Expenditures:

Law enforcement agencies which fail to comply with the forfeiture reporting requirements in the bill would be assessed a civil fine of \$5,000 payable to the state General Revenue Fund. The number of law enforcement agencies which may fail to comply cannot be accurately determined.

This bill increases reporting requirements for local law enforcement agencies. To the extent that the increased reporting requirements expend additional resources, the bill may have a minimal fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill requires county and municipal governments to develop policies and procedures governing asset forfeiture, and expands existing reporting requirements. This may result in an indeterminate positive fiscal impact; however, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>34</sup> OPPAGA. Civil Asset Forfeiture in Florida: Policies and Practices, November 2015, Tallahassee: OPPAGA, <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1510rpt.pdf>, Accessed: February 11, 2016.

<sup>35</sup> *Id.*

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2016, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all:

- Prohibits seizure of any property until the owner of the property has been arrested for a criminal violation that renders the property a contraband article.
- Permits seized property to be deemed a contraband article subject to forfeiture under the Act if at least 90 days has elapsed since the arrest of the property owner and the seizing agency is unable to locate the owner thereafter.
- Requires the court to order the seized property forfeited only upon clear and convincing evidence that:
  - The property has been used in violation of a criminal law that renders the property a contraband article;
  - The claimant is the owner of the property; and
  - The owner was prosecuted for the criminal violation that formed the basis for the forfeiture proceeding, and has been placed into a pretrial intervention program; been placed into a diversion program; been placed into a program for confidential informants, as defined in s. 914.28, F.S.; entered a plea of guilty; entered a plea of nolo contendere; or been found guilty at trial, regardless of adjudication of guilt.
- Requires the court to order the return of seized property to the owner within five days of making a finding that a perfected security interest applies to the property or that the criminal case that formed the basis for the forfeiture proceeding was discharged by acquittal, dismissal, or nolle prosequi.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1                                   A bill to be entitled  
2       An act relating to contraband forfeiture; amending s.  
3       932.701, F.S.; conforming provisions to changes made  
4       by the act; amending s. 932.703, F.S.; specifying that  
5       property may be seized only upon the arrest of the  
6       owner of the property for a violation of a criminal  
7       law that renders the property a contraband article;  
8       requiring that specified persons approve a settlement;  
9       specifying the nature of title interest in seized  
10      property; providing circumstances when property may be  
11      deemed contraband; amending s. 932.704, F.S.;  
12      specifying the circumstances when a court shall order  
13      the forfeiture of seized property; providing  
14      circumstances for return of seized property to the  
15      owner; requiring an agency seizing property to be  
16      responsible for costs in specified circumstances;  
17      requiring various review procedures for seizure  
18      records held by a seizing agency; prohibiting the  
19      compensation of law enforcement officers from being  
20      dependent on meeting a seizure quota; requiring the  
21      adoption and implementation of written policies,  
22      procedures, and training; requiring training for  
23      personnel involved in property seizure; amending s.  
24      932.7055, F.S.; conforming provisions to changes made  
25      by the act; creating s. 932.7061, F.S.; providing  
26      reporting requirements for seized property for

27 forfeiture; creating s. 932.7062, F.S.; providing  
 28 penalties for noncompliance with reporting  
 29 requirements; amending ss. 322.34, 323.001, 328.07,  
 30 and 817.625, F.S.; conforming provisions to changes  
 31 made by the act; providing an effective date.  
 32

33 Be It Enacted by the Legislature of the State of Florida:  
 34

35 Section 1. Subsection (1) of section 932.701, Florida  
 36 Statutes, is amended to read:

37 932.701 Short title; definitions.—

38 (1) Sections 932.701-932.7062 ~~932.706~~ shall be known and  
 39 may be cited as the "Florida Contraband Forfeiture Act."

40 Section 2. Subsections (1), (2), and (6) of section  
 41 932.703, Florida Statutes, are amended to read:

42 932.703 Forfeiture of contraband article; exceptions.—

43 (1)(a) A ~~Any~~ contraband article, vessel, motor vehicle,  
 44 aircraft, other personal property, or real property ~~used in~~  
 45 ~~violation of any provision of the Florida Contraband Forfeiture~~  
 46 ~~Act, or in, upon, or by means of which any violation of the~~  
 47 ~~Florida Contraband Forfeiture Act has taken or is taking place,~~  
 48 may be seized only upon the arrest of the owner of the property  
 49 for a violation of a criminal law that renders the property a  
 50 contraband article and shall be forfeited subject to the  
 51 ~~provisions of the Florida Contraband Forfeiture Act.~~

52 (b) Once property is seized pursuant to the Florida

53 Contraband Forfeiture Act, regardless of whether the civil  
 54 complaint has been filed, all settlements must be personally  
 55 approved by the head of the law enforcement agency making the  
 56 seizure. If the agency head is unavailable and a delay would  
 57 adversely affect the settlement, approval may be given by a  
 58 subordinate of the agency head who is designated to grant such  
 59 authority ~~Notwithstanding any other provision of the Florida~~  
 60 ~~Contraband Forfeiture Act, except the provisions of paragraph~~  
 61 ~~(a), contraband articles set forth in s. 932.701(2)(a)7. used in~~  
 62 ~~violation of any provision of the Florida Contraband Forfeiture~~  
 63 ~~Act, or in, upon, or by means of which any violation of the~~  
 64 ~~Florida Contraband Forfeiture Act has taken or is taking place,~~  
 65 ~~shall be seized and shall be forfeited subject to the provisions~~  
 66 ~~of the Florida Contraband Forfeiture Act.~~

67 (c)1. At the time of seizure of property or entry of a  
 68 restraining order, the state acquires provisional title to the  
 69 property that is seized or subject to the restraining order. A  
 70 forfeiture under the Florida Contraband Forfeiture Act is not  
 71 final, and title or other indicia of ownership, other than  
 72 provisional title, do not pass to a seizing agency until the  
 73 title to the seized property is perfected in accordance with the  
 74 Florida Contraband Forfeiture Act ~~All rights to, interest in,~~  
 75 ~~and title to contraband articles used in violation of s. 932.702~~  
 76 ~~shall immediately vest in the seizing law enforcement agency~~  
 77 ~~upon seizure.~~

78 2. If at least 90 days have elapsed since the arrest of

79 the owner of the property and the seizing agency has failed to  
 80 locate the owner after making a diligent effort, the seized  
 81 property is deemed a contraband article that is subject to  
 82 forfeiture under the Florida Contraband Forfeiture Act.

83 (d) The seizing agency may not use the seized property for  
 84 any purpose until the rights to, interest in, and title to the  
 85 seized property are perfected in accordance with the Florida  
 86 Contraband Forfeiture Act. This section does not prohibit use or  
 87 operation necessary for reasonable maintenance of seized  
 88 property. Reasonable efforts shall be made to maintain seized  
 89 property in such a manner as to minimize loss of value.

90 (2)(a) Personal property may be seized at the time the  
 91 property owner is arrested ~~of the violation~~ or subsequent to the  
 92 arrest violation, if the person entitled to notice is notified  
 93 at the time of the seizure or by certified mail, return receipt  
 94 requested, that there is a right to an adversarial preliminary  
 95 hearing after the seizure to determine whether probable cause  
 96 exists to believe that such property has been or is being used  
 97 in violation of a criminal law that renders the property a  
 98 contraband article ~~the Florida Contraband Forfeiture Act.~~

99 Seizing agencies shall make a diligent effort to notify the  
 100 person entitled to notice of the seizure. Notice provided by  
 101 certified mail must be mailed within 5 working days after the  
 102 seizure and must state that a person entitled to notice may  
 103 request an adversarial preliminary hearing within 15 days after  
 104 receiving such notice. When a postseizure, adversarial



105 preliminary hearing as provided in this section is desired, a  
 106 request must be made in writing by certified mail, return  
 107 receipt requested, to the seizing agency. The seizing agency  
 108 shall set and notice the hearing, which must be held within 10  
 109 days after the request is received or as soon as practicable  
 110 thereafter.

111 (b) Real property may not be seized or restrained, other  
 112 than by lis pendens, subsequent to the arrest of the owner of  
 113 the property for a violation of a criminal law that renders the  
 114 property a contraband article ~~the Florida Contraband Forfeiture~~  
 115 ~~Act~~ until the persons entitled to notice are afforded the  
 116 opportunity to attend the preseizure adversarial preliminary  
 117 hearing. A lis pendens may be obtained by any method authorized  
 118 by law. Notice of the adversarial preliminary hearing shall be  
 119 by certified mail, return receipt requested. The purpose of the  
 120 adversarial preliminary hearing is to determine whether probable  
 121 cause exists to believe that such property has been used in  
 122 violation of a criminal law that renders the property a  
 123 contraband article ~~the Florida Contraband Forfeiture Act~~. The  
 124 seizing agency shall make a diligent effort to notify any person  
 125 entitled to notice of the seizure. The preseizure adversarial  
 126 preliminary hearing provided herein shall be held within 10 days  
 127 after ~~of~~ the filing of the lis pendens or as soon as  
 128 practicable.

129 (c) When an adversarial preliminary hearing is held, the  
 130 court shall review the verified affidavit and any other

131 supporting documents and take any testimony to determine whether  
 132 there is probable cause to believe that the owner of the  
 133 property violated a criminal law that renders the property a  
 134 contraband article ~~property was used, is being used, was~~  
 135 ~~attempted to be used, or was intended to be used in violation of~~  
 136 ~~the Florida Contraband Forfeiture Act.~~ If probable cause is  
 137 established, the court shall authorize the seizure or continued  
 138 seizure of the subject contraband. A copy of the findings of the  
 139 court shall be provided to any person entitled to notice.

140 (d) If the court determines that probable cause exists to  
 141 believe that the owner of the property violated a criminal law  
 142 that renders the property a contraband article ~~such property was~~  
 143 ~~used in violation of the Florida Contraband Forfeiture Act,~~ the  
 144 court shall order the property restrained by the least  
 145 restrictive means to protect against disposal, waste, or  
 146 continued illegal use of such property pending disposition of  
 147 the forfeiture proceeding. The court may order the claimant to  
 148 post a bond or other adequate security equivalent to the value  
 149 of the property.

150 (6) ~~(a) Property may not be forfeited under the Florida~~  
 151 ~~Contraband Forfeiture Act unless the seizing agency establishes~~  
 152 ~~by a preponderance of the evidence that the owner either knew,~~  
 153 ~~or should have known after a reasonable inquiry, that the~~  
 154 ~~property was being employed or was likely to be employed in~~  
 155 ~~criminal activity.~~

156 (a) ~~(b)~~ A bona fide lienholder's interest that has been

157 perfected in the manner prescribed by law prior to the seizure  
 158 may not be forfeited under the Florida Contraband Forfeiture Act  
 159 ~~unless the seizing agency establishes by a preponderance of the~~  
 160 ~~evidence that the lienholder had actual knowledge, at the time~~  
 161 ~~the lien was made, that the property was being employed or was~~  
 162 ~~likely to be employed in criminal activity.~~ If a lienholder's  
 163 interest is not subject to forfeiture under the requirements of  
 164 this section, such interest shall be preserved by the court by  
 165 ordering the lienholder's interest to be paid as provided in s.  
 166 932.7055.

167 (b) ~~(e)~~ Property titled or registered between husband and  
 168 wife jointly by the use of the conjunctives "and," "and/or," or  
 169 "or," in the manner prescribed by law prior to the seizure, may  
 170 not be forfeited under the Florida Contraband Forfeiture Act  
 171 unless the seizing agency establishes by a preponderance of the  
 172 evidence that the coowner either knew or had reason to know,  
 173 after reasonable inquiry, that such property was employed or was  
 174 likely to be employed in criminal activity.

175 (c) ~~(d)~~ A vehicle that is rented or leased from a company  
 176 engaged in the business of renting or leasing vehicles, which  
 177 vehicle was rented or leased in the manner prescribed by law  
 178 prior to the seizure, may not be forfeited under the Florida  
 179 Contraband Forfeiture Act, and no fine, penalty, or  
 180 administrative charge, other than reasonable and customary  
 181 charges for towing and storage, shall be imposed by any  
 182 governmental agency on the company which rented or leased the

183 ~~vehicle, unless the seizing agency establishes by preponderance~~  
 184 ~~of the evidence that the renter or lessor had actual knowledge,~~  
 185 ~~at the time the vehicle was rented or leased, that the vehicle~~  
 186 ~~was being employed or was likely to be employed in criminal~~  
 187 ~~activity.~~ When a vehicle that is rented or leased from a company  
 188 engaged in the business of renting or leasing vehicles is seized  
 189 under the Florida Contraband Forfeiture Act, upon learning the  
 190 address or phone number of the company, the seizing law  
 191 enforcement agency shall, as soon as practicable, inform the  
 192 company that the vehicle has been seized and is available for  
 193 the company to take possession upon payment of the reasonable  
 194 and customary charges for towing and storage.

195 Section 3. Subsections (8), (9), and (11) of section  
 196 932.704, Florida Statutes, are amended to read:

197 932.704 Forfeiture proceedings.—

198 (8) (a) ~~Upon clear and convincing evidence that the~~  
 199 ~~contraband article was being used in violation of the Florida~~  
 200 ~~Contraband Forfeiture Act,~~ The court shall order the seized  
 201 property forfeited to the seizing law enforcement agency upon  
 202 clear and convincing evidence that:

203 1. The property has been or is being used in violation of  
 204 a criminal law that renders the property a contraband article.

205 2. The claimant is the owner of the property.

206 3. The owner was prosecuted for the criminal violation  
 207 that formed the basis for the forfeiture proceeding, and has:

208 a. Been placed into a pretrial intervention program;

- 209        b. Been placed into a diversion program;
- 210        c. Been placed into a program for confidential informants,
- 211 as defined in s. 914.28;
- 212        d. Entered a plea of guilty;
- 213        e. Entered a plea of nolo contendere; or
- 214        f. Been found guilty at trial, regardless of adjudication
- 215 of guilt.

216        (b) The final order of forfeiture by the court shall  
 217 perfect in the law enforcement agency right, title, and interest  
 218 in and to such property, subject only to the rights and  
 219 interests of bona fide lienholders, and shall relate back to the  
 220 date of seizure.

221        (9) (a) When the claimant prevails at the conclusion of the  
 222 forfeiture proceeding, if the seizing agency decides not to  
 223 appeal, the seized property shall be released immediately to the  
 224 person entitled to possession of the property as determined by  
 225 the court. If the court finds that a perfected security interest  
 226 applies to the property or the criminal case that formed the  
 227 basis for the forfeiture proceeding was discharged by acquittal,  
 228 dismissal, or nolle prosequi, the seizing agency shall return  
 229 the property to the owner within 5 days thereafter ~~Under such~~  
 230 ~~circumstances, the seizing agency shall not assess any towing~~  
 231 ~~charges, storage fees, administrative costs, or maintenance~~  
 232 ~~costs against the claimant with respect to the seized property~~  
 233 ~~or the forfeiture proceeding.~~

234        (b) When the claimant prevails at the conclusion of the

235 forfeiture proceeding, any decision to appeal must be made by  
 236 the chief administrative official of the seizing agency, or his  
 237 or her designee. The trial court shall require the seizing  
 238 agency to pay to the claimant the reasonable loss of value of  
 239 the seized property when the claimant prevails at trial or on  
 240 appeal and the seizing agency retained the seized property  
 241 during the trial or appellate process. The trial court shall  
 242 also require the seizing agency to pay to the claimant any loss  
 243 of income directly attributed to the continued seizure of  
 244 income-producing property during the trial or appellate process.  
 245 If the claimant prevails under this subsection ~~on appeal~~, the  
 246 seizing agency shall immediately release the seized property to  
 247 the person entitled to possession of the property as determined  
 248 by the court, pay any cost as assessed by the court, and may not  
 249 assess any towing charges, storage fees, administrative costs,  
 250 or maintenance costs against the claimant with respect to the  
 251 seized property or the forfeiture proceeding.

252 (11)(a) The Department of Law Enforcement, in consultation  
 253 with the Florida Sheriffs Association and the Florida Police  
 254 Chiefs Association, shall develop guidelines and training  
 255 procedures to be used by state and local law enforcement  
 256 agencies and state attorneys in implementing the Florida  
 257 Contraband Forfeiture Act. At least annually, each state or  
 258 local law enforcement agency that seizes property for the  
 259 purpose of forfeiture shall ~~periodically~~ review such seizures ~~of~~  
 260 ~~assets made by the agency's law enforcement officers, any~~

261 settlements, and any forfeiture proceedings initiated by the law  
 262 enforcement agency, ~~to determine whether they such seizures,~~  
 263 ~~settlements, and forfeitures~~ comply with the Florida Contraband  
 264 Forfeiture Act and the guidelines adopted under this subsection.  
 265 If the review suggests deficiencies, the state or local law  
 266 enforcement agency shall promptly take action to comply with the  
 267 Florida Contraband Forfeiture Act.

268 (b) The determination as to ~~of~~ whether an agency will file  
 269 a civil forfeiture action is ~~must be~~ the sole responsibility of  
 270 the head of the agency or his or her designee.

271 (c) ~~(b)~~ The determination as to ~~of~~ whether to seize  
 272 currency must be made by supervisory personnel. The agency's  
 273 legal counsel must be notified as soon as possible after a  
 274 determination is made.

275 (d) The employment, salary, promotion, or other  
 276 compensation of any law enforcement officer may not be dependent  
 277 on the ability of the officer to meet a quota for seizures.

278 (e) A seizing agency shall adopt and implement written  
 279 policies, procedures, and training to ensure compliance with all  
 280 applicable legal requirements regarding seizing, maintaining,  
 281 and the forfeiture of property under the Florida Contraband  
 282 Forfeiture Act.

283 (f) When property is seized for forfeiture, the probable  
 284 cause supporting the seizure must be promptly reviewed by  
 285 supervisory personnel. The seizing agency's legal counsel must  
 286 be notified as soon as possible of all seizures and shall

287 conduct a review to determine whether there is legal sufficiency  
 288 to proceed with a forfeiture action.

289 (g) Each seizing agency shall adopt and implement written  
 290 policies and procedures promoting the prompt release of seized  
 291 property as may be required by the act or by agency  
 292 determination when there is no legitimate basis for holding  
 293 seized property. To help ensure that property is not wrongfully  
 294 held after seizure, each law enforcement agency must adopt  
 295 written policies and procedures ensuring that all asserted  
 296 claims of interest in seized property are promptly reviewed for  
 297 potential validity.

298 (h) The settlement of any forfeiture action must be  
 299 consistent with the Florida Contraband Forfeiture Act and the  
 300 policy of the seizing agency.

301 (i) Law enforcement agency personnel involved in the  
 302 seizure of property for forfeiture shall receive basic training  
 303 and continuing education as required by the Florida Contraband  
 304 Forfeiture Act. Each agency shall maintain records demonstrating  
 305 each law enforcement officer's compliance with this requirement.  
 306 Among other things, the training must address the legal aspects  
 307 of forfeiture, including, but not limited to, search and seizure  
 308 and other constitutional considerations.

309 Section 4. Subsection (3) and paragraph (c) of subsection  
 310 (5) of section 932.7055, Florida Statutes, are amended to read:

311 932.7055 Disposition of liens and forfeited property.—

312 (3) If the forfeited property is subject to a lien



313 preserved by the court as provided in s. 932.703(6) (a)  
 314 ~~932.703(6) (b)~~, the agency shall:

315 (a) Sell the property with the proceeds being used towards  
 316 satisfaction of any liens; or

317 (b) Have the lien satisfied prior to taking any action  
 318 authorized by subsection (1).

319 (5)

320 (c) An agency or organization, other than the seizing  
 321 agency, that wishes to receive such funds shall apply to the  
 322 sheriff or chief of police for an appropriation and its  
 323 application shall be accompanied by a written certification that  
 324 the moneys will be used for an authorized purpose. Such requests  
 325 for expenditures shall include a statement describing  
 326 anticipated recurring costs for the agency for subsequent fiscal  
 327 years. An agency or organization that receives money pursuant to  
 328 this subsection shall provide an accounting for such moneys and  
 329 shall furnish the same reports as an agency of the county or  
 330 municipality that receives public funds. Such funds may be  
 331 expended in accordance with the following procedures:

332 1. Such funds may be used only for school resource  
 333 officer, crime prevention, safe neighborhood, drug abuse  
 334 education, or drug prevention programs or such other law  
 335 enforcement purposes as the board of county commissioners or  
 336 governing body of the municipality deems appropriate.

337 2. Such funds shall not be a source of revenue to meet  
 338 normal operating needs of the law enforcement agency.

339           3. ~~After July 1, 1992, and during every fiscal year~~  
 340 ~~thereafter,~~ Any local law enforcement agency that acquires at  
 341 least \$15,000 pursuant to the Florida Contraband Forfeiture Act  
 342 within a fiscal year must expend or donate no less than 25 ~~15~~  
 343 percent of such proceeds for the support or operation of any  
 344 drug treatment, drug abuse education, drug prevention, crime  
 345 prevention, safe neighborhood, or school resource officer  
 346 program or programs ~~program(s)~~. The local law enforcement agency  
 347 has the discretion to determine which program or programs  
 348 ~~program(s)~~ will receive the designated proceeds.

349  
 350 Notwithstanding the drug abuse education, drug treatment, drug  
 351 prevention, crime prevention, safe neighborhood, or school  
 352 resource officer minimum expenditures or donations, the sheriff  
 353 and the board of county commissioners or the chief of police and  
 354 the governing body of the municipality may agree to expend or  
 355 donate such funds over a period of years if the expenditure or  
 356 donation of such minimum amount in any given fiscal year would  
 357 exceed the needs of the county or municipality for such program  
 358 or programs ~~program(s)~~. ~~Nothing in this section precludes~~ The  
 359 minimum requirement for expenditure or donation of forfeiture  
 360 proceeds in excess of the minimum amounts established in this  
 361 subparagraph does not preclude expenditures or donations in  
 362 excess of that amount herein.

363           Section 5. Section 932.7061, Florida Statutes, is created  
 364 to read:

365        932.7061 Reporting seized property for forfeiture.—  
 366        (1) Every law enforcement agency shall submit an annual  
 367 report to the Department of Law Enforcement indicating whether  
 368 the agency has seized or forfeited property under the Florida  
 369 Contraband Forfeiture Act. A law enforcement agency receiving or  
 370 expending forfeited property or proceeds from the sale of  
 371 forfeited property in accordance with the Florida Contraband  
 372 Forfeiture Act shall submit a completed annual report by October  
 373 10 documenting the receipts and expenditures. The report shall  
 374 be submitted in an electronic form, maintained by the Department  
 375 of Law Enforcement in consultation with the Office of Program  
 376 Policy Analysis and Government Accountability, to the entity  
 377 that has budgetary authority over such agency and to the  
 378 Department of Law Enforcement. The annual report must, at a  
 379 minimum, specify the type, approximate value, court case number,  
 380 type of offense, disposition of property received, and amount of  
 381 any proceeds received or expended.  
 382        (2) The Department of Law Enforcement shall submit an  
 383 annual report to the Office of Program Policy Analysis and  
 384 Government Accountability compiling the information and data in  
 385 the annual reports submitted by the law enforcement agencies.  
 386 The annual report shall also contain a list of law enforcement  
 387 agencies that have failed to meet the reporting requirements and  
 388 a summary of any action taken against the noncomplying agency by  
 389 the office of Chief Financial Officer.  
 390        (3) The law enforcement agency and the entity having

391 budgetary control over the law enforcement agency may not  
 392 anticipate future forfeitures or proceeds therefrom in the  
 393 adoption and approval of the budget for the law enforcement  
 394 agency.

395 Section 6. Section 932.7062, Florida Statutes, is created  
 396 to read:

397 932.7062 Penalty for noncompliance with reporting  
 398 requirements.—A seizing agency that fails to comply with the  
 399 reporting requirements in s. 932.7061 is subject to a civil fine  
 400 of \$5,000, to be determined by the Chief Financial Officer and  
 401 payable to the General Revenue Fund. However, such agency is not  
 402 subject to the fine if, within 60 days after receipt of written  
 403 notification from the Department of Law Enforcement of  
 404 noncompliance with the reporting requirements of the Florida  
 405 Contraband Forfeiture Act, the agency substantially complies  
 406 with those requirements. The Department of Law Enforcement shall  
 407 submit any substantial noncompliance to the office of Chief  
 408 Financial Officer, which shall be responsible for the  
 409 enforcement of this section.

410 Section 7. Paragraphs (a) and (c) of subsection (9) of  
 411 section 322.34, Florida Statutes, are amended to read:

412 322.34 Driving while license suspended, revoked, canceled,  
 413 or disqualified.—

414 (9) (a) A motor vehicle that is driven by a person under  
 415 the influence of alcohol or drugs in violation of s. 316.193 is  
 416 subject to seizure and forfeiture under ss. 932.701-932.7062

417 ~~932.706~~ and is subject to liens for recovering, towing, or  
 418 storing vehicles under s. 713.78 if, at the time of the offense,  
 419 the person's driver license is suspended, revoked, or canceled  
 420 as a result of a prior conviction for driving under the  
 421 influence.

422 (c) Notwithstanding ~~s. 932.703(1)(c)~~ or s. 932.7055, when  
 423 the seizing agency obtains a final judgment granting forfeiture  
 424 of the motor vehicle under this section, 30 percent of the net  
 425 proceeds from the sale of the motor vehicle shall be retained by  
 426 the seizing law enforcement agency and 70 percent shall be  
 427 deposited in the General Revenue Fund for use by regional  
 428 workforce boards in providing transportation services for  
 429 participants of the welfare transition program. In a forfeiture  
 430 proceeding under this section, the court may consider the extent  
 431 that the family of the owner has other public or private means  
 432 of transportation.

433 Section 8. Paragraph (a) of subsection (4) of section  
 434 323.001, Florida Statutes, is amended to read:

435 323.001 Wrecker operator storage facilities; vehicle  
 436 holds.—

437 (4) The requirements for a written hold apply when the  
 438 following conditions are present:

439 (a) The officer has probable cause to believe the vehicle  
 440 should be seized and forfeited under the Florida Contraband  
 441 Forfeiture Act, ss. ~~932.701-932.7062~~ 932.706;

442 Section 9. Paragraph (b) of subsection (3) of section

443 328.07, Florida Statutes, is amended to read:

444 328.07 Hull identification number required.—

445 (3)

446 (b) If any of the hull identification numbers required by  
 447 the United States Coast Guard for a vessel manufactured after  
 448 October 31, 1972, do not exist or have been altered, removed,  
 449 destroyed, covered, or defaced or the real identity of the  
 450 vessel cannot be determined, the vessel may be seized as  
 451 contraband property by a law enforcement agency or the division,  
 452 and shall be subject to forfeiture pursuant to ss. 932.701-  
 453 932.7062 ~~932.706~~. Such vessel may not be sold or operated on the  
 454 waters of the state unless the division receives a request from  
 455 a law enforcement agency providing adequate documentation or is  
 456 directed by written order of a court of competent jurisdiction  
 457 to issue to the vessel a replacement hull identification number  
 458 which shall thereafter be used for identification purposes. No  
 459 vessel shall be forfeited under the Florida Contraband  
 460 Forfeiture Act when the owner unknowingly, inadvertently, or  
 461 neglectfully altered, removed, destroyed, covered, or defaced  
 462 the vessel hull identification number.

463 Section 10. Paragraph (c) of subsection (2) of section  
 464 817.625, Florida Statutes, is amended to read:

465 817.625 Use of scanning device or reencoder to defraud;  
 466 penalties.—

467 (2)

468 (c) Any person who violates subparagraph (a)1. or

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2016

469 | subparagraph (a)2. shall also be subject to the provisions of  
470 | ss. 932.701-932.7062 ~~932.706~~.

471 |       Section 11. This act shall take effect July 1, 2016.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Metz offered the following:

**Amendment (with title amendment)**

Remove lines 40-251 and insert:

6 Section 2. Present subsection (1) of section 932.703,  
 7 Florida Statutes, is amended, a new subsection (2) is added, and  
 8 present subsections (2) through (8), are redesignated as  
 9 subsections (3) through (9), respectively, to read:

932.703 Forfeiture of contraband article; exceptions.-

11 (1)(a) A ~~Any~~ contraband article, vessel, motor vehicle,  
 12 aircraft, other personal property, or real property used in  
 13 violation of any provision of the Florida Contraband Forfeiture  
 14 Act, or in, upon, or by means of which any violation of the  
 15 Florida Contraband Forfeiture Act has taken or is taking place,  
 16 may be seized only if:





Amendment No. 1

17 1. The owner of the property is arrested for a criminal  
18 violation that renders the property a contraband article; or

19 2. A criminal violation occurs that renders the property a  
20 contraband article and one or more of the following  
21 circumstances applies ~~shall be forfeited subject to the~~  
22 ~~provisions of the Florida Contraband Forfeiture Act.:~~

23 a. The owner of the property cannot be identified after a  
24 diligent search;

25 b. The owner of the property is a fugitive from justice or  
26 deceased;

27 c. An individual who does not own the property is arrested  
28 for the criminal violation that renders the property a  
29 contraband article, and the owner of the property had actual  
30 knowledge of the criminal activity;

31 d. The owner of the property agrees to be a confidential  
32 informant, as defined in s. 914.28. The seizing agency may not  
33 use the threat of property seizure or forfeiture to coerce the  
34 owner of the property into entering a confidential informant  
35 agreement. The agency may include the final forfeiture of the  
36 property as a component of the confidential informant agreement.  
37 The seizing agency shall return the property to the owner if  
38 criminal charges are not filed against the owner and the active  
39 criminal investigation ends or the owner ceases being a  
40 confidential informant; or

41 e. The property is a monetary instrument. For purposes of  
42 this sub-subparagraph, the term "monetary instrument" means coin



Amendment No. 1

43 or currency of the United States or any other country; a  
44 traveler's check; a personal check; a bank check; a cashier's  
45 check; a money order; a bank draft of any country; an investment  
46 security or negotiable instrument in bearer form or in other  
47 form such that title passes upon delivery; a prepaid or stored  
48 value card or other device that is the equivalent of money and  
49 can be used to obtain cash, property, or services; gold, silver,  
50 or platinum bullion or coins.

51 (b) After property is seized pursuant to the Florida  
52 Contraband Forfeiture Act, regardless of whether the civil  
53 complaint has been filed, all settlements must be personally  
54 approved by the head of the law enforcement agency that seized  
55 the property. If the agency head is unavailable and a delay  
56 would adversely affect the settlement, approval may be given by  
57 a subordinate of the agency head who is designated to grant such  
58 approval ~~Notwithstanding any other provision of the Florida~~  
59 ~~Contraband Forfeiture Act, except the provisions of paragraph~~  
60 ~~(a), contraband articles set forth in s. 932.701(2)(a)7. used in~~  
61 ~~violation of any provision of the Florida Contraband Forfeiture~~  
62 ~~Act, or in, upon, or by means of which any violation of the~~  
63 ~~Florida Contraband Forfeiture Act has taken or is taking place,~~  
64 ~~shall be seized and shall be forfeited subject to the provisions~~  
65 ~~of the Florida Contraband Forfeiture Act.~~

66 (c) If at least 90 days have elapsed since the initial  
67 seizure of the property and the seizing agency has failed to  
68 locate the owner after making a diligent effort, the seized



Amendment No. 1

69 property is deemed a contraband article that is subject to  
70 forfeiture under the Florida Contraband Forfeiture Act All  
71 rights to, interest in, and title to contraband articles used in  
72 violation of s. 932.702 shall immediately vest in the seizing  
73 law enforcement agency upon seizure.

74 (d)1. The seizing agency may not use the seized property  
75 for any purpose until the rights to, interest in, and title to  
76 the seized property are perfected in accordance with the Florida  
77 Contraband Forfeiture Act. This section does not prohibit use or  
78 operation necessary for reasonable maintenance of seized  
79 property. Reasonable efforts shall be made to maintain seized  
80 property in such a manner as to minimize loss of value.

81 2. The agency seeking to forfeit the seized property is  
82 responsible for any damage to the property and any storage fees  
83 or maintenance costs applicable to the property. If more than  
84 one agency seeks forfeiture of the property, the division of  
85 liability under this subparagraph may be governed by the terms  
86 of an agreement between the agencies.

87 (2)(a) A seizing agency shall submit a written petition to  
88 the court within 10 days after a seizure of property under the  
89 Florida Contraband Forfeiture Act which requests a finding of:

90 1. Compliance with subparagraph (1)(a)1. or subparagraph  
91 (1)(a)2.; and

92 2. Probable cause that the seized property was used in  
93 violation of the Florida Contraband Forfeiture Act.

94 (b) If the court issues an order finding that:



Amendment No. 1

95 1. Compliance and probable cause under paragraph (a)  
96 exists, the seized property may be held by the seizing agency  
97 pending the completion of proceedings in accordance with the  
98 Florida Contraband Forfeiture Act.

99 2. Compliance or probable cause under paragraph (a) does  
100 not exist, any seizure, forfeiture hold, lien, lis pendens, or  
101 other civil encumbrance shall be released within 5 days after  
102 issuance of the order.

103 (c) The court may seal any portion of the petition and the  
104 record of any proceeding under the Florida Contraband Forfeiture  
105 Act which is exempt or confidential and exempt from s. 119.07(1)  
106 and s. 24(a) Art. I of the Florida Constitution or may otherwise  
107 be sealed pursuant to Rule 2.420, Rules of Judicial  
108 Administration.

109 Section 3. Subsection (4), paragraph (b) of subsection  
110 (5), paragraph (b) of subsection (6), subsections (8), (10), and  
111 (11) of section 932.704, Florida Statutes, are amended to read:  
112 932.704 Forfeiture proceedings.—

113 (4) The seizing agency shall promptly proceed against the  
114 contraband article by filing a complaint in the circuit court  
115 within the jurisdiction where the seizure or the offense  
116 occurred. The seizing agency shall pay a filing fee of at least  
117 \$1,000 and deposit a bond of \$1,500 to the clerk of the court.  
118 The bond shall be payable to the claimant, as determined by the  
119 court, if the forfeiture is not awarded to the seizing agency.

120 (5)



Amendment No. 1

121 (b) If no person entitled to notice requests an  
122 adversarial preliminary hearing, as provided in s. 932.703(3)(a)  
123 ~~932.703(2)(a)~~, the court, upon receipt of the complaint, shall  
124 review the complaint and the verified supporting affidavit to  
125 determine whether there was probable cause for the seizure. Upon  
126 a finding of probable cause, the court shall enter an order  
127 showing the probable cause finding.

128 (6)

129 (b) The complaint must, in addition to stating that which  
130 is required by s. 932.703(3)(a) and (b) ~~932.703(2)(a) and (b)~~,  
131 as appropriate, describe the property; state the county, place,  
132 and date of seizure; state the name of the law enforcement  
133 agency holding the seized property; and state the name of the  
134 court in which the complaint will be filed.

135 (8) Upon proof beyond a reasonable doubt ~~clear and~~  
136 ~~convincing evidence~~ that the contraband article was being used  
137 in violation of the Florida Contraband Forfeiture Act, the court  
138 shall order the seized property forfeited to the seizing law  
139 enforcement agency. The final order of forfeiture by the court  
140 shall perfect in the law enforcement agency right, title, and  
141 interest in and to such property, subject only to the rights and  
142 interests of bona fide lienholders, and shall relate back to the  
143 date of seizure.

144 (10) The court shall award reasonable attorney's fees and  
145 costs, up to a limit of \$2,000 ~~\$1,000~~, to the claimant at the  
146 close of the adversarial preliminary hearing if the court makes



Amendment No. 1

147 a finding of no probable cause. When the claimant prevails, at  
148 the close of forfeiture proceedings and any appeal, the court  
149 shall award reasonable trial attorney's fees and costs to the  
150 claimant if the court finds that the seizing agency has not  
151 proceeded at any stage of the proceedings in good faith or that  
152 the seizing agency's action which precipitated the forfeiture  
153 proceedings was a gross abuse of the agency's discretion. The  
154 court may order the seizing agency to pay the awarded attorney's  
155 fees and costs from the appropriate contraband forfeiture trust  
156 fund. Nothing in this subsection precludes any party from  
157 electing to seek attorney's fees and costs under chapter 57 or  
158 other applicable law.

159

160

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161

**T I T L E A M E N D M E N T**

162

Remove lines 4-23 and insert:

163

by the act; amending s. 932.703, F.S.; specifying that property

164

may be seized under certain circumstances; requiring that

165

specified persons approve a settlement; providing circumstances

166

when property may be deemed contraband; allocating

167

responsibility for damage to seized property and payment of

168

storage and maintenance expenses; providing a procedure for

169

judicial review of seizures; amending s. 932.704, F.S.;

170

providing requirements for a filing fee and a bond to be paid to

171

the clerk of court; specifying the circumstances when a court

172

shall order the forfeiture of seized property; amending s.



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Judiciary Committee  
2 Representative Metz offered the following:

3  
4  
5  
6

**Amendment**

Remove line 313 and insert:  
preserved by the court as provided in s. 932.703(7)(b)



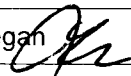
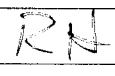


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1043 Interviews of Victims, Suspects, or Defendants with Autism Spectrum Disorder

**SPONSOR(S):** Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Hager and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 936

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	7 Y, 0 N, As CS	Keegan	White
2) Justice Appropriations Subcommittee	11 Y, 0 N, As CS	McAuliffe	Lloyd
3) Judiciary Committee		Keegan 	Havlicak 

### SUMMARY ANALYSIS

Autism spectrum disorder (ASD) is a developmental disorder that is characterized, in varying degrees, by repetitive behaviors and difficulties with social interaction and verbal and nonverbal communication. The ASD diagnosis once included Autistic Disorder, Asperger Syndrome, Pervasive Developmental Disorder Not Otherwise Specified, and other disorders; however, in June 2013, all autism disorders were merged into one umbrella diagnosis of ASD in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorder (DSM 5).

It has been estimated that individuals with ASD have up to seven times more contacts with law enforcement agencies during their lifetimes than other individuals. There is currently no requirement in Florida for any mental health or similar professional to assist during law enforcement interactions with individuals diagnosed with ASD.

The bill requires a law enforcement officer, correctional officer or other public safety official to make a good faith effort to ensure a qualified professional, a relative, or a caretaker is present to assist a law enforcement officer, if practicable, during an interview of an individual if:

- The individual is a victim, suspect or a defendant in a criminal case;
- The individual has been diagnosed with autism spectrum disorder; and
- The law enforcement officer knows or should know that the individual has been diagnosed with autism spectrum disorder.

The bill requires all expenses related to the attendance of a qualified professional at an interview will be borne by the individual who has been diagnosed with autism spectrum disorder or the parent or guardian of the individual. If the individual is a victim, the defendant must reimburse the victim for such expenses upon conviction.

The bill provides that failure to have a qualified professional, a relative, or a caretaker present as provided is not a basis for suppression of the statement or the contents of the interview or for a cause of action against a law enforcement officer, a correctional officer, or other public safety official, or an agency employing such officer or official. The bill requires each agency employing law enforcement officers, correctional officers, or other public safety officials to develop appropriate policies and procedures to implement this section and provide training to its officers and officials.

The bill may have an indeterminate impact on state and local government expenditures because law enforcement agencies will have to develop appropriate policies and procedures to implement this bill and provide training to its officers.

This bill is effective July 1, 2016.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1043d.JDC.DOCX

DATE: 2/23/2016

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Autism Spectrum Disorder**

Autism spectrum disorder (ASD) is a developmental disorder that is characterized, in varying degrees, by repetitive behaviors and difficulties with social interaction and verbal and nonverbal communication. The ASD diagnosis once included Autistic Disorder, Asperger Syndrome, Pervasive Developmental Disorder Not Otherwise Specified, and other disorders; however, in June 2013, all autism disorders were merged into one umbrella diagnosis of ASD when the fifth edition of the Diagnostic and Statistical Manual of Mental Disorder (DSM-5) was published.<sup>1</sup>

Florida law defines several terms relating to autism:

- “Autism” is defined in s. 393.063(3), F.S., as “a pervasive, neurologically based developmentally based disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood, individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and non-verbal communication and imaginative ability, and markedly restrictive repertoire of activities and interests.”
- “Developmental disability” is defined in s. 393.063(9), F.S., defines “developmental as “a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”
- “Autism spectrum disorder” is defined in ss. 627.6686(2)(b) and 641.31098(2)(b), F.S., as “any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association: 1. Autistic disorder. 2. Asperger’s syndrome. 3. Pervasive developmental disorder not otherwise specified.”

Although an exact population count of individuals with ASD does not exist, the Centers for Disease Control’s (CDC) Autism Developmental Disabilities Monitoring (ADDM) Network estimates that approximately one in 68 children have been identified with ASD.<sup>2</sup> This estimate is based on surveys of 8-year-old children who were living in 11 communities in the United States in 2010.<sup>3</sup> Boys are five times more likely than girls to be identified with ASD and white children are more likely to be identified than black or Hispanic children.<sup>4</sup>

##### **Law Enforcement and ASD**

It has been estimated that individuals with ASD have up to seven times more contacts with law enforcement agencies during their lifetimes.<sup>5</sup> These contacts occur under a variety of circumstances. Law enforcement officers often come into contact with persons with ASD through a call reporting a domestic disturbance, a suspicious person who is acting in an unusual manner, or when responding to a medical emergency.<sup>6</sup>

There is currently no requirement in Florida for any mental health or similar professional to assist law enforcement during interactions with individuals diagnosed with ASD.

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<sup>1</sup> CENTERS FOR DISEASE CONTROL & PREVENTION, *Facts about ASD*, <http://www.cdc.gov/ncbddd/autism/facts.html> (last visited Jan. 22, 2016); AUTISM SPEAKS, *What is Autism*, <https://www.autismspeaks.org/what-autism> (last visited Jan. 22, 2016).

<sup>2</sup> CENTERS FOR DISEASE CONTROL & PREVENTION, *Data and Statistics*, <http://www.cdc.gov/ncbddd/autism/data.html> (last visited Jan. 22, 2016).

<sup>3</sup> CENTERS FOR DISEASE CONTROL & PREVENTION, *10 Things You Need to Know about CDC’s Latest Report from The Autism and Developmental Disabilities Monitoring Network*, <http://www.cdc.gov/features/dsautismdata/index.html> (last visited Jan. 22, 2016).

<sup>4</sup> *Id.*

<sup>5</sup> Pamela Kulbarsh, *Law Enforcement and Autism*, OFFICER.COM (Feb. 15, 2013), <http://www.officer.com/article/10880086/law-enforcement-and-autism> (last visited Jan. 22, 2016).

<sup>6</sup> *Id.*

## **Effect of the Bill**

The bill cites the act as the "Wes Kleinert Fair Interview Act."

The bill requires a law enforcement officer, correctional officer or other public safety official to make a good faith effort to ensure a qualified professional, a relative, or a caretaker is present to assist a law enforcement officer, if practicable, during an interview of an individual if:

- The individual is a victim, suspect or defendant in a criminal case;
- The individual has been diagnosed with autism spectrum disorder; and
- The law enforcement officer knows or should have known that the individual has been diagnosed with autism spectrum disorder.

The bill defines the following key terms:

- "Autism spectrum disorder" has the same meaning as provided in s. 627.6686, F.S.
- "Conviction" means a finding of guilt or the acceptance of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.
- "Correctional officer" has the same meaning as provided in s. 943.10, F.S.
- "Law enforcement officer" has the same meaning as provided in s. 943.10, F.S.
- "Qualified professional" means a mental health counselor, a behavioral therapist, or a related professional with professional experience teaching, treating, or caring for patients or clients who have an autism spectrum disorder, or a psychiatrist or psychologist.

The bill provides that failure to have a qualified professional, a relative, or a caretaker present as provided is not a basis for suppression of the statement or the contents of the interview or for a cause of action against a law enforcement officer, a correctional officer, or other public safety official, or an agency employing such officer or official.

The bill requires each agency employing law enforcement officers, correctional officers, or other public safety officials to develop appropriate policies and procedures to implement this section and provide training to its officers and officials.

The bill provides an effective date of July 1, 2016.

## **B. SECTION DIRECTORY:**

Section 1. Creating the "Wes Kleinert Fair Interview Act."

Section 2. Creating s. 943.0439, F.S., relating to interviews of suspects or defendants with autism spectrum disorder.

Section 3. Providing an effective date of July 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

This bill does not appear to have an impact on state revenues.

#### **2. Expenditures:**

The bill may have an indeterminate impact on state government expenditures because state law enforcement agencies will have to develop appropriate policies and procedures to implement this bill and provide training to its officers.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

This bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill may have an indeterminate impact on local government expenditures because local law enforcement agencies will have to develop appropriate policies and procedures to implement this bill and provide training to its officers.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The committee substitute does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 25, 2016, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Defines key terms; and
- Requires a qualified professional to be present to assist a law enforcement officer, if practicable, during an interview of an individual if (1) the individual is a suspect or defendant in a criminal case; (2) the individual has been diagnosed with autism spectrum disorder; and (3) the law enforcement officer knows or should know that the individual has been diagnosed with autism spectrum disorder.

On February 16, 2016, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Adds definitions for "conviction" and "correctional officer."

- Requires a law enforcement officer, correctional officer or other public safety official to make a good faith effort to ensure a qualified professional, a relative, or a caretaker is present to assist a law enforcement officer, if practicable, during an interview of an individual.
- Requires each agency employing law enforcement officers, correctional officers, or other public safety officials to develop appropriate policies and procedures to implement this section and provide training to its officers and officials.

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.

1                                    A bill to be entitled  
 2            An act relating to interviews of victims, suspects, or  
 3            defendants with autism spectrum disorder; providing a  
 4            short title; creating s. 943.0439, F.S.; providing  
 5            definitions; requiring a qualified professional or a  
 6            relative or caretaker of certain individuals to assist  
 7            a law enforcement officer, correctional officer, or  
 8            other public safety official during interviews in  
 9            specified circumstances; providing responsibility for  
 10           payment of related expenses; prohibiting the failure  
 11           to have a qualified professional, relative, or  
 12           caretaker present from serving as a basis for  
 13           specified actions; requiring agencies to develop and  
 14           implement appropriate policies and procedures and  
 15           provide training; providing an effective date.

16  
 17    Be It Enacted by the Legislature of the State of Florida:

18  
 19            Section 1.    This act may be cited as the "Wes Kleinert Fair  
 20            Interview Act."

21            Section 2.    Section 943.0439, Florida Statutes, is created  
 22            to read:

23            943.0439 Interviews of victims, suspects, or defendants  
 24            with autism spectrum disorder.-

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

26            (a) "Autism spectrum disorder" has the same meaning as

27 provided in s. 627.6686.

28 (b) "Conviction" means a finding of guilt or the  
 29 acceptance of a plea of guilty or nolo contendere, regardless of  
 30 whether adjudication is withheld.

31 (c) "Correctional officer" has the same meaning as  
 32 provided in s. 943.10.

33 (d) "Law enforcement officer" has the same meaning as  
 34 provided in s. 943.10.

35 (e) "Qualified professional" means a mental health  
 36 counselor, behavioral therapist, or related professional with  
 37 professional experience in teaching, treating, or caring for  
 38 patients or clients with autism spectrum disorder or a similar  
 39 disorder, or a psychiatrist or psychologist.

40 (2) A law enforcement officer, correctional officer, or  
 41 other public safety official shall make a good faith effort to  
 42 ensure that a qualified professional or a relative or caretaker  
 43 of an individual who has been diagnosed with autism spectrum  
 44 disorder is present at all interviews of such individual, if:

45 (a) The presence of a qualified professional, relative, or  
 46 caretaker is practicable;

47 (b) The law enforcement officer, correctional officer, or  
 48 other public safety official knows or should know that the  
 49 individual has been diagnosed with autism spectrum disorder; and

50 (c) The individual is a victim, suspect, or defendant  
 51 formally accused of a crime.

52 (3) All expenses related to the attendance of a qualified

53 professional at an interview shall be borne by the individual  
54 who has been diagnosed with autism spectrum disorder or the  
55 parent or guardian of such individual. If the individual is a  
56 victim, the defendant shall reimburse the victim for all  
57 expenses related to the attendance of the qualified professional  
58 at the interview, in addition to other restitution or penalties  
59 provided by law, upon conviction of the offense for which the  
60 individual is a victim.

61 (4) Failure to have a qualified professional, relative, or  
62 caretaker present as provided by this section is not a basis for  
63 suppression of the statement or the contents of the interview or  
64 for a cause of action against a law enforcement officer,  
65 correctional officer, or other public safety official, or an  
66 agency employing such officer or official.

67 (5) Each agency employing law enforcement officers,  
68 correctional officers, or other public safety officials must  
69 develop appropriate policies and procedures for implementation  
70 of this section and provide training to its officers and  
71 officials.

72 Section 3. This act shall take effect July 1, 2016.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 1191 Regulation Freedom Amendment

**SPONSOR(S):** Raulerson

**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	10 Y, 2 N	Renner	Kiner
2) Judiciary Committee		Aziz <i>PA</i>	Havlicak <i>RA</i>

### SUMMARY ANALYSIS

Article V of the U.S. Constitution prescribes two methods for amending the Constitution. One method is for both houses of Congress, by two-thirds vote, to propose an amendment that becomes effective when ratified by three-fourths of the states (38 states). All 27 amendments to the Constitution were adopted through this procedure.

The other method, which has never been used, requires Congress to call a constitutional convention (Article V convention) to propose amendments when two-thirds of the states (34 states) apply for such a convention. These proposed amendments would require approval of three-fourths of the states in order to be ratified.

HM 1191 petitions the U.S. Congress to propose to the states an amendment to the U.S. Constitution entitled the "Regulation Freedom Amendment." The amendment would require the House and Senate to adopt proposed federal regulations by majority vote, whenever one quarter of either body objects to the proposed regulation.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law—they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

This memorial does not have a fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### Methods of Amending the U.S. Constitution

Article V of the U.S. Constitution prescribes two methods for amending the Constitution. One method is for Congress to propose an amendment that is ratified by the states. All 27 amendments to the Constitution were adopted through this procedure. The other method, which has never been used, is for states to apply for a constitutional convention that proposes amendments.<sup>1</sup>

##### *Congressional Amendments*

Congress, by a two-thirds vote in both houses, may propose a constitutional amendment in the form of a joint resolution. After Congress proposes an amendment, the Archivist of the U.S. is responsible for administering the ratification process.<sup>2</sup> Since the President does not have a constitutional role in the amendment process, the joint resolution does not go to the White House for signature or approval. The Office of the Federal Register (OFR) assembles an information package for the states which includes copies of the joint resolution and the statutory procedure for ratification under 1 U.S.C. 106b.<sup>3</sup> The Archivist submits the proposed amendment to the states for their consideration by sending a letter of notification and the OFR informational material to each governor. The governors then formally submit the amendment to their state legislatures.<sup>4</sup>

When a state ratifies a proposed amendment, it sends a certified copy of the state action to the Archivist. A proposed amendment becomes part of the Constitution as soon as it is ratified by three-fourths of the states (38 states). The OFR verifies the ratification documents and drafts a formal proclamation for the Archivist to certify that the amendment is valid and has become part of the U.S. Constitution. This certification is published in the Federal Register and U.S. Statutes at Large and serves as official notice that the amendment process has been completed.<sup>5</sup>

Since 1789, Congress has proposed 33 amendments by this method, 27 of which have been adopted.<sup>6</sup>

##### *Constitutional Convention Amendments*

A constitutional amendment may also be proposed by a constitutional convention (Article V convention) applied for by two-thirds of the state legislatures (34 states). This method has never been used. If 34 states apply, Congress must call an Article V convention to consider and propose amendments. These proposed amendments must be ratified by three-fourths of the states (38 states). Records of the Philadelphia Convention of 1787 indicate that the founders intended to balance Congress's amendatory power by providing the Article V convention method to empower the people to propose amendments. Article V identifies these methods as equal and requires the same ratification for all proposed amendments.<sup>7</sup>

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<sup>1</sup> Erwin Chemerinsky, *Constitutional Law*, pg. 6 (3rd ed. 2006).

<sup>2</sup> 1 U.S.C. 106b.

<sup>3</sup> *The Constitutional Amendment Process*, U.S. National Archives and Records Administration, <http://www.archives.gov/federal-register/constitution/> (last visited January 28, 2016).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 2.

Though the specific procedures for an Article V convention are not specified in the Constitution, Congress has historically taken on broad responsibilities in connection with a convention by administering state applications, establishing procedures to summon a convention, setting the amount of time allotted to its deliberations, determining the number and selection process of its delegates, setting internal convention procedures, and providing arrangement for the formal transmission of any proposed amendments to the states.<sup>8</sup>

Although never used in full, this method has been a useful tool to provoke congressional action. The most successful incidence of using the threat of a constitutional convention to induce change was the movement for the direct election of Senators, which prodded Congress to propose the 17th Amendment.<sup>9</sup>

### Federal Administrative Law

The scope of the federal administrative state expanded greatly during the 20<sup>th</sup> century. In the 1930's, President Franklin Delano Roosevelt's New Deal programs designed to combat the Great Depression led to the creation of a wave of new administrative agencies such as the National Labor Relations Board, the Securities and Exchange Commission, the Social Security Administration, the Federal Communications Commission, and the Tennessee Valley Authority. Critics of this expansion of federal administrative authority charged that it jeopardized the separation of powers in the U.S. Constitution and created a "fourth branch" of government. In response to the criticisms of the expansion of administrative power in the 1930's, Congress passed the Administrative Procedures Act (APA) in 1946. The APA has been described as a "bill of rights" for the regulatory state. Administrative agencies must follow procedures established by the APA when exercising their rulemaking and adjudicatory powers.

Since the 1930's, the scope of the federal administrative state continued to expand. In the 1970's for instance, a wave of quality of life oriented regulations lead to the creation of the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the Consumer Product Safety Commission (CPSC).

Federal administrative agencies of the federal government of the United States of America are controlled by the executive branch. The legislative branch has the power to create, abolish or modify the powers and structure of administrative agencies. Laws passed by the legislative branch and actions taken by the executive branch are subject to review by the judicial branch. Federal administrative agencies have quasi-legislative (rulemaking) and quasi-judicial (adjudicatory) powers to assist them in carrying out their executive functions. The rule-making and adjudicatory powers of federal agencies are regulated by the APA.

Administrative agencies adopt rules through the rulemaking procedures set forth in the APA. When adopting a new rule an agency must publish the proposed rule in the Federal Register, allow interested parties an opportunity to submit comments on the proposal, and incorporate in the final rule a concise general statement of the basis and purpose of the rule.<sup>10</sup>

Presently, the executive branch of the federal government is comprised of 15 cabinet level executive departments which oversee 169 dependent agencies, in addition to 70 independent agencies and government corporations which are listed below.

### Cabinet Level Departments and Related Agencies

- Department of Agriculture (USDA)
  - Agricultural Marketing Service

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 2.

<sup>10</sup> Koch, C., et al. *Administrative Law: Cases and Material*, 6<sup>th</sup> ed., Ch. 1, part B.

- Agricultural Research Service
- Animal and Plant Health Inspection Service
- Center for Nutrition Policy and Promotion (CNPP)
- Economic Research Service
- Farm Service Agency
- Food and Nutrition Service
- Food Safety and Inspection Service
- Foreign Agricultural Service
- Forest Service
- Grain Inspection, Packers and Stockyards Administration
- National Agricultural Library
- National Agricultural Statistics Service
- National Institute of Food and Agriculture
- Natural Resources Conservation Service
- Risk Management Agency (Agriculture Department)
- Rural Development
  
- Department of Commerce (DOC)
  - Bureau of Economic Analysis (BEA)
  - Bureau of Industry and Security
  - Economics and Statistics Administration
  - Economic Development Administration (EDA)
  - International Trade Administration (ITA)
  - Minority Business Development Agency
  - National Institute of Standards and Technology (NIST)
  - National Oceanic and Atmospheric Administration (NOAA)
  - National Technical Information Service
  - National Telecommunications and Information Administration
  - Bureau of the Census
  - U.S. Patent and Trademark Office
  
- Department of Defense (DOD)
  - Department of Defense Inspector General
  - National Defense University
  - National Geospatial-Intelligence Agency
  - National Security Agency (NSA)
  - U.S. Navy
  - Pentagon Force Protection Agency
  - Prisoner of War/Missing Personnel Office
  - TRICARE Management
  - U.S. Air Force
  - U.S. Army
  - U.S. Fleet Forces Command
  - U.S. Military Academy, West Point
  - Unified Combatant Commands (Defense Department)
  - Uniformed Services University of the Health Sciences
  - Washington Headquarters Services
  - Federal Voting Assistance Program
  
- Department of Education (ED)
  - The Education Publications Center (EDPUBS)
  - Office for Civil Rights, Department of Education
  - Office of Elementary and Secondary Education (OESE)
  - Office of Postsecondary Education (OPE)
  - Office of Special Education and Rehabilitative Services (OSERS)

- Office of Vocational and Adult Education (OVAE)
- White House Commission on Presidential Scholars
- Institute of Education Services
- English Language Acquisition Office
- Improvement Office
- Department of Energy (DOE)
  - Energy Efficiency and Renewable Energy (EERE)
  - Fossil Energy
  - National Laboratories (Energy Department)
  - National Nuclear Security Administration
  - Nuclear Energy, Science and Technology
  - Power Administrations
  - Public Affairs
  - Science Office (Energy Department)
  - Energy Information Administration
  - Environmental Management
  - Federal Energy Regulatory Commission
- Department of Health and Human Services (HHS)
  - Administration for Children and Families (ACF)
  - AIDS.gov
  - CDC National STD Hotline
  - Centers for Disease Control and Prevention
  - Child Welfare Information Gateway
  - Eldercare Locator
  - Food and Drug Administration
  - HHS-TIPS Fraud Hotline
  - National Health Information Center
  - National Institute of Allergy and Infectious Disease
  - National Institutes of Health
  - National Runaway Safeline
  - Office of Child Support Enforcement
  - Agency for Healthcare Research and Quality
  - Centers for Medicare and Medicaid Services
  - Health Resources and Services Administration
  - Indian Health Service
  - Substance Abuse and Mental Health Services Administration
  - Administration for Community Living
- Department of Homeland Security (DHS)
  - Computer Emergency Readiness Team (US CERT)
  - Federal Emergency Management Agency (FEMA)
  - FEMA Disaster Assistance
  - Federal Law Enforcement Training Center
  - Secret Service
  - Transportation Security Administration (TSA)
  - U.S. Citizenship and Immigration Services
  - U.S. Coast Guard
  - U.S. Customs and Border Protection
  - U.S. Immigration and Customs Enforcement
- Department of Housing and Urban Development (HUD)
  - Federal Housing Administration (FHA)
  - Multifamily Housing Office

- Office of Community Planning and Development
- Office of Fair Housing and Equal Opportunity
- Policy Development and Research (HUD)
- Public and Indian Housing
- Department of Justice (DOJ)
  - Antitrust Division
  - Bureau of Alcohol, Tobacco, Firearms, and Explosives
  - Bureau of Prisons
  - Community Oriented Policing Services (COPS)
  - Drug Enforcement Administration
  - Executive Office for Immigration Review
  - Federal Bureau of Investigation (FBI)
  - Marshals Service
  - Office of Justice Programs
  - Office of the Pardon Attorney
  - Parole Commission
  - U.S. National Central Bureau - Interpol
  - U.S. Trustee Program
  - National Drug Intelligence Center
- Department of Labor (DOL)
  - Employee Benefits Security Administration (EBSA)
  - Job Corps
  - Mine Safety and Health Administration
  - National Contact Center
  - Occupational Safety and Health Administration (OSHA)
  - Office of Disability Employment Policy
  - Veterans' Employment and Training Service
  - Women's Bureau (Labor Department)
  - Employment and Training Administration
  - Bureau of Labor Statistics
  - Bureau of Internal Labor Affairs
- Department of State (DOS)
  - U.S. Mission to the United Nations
  - Arms Control and International Security
  - Bureau of Consular Affairs
- Department of the Interior (DOI)
  - Bureau of Indian Affairs (BIA)
  - Bureau of Land Management (BLM)
  - Bureau of Reclamation
  - Fish and Wildlife Service
  - National Park Service (NPS)
  - Surface Mining, Reclamation and Enforcement
  - U.S. Geological Survey (USGS)
  - Bureau of Ocean Energy Management
  - Bureau of Safety and Environmental Enforcement
  - National Park Service
  - Federal Consulting Group
  - Indian Arts and Crafts Board
  - Office of Natural Resources Revenue

- Department of the Treasury
  - Alcohol and Tobacco Tax and Trade Bureau
  - Bureau of the Public Debt
  - Internal Revenue Service (IRS)
  - Office of the Comptroller of the Currency (OCC)
  - Taxpayer Advocacy Panel
  - United States Mint
  - Financial Management Service
  - Federal Financing Bank
  - Taxpayer Advocacy Panel
  - Bureau of the Fiscal Service
  - Bureau of Engraving and Printing
  
- Department of Transportation (DOT)
  - Federal Aviation Administration (FAA)
  - Maritime Administration
  - National Highway Traffic Safety Administration
  - Pipeline and Hazardous Materials Safety Administration
  - Research and Innovative Technology Administration
  - Saint Lawrence Seaway Development Corporation
  - Surface Transportation Board
  - Bureau of Transportation Statistics
  - Federal Highway Administration
  - Federal Motor Carrier Safety Administration
  - Federal Railroad Administration
  - Federal Transit Administration
  
- Department of Veterans Affairs (VA)
  - National Cemetery Administration (NCA)
  - Veterans Benefits Administration
  - Veterans Day National Committee
  - Veterans Health Administration

#### Independent Agencies and Government Corporations

- Administrative Conference of the United States
- Advisory Council on Historic Preservation
- African Development Foundation
- AMTRAK (National Railroad Passenger Corporation)
- Broadcasting Board of Governors
- Central Intelligence Agency (CIA)
- Commission on Civil Rights
- Commodity Futures Trading Commission
- Consumer Product Safety Commission (CPSC)
- Corporation for National and Community Service
- Court Services and Offender Supervision Agency for the District of Columbia
- Defense Nuclear Facilities Safety Board
- Director of National Intelligence
- Environmental Protection Agency (EPA)
- Equal Employment Opportunity Commission (EEOC)
- Export-Import Bank of the United States
- Farm Credit Administration
- Farm Credit System Insurance Corporation



- Federal Communications Commission (FCC)
- Federal Deposit Insurance Corporation (FDIC)
- Federal Election Commission (FEC)
- Federal Energy Regulatory Commission
- Federal Housing Finance Agency
- Federal Labor Relations Authority
- Federal Maritime Commission
- Federal Mediation and Conciliation Service
- Federal Mine Safety and Health Review Commission
- Federal Reserve System
- Federal Retirement Thrift Investment Board
- Federal Trade Commission (FTC)
- General Services Administration (GSA)
- Institute of Museum and Library Services
- Inter-American Foundation
- Merit Systems Protection Board
- Millennium Challenge Corporation
- National Aeronautics and Space Administration (NASA)
- National Archives and Records Administration (NARA)
- National Capital Planning Commission
- National Council on Disability
- National Credit Union Administration (NCUA)
- National Endowment for the Arts
- National Endowment for the Humanities
- National Labor Relations Board (NLRB)
- National Mediation Board
- National Railroad Passenger Corporation (AMTRAK)
- National Science Foundation (NSF)
- National Transportation Safety Board
- Nuclear Regulatory Commission (NRC)
- Occupational Safety and Health Review Commission
- Office of Compliance
- Office of Government Ethics
- Office of Personnel Management
- Office of Special Counsel
- Office of the Director of National Intelligence
- Office of the National Counterintelligence Executive
- Overseas Private Investment Corporation
- Panama Canal Commission
- Peace Corps
- Pension Benefit Guaranty Corporation
- Postal Regulatory Commission
- Railroad Retirement Board
- Securities and Exchange Commission (SEC)
- Selective Service System
- Small Business Administration (SBA)
- Social Security Administration (SSA)
- Tennessee Valley Authority
- U.S. Trade and Development Agency
- United States Agency for International Development (USAID)
- United States International Trade Commission

- United States Postal Service (USPS)<sup>11</sup>

### Regulations from the Executive in Need of Scrutiny (REINS) Act

Congress has made attempts to curb executive agency powers by introducing the REINS Act in 2015.<sup>12</sup> The purpose of the REINS Act is to increase accountability and transparency in the federal regulatory process by requiring Congress to approve all new major regulations. The Act sets forth procedures federal agencies must follow, including preparing a report to Congress which classifies rules as major or non-major, list agency actions designed to implement a statutory provision or objective, list the aggregate economic impact of those actions, and include a complete copy of any cost-benefit analysis of a rule.

On July 28, 2015, the Act passed out of the House of Representatives but has yet to be heard in the Senate.<sup>13</sup>

### **Effect of Proposed Changes**

HM 1191 petitions the United States Congress to propose to the states an amendment to the U.S. Constitution entitled the "Regulation Freedom Amendment." Under the amendment, whenever one quarter of either the House of Representatives or the Senate objects to a proposed regulation, and transmits their written declaration of opposition to the President, a majority vote of the House and Senate would be required to adopt the proposed federal regulation.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law—they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject. This memorial does not have a fiscal impact.

#### **B. SECTION DIRECTORY:**

Not applicable.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

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<sup>11</sup> *Federal Executive Branch*, available at <http://www.usa.gov/Agencies/Federal/Executive.shtml> (last visited January 16, 2016).

<sup>12</sup> H.R. 427 and S 226, 114th Cong. (2015).

<sup>13</sup> <https://www.govtrack.us/congress/bills/114/hr427> (last visited January 14, 2016).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

House Memorial

A memorial to the Congress of the United States, urging Congress to propose to the states an amendment to the Constitution of the United States entitled the "Regulation Freedom Amendment," which would require a federal regulation be adopted by a majority vote of both houses of Congress if opposed by a specified percentage of the membership of either house.

WHEREAS, the growth and abuse of federal regulatory authority threaten our constitutional liberties, including those guaranteed by the Bill of Rights in the First, Second, Fourth, and Fifth Amendments to the Constitution of the United States, and

WHEREAS, federal regulators must be more accountable to the elected representatives of the people and not immune from such accountability, and

WHEREAS, the Declaration of Independence decried the imposition of the central government of "absolute Tyranny over these States" that "erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance," and

WHEREAS, the states too often find themselves in a similar position today, and

WHEREAS, the United States House of Representatives has passed with bipartisan support the Regulations from the

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27 Executive in Need of Scrutiny (REINS) Act of 2015, H.R. 427, to  
 28 require that Congress approve major new federal regulations  
 29 before they may take effect, and

30 WHEREAS, the President of the United States has  
 31 unfortunately shown no inclination to sign the REINS Act if it  
 32 were passed by both houses of Congress, and

33 WHEREAS, even if enacted, the law may be repealed or not  
 34 enforced by a future Congress or the President, and

35 WHEREAS, an amendment to the United States Constitution  
 36 does not require the President's approval and cannot be waived  
 37 by a future Congress or the President, NOW, THEREFORE,

38

39 Be It Resolved by the Legislature of the State of Florida:

40

41 That the Florida Legislature respectfully petitions the  
 42 Congress of the United States to propose to the states an  
 43 amendment to the Constitution of the United States entitled the  
 44 "Regulation Freedom Amendment," as follows:

45

46 "Whenever one-quarter of the Members of the United  
 47 States House or the United States Senate transmit to  
 48 the President their written declaration of opposition  
 49 to a proposed federal regulation, it shall require a  
 50 majority vote of the House and Senate to adopt that  
 51 regulation."

52

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53           BE IT FURTHER RESOLVED that copies of this memorial be  
54    dispatched to the President of the United States, to the  
55    President of the United States Senate, to the Speaker of the  
56    United States House of Representatives, and to each member of  
57    the Florida delegation to the United States Congress.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1227 Crustaceans  
**SPONSOR(S):** Agriculture & Natural Resources Subcommittee; Raschein  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N, As CS	Gregory	Harrington
2) State Affairs Committee	16 Y, 0 N	Gregory	Camechis
3) Judiciary Committee		Aziz <i>PA</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

The Florida Fish and Wildlife Conservation Commission (FWC) regulates the commercial harvest of stone crabs and spiny lobster. Individuals who wish to commercially sell, purchase, or harvest stone crabs and spiny lobsters must obtain a saltwater products license and a restricted species endorsement for that particular species from FWC. In addition to the licensing requirements, individuals must obtain a certificate and tag for each stone crab and spiny lobster trap. It is unlawful to violate any of FWC's rules regulating stone crab and spiny lobster trap certificates and trap tags. Further, it is unlawful to harvest and possess undersized spiny lobster unless authorized by FWC. Violators of these regulations are subject to administrative fines, penalties, jail time, and license suspension or revocation.

The bill updates the penalties for commercial harvesters who violate FWC's rules for stone crab and spiny lobster trap certifications and trap tags by:

- Specifying that the stone crab specific administrative penalties are in addition to other commercial penalties;
- Specifying that violations of FWC rules relating to stone crab harvesting are a level 5 offense on the offense severity ranking chart for the purposes of sentencing; and
- Revising the current penalties that apply to commercial harvesters of spiny lobster by authorizing FWC to suspend or revoke the violator's license in certain situations.

The bill also provides that possession of undersized lobsters is a major violation, unless authorized by FWC rule, and provides criminal penalties for such violation by:

- Authorizing prosecutors to charge a separate misdemeanor count for each undersized spiny lobster. The bill restricts the total misdemeanor penalty to not exceed 4 years imprisonment and \$4000 in civil fines;
- Providing that violations involving 100 or more undersized spiny lobster are punishable as a third degree felony; and
- Requiring FWC to impose an administrative penalty of \$2,000 and authorizing FWC to suspend all of the violator's license privileges up to 12 months.

The bill may have an indeterminate fiscal impact on the state.

The bill provides an effective date of October 1, 2016.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The Florida Fish and Wildlife Conservation Commission (FWC) regulates the commercial harvest of stone crabs and spiny lobsters. Harvesters set cage like traps under water and bait the traps to attract the crustaceans. FWC restricts the size, construction and design of the traps.<sup>1</sup> Buoys must be attached and traps must be placed so as not to impede navigation.<sup>2</sup> Individuals may only harvest stone crabs whose forearm are at least 2 ¾ inches in length.<sup>3</sup> Individuals may only harvest spiny lobsters whose carapace is at least 3 inches long or, if the tail is separated from the body, whose tails are at least 5 ½ inches long.<sup>4</sup> Harvesters pull up stone crab traps to collect their catch while harvesters snorkel or scuba dive to collect spiny lobster from their traps.<sup>5</sup>

Individuals who wish to commercially sell, purchase, or harvest saltwater products must obtain a saltwater products license from FWC.<sup>6</sup> "Saltwater products" include any species of saltwater fish, marine plant, or echinoderm, except shells, and salted, cured, canned, or smoked seafood.<sup>7</sup> In addition to the saltwater products license, individuals who wish sell a "restricted species" must possess a restricted species endorsement for that particular species.<sup>8</sup> FWC lists both stone crabs and spiny lobsters as restricted species.<sup>9</sup> In addition to the licensing requirements, individuals must obtain a certificate and tag for each stone crab and spiny lobster trap.<sup>10</sup>

For commercial stone crab traps, each holder of a stone crab trap endorsement must have a certificate on record for each stone crab trap used or possessed in or on the water.<sup>11</sup> In addition, each trap requires a tag that corresponds to a valid certificate.<sup>12</sup> Similarly, each holder of an SPL who uses traps for taking or attempting to take spiny lobsters is required to have a certificate on record for each trap possessed or used.<sup>13</sup> Each trap used to take or attempt to take spiny lobsters must also have a trap tag attached.<sup>14</sup>

It is unlawful to violate any of FWC's rules regulating stone crab trap certificates and trap tags.<sup>15</sup> Additionally, it is unlawful to possess a spiny lobster trap without the appropriate number of certificates and trap tags.<sup>16</sup> Any violator of these regulations commits a Level 2 violation.<sup>17</sup>

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<sup>1</sup> Rules 68B-13.008 and 68B-24.006, F.A.C.

<sup>2</sup> Id.

<sup>3</sup> Rule 68B-13.007(1), F.A.C.

<sup>4</sup> Rule 68B-24.003(1), F.A.C.

<sup>5</sup> See FWC, Stone Crab, <http://myfwc.com/fishing/saltwater/commercial/stone-crab/> (last visited January 27, 2016) and FWC, Commercial Regulation of Spiny Lobster, <http://myfwc.com/fishing/saltwater/commercial/spiny-lobster/> (last visited January 27, 2016).

<sup>6</sup> Section 379.361, F.S.

<sup>7</sup> Section 379.101(36), F.S.

<sup>8</sup> Section 379.361(2)(b), F.S.

<sup>9</sup> Rules 68B-13.005 and 68B-24.001(4), F.A.C.

<sup>10</sup> Sections 379.365(2)(a) and 379.3671(2)(c), F.S.

<sup>11</sup> Rule 68B-13.010(2)(a), F.A.C.

<sup>12</sup> Rule 68B-13.010(2)(b), F.A.C.

<sup>13</sup> Section 379.3671(2)(a), F.S.

<sup>14</sup> Section 379.3671(2)(b), F.S.

<sup>15</sup> Section 379.365(2)(a), F.S.

<sup>16</sup> Section 379.3671(2)(c)1. and 2., F.S.

<sup>17</sup> Sections 379.365(2)(a)2. and 379.401(2)(a)13., 16., and 18., F.S.

Section 379.401, F.S., provides the following penalties for Level 2 violations:

Level 2 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1st offense <sup>18</sup>	2nd Degree Misdemeanor	Max. \$500 or Max. 60 days	None
2nd offense within 3 years of previous Level 2 violation (or higher) <sup>19</sup>	1st Degree Misdemeanor	Min. \$250; Max. \$1,000 or Max. 1 year	None
3rd offense within 5 years of two previous Level 2 violations (or higher) <sup>20</sup>	1st Degree Misdemeanor	Min. \$500; Max. \$1,000 or Max. 1 year	Max. suspension of license for 1 year
4th offense within 10 years of three previous Level 2 violations (or higher) <sup>21</sup>	1st Degree Misdemeanor	Min. \$750; Max. \$1,000 or Max. 1 year	Max. suspension of license for 3 years

Violators of these regulations are also subject to the penalties in s. 379.407, F.S. The base penalties for violations of these requirements are:

Section 379.407, F.S., Base Penalties <sup>22</sup>	Fine or Jail Time
1st Conviction	Min. \$100; Max \$500 or Max 60 days in jail
2nd and Subsequent Convictions within 12 months	Min. \$250; Max \$1,000 or Max 6 months in jail

In addition to the base penalties, courts may assess additional penalties on commercial harvesters convicted of a major violation.<sup>23</sup> For a violation involving more than 100 illegal stone crabs or spiny lobster, an additional penalty of \$10 for each stone crab or spiny lobster may be assessed.<sup>24</sup> For major violations involving stone crabs and spiny lobsters, license holder must show just cause why his or her license should not be suspended or revoked.<sup>25</sup> For the purposes of suspension or revocation, a "major violation" related to illegal stone crabs is:

- Any single violation involving possession of more than 25 stone crabs during the closed season or possession of 25 or more whole-bodied or egg-bearing stone crabs;
- Any violation for trap molestation, trap robbing, or pulling traps at night; or
- Any combination of violations in any 3-consecutive-year period wherein more than 75 illegal stone crabs in the aggregate are involved.<sup>26</sup>

For the purposes of suspension or revocation, a "major violation" related to illegal spiny lobster is:

- Any single violation involving possession of more than 25 spiny lobster during the closed season or possession of more than 25 wrung spiny lobster tails or more than 25 egg-bearing or stripped spiny lobster;
- Any violation for trap molestation, trap robbing, or pulling traps at night; or
- Any combination of violations in any 3-consecutive-year period wherein more than 75 illegal spiny lobster in the aggregate are involved.<sup>27</sup>

<sup>18</sup> Section 379.401(2)(b)1., F.S.

<sup>19</sup> Section 379.401(2)(b)2., F.S.

<sup>20</sup> Section 379.401(2)(b)3., F.S.

<sup>21</sup> Section 379.401(2)(b)4., F.S.

<sup>22</sup> Section 379.407(1), F.S.

<sup>23</sup> Section 379.407(2), F.S.

<sup>24</sup> Section 379.407(2)(a), F.S.

<sup>25</sup> Section 379.407(2)(i) and (j), F.S.

<sup>26</sup> Section 379.407(2)(i), F.S.

FWC may suspend or revoke a commercial harvester's saltwater products license as follows:

<b>Commercial License Suspension or Revocation<sup>28</sup></b>	
<b>Offense</b>	<b>Length</b>
1st conviction	Max. 30 days
2nd conviction within 12 months of prior violation	Max. 90 days
3rd conviction within 24 months of prior violation	Max. 180 days
4th conviction within 36 months of prior violation	Min. 6 months; Max. 3 years

In addition to the penalties imposed by ss. 379.401 and 379.407, F.S., commercial harvesters who violate the FWC rules regulating stone crab trap certificates and trap tags are subject to the following administrative penalties:

<b>Stone Crab Certificate and Trap Tag Penalties<sup>29</sup></b>	<b>Administrative Penalty</b>	<b>License Restrictions</b>
1st violation	Max. \$1,000	None
2nd violation within 24 months of previous violation	Max. \$2,000	Max. suspension of stone crab endorsement 12 months
3rd violation within 36 months of two previous violations	Max. \$5,000	Max. suspension of stone crab endorsement 24 months
4th violation within 48 months of three previous violations	None specified	Permanent revocation of saltwater fishing privileges including saltwater products license

In addition to the penalties imposed by ss. 379.401 and 379.407, F.S., commercial harvesters who violate the FWC rules regulating spiny lobster traps are subject to the following administrative penalties:

<b>Spiny Lobster Trap Penalties<sup>30</sup></b>	<b>Administrative Penalty</b>	<b>License Restrictions</b>
1st violation	Max. \$1,000 for violations involving certificates and tags Max. \$500 for all other violations	None
2nd violation within 24 months of previous violation of certificate and tag requirements	Max. \$2,000	Suspension of spiny lobster endorsement for remainder of current license year
3rd violation within 36 months of two previous violations of certificate and tag requirements and prohibition of taking or emptying another person's trap	Max. \$5,000	Max. suspension of spiny lobster endorsement 24 months and FWC may suspend or revoke saltwater products license

Further, an individual commits a major violation when they possess spiny lobster during the closed season or, while on the water, possesses spiny lobster tails that have been wrung or separated from the body, unless such possession is allowed by FWC rule.<sup>31</sup> Such violations are punishable as follows:

<sup>27</sup> Section 379.407(2)(j), F.S.

<sup>28</sup> Section 379.407(2)(h), F.S.

<sup>29</sup> Section 379.365(2)(a)1., F.S.

<sup>30</sup> Section 379.3671(2)(c)4., F.S.

Penalties for Possession of Spiny Lobster <sup>32</sup>	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1st violation	2nd Degree Misdemeanor	Max. \$500 or Max. 60 days	None
1st violation involving 25 or more lobsters	1st Degree Misdemeanor	Max. \$1,000 or Max. 1 year	None
2nd violation	1st Degree Misdemeanor	Max. \$1,000 or Max. 1 year	Max. suspension of license for 90 days
3rd violation	1st Degree Misdemeanor	Max. \$2,500 or Min. 6 months Max. 1 year	Max. suspension of license for 6 months
3rd violation within 1 year of 2 <sup>nd</sup> violation	3rd Degree Felony	\$5,000 or Min. 1 year; Max. 5 years	All FWC Licenses Permanently Revoked
4th offense	3rd Degree Felony	\$5,000 or Min. 1 year; Max. 5 year	All FWC Licenses Permanently Revoked

The illegal harvest of undersized and out of season spiny lobsters and stone crabs places negative pressure on the crustacean populations.<sup>33</sup>

### Effect of Proposed Changes

The bill updates the penalties for commercial harvesters who violate FWC's rules for stone crab and spiny lobster trap certifications and trap tags.

The bill specifies that the stone crab specific administrative penalties in subsections 379.365(2), F.S., are in addition to the commercial penalties in s. 379.407, F.S. The bill makes violations of FWC rules relating to molestation of stone crab traps, lines, or buoys; illegal trade, sale, or supplying of stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and commercial harvest of stone crabs while license is suspended or revoked a level 5 offense on the offense severity ranking chart for the purposes of sentencing by amending paragraph 921.0022(3)(e), F.S.

For violations of spiny lobster certificate and trap tag requirements, the bill revises the current penalties that apply to commercial harvesters as follows:

- Authorizes FWC to suspend the violator's license privileges for up to 12 months for the second violation by amending subparagraph 379.3671(2)(c)4.b., F.S. The statute previously only required suspension for the remainder for the license year;
- Authorizes FWC to suspend the violator's spiny lobster endorsement for 24 months for the third violation by amending subparagraph 379.3671(2)(c)4.c., F.S. The bill removes FWC's authorization to proceed against the violator's saltwater products license for the third violation; and

<sup>31</sup> Section 379.407(5), F.S.

<sup>32</sup> Id.

<sup>33</sup> See examples of recent arrests: *3 locals had illegal lobster, crab claws*, keynews.com (August 28, 2010)

<http://keysnews.com/node/25889>; Keysinfontet, *Two Keys men busted for illegal lobster haul a week before mini-season*, Keysinfontet (July 23, 2014) <http://www.keysnet.com/2014/07/23/497892/two-keys-men-busted-for-illegal.html>; Keysinfontet, *Three busted in two separate lobster cases*, Keysinfontet (August 6, 2014) [http://www.keysnet.com/2014/08/06/498100\\_three-busted-in-two-separate-lobster.html?rh=1](http://www.keysnet.com/2014/08/06/498100_three-busted-in-two-separate-lobster.html?rh=1); Kevin Wadlow, *Law enforcement cracking down harder on lobster mobsters*, Keysinfontet (July 22, 2015) [http://www.keysnet.com/2015/07/22/503743\\_law-enforcement-cracking-down.html?rh=1](http://www.keysnet.com/2015/07/22/503743_law-enforcement-cracking-down.html?rh=1), *Convicted lobster poacher gets jail time, \$28K in fines*, keynews.com (April 7, 2015) <http://keysnews.com/node/65465>.

- Requires FWC to permanently revoke the violator's saltwater fishing privileges, including authorizing FWC to proceed against the violator's saltwater products license, for the fourth violation that occurs within 48 months of any previous three violations by adding subparagraph 379.3671(2)(c)4.d., F.S.

The bill makes possession of undersized spiny lobster a major violation for recreational and commercial harvesters, unless authorized by FWC rule, by adding paragraph 379.407(5)(b), F.S.<sup>34</sup> Specifically the bill:

- Authorizes prosecutors to charge a separate misdemeanor count for each undersized spiny lobster for violations involving fewer than 100 spiny lobster traps. The bill restricts the total misdemeanor penalty to not exceed 4 years imprisonment and \$4000 in civil fines; and
- Provides the following criminal penalties for recreational and commercial harvesters:
  - For the first violation, a second degree misdemeanor. Such violations may be punished with a maximum fine of \$500 or up to 60 days in jail;<sup>35</sup>
  - For the second violation, a first degree misdemeanor. Such violations may be punished with a maximum fine of \$1000 or up to 1 year in jail;<sup>36</sup> and
  - For violations involving 100 or more undersized spiny lobsters, a third degree felony. Such violations may be punished with a mandatory civil penalty of \$500 and maximum fine of \$5,000 or up to 5 years in prison.<sup>37</sup> The bill makes this violation a level 5 offense on the offense severity ranking chart for the purposes of sentencing by amending paragraph 921.0022(3)(e), F.S. The bill also requires FWC to impose an administrative penalty of up to \$2,000 and authorizes FWC to suspend all of the violator's license privileges up to 12 months.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 379.365, F.S., relating to stone crab regulation.

**Section 2.** Amends s. 379.3671, F.S., relating to the spiny lobster trap certification program.

**Section 3.** Amends s. 379.407, F.S., relating to penalties for possession of spiny lobster.

**Section 4.** Amends s. 921.0022, F.S., relating to the offense severity ranking chart for criminal sentencing.

**Section 5.** Provides an effective date of October 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill may have an indeterminate positive fiscal impact on FWC by creating a civil penalty for possession of undersized spiny lobster.

<sup>34</sup> Rule 68B-24.003(3), F.A.C., authorizes commercial harvesters to possess 50 undersized lobsters per boat and one lobster per trap if used exclusively for luring, decoying, or otherwise attracting noncaptive spiny lobster into traps.

<sup>35</sup> Sections 775.082(4)(b) and 775.083(1)(e), F.S.

<sup>36</sup> Sections 775.082(4)(a) and 775.083(1)(d), F.S.

<sup>37</sup> Section 775.082(3)(e) and 775.083(1)(c), F.S.

2. Expenditures:

The Criminal Justice Impact Conference met on January 29, 2016, and determined that this bill will have a positive indeterminate prison bed impact. The impact conference provided:

While current sentencing and incarceration practices are low for the existing [third] degree felonies, it is unknown how many crustaceans were involved among the violations affected by these changes to statute. Furthermore, it is not known how courts will treat misdemeanor violations that surpass a one year jail sentence, as the current language seems to allow, which could have a positive impact on prison beds in addition to the felonies.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on recreational and commercial harvesters who harvest undersized spiny lobsters.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 2, 2016, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. Specifically the amendment:

- Removes the additional criminal penalties for violations of the stone crab and lobster trap tag and certification requirements in the original bill;
- Removes the authorization for prosecutors to charge a separate misdemeanor count for each untagged and unlawful trap for violations involving fewer than 100 stone crabs or spiny lobster traps originally in the bill;
- Specifies that the stone crab specific administrative penalties in subsections 379.365(2), F.S., are in addition to the commercial penalties in s. 379.407, F.S.;
- Specifies that violations of FWC rules relating to stone crab harvesting are a level 5 offense on the offense severity ranking chart for the purposes of sentencing; and
- Revises the current penalties that apply to commercial harvesters of spiny lobster by authorizing FWC to suspend or revoke of the violator's license in certain situations.

This analysis is drafted to the committee substitute as approved by the subcommittee.

1                   A bill to be entitled  
 2           An act relating to crustaceans; amending s. 379.365,  
 3           F.S.; revising the administrative penalties for  
 4           violations related to stone crab traps; amending s.  
 5           379.3671, F.S.; revising the administrative penalties  
 6           for violations related to spiny lobster traps;  
 7           amending s. 379.407, F.S.; prohibiting the possession  
 8           of undersized spiny lobsters by certain persons;  
 9           specifying that each undersized spiny lobster may be  
 10          charged as a separate offense of certain violations;  
 11          specifying maximum penalties for such violations;  
 12          specifying the criminal and administrative penalties  
 13          for violations related to undersized spiny lobsters;  
 14          amending s. 921.0022, F.S.; revising the offense  
 15          severity ranking chart to include certain violations  
 16          related to stone crabs and spiny lobsters; providing  
 17          an effective date.

18  
 19   Be It Enacted by the Legislature of the State of Florida:

20  
 21           Section 1. Paragraph (a) of subsection (2) of section  
 22   379.365, Florida Statutes, is amended to read:

23           379.365 Stone crab; regulation.—

24           (2) PENALTIES.—For purposes of this subsection, conviction  
 25   is any disposition other than acquittal or dismissal, regardless  
 26   of whether the violation was adjudicated under any state or



27 federal law.

28 (a) It is unlawful to violate commission rules regulating  
 29 stone crab trap certificates and trap tags. A ~~No~~ person may not  
 30 use an expired tag or a stone crab trap tag not issued by the  
 31 commission or possess or use a stone crab trap in or on state  
 32 waters or adjacent federal waters without having a trap tag  
 33 required by the commission firmly attached thereto.

34 1. In addition to any other penalties provided in s.  
 35 379.407, for a a ~~any~~ commercial harvester who violates this  
 36 paragraph, the following administrative penalties apply:—

37 a. For a first violation, the commission shall assess an  
 38 additional administrative penalty of up to \$1,000.

39 b. For a second violation that occurs within 24 months  
 40 after ~~of~~ any previous such violation, the commission shall  
 41 assess an additional administrative penalty of up to \$2,000, and  
 42 the stone crab endorsement under which the violation was  
 43 committed may be suspended for 12 ~~calendar~~ months.

44 c. For a third violation that occurs within 36 months  
 45 after ~~of~~ any two previous ~~two~~ such violations, the commission  
 46 shall assess an additional administrative penalty of up to  
 47 \$5,000, and the stone crab endorsement under which the violation  
 48 was committed may be suspended for 24 ~~calendar~~ months.

49 d. A fourth violation that occurs within 48 months after  
 50 ~~of~~ any three previous such violations, shall result in permanent  
 51 revocation of all of the violator's saltwater fishing  
 52 privileges, including having the commission proceed against the

53 endorsement holder's saltwater products license in accordance  
 54 with s. 379.407.

55 2. Any other person who violates ~~the provisions of~~ this  
 56 paragraph commits a Level Two violation under s. 379.401.

57  
 58 A ~~Any~~ commercial harvester assessed an administrative penalty  
 59 under this paragraph shall, within 30 ~~calendar~~ days after  
 60 notification, pay the administrative penalty to the commission,  
 61 or request an administrative hearing under ss. 120.569 and  
 62 120.57. The proceeds of all administrative penalties collected  
 63 under this paragraph shall be deposited in the Marine Resources  
 64 Conservation Trust Fund.

65 Section 2. Paragraph (c) of subsection (2) of section  
 66 379.3671, Florida Statutes, is amended to read:

67 379.3671 Spiny lobster trap certificate program.—

68 (2) TRANSFERABLE TRAP CERTIFICATES; TRAP TAGS; FEES;  
 69 PENALTIES.—The Fish and Wildlife Conservation Commission shall  
 70 establish a trap certificate program for the spiny lobster  
 71 fishery of this state and shall be responsible for its  
 72 administration and enforcement as follows:

73 (c) Prohibitions; penalties.—

74 1. ~~It is unlawful for~~ A person may not ~~to~~ possess or use a  
 75 spiny lobster trap in or on state waters or adjacent federal  
 76 waters without having affixed thereto the trap tag required by  
 77 this section. ~~It is unlawful for~~ A person may not ~~to~~ possess or  
 78 use any other gear or device designed to attract and enclose or

79 otherwise aid in the taking of spiny lobster by trapping that is  
80 not a trap as defined by commission rule.

81 2. ~~It is unlawful for~~ A person may not ~~to~~ possess or use  
82 spiny lobster trap tags without having the necessary number of  
83 certificates on record as required by this section.

84 3. A ~~It is unlawful for any person~~ may not ~~to~~ willfully  
85 molest, take possession of, or remove the contents of another  
86 harvester's spiny lobster trap without the express written  
87 consent of the trap owner available for immediate inspection.  
88 Unauthorized possession of another harvester's ~~another's~~ trap  
89 gear or removal of another harvester's trap contents constitutes  
90 theft.

91 a. A commercial harvester who violates this subparagraph  
92 shall be punished under ss. 379.367 and 379.407. A ~~Any~~  
93 commercial harvester receiving a judicial disposition other than  
94 dismissal or acquittal on a charge of theft of or from a trap  
95 pursuant to this subparagraph or s. 379.402 shall, in addition  
96 to the penalties specified in ss. 379.367 and 379.407 and ~~the~~  
97 ~~provisions of~~ this section, permanently lose all of his or her  
98 saltwater fishing privileges, including his or her saltwater  
99 products license, spiny lobster endorsement, and all trap  
100 certificates allotted to him or her through this program. In  
101 such cases, trap certificates and endorsements are  
102 nontransferable.

103 b. A ~~Any~~ commercial harvester receiving a judicial  
104 disposition other than dismissal or acquittal on a charge of

105 willful molestation of a trap, in addition to the penalties  
 106 specified in ss. 379.367 and 379.407, shall lose all of his or  
 107 her saltwater fishing privileges for a period of 24 ~~calendar~~  
 108 months.

109 c. In addition to any other penalties specified in this  
 110 subparagraph, a ~~any~~ commercial harvester charged with violating  
 111 this subparagraph and receiving a judicial disposition other  
 112 than dismissal or acquittal for violating this subparagraph or  
 113 s. 379.402 shall also be assessed an administrative penalty of  
 114 up to \$5,000.

115  
 116 Immediately upon receiving a citation for a violation involving  
 117 theft of or from a trap, or molestation of a trap, and until  
 118 adjudicated for such a violation or, upon receipt of a judicial  
 119 disposition other than dismissal or acquittal of such a  
 120 violation, the commercial harvester committing the violation is  
 121 prohibited from transferring any of his or her spiny lobster  
 122 trap certificates and endorsements.

123 4. In addition to any other penalties provided in s.  
 124 379.407, a commercial harvester who violates ~~the provisions of~~  
 125 this section or commission rules relating to spiny lobster traps  
 126 shall be punished as follows:

127 a. If the first violation is for a violation of  
 128 subparagraph 1. or subparagraph 2., the commission shall assess  
 129 an additional administrative penalty of up to \$1,000. For all  
 130 other first violations, the commission shall assess an

131 additional administrative penalty of up to \$500.

132 b. For a second violation of subparagraph 1. or  
 133 subparagraph 2. ~~that which~~ occurs within 24 months after ~~of~~ any  
 134 previous such violation, the commission shall assess an  
 135 additional administrative penalty of up to \$2,000, and the spiny  
 136 lobster endorsement issued under s. 379.367(2) or (6) may be  
 137 suspended for 12 months ~~the remainder of the current license~~  
 138 ~~year.~~

139 c. For a third ~~or subsequent~~ violation of subparagraph 1.  
 140 ~~or,~~ subparagraph 2. ~~that,~~ ~~or subparagraph 3.~~ which occurs within  
 141 36 months after ~~of~~ any two previous ~~two~~ such violations, the  
 142 commission shall assess an additional administrative penalty of  
 143 up to \$5,000, and ~~may suspend~~ the spiny lobster endorsement  
 144 issued under s. 379.367(2) or (6) may be suspended for a period  
 145 ~~of up to 24 months or may revoke the spiny lobster endorsement~~  
 146 ~~and, if revoking the spiny lobster endorsement, may also proceed~~  
 147 ~~against the licenseholder's saltwater products license in~~  
 148 ~~accordance with the provisions of s. 379.407(2)(h).~~

149 d. A fourth violation that occurs within 48 months after  
 150 any three previous such violations shall result in permanent  
 151 revocation of all of the violator's saltwater fishing  
 152 privileges, including having the commission proceed against the  
 153 endorsement holder's saltwater products license in accordance  
 154 with s. 379.407.

155 e.~~d.~~ Within 30 days after notification, a Any person  
 156 assessed an additional administrative penalty pursuant to this

157 | section shall ~~within 30 calendar days after notification:~~

158 | (I) Pay the administrative penalty to the commission; or

159 | (II) Request an administrative hearing pursuant to ~~the~~  
 160 | ~~provisions of~~ ss. 120.569 and 120.57.

161 | ~~f.e.~~ The commission shall suspend the spiny lobster  
 162 | endorsement issued under s. 379.367(2) or (6) if a ~~for any~~  
 163 | person fails ~~failing~~ to comply with ~~the provisions of~~ sub-  
 164 | subparagraph e. ~~d.~~

165 | 5.a. A ~~It is unlawful for any person may not to~~ make,  
 166 | alter, forge, counterfeit, or reproduce a spiny lobster trap tag  
 167 | or certificate.

168 | b. A ~~It is unlawful for any person may not to~~ knowingly  
 169 | have in his or her possession a forged, counterfeit, or  
 170 | imitation spiny lobster trap tag or certificate.

171 | c. A ~~It is unlawful for any person may not to~~ barter,  
 172 | trade, sell, supply, agree to supply, aid in supplying, or give  
 173 | away a spiny lobster trap tag or certificate or ~~to~~ conspire to  
 174 | barter, trade, sell, supply, aid in supplying, or give away a  
 175 | spiny lobster trap tag or certificate unless such action is ~~duly~~  
 176 | authorized by the commission as provided in this chapter or in  
 177 | the rules of the commission.

178 | 6.a. A ~~Any~~ commercial harvester who violates ~~the~~  
 179 | ~~provisions of~~ subparagraph 5., or a ~~any~~ commercial harvester who  
 180 | engages in the commercial harvest, trapping, or possession of  
 181 | spiny lobster without a spiny lobster endorsement as required by  
 182 | s. 379.367(2) or (6) or during any period while such spiny

183 lobster endorsement is under suspension or revocation, commits a  
 184 felony of the third degree, punishable as provided in s.  
 185 775.082, s. 775.083, or s. 775.084.

186 b. In addition to any penalty imposed pursuant to sub-  
 187 subparagraph a., the commission shall assess ~~levy~~ a fine of up  
 188 to twice the amount of the appropriate surcharge to be paid on  
 189 the fair market value of the transferred certificates, as  
 190 provided in subparagraph (a)1., on a any commercial harvester  
 191 who violates ~~the provisions of~~ sub-subparagraph 5.c.

192 c. In addition to any penalty imposed pursuant to sub-  
 193 subparagraph a., a any commercial harvester receiving any  
 194 judicial disposition other than acquittal or dismissal for a  
 195 violation of subparagraph 5. shall be assessed an administrative  
 196 penalty of up to \$5,000, and the spiny lobster endorsement under  
 197 which the violation was committed may be suspended for up to 24  
 198 ~~calendar~~ months. Immediately upon issuance of a citation  
 199 involving a violation of subparagraph 5. and until adjudication  
 200 of such a violation, and after receipt of any judicial  
 201 disposition other than acquittal or dismissal for such a  
 202 violation, the commercial harvester holding the spiny lobster  
 203 endorsement listed on the citation is prohibited from  
 204 transferring any spiny lobster trap certificates.

205 d. A ~~Any other~~ person who violates ~~the provisions of~~  
 206 subparagraph 5. commits a Level Four violation under s. 379.401.

207 7. Before ~~Prior to~~ the 2010-2011 license year, any  
 208 certificates for which the annual certificate fee is not paid

209 for a period of 3 years shall be considered abandoned and shall  
 210 revert to the commission. Beginning with the 2010-2011 license  
 211 year, any certificate for which the annual certificate fee is  
 212 not paid for a period of 2 consecutive years shall be considered  
 213 abandoned and shall revert to the commission. During any period  
 214 of trap reduction, any certificates reverting to the commission  
 215 shall become permanently unavailable and be considered in that  
 216 amount to be reduced during the next license-year period.  
 217 Otherwise, any certificates that revert to the commission are to  
 218 be reallocated in such manner as provided by the commission.

219 8. The proceeds of all administrative penalties collected  
 220 pursuant to subparagraph 4. and all fines collected pursuant to  
 221 sub-subparagraph 6.b. shall be deposited into the Marine  
 222 Resources Conservation Trust Fund.

223 9. All traps shall be removed from the water during any  
 224 period of suspension or revocation.

225 10. Except as otherwise provided, a ~~any~~ person who  
 226 violates this paragraph commits a Level Two violation under s.  
 227 379.401.

228 Section 3. Subsection (5) of section 379.407, Florida  
 229 Statutes, is amended to read:

230 379.407 Administration; rules, publications, records;  
 231 penalties; injunctions.—

232 (5) PENALTIES FOR POSSESSION OF SPINY LOBSTER; CLOSED  
 233 SEASON AND WRUNG TAILS.—

234 (a) It is a major violation under this section for any



235 person, firm, or corporation to be in possession of spiny  
 236 lobster during the closed season or, while on the water, to be  
 237 in possession of spiny lobster tails that have been wrung or  
 238 separated from the body, unless such possession is allowed by  
 239 commission rule. A ~~Any~~ person, firm, or corporation that  
 240 violates this paragraph ~~subsection~~ is subject to the following  
 241 penalties ~~as follows~~:

242 1. ~~(a)~~ A first violation is a misdemeanor of the second  
 243 degree, punishable as provided in s. 775.082 or s. 775.083. If  
 244 the violation involves 25 or more lobster, the violation is a  
 245 misdemeanor of the first degree, punishable as provided in s.  
 246 775.082 or s. 775.083.

247 2. ~~(b)~~ A second violation is a misdemeanor of the first  
 248 degree, punishable as provided in s. 775.082 or s. 775.083, and  
 249 such person is subject to a suspension of his or her ~~all~~ license  
 250 privileges under this chapter for a period not to exceed 90  
 251 days.

252 3. ~~(c)~~ A third violation is a misdemeanor of the first  
 253 degree, punishable as provided in s. 775.082 or s. 775.083, with  
 254 a mandatory minimum term of imprisonment of 6 months, and such  
 255 person may be assessed a civil penalty of up to \$2,500 and is  
 256 subject to a suspension of all license privileges under this  
 257 chapter for a period not to exceed 6 months.

258 4. ~~(d)~~ A third violation within 1 year after a second  
 259 violation is a felony of the third degree, punishable as  
 260 provided in s. 775.082 or s. 775.083, with a mandatory minimum

261 term of imprisonment of 1 year, and such person shall be  
 262 assessed a civil penalty of \$5,000 and all license privileges  
 263 under this chapter shall be permanently revoked.

264 ~~5.(e)~~ A fourth or subsequent violation is a felony of the  
 265 third degree, punishable as provided in s. 775.082 or s.  
 266 775.083, with a mandatory minimum term of imprisonment of 1  
 267 year, and such person shall be assessed a civil penalty of  
 268 \$5,000 and all license privileges under this chapter shall be  
 269 permanently revoked.

270 (b) It is a major violation under this section for a  
 271 recreational or commercial harvester to possess an undersized  
 272 spiny lobster, unless authorized by commission rule. For  
 273 violations of this paragraph involving fewer than 100 undersized  
 274 spiny lobsters, each undersized spiny lobster may be charged as  
 275 a separate offense under subparagraphs 1. and 2. However, the  
 276 total penalties assessed under subparagraphs 1. and 2. for any  
 277 one scheme or course of conduct may not exceed 4 years'  
 278 imprisonment and a fine of \$4,000 under such subparagraphs. A  
 279 person who violates this paragraph is subject to the following  
 280 penalties:

281 1. A first violation is a misdemeanor of the second  
 282 degree, punishable as provided in s. 775.082 or s. 775.083.

283 2. A second or subsequent violation is a misdemeanor of  
 284 the first degree, punishable as provided in s. 775.082 or s.  
 285 775.083.

286 3. If a violation involves 100 or more undersized spiny

287 lobsters, the violation is a felony of the third degree,  
 288 punishable as provided in s. 775.082, s. 775.083, or s. 775.084  
 289 and a mandatory civil fine of at least \$500. In addition, the  
 290 commission shall assess the violator with an administrative  
 291 penalty of up to \$2,000 and may suspend the violator's license  
 292 privileges under this chapter for a period of up to 12 months.

293 Section 4. Paragraph (e) of subsection (3) of section  
 294 921.0022, Florida Statutes, is amended to read:

295 921.0022 Criminal Punishment Code; offense severity  
 296 ranking chart.—

297 (3) OFFENSE SEVERITY RANKING CHART  
 298 (e) LEVEL 5

299

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of

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303	327.30(5)	3rd	<p>motor vehicle with suspended license, resulting in death or serious bodily injury.</p>
304	<u>379.365(2)(c)1.</u>	3rd	<p>Vessel accidents involving personal injury; leaving scene.</p> <p><u>Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone</u></p>

			<p><u>crab trap tags;</u>  <u>possession of forged,</u>  <u>counterfeit, or</u>  <u>imitation stone crab</u>  <u>trap tags; and engaging</u>  <u>in the commercial</u>  <u>harvest of stone crabs</u>  <u>while license is</u>  <u>suspended or revoked.</u></p>
305	379.367(4)	3rd	<p>Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.</p>
306	<del>379.3671(2)(c)3.</del>	<del>3rd</del>	<p><del>Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.</del></p>
307 308	<u>379.407(5)(b)3.</u>	<u>3rd</u>	<p><u>Possession of 100 or more undersized spiny lobsters.</u></p>

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309	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
310	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
311	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
312	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.

313	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
314	790.01(2)	3rd	Carrying a concealed firearm.
315	790.162	2nd	Threat to throw or discharge destructive device.
316	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
317	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
318	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
319	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
320			

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321	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
322	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
323	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
324	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
325	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.



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326	812.131(2)(b)	3rd	Robbery by sudden snatching.
327	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
328	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
329	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
330	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
331	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services

332	817.625(2)(b)	2nd	received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
333	825.1025(4)	3rd	Second or subsequent fraudulent use of scanning device or reencoder.
334	827.071(4)	2nd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
335	827.071(5)	3rd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
			Possess, control, or intentionally view any photographic material, motion

336	839.13(2)(b)	2nd	picture, etc., which includes sexual conduct by a child.
337	843.01	3rd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
338	847.0135(5)(b)	2nd	Resist officer with violence to person; resist arrest with violence.
339	847.0137(2) & (3)	3rd	Lewd or lascivious exhibition using computer; offender 18 years or older.
340	847.0138(2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
			Transmission of material harmful to minors to a minor by electronic device or equipment.

341	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
342	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
343	893.13 (1) (a) 1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03 (1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs).
344	893.13 (1) (c) 2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs) within 1,000 feet of a child care facility,

345	893.13(1)(d)1.	1st	<p>school, or state, county,  or municipal park or  publicly owned  recreational facility or  community center.</p>
346	893.13(1)(e)2.	2nd	<p>Sell, manufacture, or  deliver cocaine (or other  s. 893.03(1)(a), (1)(b),  (1)(d), (2)(a), (2)(b), or  (2)(c)4. drugs) within  1,000 feet of university.</p> <p>Sell, manufacture, or  deliver cannabis or other  drug prohibited under s.  893.03(1)(c), (2)(c)1.,  (2)(c)2., (2)(c)3.,  (2)(c)5., (2)(c)6.,  (2)(c)7., (2)(c)8.,  (2)(c)9., (3), or (4)  within 1,000 feet of  property used for  religious services or a  specified business site.</p>
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348	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
349	893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
350	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

351 Section 5. This act shall take effect October 1, 2016.

352



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1333 Sexual Offenders  
**SPONSOR(S):** Baxley  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1662

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N	Cox	White
2) Justice Appropriations Subcommittee	12 Y, 0 N	Smith	Lloyd
3) Judiciary Committee		Cox <i>Yea</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

The bill amends a variety of statutes related to sexual predators and offenders to bring them further in line with the federal Adam Walsh Act.

Specifically, the bill removes language that currently prevents a parent or guardian convicted of specified offenses of kidnapping, false imprisonment, or luring or enticing a child against his or her minor child from being designated as a sexual predator or sexual offender. Under the bill, such a parent or guardian may be designated a sexual predator or offender if he or she commits one of the above-mentioned offenses and the offense had a sexual component.

The bill also:

- Amends various definitions and provides consistency among relevant statutes;
- Expands the types of information that can be registered or updated through FDLE's online system;
- Clarifies the appropriate entity to which a sexual predator or offender must report;
- Modifies reporting requirements for international travel;
- Requires offenders taking online courses to report such information and for institutions of higher education to be notified of such attendance;
- Clarifies obligations to obtain a driver license or identification card;
- Clarifies to which court an offender must petition for removal from registration requirements; and
- Clarifies that the "Romeo and Juliet" exception that allows removal from registration requirements applies only to consensual acts.

Additionally, the bill requires offenders designated as a sexual offender for convictions of lewd or lascivious battery upon an elderly person to report quarterly and for life and prohibit such offenders from being eligible for removal from registration requirements.

The bill will likely have an indeterminate prison bed impact to DOC.

The bill will have an indeterminate fiscal impact to expenditures in local governments.

The bill is effective on October 1, 2016.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Sexual Predator and Sexual Offender Qualifying Offenses**

###### *Sexual Predator Qualifying Offenses*

Section 775.21, F.S., which contains various registration requirements for sexual predators, provides in part, that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of:

1. A capital, life, or first degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction:
  - Sections 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian;<sup>1</sup>
  - Section 794.011, F.S. (sexual battery);
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
  - Section 847.0145, F.S. (selling or buying of minors); or
  
2. Any felony violation, or attempt thereof, of:
  - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
  - Section 394.4593(2), F.S. (sexual misconduct with a patient);
  - Sections 787.01 (kidnapping), 787.02 (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian;<sup>2</sup>
  - Section 787.06(3)(b),(d),(f),(g), or former (h), F.S. (relating to human trafficking);
  - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.;<sup>3</sup>
  - Section 794.05, F.S. (unlawful activity with certain minors);
  - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution);
  - Former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
  - Section 810.145(8)(b), F.S. (relating to video voyeurism);
  - Section 825.1025, F.S. (lewd or lascivious battery upon or in the presence of an elderly person or disabled person);
  - Section 827.071, F.S. (sexual performance by a child);
  - Section 847.0135, F.S., excluding s. 847.0135(6), F.S. (computer pornography);
  - Section 847.0145, F.S. (selling or buying of minors);
  - Section 916.1075(2), F.S. (sexual misconduct with a forensic client); or
  - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and

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<sup>1</sup> These convictions can only be used as a qualifying offense for designation as a sexual predator if there is a finding that the conviction has a sexual component. The Fourth District Court of Appeal has held that the sexual offender designation that resulted from a false imprisonment conviction that had no sexual motivation failed the "rationally related" test. The Court held the state has an interest in protecting the public from sexual offenders and the designation of a person as a sexual offender is rationally related to that goal. However, if it is clear that the qualifying crime is totally devoid of a sexual component, such rational basis is lost. *Raines v. State*, 805 So. 2d 999, 1003 (Fla. 4th DCA 2001); see also *Robinson v. State*, 804 So. 2d 451 (Fla. 4th DCA 2001).

<sup>2</sup> *Id.*

<sup>3</sup> Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

- The offender has previously been convicted of any of the statutes enumerated above, including s. 847.0133, F.S. (protection of minors / obscenity).

### *Sexual Offender Qualifying Offenses*

Section 943.0435, F.S., which contains various registration requirements for sexual offenders, defines the term “sexual offender,” in part, as a person who:

1. Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:
  - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
  - Section 394.4593(2), F.S. (sexual misconduct with a patient);
  - Sections 787.01, (kidnapping), 787.02, (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim’s parent or guardian;
  - Section 787.06(3)(b),(d),(f),(g), or former (h), F.S. (relating to human trafficking);
  - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.;
  - Section 794.05, F.S. (unlawful activity with certain minors);
  - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution);
  - Former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
  - Section 810.145(8), F.S. (relating to video voyeurism);
  - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person);
  - Section 827.071, F.S. (sexual performance by a child);
  - Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity);
  - Section 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.;
  - Section 847.0137, F.S. (transmission of pornography by electronic device or equipment);
  - Section 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment);
  - Section 847.0145, F.S. (selling or buying of minors);
  - Section 916.1075(2), F.S. (sexual misconduct with a forensic client); or
  - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
  
2. Has been released on or after October 1, 1997, from the sanction<sup>4</sup> imposed for any conviction of an offense described above.

Sections 944.606 and 944.607, F.S., which contain provisions relating to sexual offenders in the custody of or under the supervision of the Department of Corrections (DOC), also contain definitions of the term “sexual offender” that include the list of qualifying offenses enumerated above.

### **Specified Qualifying Offenses Involving a Minor Child and Parent or Guardian**

#### *Sexual Predator and Sexual Offender Qualifying Offenses*

There are specified offenses included in the enumerated list of qualifying offenses that cannot be used as a basis for a designation as a sexual predator or offender if the defendant is the parent or guardian or the minor victim, including:

- Capital, life, or first degree felony violations of ss. 787.01 (kidnapping) or 787.02, F.S. (false imprisonment); or

<sup>4</sup> A sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility. s. 943.0435(1)(a), F.S.

- Felony violations of ss. 787.01, (kidnapping), 787.02, (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child).<sup>5</sup>

As noted above, a conviction for one of the above-mentioned offenses will not result in a person being designated as a sexual predator or sexual offender if the conviction is found to lack a sexual component, regardless of whether that person is the victim's parent or guardian.<sup>6</sup> Florida Department of Law Enforcement (FDLE) reports that they currently review all convictions of kidnapping, false imprisonment, and luring or enticing a child, where the victim is a minor and the defendant is not the parent or guardian, to ensure that there is a sexual intent or motivation to the conviction prior to using such conviction as a basis for a sexual predator or sexual offender designation.<sup>7</sup>

*Loitering and Prowling by a Person Convicted of a Sexual Offense*

Section 856.022, F.S., prohibits a person convicted of specified sexual offenses<sup>8</sup> from being within 300 feet of a place where children are congregating. A person commits the offense of loitering or prowling<sup>9</sup> by a person convicted of a sexual offense, which is a first degree misdemeanor,<sup>10</sup> if he or she:

- Knowingly contacts, etc. a child under 18 years of age in any public park with the intent to engage in conduct of a sexual nature or to make a communication of any type with any content of a sexual nature;<sup>11</sup> or
- Knowingly is present in any child care facility or school containing any students or on real property comprising any child care facility or school containing any students when the child care facility or school is in operation and he or she:<sup>12</sup>
  - Fails to notify the child care facility owner or the school principal's office when he or she arrives and departs the child care facility or school; or
  - Fails to remain under direct supervision of a school official<sup>13</sup> or designated chaperone when present in the vicinity of children.

This section does not apply to a person who has been removed from the requirement to register.<sup>14</sup>

<sup>5</sup> ss. 775.21(4) and 943.0435(1), F.S.

<sup>6</sup> See *supra* note 1.

<sup>7</sup> Email from Ron Draa, Legislative Affairs Director, Florida Department of Law Enforcement (FDLE), HB 1333, January 20, 2016 (on file with the Criminal Justice Subcommittee).

<sup>8</sup> s. 856.022(1), F.S.

<sup>9</sup> Section 856.021, F.S., provides it is a second degree misdemeanor for a person to loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. The section further provides that circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the person or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern. A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

<sup>10</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

<sup>11</sup> Section 856.022(4)(a), F.S., further provides that this provision applies only to a person who has committed an offense enumerated in the statute whose offense was committed on or after May 26, 2010. "Contacting" for this statute includes approaching or communicating with a child. "Public park" includes buildings or playgrounds in a public park, or on real property comprising of any public park.

<sup>12</sup> s. 856.022(4)(b)1., F.S. This provision provides a student includes children in prekindergarten through grade 12. A person cannot be convicted of the offense of loitering or prowling if the person had previously provided written notification of his or her intent to be present to the school board, superintendent, principal, or child care facility owner.

<sup>13</sup> Section 856.022(4)(b), F.S., defines the term "school official" to mean a principal, a school resource officer, a teacher or any other employee of the school, the superintendent of schools, a member of the school board, a child care facility owner, or a child care provider.

<sup>14</sup> s. 856.022, F.S.

- Felony violations of ss. 787.01, (kidnapping), 787.02, (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child).<sup>5</sup>

As noted above, a conviction for one of the above-mentioned offenses will not result in a person being designated as a sexual predator or sexual offender if the conviction is found to lack a sexual component, regardless of whether that person is the victim's parent or guardian.<sup>6</sup> Florida Department of Law Enforcement (FDLE) reports that they currently review all convictions of kidnapping, false imprisonment, and luring or enticing a child, where the victim is a minor and the defendant is not the parent or guardian, to ensure that there is a sexual intent or motivation to the conviction prior to using such conviction as a basis for a sexual predator or sexual offender designation.<sup>7</sup>

*Loitering and Prowling by a Person Convicted of a Sexual Offense*

Section 856.022, F.S., prohibits a person convicted of specified sexual offenses<sup>8</sup> from being within 300 feet of a place where children are congregating. A person commits the offense of loitering or prowling<sup>9</sup> by a person convicted of a sexual offense, which is a first degree misdemeanor,<sup>10</sup> if he or she:

- Knowingly contacts, etc. a child under 18 years of age in any public park with the intent to engage in conduct of a sexual nature or to make a communication of any type with any content of a sexual nature,<sup>11</sup> or
- Knowingly is present in any child care facility or school containing any students or on real property comprising any child care facility or school containing any students when the child care facility or school is in operation and he or she:<sup>12</sup>
  - Fails to notify the child care facility owner or the school principal's office when he or she arrives and departs the child care facility or school; or
  - Fails to remain under direct supervision of a school official<sup>13</sup> or designated chaperone when present in the vicinity of children.

This section does not apply to a person who has been removed from the requirement to register.<sup>14</sup>

<sup>5</sup> ss. 775.21(4) and 943.0435(1), F.S.

<sup>6</sup> See *supra* note 1.

<sup>7</sup> Email from Ron Draa, Legislative Affairs Director, Florida Department of Law Enforcement (FDLE), HB 1333, January 20, 2016, (on file with the Criminal Justice Subcommittee).

<sup>8</sup> s. 856.022(1), F.S.

<sup>9</sup> Section 856.021, F.S., provides it is a second degree misdemeanor for a person to loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. The section further provides that circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the person or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern. A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

<sup>10</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

<sup>11</sup> Section 856.022(4)(a), F.S., further provides that this provision applies only to a person who has committed an offense enumerated in the statute whose offense was committed on or after May 26, 2010. "Contacting" for this statute includes approaching or communicating with a child. "Public park" includes buildings or playgrounds in a public park, or on real property comprising of any public park.

<sup>12</sup> s. 856.022(4)(b)1., F.S. This provision provides a student includes children in prekindergarten through grade 12. A person cannot be convicted of the offense of loitering or prowling if the person had previously provided written notification of his or her intent to be present to the school board, superintendent, principal, or child care facility owner.

<sup>13</sup> Section 856.022(4)(b), F.S., defines the term "school official" to mean a principal, a school resource officer, a teacher or any other employee of the school, the superintendent of schools, a member of the school board, a child care facility owner, or a child care provider.

<sup>14</sup> s. 856.022, F.S.

Sexual offenses specified in this section, in part include, convictions of ss. 787.01, (kidnapping), 787.02, (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian.

#### Effect of the Bill

The bill amends ss. 775.21, 856.022, 943.0435, 944.606, and 944.607, F.S., to remove language associated with the above-mentioned specified offenses that prevents a parent or guardian who committed such a specified qualifying offense against his or her minor child for a sexual purpose from being designating as a sexual predator or offender. Therefore, if a parent or guardian is convicted for kidnapping, false imprisonment, or luring or enticing a child against his or her minor child and such offense had a sexual component, this will result in the parent or guardian being designated as a sexual predator or sexual offender.

Additionally, the bill removes this language from any references to the applicable qualifying offenses found within the above-mentioned statutes to conform references to the new definition of the qualifying offenses.

The removal of this language expands the instances that can result in a person being designated a sexual predator or sexual offender and, thus, subject to registration requirements.

FDLE reports it will be expanding its review process of these specified convictions to include cases where the defendant is the parent or guardian of the minor victim ensuring that each conviction used for a sexual predator or offender designation includes a sexual component.<sup>15</sup>

The bill also amends s. 856.022, F.S., relating to loitering or prowling by a person convicted of a sexual offense, to remove the above-mentioned language from the enumerated list of offenses.

#### **Juvenile Sexual Offenders**

Section 943.0435, F.S., provides, in part, that a juvenile, 14 years old or older, who is adjudicated delinquent for specified enumerated offenses, on or after July 1, 2007, is designated as a "sexual offender."<sup>16</sup> A juvenile designated as a sexual offender under this provision is required to register in the same manner as an adult designated as a sexual offender. The offenses that qualify a juvenile as a sexual offender include:

- Section 794.011, F.S. (sexual battery), excluding s. 794.011(10), F.S.;
- Section 800.04(4)(a)2., F.S. (lewd or lascivious battery by specified sexual activity)<sup>17</sup> where the:
  - Victim is under 12 years of age; or
  - Court finds sexual activity by the use of force or coercion;
- Section 800.04(5)(c)1., F.S. (specified act of lewd or lascivious molestation)<sup>18</sup> where the:
  - Defendant is less than 18 years of age;
  - Victim less than 12 years of age; and
  - Court finds molestation involved unclothed genitals; or
- Section 800.04(5)(d), F.S. (specified act of lewd or lascivious molestation) where the:
  - Defendant is less than 18 years of age;
  - Victim is 12 years of age or older but less than 16 years; and

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<sup>15</sup> *Id.*

<sup>16</sup> ss. 943.0435(1)(a)1.d., F.S. Additionally, this section requires the court to make a written finding of the age of a juvenile at the time of the offense.

<sup>17</sup> Section 800.04(4)(a)2., F.S., prohibits a person from committing a lewd or lascivious battery by encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity

<sup>18</sup> Section 800.04(5)(a), F.S., defines a lewd and lascivious molestation to mean a person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator.

- Court finds the use of force or coercion and unclothed genitals.

#### Effect of the Bill

The bill clarifies that a juvenile offender has committed a qualifying offense requiring a designation as a sexual offender if he or she is adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, an offense in Florida which is similar to one of the above-mentioned statutes and which was redesignated from a former statute number.

The bill amends s. 943.0515, F.S., to conform the section to these changes made by the act.

#### **Sexual Predator and Sexual Offender Registration - Generally**

In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.<sup>19</sup> A sexual predator or sexual offender must comply with a number of statutory registration requirements.<sup>20</sup> Failure to comply with these requirements is generally a third degree felony.<sup>21</sup>

Sexual predators and offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.<sup>22</sup> During initial registration, a sexual predator or sexual offender is required to provide certain information, including, in part, his or her name, address, e-mail address, home and cellular telephone number, and Internet identifier, to the sheriff's department, which then provides the information to the FDLE for inclusion in the statewide database.<sup>23</sup> A sexual predator or sexual offender is also required to re-register at specified intervals and to immediately report any changes to his or her registration information.<sup>24</sup>

#### **Online System for Registration and Re-Registration**

Sections 775.21 and 943.0435, F.S., require FDLE to establish an online system through which sexual predators and offenders may securely access and update all electronic mail addresses (e-mail) and Internet identifier information.

#### Effect of the Bill

The bill amends ss. 775.21 and 943.0435, F.S., to expand the information that can be registered or updated due to changes through FDLE's online system, including changes:

- To home telephone numbers and cellular telephone numbers, including added and deleted numbers;
- To employment information; or
- In status related to enrollment, volunteering, or employment at institutions of higher education.

Additionally, the bill provides that sexual predators or offenders may continue to register such changes in person. If a sexual predator or offender chooses to register information changes in person, he or she must ensure that the changes are registered with the appropriate entity.<sup>25</sup> The bill further provides that changes in information registered in person or through the online system must be done within 48 hours of the change.

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<sup>19</sup> See generally, ss. 775.21, 943.0435, and 944.607, F.S.

<sup>20</sup> *Id.*

<sup>21</sup> ss. 775.21(10) and 943.0435(14), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>22</sup> See ss. 775.21 and 943.0435, F.S. Sexual predators or sexual offenders who are in the custody of or under the supervision of DOC or a local jail are required to register with DOC and the jail, respectively.

<sup>23</sup> See generally, ss. 775.21, 943.0435, 944.607, and 985.4815, F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Applicable entities include the sheriff's office; in person at the Department of Corrections (DOC) if in the custody or control, or under the supervision of DOC; or in person at the Department of Juvenile Justice (DJJ) if in the custody or control, or under the supervision of DJJ.

The bill also amends ss. 775.21 and 943.0435, F.S., to provide that FDLEs online system must permit sexual predators or offenders to securely access, submit, and update all home telephone numbers and cellular telephone numbers, employment information, and institution of higher education information.

### **Registration - Reporting Frequency**

As noted above, sexual predators and offenders have to re-register at varying intervals dependent upon the type of designation and the qualifying offense that was the basis for the designation as a sexual predator or offender. Sexual predators and specified sexual offenders must report in person each year during the month of the sexual predator's or offender's birthday and during every third month thereafter to the sheriff's office in the county in which he or she resides or is otherwise located to re-register.<sup>26</sup> The specified sexual offenders who must register quarterly include those whose qualifying offense was one of the following:

- Section 787.01 or s. 787.02, F.S., where the victim is a minor and the offender is not the victim's parent or guardian;
- Section 794.011, F.S., excluding s. 794.011(10), F.S.;
- Section 800.04(4)(a)2., F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
- Section 800.04(5)(b), F.S.;
- Section 800.04(5)(c)1., F.S., where the court finds molestation involving unclothed genitals or genital area;
- Section 800.04(5)(c)2., F.S., where the court finds molestation involving the use of force or coercion and unclothed genitals or genital area;
- Section 800.04(5)(d), F.S., where the court finds the use of force or coercion and unclothed genitals or genital area;
- Any attempt or conspiracy to commit such offense;
- A violation of a similar law of another jurisdiction; or
- A violation of a similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this paragraph.<sup>27</sup>

Sexual offenders whose designation is the result of a non-enumerated qualifying offense must report each year during the month of the sexual offender's birthday and during the sixth month following the sexual offender's birth month.<sup>28</sup> Reporting must be done in person to the sheriff's office in the county in which he or she resides or is otherwise located.<sup>29</sup>

### **Effect of the Bill**

The bill amends ss. 943.0435 and 944.607, F.S., to provide that a sexual offender who is required to register as a result of a conviction for s. 825.1025(2)(a), F.S., must re-register quarterly, for life. This change will bring the statute in line with the federal Adam Walsh Act.

### **Registration – Electronic Mail Addresses and Internet Identifiers**

Sexual predators and offenders are required to register all electronic mail (e-mail) address<sup>30</sup> or internet identifiers<sup>31</sup> with FDLE before such addresses or identifiers can be used.<sup>32</sup> Registration must be made either in person or through FDLE's online system.<sup>33</sup>

<sup>26</sup> ss. 775.21(8)(a), 943.0435(14)(b), 944.607(13)(b), and 985.4815(13)(a), F.S.

<sup>27</sup> ss. 943.0435(14)(b) and 944.607(13)(b), F.S.

<sup>28</sup> ss. 943.0435(14)(a) and 944.607(13)(a), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> Sections 775.21(1)(g) and 943.0435(1)(f), F.S., define "electronic mail address" as having the same meaning as provided in s. 668.602, F.S., which defines the term "electronic mail address" to mean a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

<sup>31</sup> Section 775.21(2)(i), F.S., defines "Internet identifier" to mean all electronic mail, chat, instant messenger, social networking, application software, or similar names used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN). Voluntary disclosure by a sexual predator of his or her

## Effect of the Bill

The bill amends s. 775.21, F.S., to modify the term "Internet identifier" to mean that it:

"includes, but is not limited to, all website uniform resource locators (URLs) and application software, whether mobile or nonmobile, used for Internet communication, including anonymous communication, through electronic mail, chat, instant messages, social networking, social gaming, or other similar programs and all corresponding usernames, logins, screen names, and screen identifiers associated with each URL or application software. Internet identifier does not include a date of birth, Social Security number, or personal identification number (PIN), URL, or application software used for utility, banking, retail, or medical purposes. Voluntary disclosure by a sexual predator or sexual offender of his or her date of birth, Social Security number, or PIN as an Internet identifier waives the disclosure exemption in this paragraph for such personal information."

This new language expands the definition of Internet identifier to include the corresponding website URLs or application software that is associated with the identifier, rather than limiting the information that must be registered to the names used for Internet communication. The bill amends the definition of "Internet identifier" found in ss. 943.0435, 944.606, 944.607, and 985.4815, F.S., to have the same meaning as in s. 775.21, F.S.

The bill adds the term "electronic mail address" to ss. 985.481 and 985.4815, F.S., and provides that the term has the same meaning as in s. 668.602, F.S.

For the above-mentioned information related to email addresses and Internet identifiers that are required to be registered prior to use, the bill amends ss. 775.21 and 943.0435, F.S., to provide that a sexual predator or offender may register such information through FDLE's online system or in person at the sheriff's office. Additionally, the bill amends these sections to provide that sexual predators or offenders who are in the custody or control, or under the supervision, of the Department of Corrections (DOC) or Department of Juvenile Justice (DJJ) must report all email addresses and Internet identifiers to the applicable agency prior to using such email addresses or Internet identifiers.

## **Registration – Location of Residence or Travel**

Sexual predators and offenders are required to register their permanent,<sup>34</sup> temporary,<sup>35</sup> or transient<sup>36</sup> residences both within the state and outside the state in the above-mentioned manner.<sup>37</sup> A sexual predator or offender who intends to establish a permanent, temporary, or transient residence in another

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date of birth, social security number, or PIN as an Internet identifier waives the disclosure exemption in this paragraph for such personal information.

<sup>32</sup> ss. 775.21(6)(a)1., (6)(e)2., and (6)(g)5. and 943.0435(2)(a), (2)(b), and (4)(e), F.S.

<sup>33</sup> ss. 775.21(6)(g)5. and 943.0435(4)(e), F.S.

<sup>34</sup> Section 775.21(1)(k), F.S., defines "permanent residence" to mean a place where the person abides, lodges, or resides for 5 or more consecutive days. Section 943.0435(1)(c), F.S., defines the term to mean the same as in s. 775.21, F.S.

<sup>35</sup> Section 775.21(1)(l), F.S., defines "temporary residence" to mean a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state. Section 943.0435(1)(c), F.S., defines the term to mean the same as in s. 775.21, F.S.

<sup>36</sup> Section 775.21(1)(m), F.S., defines "transient residence" to mean a county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address. Section 943.0435(1)(c), F.S., defines the term to mean the same as in s. 775.21, F.S.

<sup>37</sup> ss. 775.21(6)(i) and 943.0435(7), F.S.



state or jurisdiction other than Florida must report in person to the sheriff of the county of current residence within:

- 48 hours before the date he or she intends to leave Florida to establish residence in another state or jurisdiction; or
- 21 days before his or her planned departure date for stays outside the country lasting longer than five days.<sup>38</sup>

The notification provided to the sheriff must include the address, municipality, county, state, and country of intended residence.<sup>39</sup> The sheriff must promptly provide FDLE the information received from the sexual predator or offender and FDLE must notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the sexual predator's or offender's intended residence.<sup>40</sup>

#### Effect of the Bill

The bill amends ss. 775.21 and 943.0435, F.S., to clarify that the sexual predator or offender must report to the sheriff of the county of current residence at least 21 days before the date of intended travel for international travel, rather than within 21 days of the planned departure date. Additionally, the bill requires a sexual predator or offender to provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel for international travel plans.

Additionally, the bill amends the definition sections found in ss. 944.606, 985.481, and 985.4815, F.S., to include definitions for the terms permanent, temporary, and transient residence. The bill provides these terms have the same meaning as provided in s. 775.21, F.S.

#### **Registration – Institution of Higher Education**

Sexual predators and offenders that are enrolled, employed, volunteering, or carrying on a vocation at an institution of high education are required to provide the:

- Name, address, and county of each institution, including each campus attended; and
- Enrollment, volunteer, or employment status.<sup>41</sup>

Additionally, a change in such enrollment, volunteer, or employment status must be reported in person to the appropriate entity within 48 hours.<sup>42</sup> The appropriate entity is required to promptly notify each institution of the sexual predator's or offender's presence and any change in enrollment, volunteer, or employment status.<sup>43</sup>

The term "institution of higher education" is included in ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., and is defined to mean a "career center, community college, college, state university, or independent postsecondary institution."<sup>44</sup>

The term "change in enrollment or employment status" is included in ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., and is defined to mean the "commencement or termination of enrollment or employment or a change in location of enrollment or employment."<sup>45</sup>

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> ss. 775.21(6)(b), 943.0435(2)(b)2., 944.607(4)(b), and 985.4815(4)(b), F.S.

<sup>42</sup> Section 775.21(6)(b), F.S., provides that the sheriff or DOC are the appropriate reporting entities. Section 943.0435(2)(b)2., F.S., provides the sheriff is the appropriate reporting entity. Section 944.607(4)(b), provides DOC is the appropriate reporting agency. Section 985.4815(4)(b), F.S., provides that DJJ is the appropriate reporting agency.

<sup>43</sup> *Id.*

<sup>44</sup> ss. 775.21(1)(j), 943.0435(1)(d), 944.607(1)(d), and 985.4815(1)(c), F.S.

<sup>45</sup> ss. 775.21(1)(a), 943.0435(1)(e), 944.607(1)(e), and 985.4815(1)(a), F.S.

### Effect of the Bill

The bill amends s. 775.21, F.S., to rename the term “change in enrollment or employment status” to “change in status at an institution of higher education,” and to amend the definition to mean:

the commencement or termination of enrollment, including, but not limited to, traditional classroom setting or online courses, or employment, whether for compensation or as a volunteer, at an institution of higher education or a change in location of enrollment or employment, whether for compensation or as a volunteer, at an institution of higher education.

The bill amends the name of the term in ss. 943.0435, 944.607, and 985.4815, F.S., in the same manner and provides the term has the same meaning as provided in s. 775.21, F.S.

Therefore, sexual predators or sexual offenders who are enrolled in online classes at institutions that meet the above-mentioned definition will now be required to register such information and re-register changes to such status. Additionally, appropriate reporting entities will be required to notify institutions of sexual predators or offenders that are enrolled in online classes through their institution.

The bill retains the reporting agencies included in ss. 944.607 and 985.4815, F.S., but amends ss. 775.21 and 943.0435, F.S., to provide that the sheriff, DOC, or DJJ shall promptly notify each institution of higher education of a sexual predator’s or offender’s presence or change in status.

The bill amends ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., to specifically include information regarding changes in enrollment status to the types of information that a sexual predator or offender must register and re-register.

### **Registration – Professional Licenses and Employment Information**

Sexual predators and offenders are required to provide information about employment and any professional licenses he or she may possess.<sup>46</sup> Currently, the law is silent as to the definition of a “professional license.”

### Effect of the Bill

The bill amends s. 775.21, F.S., defining the term “professional license” to mean the “document of authorization or certification issued by an agency of this state for a regulatory purpose, or by any similar agency in another jurisdiction for a regulatory purpose, to a person to engage in an occupation or to carry out a trade or business.”

The bill amends ss. 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S., to include the term “professional license” and defines the term to have the same meaning as in s. 775.21, F.S.

Therefore, any sexual predator or offender, including a juvenile sexual predator, who has been or is issued a license that meets the above criteria will be required to provide information about such license at the time of registration.

The bill amends ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., to specifically include employment information and changes in employment information to the types of information that a sexual predator or offender must register and re-register.

### **Registration – Driver License or Identification Card**

Sexual predators and sexual offenders who are not incarcerated are required to register in person at a driver license office within 48 hours to obtain a driver license or identification card.<sup>47</sup> Additionally, a

<sup>46</sup> ss. 775.21(6)(a)1. and (8), 943.0435(2)(b) and (14)(c), 944.606(3)(a), 944.607(4)(a) and (14)(c), 985.481(3)(a)1., 985.4815(4)(a) and (13)(b)1., F.S.

sexual predator or offender is required to report specified information to Department of Highway Safety and Motor Vehicles (DHSMV), maintain an accurate driver license or identification card, and report to a driver license office within 48 hours any time the sexual predator's or offender's:

- Driver license or identification card is subject to renewal;
- Residence has changed; or
- Name has changed by reason of marriage or other legal process.<sup>48</sup>

DHSMV must forward to FDLE and DOC all photographs and information provided by sexual predators or offenders.<sup>49</sup>

A sexual predator who is unable to secure or update a driver license or identification card with DHSMV as provided above must also report any change of the predator's residence or change in the predator's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the predator resides or is located and provide confirmation that he or she reported such information to DHSMV.

#### Effect of the Bill

The bill amends s. 775.21, F.S., to clarify that a sexual predator who has previously obtained a driver license or identification card as a requirement under s. 944.607, F.S., is not required to obtain a driver license or identification card again.

This bill also amends ss. 775.21 and 943.0435, F.S., to clarify that a sexual predator's or offender's requirement to report specified information to DHSMV does not negate the requirement to obtain a Florida driver license or identification card.

#### **Penalties for Failure to Register**

Sections 775.21(10), 943.0435(14), 944.607(4), and 985.4815(13), F.S., in part, provide that a sexual predator or offender that fails to register, or who fails after registration to update or maintain specified information, commits a third degree felony.

#### Effect of the Bill

As noted above, the bill expands various current registration and re-registration requirements or adds new registration requirements above what is currently imposed on a sexual predator or sexual offender. If a sexual predator or offender fails to provide initially or update as necessary any of the above-mentioned types of information, he or she will be subject to the criminal penalties for failure to comply with registration requirements.

#### **Removal of the Requirement to Register as a Sexual Offender**

Generally, sexual offenders must maintain registration with FDLE for the duration of the offender's life unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that met the criteria for the sexual predator designation or that met the criteria for classifying the person as a sexual offender for purposes of registration.<sup>50</sup> However, there are ways in which the registration requirement can be removed.

#### *Section 943.0435(11), F.S.*

Section 943.0435(11)(a), F.S., currently permits sexual offenders who have been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and who have not been arrested for any felony or misdemeanor offense since release to petition the court for the purpose of

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<sup>47</sup> ss. 775.21(6)(f) and (g) and 943.0435(4)(a), F.S. Section 944.607, F.S., covers this requirement for sexual offenders who are not incarcerated, but are under the supervision of DOC.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> ss. 775.21(6) and 943.0435(11), F.S.

removing the requirement for registration as a sexual offender, provided that the offender's requirement to register was not based on an adult conviction for:

- A violation of ss. 787.01 or 787.02, F.S.;
- A violation of s. 794.011, F.S., excluding s. 794.011(10), F.S.;
- A violation of s. 800.04(4)(a)2., F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
- A violation of s. 800.04(5)(b), F.S.;
- A violation of s. 800.04(5)(c)2., F.S., where the court finds the offense involved the use of force or coercion and unclothed genitals or genital area;
- Any attempt or conspiracy to commit any such offense; or
- A violation of similar law of another jurisdiction.<sup>51</sup>

A sexual offender may petition the criminal division of the circuit court of the circuit where the conviction or adjudication occurred.

#### Effect of the Bill

The bill amends s. 943.0435, F.S., to include a violation of s. 825.1025(2)(a), F.S. (lewd or lascivious battery upon an elderly or disabled person) as an offense that, if committed as an adult, will prohibit a sexual offender from petitioning the court for removal from registration. This will result in such an offender being required register for the offender's lifetime. This change will bring the statute in line with the federal Adam Walsh Act.

The bill also amends s. 943.0435, F.S., to clarify that an eligible sexual offender may, for the purpose of removing the requirement for registration as a sexual offender, petition the criminal division of the circuit court of the circuit where the:

- Conviction or adjudication occurred, for a conviction in this state;
- Sexual offender resides, for a conviction of a violation of similar law of another jurisdiction; or
- Sexual offender last resided, for a sexual offender with a conviction of a violation of similar law of another jurisdiction who no longer resides in this state.

#### *Section 943.04354, F.S.*

Section 943.04354(1), F.S., provides that a person may be considered for removal from the requirement to register as a sexual predator or offender if the person:

1. Was convicted<sup>52</sup> or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or of a similar offense in another jurisdiction, and the person does not have any other conviction or adjudication of delinquency for a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or for a similar offense in another jurisdiction;
2. Is required to register as a sexual offender or predator solely on the basis of this violation; or
3. No longer meets the criteria for registration as a sexual offender or sexual predator under the laws of the jurisdiction in which the similar offense occurred; and
4. Is not more than 4 years older than the victim of this violation who was 13 years of age or older, but younger than 18 years of age at the time the person committed this violation.

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<sup>51</sup> The court may grant or deny relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief. s. 943.0435(11)(a), F.S.

<sup>52</sup> This conviction is regardless of whether the person was adjudicated guilty for the offense.

Subsection (2) of the statute provides that if a person meets the above criteria the person may petition the criminal division of the circuit court of the circuit where the conviction or adjudication for the qualifying offense occurred to remove the requirement that the person register as a sexual offender or sexual predator. The person must:

- Allege in the motion that he or she meets the criteria in subsection (1) and that removal of the registration requirement will not conflict with federal law; and
- Provide the court with written confirmation that he or she is not required to register in the jurisdiction in which the conviction or adjudication occurred if the offense occurred in a jurisdiction other than Florida.<sup>53</sup>

#### Effect of the Bill

The bill amends s. 943.04354(1), F.S., to remove s. 794.011, F.S. (sexual battery), from the list of eligible offenses that permits a sexual predator or offender to seek for removal from registration requirements under this provision.

The bill clarifies that a person seeking to have his or her registration requirements removed under this section, must file a motion in the criminal division of the circuit court where the:

- Conviction or adjudication for the qualifying offense occurred if registration is required for a conviction that occurred in this state;
- Sexual offender or sexual predator resides if registration is required for a violation of similar law of another jurisdiction; or
- Sexual offender or sexual predator last resided for a sexual offender or predator with a conviction of a violation of a similar law of another jurisdiction who no longer resides in this state.

Lastly, the bill clarifies that for a person to be eligible for removal under this provision, the sexual act must have been consensual, notwithstanding the age of the victim. This clarification ensures that this section is in compliance with the federal Adam Walsh Act.

#### **Miscellaneous**

The bill amends s. 943.0435(11), F.S., to remove inoperable language that addresses “registration periods.” FDLE reports this language was associated with a proposed amendment that was not adopted by the Legislature and that a portion of the amendment was inadvertently left in the statute.<sup>54</sup>

The bill amends ss. 92.55, 775.0862, 947.1405, 948.30, 948.31, 1012.315, and 1012.467, F.S., to conform the sections to changes made by the act.

Finally, the bill reenacts sections of law to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

Section 2. Amends s. 856.022, F.S., relating to loitering and prowling by certain offenders in close proximity to children; penalty.

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<sup>53</sup> The state attorney and FDLE must be given notice of the motion at least 21 days before the date of sentencing, disposition of the violation, or hearing on the motion and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. If the court determines the person meets the criteria in subsection (1) and the removal of the registration requirement will not conflict with federal law, it may grant the motion and order the removal of the registration requirement. If the motion is granted, the person must provide FDLE a certified copy of the order granting relief. If motion is denied, the person is not authorized under this section to file another motion for removal of the registration requirement. s. 943.04354(2), F.S.

<sup>54</sup> Florida Department of Law Enforcement, Agency Analysis 2016 HB 1333, p. 2 (January 14, 2016).

Section 3. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 4. Amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances.

Section 5. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 6. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 7. Amends s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.

Section 8. Amends s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sexual offenders.

Section 9. Amends s. 92.55, F.S., relating to judicial or other proceedings involving victim or witness under the age of 16, a person who has an intellectual disability, or a sexual offense victim or witness; special protections; use of registered service or therapy animals.

Section 10. Amends s. 775.0862, F.S., relating to sexual offenses against students by authority figures; reclassification.

Section 11. Amends s. 943.0515, F.S., relating to retention of criminal history records of minors.

Section 12. Amends s. 947.1405, F.S., relating to conditional release program.

Section 13. Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.

Section 14. Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and offenders on probation or community control.

Section 15. Amends s. 1012.315, F.S., relating to disqualification from employment.

Section 16. Amends s. 1012.467, F.S., relating to noninstructional contractors who are permitted access to school grounds when students are present; background screening requirements.

Section 17. Reenacts s. 938.085, F.S., relating to additional cost to fund rape crisis centers.

Section 18. Reenacts s. 794.056, F.S., relating to Rape Crisis Program Trust Fund.

Section 19. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 20. Reenacts s. 985.04, F.S., relating to oaths; records; confidential information.

Section 21. Reenacts s. 322.141, F.S., relating to color or markings of certain licenses or identification cards.

Section 22. Reenacts s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 23. Reenacts s. 948.063, F.S., relating to violations of probation or community control by designated sexual offenders and sexual predators.

Section 24. Reenacts s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 25. Reenacts s. 397.4872, F.S., relating to exemption from disqualification; publication.

Section 26. Reenacts s. 435.07, F.S., relating to exemptions from disqualification.

Section 27. Reenacts s. 775.25, F.S., relating to prosecutions for acts or omissions.

Section 28. Reenacts s. 775.24, F.S., relating to duty of the court to uphold laws governing sexual predators and sexual offenders.

Section 29. Reenacts s. 944.608, F.S., relating to notification to Department of Law Enforcement of information on career offenders.

Section 30. Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have a fiscal impact on state revenues.

#### 2. Expenditures:

This bill has an indeterminate impact on prison beds.<sup>55</sup> This bill could potentially result in an increase in the prison population; however, available data is insufficient to determine the extent of such an impact.

Per DOC, in FY 14-15, 1 offender was sentenced for s. 825.1025(2)(a), F.S., and that offender received prison (sentence length=48.0 m). There were 558 offenders sentenced under s. 787.01, F.S., s. 787.02, F.S., or s. 787.025(2)(c), F.S., and 265 of these offenders were sentenced to prison (mean sentence length=109.2 m, incarceration rate: 47.5%) It is unknown how many of these offenders were parents and how many offenses had a sexual component.<sup>56</sup>

Per DOC, in FY 14-15, there were 1,145 offenders sentenced for offenses related to sexual offenders and sexual predators, with 620 of these offenders sentenced to prison (mean sentence length=43.4 m, incarceration rate: 54.2%) It is unknown how many additional offenders might be added due to changes made in this bill.<sup>57</sup>

### IT Infrastructure

Implementation would require programming changes to both mSystems and eSystems databases as well as create need for user testing between FDC and FDLE. Offense code changes to the database/table would need to be completed. All changes would need to be added to the current Public Safety Information Act (PSIA), file transfer system currently in place for sex offender

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<sup>55</sup> Criminal Justice Impact Conference, *HB 1333*, January 29, 2016.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

information exchange from FDC and FDLE. The cost of implementation is estimated to be \$34,000.<sup>58</sup>

The expenses could be absorbed by existing resources.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

As noted above, the bill expands the reporting requirements of sexual predators or offenders who report in person to sheriff's offices or in specific instances, to the jail. To the extent the expanded reporting requirements results in an increased workload to sheriff or jail employees, the bill may result in increased expenditures to local governments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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<sup>58</sup> Department of Corrections, *HB 1333 Legislative Bill Analysis*, January 26, 2016, (on file with the Justice Appropriations Subcommittee).





27 appropriate venue for a defendant to move the circuit  
 28 court to remove the requirement to register as a  
 29 sexual offender or sexual predator; amending s.  
 30 944.606, F.S.; revising definitions; revising the  
 31 information that the Department of Law Enforcement is  
 32 required to provide about a sexual offender upon his  
 33 or her release from incarceration; conforming  
 34 provisions to changes made by the act; amending s.  
 35 944.607, F.S.; revising definitions; conforming  
 36 provisions to changes made by the act; amending s.  
 37 985.481, F.S.; revising definitions; conforming  
 38 provisions to changes made by the act; amending s.  
 39 985.4815, F.S.; revising definitions; revising the  
 40 reporting and registering requirements imposed upon a  
 41 sexual offender to conform provisions to changes made  
 42 by the act; amending ss. 92.55, 775.0862, 943.0515,  
 43 947.1405, 948.30, 948.31, 1012.315, and 1012.467,  
 44 F.S.; conforming cross-references; reenacting s.  
 45 938.085, F.S., relating to additional costs to fund  
 46 rape crisis centers, to incorporate the amendment made  
 47 to s. 775.21, F.S., in a reference thereto; reenacting  
 48 s. 794.056(1), F.S., relating to the Rape Crisis  
 49 Program Trust Fund, to incorporate the amendments made  
 50 to ss. 775.21 and 943.0435, F.S., in references  
 51 thereto; reenacting s. 921.0022(3)(g), F.S., relating  
 52 to level 7 of the offense severity ranking chart of

53 the Criminal Punishment Code, to incorporate the  
 54 amendments made to ss. 775.21, 943.0435, 944.607, and  
 55 985.4815, F.S., in references thereto; reenacting s.  
 56 985.04(6)(b), F.S., relating to confidential  
 57 information, to incorporate the amendments made to ss.  
 58 775.21, 943.0435, 944.606, 944.607, 985.481, and  
 59 985.4815, F.S., in references thereto; reenacting ss.  
 60 322.141(3) and (4), 948.06(4), and 948.063, F.S.,  
 61 relating to color or markings of certain licenses or  
 62 identification cards, probation or community control,  
 63 and violations of probation or community control by  
 64 designated sexual offenders and sexual predators,  
 65 respectively, to incorporate the amendments made to  
 66 ss. 775.21, 943.0435, and 944.607, F.S., in references  
 67 thereto; reenacting s. 944.607(10)(c), F.S., relating  
 68 to notification to the Department of Law Enforcement  
 69 of information on sexual offenders, to incorporate the  
 70 amendment made to s. 943.0435, F.S., in a reference  
 71 thereto; reenacting ss. 397.4872(2) and 435.07(4)(b),  
 72 F.S., relating to exemptions from disqualification, to  
 73 incorporate the amendment made to s. 943.04354, F.S.,  
 74 in references thereto; reenacting s. 775.25, F.S.,  
 75 relating to prosecutions for acts or omissions, to  
 76 incorporate the amendments made to ss. 944.606 and  
 77 944.607, F.S., in references thereto; reenacting ss.  
 78 775.24(2) and 944.608(7), F.S., relating to duty of

79 the court to uphold laws governing sexual predators  
 80 and sexual offenders and notification to the  
 81 Department of Law Enforcement of information on career  
 82 offenders, respectively, to incorporate the amendment  
 83 made to s. 944.607, F.S., in references thereto;  
 84 providing an effective date.

85

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

87

88 Section 1. Subsection (2), paragraph (a) of subsection  
 89 (4), paragraphs (a), (e), (f), (g), and (i) of subsection (6),  
 90 paragraph (a) of subsection (8), and paragraphs (a) and (b) of  
 91 subsection (10) of section 775.21, Florida Statutes, are  
 92 amended, and paragraphs (c) and (d) of subsection (4),  
 93 paragraphs (a) and (b) of subsection (5), and paragraphs (c) and  
 94 (e) of subsection (10) of that section are republished, to read:

95

775.21 The Florida Sexual Predators Act.—

96

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

97

(a) "Change in ~~enrollment or employment~~ status at an

98

institution of higher education" means the commencement or

99

termination of enrollment, including, but not limited to,

100

traditional classroom setting or online courses, or employment,

101

whether for compensation or as a volunteer, at an institution of

102

higher education or a change in location of enrollment or

103

employment, whether for compensation or as a volunteer, at an

104

institution of higher education.

105 (b) "Chief of police" means the chief law enforcement  
 106 officer of a municipality.

107 (c) "Child care facility" has the same meaning as provided  
 108 in s. 402.302.

109 (d) "Community" means any county where the sexual predator  
 110 lives or otherwise establishes or maintains a permanent,  
 111 temporary, or transient ~~permanent~~ residence.

112 (e) "Conviction" means a determination of guilt which is  
 113 the result of a trial or the entry of a plea of guilty or nolo  
 114 contendere, regardless of whether adjudication is withheld. A  
 115 conviction for a similar offense includes, but is not limited  
 116 to, a conviction by a federal or military tribunal, including  
 117 courts-martial conducted by the Armed Forces of the United  
 118 States, and includes a conviction or entry of a plea of guilty  
 119 or nolo contendere resulting in a sanction in any state of the  
 120 United States or other jurisdiction. A sanction includes, but is  
 121 not limited to, a fine, probation, community control, parole,  
 122 conditional release, control release, or incarceration in a  
 123 state prison, federal prison, private correctional facility, or  
 124 local detention facility.

125 (f) "Department" means the Department of Law Enforcement.

126 (g) "Electronic mail address" has the same meaning as  
 127 provided in s. 668.602.

128 (h) "Entering the county" includes being discharged from a  
 129 correctional facility or jail or secure treatment facility  
 130 within the county or being under supervision within the county

131 for the commission of a violation enumerated in subsection (4).

132 (i) "Institution of higher education" means a career  
 133 center, a community college, a college, a state university, or  
 134 an independent postsecondary institution.

135 (j)(i) "Internet identifier" includes, but is not limited  
 136 to, all website uniform resource locators (URLs) and application  
 137 software, whether mobile or nonmobile, used for Internet  
 138 communication, including anonymous communication, through means  
 139 all electronic mail, chat, instant messages messenger, social  
 140 networking, social gaming, or other similar programs and all  
 141 corresponding usernames, logins, screen names, and screen  
 142 identifiers associated with each URL or application software.  
 143 Internet identifier application software, or similar names used  
 144 for Internet communication, but does not include a date of  
 145 birth, Social Security number, ~~or~~ personal identification number  
 146 (PIN), URL, or application software used for utility, banking,  
 147 retail, or medical purposes. Voluntary disclosure by a sexual  
 148 predator or sexual offender of his or her date of birth, Social  
 149 Security number, or PIN as an Internet identifier waives the  
 150 disclosure exemption in this paragraph for such personal  
 151 information.

152 ~~(j) "Institution of higher education" means a career~~  
 153 ~~center, community college, college, state university, or~~  
 154 ~~independent postsecondary institution.~~

155 (k) "Permanent residence" means a place where the person  
 156 abides, lodges, or resides for 5 or more consecutive days.

157        (l) "Professional license" means the document of  
 158 authorization or certification issued by an agency of this state  
 159 for a regulatory purpose, or by any similar agency in another  
 160 jurisdiction for a regulatory purpose, to a person to engage in  
 161 an occupation or to carry out a trade or business.

162        (m) ~~(l)~~ "Temporary residence" means a place where the  
 163 person abides, lodges, or resides, including, but not limited  
 164 to, vacation, business, or personal travel destinations in or  
 165 out of this state, for a period of 5 or more days in the  
 166 aggregate during any calendar year and which is not the person's  
 167 permanent address or, for a person whose permanent residence is  
 168 not in this state, a place where the person is employed,  
 169 practices a vocation, or is enrolled as a student for any period  
 170 of time in this state.

171        (n) ~~(m)~~ "Transient residence" means a county where a person  
 172 lives, remains, or is located for a period of 5 or more days in  
 173 the aggregate during a calendar year and which is not the  
 174 person's permanent or temporary address. The term includes, but  
 175 is not limited to, a place where the person sleeps or seeks  
 176 shelter and a location that has no specific street address.

177        (o) ~~(n)~~ "Vehicles owned" means any motor vehicle as defined  
 178 in s. 320.01, which is registered, coregistered, leased, titled,  
 179 or rented by a sexual predator or sexual offender; a rented  
 180 vehicle that a sexual predator or sexual offender is authorized  
 181 to drive; or a vehicle for which a sexual predator or sexual  
 182 offender is insured as a driver. The term also includes any

183 motor vehicle as defined in s. 320.01, which is registered,  
 184 coregistered, leased, titled, or rented by a person or persons  
 185 residing at a sexual predator's or sexual offender's permanent  
 186 residence for 5 or more consecutive days.

187 (4) SEXUAL PREDATOR CRITERIA.—

188 (a) For a current offense committed on or after October 1,  
 189 1993, upon conviction, an offender shall be designated as a  
 190 "sexual predator" under subsection (5), and subject to  
 191 registration under subsection (6) and community and public  
 192 notification under subsection (7) if:

193 1. The felony is:

194 a. A capital, life, or first degree felony violation, or  
 195 any attempt thereof, of s. 787.01 or s. 787.02, where the victim  
 196 is a minor ~~and the defendant is not the victim's parent or~~  
 197 ~~guardian~~, or s. 794.011, s. 800.04, or s. 847.0145, or a  
 198 violation of a similar law of another jurisdiction; or

199 b. Any felony violation, or any attempt thereof, of s.  
 200 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
 201 787.025(2)(c), where the victim is a minor ~~and the defendant is~~  
 202 ~~not the victim's parent or guardian~~; s. 787.06(3)(b), (d), (f),  
 203 or (g); former s. 787.06(3)(h); s. 794.011, excluding s.  
 204 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.  
 205 800.04; s. 810.145(8)(b); s. 825.1025; s. 827.071; s. 847.0135,  
 206 excluding s. 847.0135(6); s. 847.0145; s. 916.1075(2); or s.  
 207 985.701(1); or a violation of a similar law of another  
 208 jurisdiction, and the offender has previously been convicted of



209 | or found to have committed, or has pled nolo contendere or  
 210 | guilty to, regardless of adjudication, any violation of s.  
 211 | 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
 212 | 787.025(2)(c), where the victim is a minor ~~and the defendant is~~  
 213 | ~~not the victim's parent or guardian~~; s. 787.06(3)(b), (d), (f),  
 214 | or (g); former s. 787.06(3)(h); s. 794.011, excluding s.  
 215 | 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.  
 216 | 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,  
 217 | excluding s. 847.0135(6); s. 847.0145; s. 916.1075(2); or s.  
 218 | 985.701(1); or a violation of a similar law of another  
 219 | jurisdiction;

220 |         2. The offender has not received a pardon for any felony  
 221 | or similar law of another jurisdiction that is necessary for the  
 222 | operation of this paragraph; and

223 |         3. A conviction of a felony or similar law of another  
 224 | jurisdiction necessary to the operation of this paragraph has  
 225 | not been set aside in any postconviction proceeding.

226 |         (c) If an offender has been registered as a sexual  
 227 | predator by the Department of Corrections, the department, or  
 228 | any other law enforcement agency and if:

229 |             1. The court did not, for whatever reason, make a written  
 230 | finding at the time of sentencing that the offender was a sexual  
 231 | predator; or

232 |             2. The offender was administratively registered as a  
 233 | sexual predator because the Department of Corrections, the  
 234 | department, or any other law enforcement agency obtained

235 information that indicated that the offender met the criteria  
 236 for designation as a sexual predator based on a violation of a  
 237 similar law in another jurisdiction,

238  
 239 the department shall remove that offender from the department's  
 240 list of sexual predators and, for an offender described under  
 241 subparagraph 1., shall notify the state attorney who prosecuted  
 242 the offense that met the criteria for administrative designation  
 243 as a sexual predator, and, for an offender described under this  
 244 paragraph, shall notify the state attorney of the county where  
 245 the offender establishes or maintains a permanent, temporary, or  
 246 transient residence. The state attorney shall bring the matter  
 247 to the court's attention in order to establish that the offender  
 248 meets the criteria for designation as a sexual predator. If the  
 249 court makes a written finding that the offender is a sexual  
 250 predator, the offender must be designated as a sexual predator,  
 251 must register or be registered as a sexual predator with the  
 252 department as provided in subsection (6), and is subject to the  
 253 community and public notification as provided in subsection (7).  
 254 If the court does not make a written finding that the offender  
 255 is a sexual predator, the offender may not be designated as a  
 256 sexual predator with respect to that offense and is not required  
 257 to register or be registered as a sexual predator with the  
 258 department.

259 (d) An offender who has been determined to be a sexually  
 260 violent predator pursuant to a civil commitment proceeding under

261 chapter 394 shall be designated as a "sexual predator" under  
 262 subsection (5) and subject to registration under subsection (6)  
 263 and community and public notification under subsection (7).

264 (5) SEXUAL PREDATOR DESIGNATION.—An offender is designated  
 265 as a sexual predator as follows:

266 (a)1. An offender who meets the sexual predator criteria  
 267 described in paragraph (4) (d) is a sexual predator, and the  
 268 court shall make a written finding at the time such offender is  
 269 determined to be a sexually violent predator under chapter 394  
 270 that such person meets the criteria for designation as a sexual  
 271 predator for purposes of this section. The clerk shall transmit  
 272 a copy of the order containing the written finding to the  
 273 department within 48 hours after the entry of the order;

274 2. An offender who meets the sexual predator criteria  
 275 described in paragraph (4) (a) who is before the court for  
 276 sentencing for a current offense committed on or after October  
 277 1, 1993, is a sexual predator, and the sentencing court must  
 278 make a written finding at the time of sentencing that the  
 279 offender is a sexual predator, and the clerk of the court shall  
 280 transmit a copy of the order containing the written finding to  
 281 the department within 48 hours after the entry of the order; or

282 3. If the Department of Corrections, the department, or  
 283 any other law enforcement agency obtains information which  
 284 indicates that an offender who establishes or maintains a  
 285 permanent, temporary, or transient residence in this state meets  
 286 the sexual predator criteria described in paragraph (4) (a) or

287 paragraph (4) (d) because the offender was civilly committed or  
 288 committed a similar violation in another jurisdiction on or  
 289 after October 1, 1993, the Department of Corrections, the  
 290 department, or the law enforcement agency shall notify the state  
 291 attorney of the county where the offender establishes or  
 292 maintains a permanent, temporary, or transient residence of the  
 293 offender's presence in the community. The state attorney shall  
 294 file a petition with the criminal division of the circuit court  
 295 for the purpose of holding a hearing to determine if the  
 296 offender's criminal record or record of civil commitment from  
 297 another jurisdiction meets the sexual predator criteria. If the  
 298 court finds that the offender meets the sexual predator criteria  
 299 because the offender has violated a similar law or similar laws  
 300 in another jurisdiction, the court shall make a written finding  
 301 that the offender is a sexual predator.

302  
 303 When the court makes a written finding that an offender is a  
 304 sexual predator, the court shall inform the sexual predator of  
 305 the registration and community and public notification  
 306 requirements described in this section. Within 48 hours after  
 307 the court designating an offender as a sexual predator, the  
 308 clerk of the circuit court shall transmit a copy of the court's  
 309 written sexual predator finding to the department. If the  
 310 offender is sentenced to a term of imprisonment or supervision,  
 311 a copy of the court's written sexual predator finding must be  
 312 submitted to the Department of Corrections.

313 (b) If a sexual predator is not sentenced to a term of  
 314 imprisonment, the clerk of the court shall ensure that the  
 315 sexual predator's fingerprints are taken and forwarded to the  
 316 department within 48 hours after the court renders its written  
 317 sexual predator finding. The fingerprints shall be clearly  
 318 marked, "Sexual Predator Registration." The clerk of the court  
 319 that convicts and sentences the sexual predator for the offense  
 320 or offenses described in subsection (4) shall forward to the  
 321 department and to the Department of Corrections a certified copy  
 322 of any order entered by the court imposing any special condition  
 323 or restriction on the sexual predator that restricts or  
 324 prohibits access to the victim, if the victim is a minor, or to  
 325 other minors.

326 (6) REGISTRATION.—

327 (a) A sexual predator shall register with the department  
 328 through the sheriff's office by providing the following  
 329 information to the department:

330 1. Name; social security number; age; race; sex; date of  
 331 birth; height; weight; tattoos or other identifying marks; hair  
 332 and eye color; photograph; address of legal residence and  
 333 address of any current temporary residence, within the state or  
 334 out of state, including a rural route address and a post office  
 335 box; if no permanent or temporary address, any transient  
 336 residence within the state; address, location or description,  
 337 and dates of any current or known future temporary residence  
 338 within the state or out of state; all electronic mail addresses

339 and all Internet identifiers required to be provided pursuant to  
 340 subparagraph (g)5.; all home telephone numbers and cellular  
 341 telephone numbers required to be provided pursuant to  
 342 subparagraph (g)5.; ~~date and place of any employment information~~  
 343 required to be provided pursuant to subparagraph (g)5.; the  
 344 make, model, color, vehicle identification number (VIN), and  
 345 license tag number of all vehicles owned; date and place of each  
 346 conviction; fingerprints; palm prints; and a brief description  
 347 of the crime or crimes committed by the offender. A post office  
 348 box may not be provided in lieu of a physical residential  
 349 address. The sexual predator shall produce his or her passport,  
 350 if he or she has a passport, and, if he or she is an alien,  
 351 shall produce or provide information about documents  
 352 establishing his or her immigration status. The sexual predator  
 353 shall also provide information about any professional licenses  
 354 he or she has.

355 a. If the sexual predator's place of residence is a motor  
 356 vehicle, trailer, mobile home, or manufactured home, as defined  
 357 in chapter 320, the sexual predator shall also provide to the  
 358 department written notice of the vehicle identification number;  
 359 the license tag number; the registration number; and a  
 360 description, including color scheme, of the motor vehicle,  
 361 trailer, mobile home, or manufactured home. If a sexual  
 362 predator's place of residence is a vessel, live-aboard vessel,  
 363 or houseboat, as defined in chapter 327, the sexual predator  
 364 shall also provide to the department written notice of the hull

365 identification number; the manufacturer's serial number; the  
 366 name of the vessel, live-aboard vessel, or houseboat; the  
 367 registration number; and a description, including color scheme,  
 368 of the vessel, live-aboard vessel, or houseboat.

369 b. If the sexual predator is enrolled or, employed,  
 370 whether for compensation or as a volunteer ~~volunteering, or~~  
 371 ~~carrying on a vocation~~ at an institution of higher education in  
 372 this state, the sexual predator shall also provide to the  
 373 department pursuant to subparagraph (g)5. the name, address, and  
 374 county of each institution, including each campus attended, and  
 375 the sexual predator's enrollment, volunteer, or employment  
 376 status. ~~Each change in enrollment, volunteer, or employment~~  
 377 ~~status must be reported in person at the sheriff's office, or~~  
 378 ~~the Department of Corrections if the sexual predator is in the~~  
 379 ~~custody or control of or under the supervision of the Department~~  
 380 ~~of Corrections, within 48 hours after any change in status.~~ The  
 381 sheriff, ~~or~~ the Department of Corrections, or the Department of  
 382 Juvenile Justice shall promptly notify each institution of  
 383 higher education of the sexual predator's presence and any  
 384 change in the sexual predator's enrollment, volunteer, or  
 385 employment status.

386 c. A sexual predator shall report in person to the  
 387 sheriff's office within 48 hours after any change in vehicles  
 388 owned to report those vehicle information changes.

389 2. Any other information determined necessary by the  
 390 department, including criminal and corrections records;

391 nonprivileged personnel and treatment records; and evidentiary  
 392 genetic markers when available.

393 (e)1. If the sexual predator is not in the custody or  
 394 control of, or under the supervision of, the Department of  
 395 Corrections or is not in the custody of a private correctional  
 396 facility, the sexual predator shall register in person:

397 a. At the sheriff's office in the county where he or she  
 398 establishes or maintains a residence within 48 hours after  
 399 establishing or maintaining a residence in this state; and

400 b. At the sheriff's office in the county where he or she  
 401 was designated a sexual predator by the court within 48 hours  
 402 after such finding is made.

403 2. Any change in the sexual predator's permanent, ~~or~~  
 404 temporary, or transient residence; ~~;~~ name; ~~;~~ vehicles owned; ~~;~~  
 405 electronic mail addresses; ~~;~~ Internet identifiers; home  
 406 telephone numbers and cellular telephone numbers; and employment  
 407 information and any change in status at an institution of higher  
 408 education, required to be provided pursuant to subparagraph

409 (g)5., after the sexual predator registers in person at the  
 410 sheriff's office as provided in subparagraph 1. ~~;~~ must be  
 411 accomplished in the manner provided in paragraphs (g), (i), and  
 412 (j). When a sexual predator registers with the sheriff's office,  
 413 the sheriff shall take a photograph, a set of fingerprints, and  
 414 palm prints of the predator and forward the photographs, palm  
 415 prints, and fingerprints to the department, along with the  
 416 information that the predator is required to provide pursuant to



417 | this section.

418 |         (f) Within 48 hours after the registration required under  
 419 | paragraph (a) or paragraph (e), a sexual predator who is not  
 420 | incarcerated and who resides in the community, including a  
 421 | sexual predator under the supervision of the Department of  
 422 | Corrections, shall register in person at a driver license office  
 423 | of the Department of Highway Safety and Motor Vehicles and shall  
 424 | present proof of registration unless a driver license or an  
 425 | identification card that complies with the requirements of s.  
 426 | 322.141(3) was previously secured or updated under s. 944.607.

427 | At the driver license office the sexual predator shall:

428 |         1. If otherwise qualified, secure a Florida driver  
 429 | license, renew a Florida driver license, or secure an  
 430 | identification card. The sexual predator shall identify himself  
 431 | or herself as a sexual predator who is required to comply with  
 432 | this section, provide his or her place of permanent, temporary,  
 433 | or transient residence, including a rural route address and a  
 434 | post office box, and submit to the taking of a photograph for  
 435 | use in issuing a driver license, a renewed license, or an  
 436 | identification card, and for use by the department in  
 437 | maintaining current records of sexual predators. A post office  
 438 | box may not be provided in lieu of a physical residential  
 439 | address. If the sexual predator's place of residence is a motor  
 440 | vehicle, trailer, mobile home, or manufactured home, as defined  
 441 | in chapter 320, the sexual predator shall also provide to the  
 442 | Department of Highway Safety and Motor Vehicles the vehicle

443 identification number; the license tag number; the registration  
 444 number; and a description, including color scheme, of the motor  
 445 vehicle, trailer, mobile home, or manufactured home. If a sexual  
 446 predator's place of residence is a vessel, live-aboard vessel,  
 447 or houseboat, as defined in chapter 327, the sexual predator  
 448 shall also provide to the Department of Highway Safety and Motor  
 449 Vehicles the hull identification number; the manufacturer's  
 450 serial number; the name of the vessel, live-aboard vessel, or  
 451 houseboat; the registration number; and a description, including  
 452 color scheme, of the vessel, live-aboard vessel, or houseboat.

453 2. Pay the costs assessed by the Department of Highway  
 454 Safety and Motor Vehicles for issuing or renewing a driver  
 455 license or an identification card as required by this section.  
 456 The driver license or identification card issued to the sexual  
 457 predator must comply with s. 322.141(3).

458 3. Provide, upon request, any additional information  
 459 necessary to confirm the identity of the sexual predator,  
 460 including a set of fingerprints.

461 (g)1. Each time a sexual predator's driver license or  
 462 identification card is subject to renewal, and, without regard  
 463 to the status of the predator's driver license or identification  
 464 card, within 48 hours after any change of the predator's  
 465 residence or change in the predator's name by reason of marriage  
 466 or other legal process, the predator shall report in person to a  
 467 driver license office and is subject to the requirements  
 468 specified in paragraph (f). The Department of Highway Safety and

469 Motor Vehicles shall forward to the department and to the  
 470 Department of Corrections all photographs and information  
 471 provided by sexual predators. Notwithstanding the restrictions  
 472 set forth in s. 322.142, the Department of Highway Safety and  
 473 Motor Vehicles may release a reproduction of a color-photograph  
 474 or digital-image license to the Department of Law Enforcement  
 475 for purposes of public notification of sexual predators as  
 476 provided in this section. A sexual predator who is unable to  
 477 secure or update a driver license or an identification card with  
 478 the Department of Highway Safety and Motor Vehicles as provided  
 479 in paragraph (f) and this paragraph shall also report any change  
 480 of the predator's residence or change in the predator's name by  
 481 reason of marriage or other legal process within 48 hours after  
 482 the change to the sheriff's office in the county where the  
 483 predator resides or is located and provide confirmation that he  
 484 or she reported such information to the Department of Highway  
 485 Safety and Motor Vehicles. The reporting requirements under this  
 486 subparagraph do not negate the requirement for a sexual predator  
 487 to obtain a Florida driver license or identification card as  
 488 required by this section.

489 2.a. A sexual predator who vacates a permanent, temporary,  
 490 or transient residence and fails to establish or maintain  
 491 another permanent, temporary, or transient residence shall,  
 492 within 48 hours after vacating the permanent, temporary, or  
 493 transient residence, report in person to the sheriff's office of  
 494 the county in which he or she is located. The sexual predator

495 shall specify the date upon which he or she intends to or did  
 496 vacate such residence. The sexual predator shall provide or  
 497 update all of the registration information required under  
 498 paragraph (a). The sexual predator shall provide an address for  
 499 the residence or other place that he or she is or will be  
 500 located during the time in which he or she fails to establish or  
 501 maintain a permanent or temporary residence.

502       b. A sexual predator shall report in person at the  
 503 sheriff's office in the county in which he or she is located  
 504 within 48 hours after establishing a transient residence and  
 505 thereafter must report in person every 30 days to the sheriff's  
 506 office in the county in which he or she is located while  
 507 maintaining a transient residence. The sexual predator must  
 508 provide the addresses and locations where he or she maintains a  
 509 transient residence. Each sheriff's office shall establish  
 510 procedures for reporting transient residence information and  
 511 provide notice to transient registrants to report transient  
 512 residence information as required in this sub-subparagraph.  
 513 Reporting to the sheriff's office as required by this sub-  
 514 subparagraph does not exempt registrants from any reregistration  
 515 requirement. The sheriff may coordinate and enter into  
 516 agreements with police departments and other governmental  
 517 entities to facilitate additional reporting sites for transient  
 518 residence registration required in this sub-subparagraph. The  
 519 sheriff's office shall, within 2 business days, electronically  
 520 submit and update all information provided by the sexual

521 predator to the department.

522 3. A sexual predator who remains at a permanent,  
523 temporary, or transient residence after reporting his or her  
524 intent to vacate such residence shall, within 48 hours after the  
525 date upon which the predator indicated he or she would or did  
526 vacate such residence, report in person to the sheriff's office  
527 to which he or she reported pursuant to subparagraph 2. for the  
528 purpose of reporting his or her address at such residence. When  
529 the sheriff receives the report, the sheriff shall promptly  
530 convey the information to the department. An offender who makes  
531 a report as required under subparagraph 2. but fails to make a  
532 report as required under this subparagraph commits a felony of  
533 the second degree, punishable as provided in s. 775.082, s.  
534 775.083, or s. 775.084.

535 4. The failure of a sexual predator who maintains a  
536 transient residence to report in person to the sheriff's office  
537 every 30 days as required by sub-subparagraph 2.b. is punishable  
538 as provided in subsection (10).

539 5.a. A sexual predator shall register all electronic mail  
540 addresses and Internet identifiers with the department through  
541 the department's online system or in person at the sheriff's  
542 office before using such electronic mail addresses and Internet  
543 identifiers. If the sexual predator is in the custody or  
544 control, or under the supervision, of the Department of  
545 Corrections, he or she must report all electronic mail addresses  
546 and Internet identifiers to the Department of Corrections before

547 using such electronic mail addresses or Internet identifiers. If  
 548 the sexual predator is in the custody or control, or under the  
 549 supervision, of the Department of Juvenile Justice, he or she  
 550 must report all electronic mail addresses and Internet  
 551 identifiers to the Department of Juvenile Justice before using  
 552 such electronic mail addresses or Internet identifiers.

553 b. A sexual predator shall register all changes to home  
 554 telephone numbers and cellular telephone numbers, including  
 555 added and deleted numbers, all changes to employment  
 556 information, and all changes in status related to enrollment,  
 557 volunteering, or employment at institutions of higher education,  
 558 through the department's online system; in person at the  
 559 sheriff's office; in person at the Department of Corrections if  
 560 the sexual predator is in the custody or control, or under the  
 561 supervision, of the Department of Corrections; or in person at  
 562 the Department of Juvenile Justice if the sexual predator is in  
 563 the custody or control, or under the supervision, of the  
 564 Department of Juvenile Justice. All changes required to be  
 565 reported in this sub-subparagraph shall be reported within 48  
 566 hours after the change.

567 c. The department shall establish an online system through  
 568 which sexual predators may securely access, submit, and update  
 569 all electronic mail address and Internet identifier information,  
 570 home telephone numbers and cellular telephone numbers,  
 571 employment information, and institution of higher education  
 572 information.

573 (i) A sexual predator who intends to establish a  
 574 permanent, temporary, or transient residence in another state or  
 575 jurisdiction other than the State of Florida shall report in  
 576 person to the sheriff of the county of current residence within  
 577 48 hours before the date he or she intends to leave this state  
 578 to establish residence in another state or jurisdiction or at  
 579 least ~~within~~ 21 days before the date he or she intends to travel  
 580 ~~before his or her planned departure date~~ if the intended  
 581 residence of 5 days or more is outside of the United States. Any  
 582 travel that is not known by the sexual predator 21 days before  
 583 the departure date must be reported to the sheriff's office as  
 584 soon as possible before departure. The sexual predator shall  
 585 provide to the sheriff the address, municipality, county, state,  
 586 and country of intended residence. For international travel, the  
 587 sexual predator shall also provide travel information,  
 588 including, but not limited to, expected departure and return  
 589 dates, flight number, airport of departure, cruise port of  
 590 departure, or any other means of intended travel. The sheriff  
 591 shall promptly provide to the department the information  
 592 received from the sexual predator. The department shall notify  
 593 the statewide law enforcement agency, or a comparable agency, in  
 594 the intended state, jurisdiction, or country of residence of the  
 595 sexual predator's intended residence. The failure of a sexual  
 596 predator to provide his or her intended place of residence is  
 597 punishable as provided in subsection (10).

598 (8) VERIFICATION.—The department and the Department of

599 Corrections shall implement a system for verifying the addresses  
 600 of sexual predators. The system must be consistent with ~~the~~  
 601 ~~provisions of~~ the federal Adam Walsh Child Protection and Safety  
 602 Act of 2006 and any other federal standards applicable to such  
 603 verification or required to be met as a condition for the  
 604 receipt of federal funds by the state. The Department of  
 605 Corrections shall verify the addresses of sexual predators who  
 606 are not incarcerated but who reside in the community under the  
 607 supervision of the Department of Corrections and shall report to  
 608 the department any failure by a sexual predator to comply with  
 609 registration requirements. County and local law enforcement  
 610 agencies, in conjunction with the department, shall verify the  
 611 addresses of sexual predators who are not under the care,  
 612 custody, control, or supervision of the Department of  
 613 Corrections, and may verify the addresses of sexual predators  
 614 who are under the care, custody, control, or supervision of the  
 615 Department of Corrections. Local law enforcement agencies shall  
 616 report to the department any failure by a sexual predator to  
 617 comply with registration requirements.

618 (a) A sexual predator shall report in person each year  
 619 during the month of the sexual predator's birthday and during  
 620 every third month thereafter to the sheriff's office in the  
 621 county in which he or she resides or is otherwise located to  
 622 reregister. The sheriff's office may determine the appropriate  
 623 times and days for reporting by the sexual predator, which must  
 624 be consistent with the reporting requirements of this paragraph.



625 Reregistration must include any changes to the following  
 626 information:

627 1. Name; social security number; age; race; sex; date of  
 628 birth; height; weight; tattoos or other identifying marks; hair  
 629 and eye color; address of any permanent residence and address of  
 630 any current temporary residence, within the state or out of  
 631 state, including a rural route address and a post office box; if  
 632 no permanent or temporary address, any transient residence  
 633 within the state; address, location or description, and dates of  
 634 any current or known future temporary residence within the state  
 635 or out of state; all electronic mail addresses or Internet  
 636 identifiers required to be provided pursuant to subparagraph  
 637 (6)(g)5.; all home telephone numbers and cellular telephone  
 638 numbers required to be provided pursuant to subparagraph  
 639 (6)(g)5.; date and place of any employment required to be  
 640 provided pursuant to subparagraph (6)(g)5.; the make, model,  
 641 color, vehicle identification number (VIN), and license tag  
 642 number of all vehicles owned; fingerprints; palm prints; and  
 643 photograph. A post office box may not be provided in lieu of a  
 644 physical residential address. The sexual predator shall also  
 645 produce his or her passport, if he or she has a passport, and,  
 646 if he or she is an alien, shall produce or provide information  
 647 about documents establishing his or her immigration status. The  
 648 sexual predator shall also provide information about any  
 649 professional licenses he or she has.

650 2. If the sexual predator is enrolled ~~or~~ employed,

651 whether for compensation or as a volunteer ~~volunteering, or~~  
 652 ~~carrying on a vocation~~ at an institution of higher education in  
 653 this state, the sexual predator shall also provide to the  
 654 department the name, address, and county of each institution,  
 655 including each campus attended, and the sexual predator's  
 656 enrollment, volunteer, or employment status.

657 3. If the sexual predator's place of residence is a motor  
 658 vehicle, trailer, mobile home, or manufactured home, as defined  
 659 in chapter 320, the sexual predator shall also provide the  
 660 vehicle identification number; the license tag number; the  
 661 registration number; and a description, including color scheme,  
 662 of the motor vehicle, trailer, mobile home, or manufactured  
 663 home. If the sexual predator's place of residence is a vessel,  
 664 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 665 sexual predator shall also provide the hull identification  
 666 number; the manufacturer's serial number; the name of the  
 667 vessel, live-aboard vessel, or houseboat; the registration  
 668 number; and a description, including color scheme, of the  
 669 vessel, live-aboard vessel, or houseboat.

670 (10) PENALTIES.—

671 (a) Except as otherwise specifically provided, a sexual  
 672 predator who fails to register; who fails, after registration,  
 673 to maintain, acquire, or renew a driver license or an  
 674 identification card; who fails to provide required location  
 675 information, electronic mail address information before use,  
 676 Internet identifier information before use, all home telephone

677 numbers and cellular telephone numbers, employment information,  
 678 change in status at an institution of higher education, or  
 679 change-of-name information; who fails to make a required report  
 680 in connection with vacating a permanent residence; who fails to  
 681 reregister as required; who fails to respond to any address  
 682 verification correspondence from the department within 3 weeks  
 683 of the date of the correspondence; who knowingly provides false  
 684 registration information by act or omission; or who otherwise  
 685 fails, by act or omission, to comply with the requirements of  
 686 this section commits a felony of the third degree, punishable as  
 687 provided in s. 775.082, s. 775.083, or s. 775.084.

688 (b) A sexual predator who has been convicted of or found  
 689 to have committed, or has pled nolo contendere or guilty to,  
 690 regardless of adjudication, any violation, or attempted  
 691 violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
 692 the victim is a minor ~~and the defendant is not the victim's~~  
 693 ~~parent or guardian;~~ s. 794.011, excluding s. 794.011(10); s.  
 694 794.05; former s. 796.03; former s. 796.035; s. 800.04; s.  
 695 827.071; s. 847.0133; s. 847.0135(5); s. 847.0145; or s.  
 696 985.701(1); or a violation of a similar law of another  
 697 jurisdiction when the victim of the offense was a minor, and who  
 698 works, whether for compensation or as a volunteer, at any  
 699 business, school, child care facility, park, playground, or  
 700 other place where children regularly congregate, commits a  
 701 felony of the third degree, punishable as provided in s.  
 702 775.082, s. 775.083, or s. 775.084.

703 (c) Any person who misuses public records information  
 704 relating to a sexual predator, as defined in this section, or a  
 705 sexual offender, as defined in s. 943.0435 or s. 944.607, to  
 706 secure a payment from such a predator or offender; who knowingly  
 707 distributes or publishes false information relating to such a  
 708 predator or offender which the person misrepresents as being  
 709 public records information; or who materially alters public  
 710 records information with the intent to misrepresent the  
 711 information, including documents, summaries of public records  
 712 information provided by law enforcement agencies, or public  
 713 records information displayed by law enforcement agencies on  
 714 websites or provided through other means of communication,  
 715 commits a misdemeanor of the first degree, punishable as  
 716 provided in s. 775.082 or s. 775.083.

717 (e) An arrest on charges of failure to register, the  
 718 service of an information or a complaint for a violation of this  
 719 section, or an arraignment on charges for a violation of this  
 720 section constitutes actual notice of the duty to register when  
 721 the predator has been provided and advised of his or her  
 722 statutory obligation to register under subsection (6). A sexual  
 723 predator's failure to immediately register as required by this  
 724 section following such arrest, service, or arraignment  
 725 constitutes grounds for a subsequent charge of failure to  
 726 register. A sexual predator charged with the crime of failure to  
 727 register who asserts, or intends to assert, a lack of notice of  
 728 the duty to register as a defense to a charge of failure to

729 register shall immediately register as required by this section.  
 730 A sexual predator who is charged with a subsequent failure to  
 731 register may not assert the defense of a lack of notice of the  
 732 duty to register.

733 Section 2. Subsection (1) of section 856.022, Florida  
 734 Statutes, is amended, and subsections (2), (3), and (4) of that  
 735 section are republished, to read:

736 856.022 Loitering or prowling by certain offenders in  
 737 close proximity to children; penalty.-

738 (1) Except as provided in subsection (2), this section  
 739 applies to a person convicted of committing, or attempting,  
 740 soliciting, or conspiring to commit, any of the criminal  
 741 offenses proscribed in the following statutes in this state or  
 742 similar offenses in another jurisdiction against a victim who  
 743 was under 18 years of age at the time of the offense: s. 787.01,  
 744 s. 787.02, or s. 787.025(2)(c), where the victim is a minor ~~and~~  
 745 ~~the offender was not the victim's parent or guardian; s.~~  
 746 787.06(3)(g); s. 794.011, excluding s. 794.011(10); s. 794.05;  
 747 former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025; s.  
 748 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
 749 847.0137; s. 847.0138; s. 847.0145; s. 985.701(1); or any  
 750 similar offense committed in this state which has been  
 751 redesignated from a former statute number to one of those listed  
 752 in this subsection, if the person has not received a pardon for  
 753 any felony or similar law of another jurisdiction necessary for  
 754 the operation of this subsection and a conviction of a felony or

755 similar law of another jurisdiction necessary for the operation  
 756 of this subsection has not been set aside in any postconviction  
 757 proceeding.

758 (2) This section does not apply to a person who has been  
 759 removed from the requirement to register as a sexual offender or  
 760 sexual predator pursuant to s. 943.04354.

761 (3) A person described in subsection (1) commits loitering  
 762 and prowling by a person convicted of a sexual offense against a  
 763 minor if, in committing loitering and prowling, he or she was  
 764 within 300 feet of a place where children were congregating.

765 (4) It is unlawful for a person described in subsection  
 766 (1) to:

767 (a) Knowingly approach, contact, or communicate with a  
 768 child under 18 years of age in any public park building or on  
 769 real property comprising any public park or playground with the  
 770 intent to engage in conduct of a sexual nature or to make a  
 771 communication of any type with any content of a sexual nature.  
 772 This paragraph applies only to a person described in subsection  
 773 (1) whose offense was committed on or after May 26, 2010.

774 (b)1. Knowingly be present in any child care facility or  
 775 school containing any students in prekindergarten through grade  
 776 12 or on real property comprising any child care facility or  
 777 school containing any students in prekindergarten through grade  
 778 12 when the child care facility or school is in operation unless  
 779 the person had previously provided written notification of his  
 780 or her intent to be present to the school board, superintendent,

781 principal, or child care facility owner;

782 2. Fail to notify the child care facility owner or the  
 783 school principal's office when he or she arrives and departs the  
 784 child care facility or school; or

785 3. Fail to remain under direct supervision of a school  
 786 official or designated chaperone when present in the vicinity of  
 787 children. As used in this paragraph, the term "school official"  
 788 means a principal, a school resource officer, a teacher or any  
 789 other employee of the school, the superintendent of schools, a  
 790 member of the school board, a child care facility owner, or a  
 791 child care provider.

792 (c) A person is not in violation of paragraph (b) if:

793 1. The child care facility or school is a voting location  
 794 and the person is present for the purpose of voting during the  
 795 hours designated for voting; or

796 2. The person is only dropping off or picking up his or  
 797 her own children or grandchildren at the child care facility or  
 798 school.

799 Section 3. Subsection (1) of section 943.0435, Florida  
 800 Statutes, is reordered and amended, and subsection (2),  
 801 paragraphs (a) and (e) of subsection (4), subsection (7),  
 802 subsection (11), and paragraphs (b) and (c) of subsection (14)  
 803 of that section are amended, to read:

804 943.0435 Sexual offenders required to register with the  
 805 department; penalty.—

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

807            (a)(e) "Change in ~~enrollment or employment~~ status at an  
 808 institution of higher education" has the same meaning as  
 809 provided in s. 775.21 ~~means the commencement or termination of~~  
 810 ~~enrollment or employment or a change in location of enrollment~~  
 811 ~~or employment.~~

812            (b) "Convicted" means that there has been a determination  
 813 of guilt as a result of a trial or the entry of a plea of guilty  
 814 or nolo contendere, regardless of whether adjudication is  
 815 withheld, and includes an adjudication of delinquency of a  
 816 juvenile as specified in this section. Conviction of a similar  
 817 offense includes, but is not limited to, a conviction by a  
 818 federal or military tribunal, including courts-martial conducted  
 819 by the Armed Forces of the United States, and includes a  
 820 conviction or entry of a plea of guilty or nolo contendere  
 821 resulting in a sanction in any state of the United States or  
 822 other jurisdiction. A sanction includes, but is not limited to,  
 823 a fine, probation, community control, parole, conditional  
 824 release, control release, or incarceration in a state prison,  
 825 federal prison, private correctional facility, or local  
 826 detention facility.

827            (c)(f) "Electronic mail address" has the same meaning as  
 828 provided in s. 668.602.

829            (d) "Institution of higher education" has the same meaning  
 830 as provided in s. 775.21 ~~means a career center, community~~  
 831 ~~college, college, state university, or independent postsecondary~~  
 832 ~~institution.~~



833           ~~(e)(g)~~ "Internet identifier" has the same meaning as  
 834 provided in s. 775.21.

835           ~~(f)(e)~~ "Permanent residence," "temporary residence," and  
 836 "transient residence" have the same meaning as provided ~~ascribed~~  
 837 in s. 775.21.

838           (g) "Professional license" has the same meaning as  
 839 provided in s. 775.21.

840           ~~(h)(a)~~1. "Sexual offender" means a person who meets the  
 841 criteria in sub-subparagraph a., sub-subparagraph b., sub-  
 842 subparagraph c., or sub-subparagraph d., as follows:

843           a.(I) Has been convicted of committing, or attempting,  
 844 soliciting, or conspiring to commit, any of the criminal  
 845 offenses proscribed in the following statutes in this state or  
 846 similar offenses in another jurisdiction: s. 393.135(2); s.  
 847 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
 848 the victim is a minor ~~and the defendant is not the victim's~~  
 849 ~~parent or guardian~~; s. 787.06(3)(b), (d), (f), or (g); former s.  
 850 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05;  
 851 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);  
 852 s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
 853 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.  
 854 916.1075(2); or s. 985.701(1); or any similar offense committed  
 855 in this state which has been redesignated from a former statute  
 856 number to one of those listed in this sub-sub-subparagraph; and

857           (II) Has been released on or after October 1, 1997, from  
 858 the sanction imposed for any conviction of an offense described

859 in sub-sub-subparagraph (I). For purposes of sub-sub-  
 860 subparagraph (I), a sanction imposed in this state or in any  
 861 other jurisdiction includes, but is not limited to, a fine,  
 862 probation, community control, parole, conditional release,  
 863 control release, or incarceration in a state prison, federal  
 864 prison, private correctional facility, or local detention  
 865 facility;

866 b. Establishes or maintains a residence in this state and  
 867 who has not been designated as a sexual predator by a court of  
 868 this state but who has been designated as a sexual predator, as  
 869 a sexually violent predator, or by another sexual offender  
 870 designation in another state or jurisdiction and was, as a  
 871 result of such designation, subjected to registration or  
 872 community or public notification, or both, or would be if the  
 873 person were a resident of that state or jurisdiction, without  
 874 regard to whether the person otherwise meets the criteria for  
 875 registration as a sexual offender;

876 c. Establishes or maintains a residence in this state who  
 877 is in the custody or control of, or under the supervision of,  
 878 any other state or jurisdiction as a result of a conviction for  
 879 committing, or attempting, soliciting, or conspiring to commit,  
 880 any of the criminal offenses proscribed in the following  
 881 statutes or similar offense in another jurisdiction: s.  
 882 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
 883 787.025(2)(c), where the victim is a minor ~~and the defendant is~~  
 884 ~~not the victim's parent or guardian~~; s. 787.06(3)(b), (d), (f),

885 or (g); former s. 787.06(3)(h); s. 794.011, excluding s.  
 886 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.  
 887 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s.  
 888 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.  
 889 847.0145; s. 916.1075(2); or s. 985.701(1); or any similar  
 890 offense committed in this state which has been redesignated from  
 891 a former statute number to one of those listed in this sub-  
 892 subparagraph; or

893 d. On or after July 1, 2007, has been adjudicated  
 894 delinquent for committing, or attempting, soliciting, or  
 895 conspiring to commit, any of the criminal offenses proscribed in  
 896 the following statutes in this state or similar offenses in  
 897 another jurisdiction when the juvenile was 14 years of age or  
 898 older at the time of the offense:

899 (I) Section 794.011, excluding s. 794.011(10);

900 (II) Section 800.04(4)(a)2. where the victim is under 12  
 901 years of age or where the court finds sexual activity by the use  
 902 of force or coercion;

903 (III) Section 800.04(5)(c)1. where the court finds  
 904 molestation involving unclothed genitals; ~~or~~

905 (IV) Section 800.04(5)(d) where the court finds the use of  
 906 force or coercion and unclothed genitals; or

907 (V) Any similar offense committed in this state which has  
 908 been redesignated from a former statute number to one of those  
 909 listed in this sub-subparagraph.

910 2. For all qualifying offenses listed in sub-subparagraph

911 1.d. ~~(1)(a)1.d.~~, the court shall make a written finding of the  
 912 age of the offender at the time of the offense.

913

914 For each violation of a qualifying offense listed in this  
 915 subsection, except for a violation of s. 794.011, the court  
 916 shall make a written finding of the age of the victim at the  
 917 time of the offense. For a violation of s. 800.04(4), the court  
 918 shall also make a written finding indicating whether the offense  
 919 involved sexual activity and indicating whether the offense  
 920 involved force or coercion. For a violation of s. 800.04(5), the  
 921 court shall also make a written finding that the offense did or  
 922 did not involve unclothed genitals or genital area and that the  
 923 offense did or did not involve the use of force or coercion.

924 (i) ~~(h)~~ "Vehicles owned" has the same meaning as provided  
 925 in s. 775.21.

926 (2) A sexual offender shall:

927 (a) Report in person at the sheriff's office:

928 1. In the county in which the offender establishes or  
 929 maintains a permanent, temporary, or transient residence within  
 930 48 hours after:

931 a. Establishing permanent, temporary, or transient  
 932 residence in this state; or

933 b. Being released from the custody, control, or  
 934 supervision of the Department of Corrections or from the custody  
 935 of a private correctional facility; or

936 2. In the county where he or she was convicted within 48

937 hours after being convicted for a qualifying offense for  
 938 registration under this section if the offender is not in the  
 939 custody or control of, or under the supervision of, the  
 940 Department of Corrections, or is not in the custody of a private  
 941 correctional facility.

942  
 943 Any change in the information required to be provided pursuant  
 944 to paragraph (b), including, but not limited to, any change in  
 945 the sexual offender's permanent, temporary, or transient  
 946 residence; name; electronic mail addresses; ~~or~~ Internet  
 947 identifiers; home telephone numbers and cellular telephone  
 948 numbers; and employment information and any change in status at  
 949 an institution of higher education, required to be provided  
 950 pursuant to paragraph (4)(e), after the sexual offender reports  
 951 in person at the sheriff's office, must be accomplished in the  
 952 manner provided in subsections (4), (7), and (8).

953 (b) Provide his or her name; date of birth; social  
 954 security number; race; sex; height; weight; hair and eye color;  
 955 tattoos or other identifying marks; fingerprints; palm prints;  
 956 photograph; ~~occupation and place of employment information~~  
 957 required to be provided pursuant to paragraph (4)(e); address of  
 958 permanent or legal residence or address of any current temporary  
 959 residence, within the state or out of state, including a rural  
 960 route address and a post office box; if no permanent or  
 961 temporary address, any transient residence within the state,  
 962 address, location or description, and dates of any current or

963 known future temporary residence within the state or out of  
 964 state; the make, model, color, vehicle identification number  
 965 (VIN), and license tag number of all vehicles owned; all home  
 966 telephone numbers and cellular telephone numbers required to be  
 967 provided pursuant to paragraph (4)(e); all electronic mail  
 968 addresses and all Internet identifiers required to be provided  
 969 pursuant to paragraph (4)(e); date and place of each conviction;  
 970 and a brief description of the crime or crimes committed by the  
 971 offender. A post office box may not be provided in lieu of a  
 972 physical residential address. The sexual offender shall also  
 973 produce his or her passport, if he or she has a passport, and,  
 974 if he or she is an alien, shall produce or provide information  
 975 about documents establishing his or her immigration status. The  
 976 sexual offender shall also provide information about any  
 977 professional licenses he or she has.

978         1. If the sexual offender's place of residence is a motor  
 979 vehicle, trailer, mobile home, or manufactured home, as defined  
 980 in chapter 320, the sexual offender shall also provide to the  
 981 department through the sheriff's office written notice of the  
 982 vehicle identification number; the license tag number; the  
 983 registration number; and a description, including color scheme,  
 984 of the motor vehicle, trailer, mobile home, or manufactured  
 985 home. If the sexual offender's place of residence is a vessel,  
 986 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 987 sexual offender shall also provide to the department written  
 988 notice of the hull identification number; the manufacturer's

989 serial number; the name of the vessel, live-aboard vessel, or  
 990 houseboat; the registration number; and a description, including  
 991 color scheme, of the vessel, live-aboard vessel, or houseboat.

992 2. If the sexual offender is enrolled or, employed,  
 993 whether for compensation or as a volunteer ~~volunteering, or~~  
 994 ~~carrying on a vocation~~ at an institution of higher education in  
 995 this state, the sexual offender shall also provide to the  
 996 department pursuant to paragraph (4)(e) ~~through the sheriff's~~  
 997 ~~office~~ the name, address, and county of each institution,  
 998 including each campus attended, and the sexual offender's  
 999 enrollment, volunteer, or employment status. ~~Each change in~~  
 1000 ~~enrollment, volunteer, or employment status must be reported in~~  
 1001 ~~person at the sheriff's office, within 48 hours after any change~~  
 1002 ~~in status.~~ The sheriff, the Department of Corrections, or the  
 1003 Department of Juvenile Justice shall promptly notify each  
 1004 institution of higher education of the sexual offender's  
 1005 presence and any change in the sexual offender's enrollment,  
 1006 volunteer, or employment status.

1007 3. A sexual offender shall report in person to the  
 1008 sheriff's office within 48 hours after any change in vehicles  
 1009 owned to report those vehicle information changes.

1010 (c) Provide any other information determined necessary by  
 1011 the department, including criminal and corrections records;  
 1012 nonprivileged personnel and treatment records; and evidentiary  
 1013 genetic markers, when available.

1014

1015 When a sexual offender reports at the sheriff's office, the  
 1016 sheriff shall take a photograph, a set of fingerprints, and palm  
 1017 prints of the offender and forward the photographs, palm prints,  
 1018 and fingerprints to the department, along with the information  
 1019 provided by the sexual offender. The sheriff shall promptly  
 1020 provide to the department the information received from the  
 1021 sexual offender.

1022 (4)(a) Each time a sexual offender's driver license or  
 1023 identification card is subject to renewal, and, without regard  
 1024 to the status of the offender's driver license or identification  
 1025 card, within 48 hours after any change in the offender's  
 1026 permanent, temporary, or transient residence or change in the  
 1027 offender's name by reason of marriage or other legal process,  
 1028 the offender shall report in person to a driver license office,  
 1029 and is subject to the requirements specified in subsection (3).  
 1030 The Department of Highway Safety and Motor Vehicles shall  
 1031 forward to the department all photographs and information  
 1032 provided by sexual offenders. Notwithstanding the restrictions  
 1033 set forth in s. 322.142, the Department of Highway Safety and  
 1034 Motor Vehicles may release a reproduction of a color-photograph  
 1035 or digital-image license to the Department of Law Enforcement  
 1036 for purposes of public notification of sexual offenders as  
 1037 provided in this section and ss. 943.043 and 944.606. A sexual  
 1038 offender who is unable to secure or update a driver license or  
 1039 an identification card with the Department of Highway Safety and  
 1040 Motor Vehicles as provided in subsection (3) and this subsection



1041 shall also report any change in the sexual offender's permanent,  
 1042 temporary, or transient residence or change in the offender's  
 1043 name by reason of marriage or other legal process within 48  
 1044 hours after the change to the sheriff's office in the county  
 1045 where the offender resides or is located and provide  
 1046 confirmation that he or she reported such information to the  
 1047 Department of Highway Safety and Motor Vehicles. The reporting  
 1048 requirements under this paragraph do not negate the requirement  
 1049 for a sexual offender to obtain a Florida driver license or an  
 1050 identification card as required in this section.

1051 (e)1. A sexual offender shall register all electronic mail  
 1052 addresses and Internet identifiers with the department through  
 1053 the department's online system or in person at the sheriff's  
 1054 office before using such electronic mail addresses and Internet  
 1055 identifiers. If the sexual offender is in the custody or  
 1056 control, or under the supervision, of the Department of  
 1057 Corrections, he or she must report all electronic mail addresses  
 1058 and Internet identifiers to the Department of Corrections before  
 1059 using such electronic mail addresses or Internet identifiers. If  
 1060 the sexual offender is in the custody or control, or under the  
 1061 supervision, of the Department of Juvenile Justice, he or she  
 1062 must report all electronic mail addresses and Internet  
 1063 identifiers to the Department of Juvenile Justice before using  
 1064 such electronic mail addresses or Internet identifiers.

1065 2. A sexual offender shall register all changes to home  
 1066 telephone numbers and cellular telephone numbers, including

1067 added and deleted numbers, all changes to employment  
 1068 information, and all changes in status related to enrollment,  
 1069 volunteering, or employment at institutions of higher education,  
 1070 through the department's online system; in person at the  
 1071 sheriff's office; in person at the Department of Corrections if  
 1072 the sexual offender is in the custody or control, or under the  
 1073 supervision, of the Department of Corrections; or in person at  
 1074 the Department of Juvenile Justice if the sexual offender is in  
 1075 the custody or control, or under the supervision, of the  
 1076 Department of Juvenile Justice. All changes required to be  
 1077 reported under this subparagraph must be reported within 48  
 1078 hours after the change.

1079 3. The department shall establish an online system through  
 1080 which sexual offenders may securely access, submit, and update  
 1081 all changes in status to electronic mail address and Internet  
 1082 identifier information, home telephone numbers and cellular  
 1083 telephone numbers, employment information, and institution of  
 1084 higher education information.

1085 (7) A sexual offender who intends to establish a  
 1086 permanent, temporary, or transient residence in another state or  
 1087 jurisdiction other than the State of Florida shall report in  
 1088 person to the sheriff of the county of current residence within  
 1089 48 hours before the date he or she intends to leave this state  
 1090 to establish residence in another state or jurisdiction or at  
 1091 least ~~within~~ 21 days before the date he or she intends to travel  
 1092 before his or her planned departure date if the intended

1093 residence of 5 days or more is outside of the United States. Any  
 1094 travel that is not known by the sexual offender 21 days before  
 1095 the departure date must be reported in person to the sheriff's  
 1096 office as soon as possible before departure. The sexual offender  
 1097 shall provide to the sheriff ~~The notification must include the~~  
 1098 address, municipality, county, state, and country of intended  
 1099 residence. For international travel, the sexual offender shall  
 1100 also provide travel information, including, but not limited to,  
 1101 expected departure and return dates, flight number, airport of  
 1102 departure, cruise port of departure, or any other means of  
 1103 intended travel. The sheriff shall promptly provide to the  
 1104 department the information received from the sexual offender.  
 1105 The department shall notify the statewide law enforcement  
 1106 agency, or a comparable agency, in the intended state,  
 1107 jurisdiction, or country of residence of the sexual offender's  
 1108 intended residence. The failure of a sexual offender to provide  
 1109 his or her intended place of residence is punishable as provided  
 1110 in subsection (9).

1111 (11) Except as provided in s. 943.04354, a sexual offender  
 1112 shall maintain registration with the department for the duration  
 1113 of his or her life unless the sexual offender has received a  
 1114 full pardon or has had a conviction set aside in a  
 1115 postconviction proceeding for any offense that meets the  
 1116 criteria for classifying the person as a sexual offender for  
 1117 purposes of registration. However, a sexual offender shall be  
 1118 considered for removal of the requirement to register as a

1119 sexual offender only if the person:  
 1120 (a)1. ~~Who~~ Has been lawfully released from confinement,  
 1121 supervision, or sanction, whichever is later, for at least 25  
 1122 years and has not been arrested for any felony or misdemeanor  
 1123 offense since release, provided that the sexual offender's  
 1124 requirement to register was not based upon an adult conviction:  
 1125 a. For a violation of s. 787.01 or s. 787.02;  
 1126 b. For a violation of s. 794.011, excluding s.  
 1127 794.011(10);  
 1128 c. For a violation of s. 800.04(4)(a)2. where the court  
 1129 finds the offense involved a victim under 12 years of age or  
 1130 sexual activity by the use of force or coercion;  
 1131 d. For a violation of s. 800.04(5)(b);  
 1132 e. For a violation of s. 800.04(5)(c)2. where the court  
 1133 finds the offense involved the use of force or coercion and  
 1134 unclothed genitals or genital area;  
 1135 f. For a violation of s. 825.1025(2)(a);  
 1136 g.f. For any attempt or conspiracy to commit any such  
 1137 offense;  
 1138 h.g. For a violation of similar law of another  
 1139 jurisdiction; or  
 1140 i.h. For a violation of a similar offense committed in  
 1141 this state which has been redesignated from a former statute  
 1142 number to one of those listed in this subparagraph.7  
 1143 2. If the sexual offender meets the criteria in  
 1144 subparagraph 1., the sexual offender may, for the purpose of

1145 removing the requirement for registration as a sexual offender,  
 1146 petition the criminal division of the circuit court of the  
 1147 circuit:

1148 a. Where the conviction or adjudication occurred, for a  
 1149 conviction in this state;

1150 b. Where the sexual offender resides, for a conviction of  
 1151 a violation of similar law of another jurisdiction; or

1152 c. Where the sexual offender last resided, for a sexual  
 1153 offender with a conviction of a violation of similar law of  
 1154 another jurisdiction who no longer resides in this state ~~for the~~  
 1155 ~~purpose of removing the requirement for registration as a sexual~~  
 1156 ~~offender.~~

1157 3.2. The court may grant or deny relief if the offender  
 1158 demonstrates to the court that he or she has not been arrested  
 1159 for any crime since release; the requested relief complies with  
 1160 ~~the provisions of~~ the federal Adam Walsh Child Protection and  
 1161 Safety Act of 2006 and any other federal standards applicable to  
 1162 the removal of registration requirements for a sexual offender  
 1163 or required to be met as a condition for the receipt of federal  
 1164 funds by the state; and the court is otherwise satisfied that  
 1165 the offender is not a current or potential threat to public  
 1166 safety. The state attorney in the circuit in which the petition  
 1167 is filed must be given notice of the petition at least 3 weeks  
 1168 before the hearing on the matter. The state attorney may present  
 1169 evidence in opposition to the requested relief or may otherwise  
 1170 demonstrate the reasons why the petition should be denied. If

1171 the court denies the petition, the court may set a future date  
 1172 at which the sexual offender may again petition the court for  
 1173 relief, subject to the standards for relief provided in this  
 1174 subsection.

1175 4.3. The department shall remove an offender from  
 1176 classification as a sexual offender for purposes of registration  
 1177 if the offender provides to the department a certified copy of  
 1178 the court's written findings or order that indicates that the  
 1179 offender is no longer required to comply with the requirements  
 1180 for registration as a sexual offender.

1181 ~~4. For purposes of this paragraph:~~

1182 ~~a. The registration period of a sexual offender sentenced~~  
 1183 ~~to a term of incarceration or committed to a residential program~~  
 1184 ~~begins upon the offender's release from incarceration or~~  
 1185 ~~commitment for the most recent conviction that required the~~  
 1186 ~~offender to register.~~

1187 ~~b. A sexual offender's registration period is tolled~~  
 1188 ~~during any period in which the offender is incarcerated, civilly~~  
 1189 ~~committed, detained pursuant to chapter 985, or committed to a~~  
 1190 ~~residential program.~~

1191 ~~c. Except as provided in sub-subparagraph c., if the~~  
 1192 ~~sexual offender is only sentenced to a term of supervision for~~  
 1193 ~~the most recent conviction that required the offender to~~  
 1194 ~~register as a sexual offender or is only subject to a period of~~  
 1195 ~~supervision for that conviction, the registration period begins~~  
 1196 ~~when the term or period of supervision for that conviction~~

1197 ~~begins.~~

1198 ~~d. Except as provided in sub-subparagraph e., if the~~  
 1199 ~~sexual offender is sentenced to a term of supervision that~~  
 1200 ~~follows a term of incarceration for the most recent conviction~~  
 1201 ~~that required the offender to register as a sexual offender or~~  
 1202 ~~is subject to a period of supervision that follows commitment to~~  
 1203 ~~a residential program for that conviction, the registration~~  
 1204 ~~period begins when the term or period of supervision for that~~  
 1205 ~~conviction begins.~~

1206 ~~e. If a sexual offender is sentenced to a term of more~~  
 1207 ~~than 25 years' supervision for the most recent conviction that~~  
 1208 ~~required the offender to register as a sexual offender, the~~  
 1209 ~~sexual offender may not petition for removal of the requirement~~  
 1210 ~~for registration as a sexual offender until the term of~~  
 1211 ~~supervision for that conviction is completed.~~

1212 (b) As defined in sub-subparagraph (1)(h)1.b. ~~(1)(a)1.b.~~  
 1213 must maintain registration with the department for the duration  
 1214 of his or her life until the person provides the department with  
 1215 an order issued by the court that designated the person as a  
 1216 sexual predator, as a sexually violent predator, or by another  
 1217 sexual offender designation in the state or jurisdiction in  
 1218 which the order was issued which states that such designation  
 1219 has been removed or demonstrates to the department that such  
 1220 designation, if not imposed by a court, has been removed by  
 1221 operation of law or court order in the state or jurisdiction in  
 1222 which the designation was made, and provided such person no

1223 longer meets the criteria for registration as a sexual offender  
 1224 under the laws of this state.

1225 (14)

1226 (b) However, a sexual offender who is required to register  
 1227 as a result of a conviction for:

1228 1. Section 787.01 or s. 787.02 where the victim is a minor  
 1229 ~~and the offender is not the victim's parent or guardian;~~

1230 2. Section 794.011, excluding s. 794.011(10);

1231 3. Section 800.04(4)(a)2. where the court finds the  
 1232 offense involved a victim under 12 years of age or sexual  
 1233 activity by the use of force or coercion;

1234 4. Section 800.04(5)(b);

1235 5. Section 800.04(5)(c)1. where the court finds  
 1236 molestation involving unclothed genitals or genital area;

1237 6. Section 800.04(5)(c)2. where the court finds  
 1238 molestation involving the use of force or coercion and unclothed  
 1239 genitals or genital area;

1240 7. Section 800.04(5)(d) where the court finds the use of  
 1241 force or coercion and unclothed genitals or genital area;

1242 8. Section 825.1025(2)(a);

1243 ~~9.8.~~ Any attempt or conspiracy to commit such offense;

1244 ~~10.9.~~ A violation of a similar law of another  
 1245 jurisdiction; or

1246 11.10. A violation of a similar offense committed in this  
 1247 state which has been redesignated from a former statute number  
 1248 to one of those listed in this paragraph,



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must reregister each year during the month of the sexual offender's birthday and every third month thereafter.

(c) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which must be consistent with the reporting requirements of this subsection. Reregistration must include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; all electronic mail addresses or Internet identifiers required to be provided pursuant to paragraph (4)(e); all home telephone numbers and cellular telephone numbers required to be provided pursuant to paragraph (4)(e); ~~date and place of any employment information required to be provided pursuant to paragraph (4)(e)~~; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; fingerprints; palm prints; and photograph. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1275 or her passport, if he or she has a passport, and, if he or she  
 1276 is an alien, shall produce or provide information about  
 1277 documents establishing his or her immigration status. The sexual  
 1278 offender shall also provide information about any professional  
 1279 licenses he or she has.

1280 2. If the sexual offender is enrolled or, ~~volunteering,~~  
 1281 employed, whether for compensation or as a volunteer, or  
 1282 ~~carrying on a vocation~~ at an institution of higher education in  
 1283 this state, the sexual offender shall also provide to the  
 1284 department the name, address, and county of each institution,  
 1285 including each campus attended, and the sexual offender's  
 1286 enrollment, volunteer, or employment status.

1287 3. If the sexual offender's place of residence is a motor  
 1288 vehicle, trailer, mobile home, or manufactured home, as defined  
 1289 in chapter 320, the sexual offender shall also provide the  
 1290 vehicle identification number; the license tag number; the  
 1291 registration number; and a description, including color scheme,  
 1292 of the motor vehicle, trailer, mobile home, or manufactured  
 1293 home. If the sexual offender's place of residence is a vessel,  
 1294 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 1295 sexual offender shall also provide the hull identification  
 1296 number; the manufacturer's serial number; the name of the  
 1297 vessel, live-aboard vessel, or houseboat; the registration  
 1298 number; and a description, including color scheme, of the  
 1299 vessel, live-aboard vessel or houseboat.

1300 4. Any sexual offender who fails to report in person as

1301 required at the sheriff's office, who fails to respond to any  
 1302 address verification correspondence from the department within 3  
 1303 weeks of the date of the correspondence, who fails to report all  
 1304 electronic mail addresses and all Internet identifiers before  
 1305 ~~prior to~~ use, or who knowingly provides false registration  
 1306 information by act or omission commits a felony of the third  
 1307 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 1308 775.084.

1309 Section 4. Subsections (1) and (2) of section 943.04354,  
 1310 Florida Statutes, are amended to read:

1311 943.04354 Removal of the requirement to register as a  
 1312 sexual offender or sexual predator in special circumstances.—

1313 (1) For purposes of this section, a person shall be  
 1314 considered for removal of the requirement to register as a  
 1315 sexual offender or sexual predator only if the person:

1316 (a) Was convicted, regardless of adjudication, or  
 1317 adjudicated delinquent of a violation of ~~s. 794.011~~, s. 800.04,  
 1318 s. 827.071, or s. 847.0135(5) or of a similar offense in another  
 1319 jurisdiction and if the person does not have any other  
 1320 conviction, regardless of adjudication, or adjudication of  
 1321 delinquency for a violation of s. 794.011, s. 800.04, s.  
 1322 827.071, or s. 847.0135(5) or for a similar offense in another  
 1323 jurisdiction;

1324 (b)1. Was convicted, regardless of adjudication, or  
 1325 adjudicated delinquent of an offense listed in paragraph (a) and  
 1326 is required to register as a sexual offender or sexual predator

1327 solely on the basis of this conviction or adjudication; or  
 1328 2. Was convicted, regardless of adjudication, or  
 1329 adjudicated delinquent of an offense in another jurisdiction  
 1330 which is similar to an offense listed in paragraph (a) and no  
 1331 longer meets the criteria for registration as a sexual offender  
 1332 or sexual predator under the laws of the jurisdiction in which  
 1333 the similar offense occurred; and

1334 (c) Is not more than 4 years older than the victim of this  
 1335 violation who was 13 years of age or older but younger than 18  
 1336 years of age at the time the person committed this violation.

1337 (2) (a) If a person meets the criteria in subsection (1),  
 1338 the person may, for the purpose of removing the requirement that  
 1339 he or she register as a sexual offender or sexual predator, move  
 1340 the criminal division of the circuit court of the circuit:

1341 1. the person may move the criminal division of the  
 1342 circuit court of the circuit Where the conviction or  
 1343 adjudication for the qualifying offense occurred for a  
 1344 conviction in this state;

1345 2. Where the sexual offender or sexual predator resides  
 1346 for a conviction for a violation of similar law of another  
 1347 jurisdiction; or

1348 3. Where the sexual offender or sexual predator last  
 1349 resided for a sexual offender or sexual predator with a  
 1350 conviction of a violation of a similar law of another  
 1351 jurisdiction who no longer resides in this state ~~to remove the~~  
 1352 ~~requirement that the person register as a sexual offender or~~

1353 ~~sexual predator.~~

1354       **(b)** The person must allege in the motion that he or she  
 1355 meets the criteria in subsection (1) and that removal of the  
 1356 registration requirement will not conflict with federal law that  
 1357 requires that the sexual act be consensual, notwithstanding the  
 1358 age of the victim. A person convicted or adjudicated delinquent  
 1359 of an offense in another jurisdiction which is similar to an  
 1360 offense listed in paragraph (1)(a) must provide the court  
 1361 written confirmation that he or she is not required to register  
 1362 in the jurisdiction in which the conviction or adjudication  
 1363 occurred. The state attorney and the department must be given  
 1364 notice of the motion at least 21 days before the date of  
 1365 sentencing, disposition of the violation, or hearing on the  
 1366 motion and may present evidence in opposition to the requested  
 1367 relief or may otherwise demonstrate why the motion should be  
 1368 denied. At sentencing, disposition of the violation, or hearing  
 1369 on the motion, the court shall rule on the motion, and, if the  
 1370 court determines the person meets the criteria in subsection (1)  
 1371 and the removal of the registration requirement will not  
 1372 conflict with federal law that requires that the sexual act be  
 1373 consensual, notwithstanding the age of the victim, it may grant  
 1374 the motion and order the removal of the registration  
 1375 requirement. The court shall instruct the person to provide the  
 1376 department a certified copy of the order granting relief. If the  
 1377 court denies the motion, the person is not authorized under this  
 1378 section to file another motion for removal of the registration

1379 requirement.

1380 Section 5. Subsection (1) of section 944.606, Florida  
 1381 Statutes, is reordered and amended, and paragraph (a) of  
 1382 subsection (3) of that section is amended, to read:

1383 944.606 Sexual offenders; notification upon release.-

1384 (1) As used in this section, the term:

1385 (a) "Convicted" means there has been a determination of  
 1386 guilt as a result of a trial or the entry of a plea of guilty or  
 1387 nolo contendere, regardless of whether adjudication is withheld.  
 1388 A conviction for a similar offense includes, but is not limited  
 1389 to, a conviction by a federal or military tribunal, including  
 1390 courts-martial conducted by the Armed Forces of the United  
 1391 States, and includes a conviction or entry of a plea of guilty  
 1392 or nolo contendere resulting in a sanction in any state of the  
 1393 United States or other jurisdiction. A sanction includes, but is  
 1394 not limited to, a fine; probation; community control; parole;  
 1395 conditional release; control release; or incarceration in a  
 1396 state prison, federal prison, private correctional facility, or  
 1397 local detention facility.

1398 ~~(b)-(e)~~ "Electronic mail address" has the same meaning as  
 1399 provided in s. 668.602.

1400 ~~(c)-(d)~~ "Internet identifier" has the same meaning as  
 1401 provided in s. 775.21.

1402 (d) "Permanent residence," "temporary residence," and  
 1403 "transient residence" have the same meaning as provided in s.  
 1404 775.21.

1405 (e) "Professional license" has the same meaning as  
 1406 provided in s. 775.21.

1407 ~~(f)(b)~~ "Sexual offender" means a person who has been  
 1408 convicted of committing, or attempting, soliciting, or  
 1409 conspiring to commit, any of the criminal offenses proscribed in  
 1410 the following statutes in this state or similar offenses in  
 1411 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,  
 1412 s. 787.02, or s. 787.025(2)(c), where the victim is a minor ~~and~~  
 1413 ~~the defendant is not the victim's parent or guardian; s.~~  
 1414 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.  
 1415 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
 1416 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.  
 1417 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
 1418 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.  
 1419 985.701(1); or any similar offense committed in this state which  
 1420 has been redesignated from a former statute number to one of  
 1421 those listed in this subsection, when the department has  
 1422 received verified information regarding such conviction; an  
 1423 offender's computerized criminal history record is not, in and  
 1424 of itself, verified information.

1425 (3)(a) The department shall provide information regarding  
 1426 any sexual offender who is being released after serving a period  
 1427 of incarceration for any offense, as follows:

- 1428 1. The department shall provide: the sexual offender's  
 1429 name, any change in the offender's name by reason of marriage or  
 1430 other legal process, and any alias, if known; the correctional

1431 facility from which the sexual offender is released; the sexual  
 1432 offender's social security number, race, sex, date of birth,  
 1433 height, weight, and hair and eye color; tattoos or other  
 1434 identifying marks; address of any planned permanent residence or  
 1435 temporary residence, within the state or out of state, including  
 1436 a rural route address and a post office box; if no permanent or  
 1437 temporary address, any transient residence within the state;  
 1438 address, location or description, and dates of any known future  
 1439 temporary residence within the state or out of state; date and  
 1440 county of sentence and each crime for which the offender was  
 1441 sentenced; a copy of the offender's fingerprints, palm prints,  
 1442 and a digitized photograph taken within 60 days before release;  
 1443 the date of release of the sexual offender; all electronic mail  
 1444 addresses and all Internet identifiers required to be provided  
 1445 pursuant to s. 943.0435(4)(e); employment information, if known,  
 1446 provided pursuant to s. 943.0435(4)(e); all home telephone  
 1447 numbers and cellular telephone numbers required to be provided  
 1448 pursuant to s. 943.0435(4)(e); information about any  
 1449 professional licenses the offender has, if known; and passport  
 1450 information, if he or she has a passport, and, if he or she is  
 1451 an alien, information about documents establishing his or her  
 1452 immigration status. The department shall notify the Department  
 1453 of Law Enforcement if the sexual offender escapes, absconds, or  
 1454 dies. If the sexual offender is in the custody of a private  
 1455 correctional facility, the facility shall take the digitized  
 1456 photograph of the sexual offender within 60 days before the



1457 sexual offender's release and provide this photograph to the  
 1458 Department of Corrections and also place it in the sexual  
 1459 offender's file. If the sexual offender is in the custody of a  
 1460 local jail, the custodian of the local jail shall register the  
 1461 offender within 3 business days after intake of the offender for  
 1462 any reason and upon release, and shall notify the Department of  
 1463 Law Enforcement of the sexual offender's release and provide to  
 1464 the Department of Law Enforcement the information specified in  
 1465 this paragraph and any information specified in subparagraph 2.  
 1466 that the Department of Law Enforcement requests.

1467 2. The department may provide any other information deemed  
 1468 necessary, including criminal and corrections records,  
 1469 nonprivileged personnel and treatment records, when available.

1470 Section 6. Subsection (1) of section 944.607, Florida  
 1471 Statutes, is reordered and amended, and subsections (4) and (13)  
 1472 of that section are amended, to read:

1473 944.607 Notification to Department of Law Enforcement of  
 1474 information on sexual offenders.—

1475 (1) As used in this section, the term:

1476 (a)(e) "Change in ~~enrollment or employment~~ status at an  
 1477 institution of higher education" has the same meaning as  
 1478 provided in s. 775.21 ~~means the commencement or termination of~~  
 1479 ~~enrollment or employment or a change in location of enrollment~~  
 1480 ~~or employment.~~

1481 (b)(e) "Conviction" means a determination of guilt which  
 1482 is the result of a trial or the entry of a plea of guilty or

1483 nolo contendere, regardless of whether adjudication is withheld.  
 1484 Conviction of a similar offense includes, but is not limited to,  
 1485 a conviction by a federal or military tribunal, including  
 1486 courts-martial conducted by the Armed Forces of the United  
 1487 States, and includes a conviction or entry of a plea of guilty  
 1488 or nolo contendere resulting in a sanction in any state of the  
 1489 United States or other jurisdiction. A sanction includes, but is  
 1490 not limited to, a fine; probation; community control; parole;  
 1491 conditional release; control release; or incarceration in a  
 1492 state prison, federal prison, private correctional facility, or  
 1493 local detention facility.

1494 (c)~~(f)~~ "Electronic mail address" has the same meaning as  
 1495 provided in s. 668.602.

1496 (d) "Institution of higher education" has the same meaning  
 1497 as provided in s. 775.21 ~~means a career center, community~~  
 1498 ~~college, college, state university, or independent postsecondary~~  
 1499 ~~institution.~~

1500 (e)~~(g)~~ "Internet identifier" has the same meaning as  
 1501 provided in s. 775.21.

1502 (f)~~(a)~~ "Sexual offender" means a person who is in the  
 1503 custody or control of, or under the supervision of, the  
 1504 department or is in the custody of a private correctional  
 1505 facility:

1506 1. On or after October 1, 1997, as a result of a  
 1507 conviction for committing, or attempting, soliciting, or  
 1508 conspiring to commit, any of the criminal offenses proscribed in

1509 the following statutes in this state or similar offenses in  
 1510 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,  
 1511 s. 787.02, or s. 787.025(2)(c), where the victim is a minor ~~and~~  
 1512 ~~the defendant is not the victim's parent or guardian; s.~~  
 1513 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.  
 1514 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
 1515 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.  
 1516 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
 1517 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.  
 1518 985.701(1); or any similar offense committed in this state which  
 1519 has been redesignated from a former statute number to one of  
 1520 those listed in this paragraph; or

1521 2. Who establishes or maintains a residence in this state  
 1522 and who has not been designated as a sexual predator by a court  
 1523 of this state but who has been designated as a sexual predator,  
 1524 as a sexually violent predator, or by another sexual offender  
 1525 designation in another state or jurisdiction and was, as a  
 1526 result of such designation, subjected to registration or  
 1527 community or public notification, or both, or would be if the  
 1528 person were a resident of that state or jurisdiction, without  
 1529 regard as to whether the person otherwise meets the criteria for  
 1530 registration as a sexual offender.

1531 (g) ~~(b)~~ "Vehicles owned" has the same meaning as provided  
 1532 in s. 775.21.

1533 (4) A sexual offender, as described in this section, who  
 1534 is under the supervision of the Department of Corrections but is

1535 not incarcerated shall register with the Department of  
 1536 Corrections within 3 business days after sentencing for a  
 1537 registrable offense and otherwise provide information as  
 1538 required by this subsection.

1539 (a) The sexual offender shall provide his or her name;  
 1540 date of birth; social security number; race; sex; height;  
 1541 weight; hair and eye color; tattoos or other identifying marks;  
 1542 all electronic mail addresses and Internet identifiers required  
 1543 to be provided pursuant to s. 943.0435(4)(e); employment  
 1544 information required to be provided pursuant to s.  
 1545 943.0435(4)(e); all home telephone numbers and cellular  
 1546 telephone numbers required to be provided pursuant to s.  
 1547 943.0435(4)(e); the make, model, color, vehicle identification  
 1548 number (VIN), and license tag number of all vehicles owned;  
 1549 permanent or legal residence and address of temporary residence  
 1550 within the state or out of state while the sexual offender is  
 1551 under supervision in this state, including any rural route  
 1552 address or post office box; if no permanent or temporary  
 1553 address, any transient residence within the state; and address,  
 1554 location or description, and dates of any current or known  
 1555 future temporary residence within the state or out of state. The  
 1556 sexual offender shall also produce his or her passport, if he or  
 1557 she has a passport, and, if he or she is an alien, shall produce  
 1558 or provide information about documents establishing his or her  
 1559 immigration status. The sexual offender shall also provide  
 1560 information about any professional licenses he or she has. The

1561 Department of Corrections shall verify the address of each  
 1562 sexual offender in the manner described in ss. 775.21 and  
 1563 943.0435. The department shall report to the Department of Law  
 1564 Enforcement any failure by a sexual predator or sexual offender  
 1565 to comply with registration requirements.

1566 (b) If the sexual offender is enrolled or, employed,  
 1567 whether for compensation or as a volunteer ~~volunteering, or~~  
 1568 ~~carrying on a vocation~~ at an institution of higher education in  
 1569 this state, the sexual offender shall provide the name, address,  
 1570 and county of each institution, including each campus attended,  
 1571 and the sexual offender's enrollment, volunteer, or employment  
 1572 status required to be provided pursuant to s. 943.0435(4)(e).  
 1573 Each change in ~~enrollment, volunteer, or employment~~ status at an  
 1574 institution of higher education must be reported to the  
 1575 department within 48 hours after the change in status at an  
 1576 institution of higher education as provided pursuant to s.  
 1577 943.0435(4)(e). The Department of Corrections shall promptly  
 1578 notify each institution of the sexual offender's presence and  
 1579 any change in the sexual offender's enrollment, volunteer, or  
 1580 employment status.

1581 (c) A sexual offender shall report in person to the  
 1582 sheriff's office within 48 hours after any change in vehicles  
 1583 owned to report those vehicle information changes.

1584 (13)(a) A sexual offender must report in person each year  
 1585 during the month of the sexual offender's birthday and during  
 1586 the sixth month following the sexual offender's birth month to

1587 the sheriff's office in the county in which he or she resides or  
 1588 is otherwise located to reregister.

1589 (b) However, a sexual offender who is required to register  
 1590 as a result of a conviction for:

1591 1. Section 787.01 or s. 787.02 where the victim is a minor  
 1592 ~~and the offender is not the victim's parent or guardian;~~

1593 2. Section 794.011, excluding s. 794.011(10);

1594 3. Section 800.04(4)(a)2. where the victim is under 12  
 1595 years of age or where the court finds sexual activity by the use  
 1596 of force or coercion;

1597 4. Section 800.04(5)(b);

1598 5. Section 800.04(5)(c)1. where the court finds  
 1599 molestation involving unclothed genitals or genital area;

1600 6. Section 800.04(5)(c)2. where the court finds  
 1601 molestation involving use of force or coercion and unclothed  
 1602 genitals or genital area;

1603 7. Section 800.04(5)(d) where the court finds the use of  
 1604 force or coercion and unclothed genitals or genital area;

1605 8. Section 825.1025(2)(a);

1606 ~~9.8.~~ Any attempt or conspiracy to commit such offense;

1607 ~~10.9.~~ A violation of a similar law of another  
 1608 jurisdiction; or

1609 ~~11.10.~~ A violation of a similar offense committed in this  
 1610 state which has been redesignated from a former statute number  
 1611 to one of those listed in this paragraph,  
 1612

1613 must reregister each year during the month of the sexual  
 1614 offender's birthday and every third month thereafter.

1615 (c) The sheriff's office may determine the appropriate  
 1616 times and days for reporting by the sexual offender, which must  
 1617 be consistent with the reporting requirements of this  
 1618 subsection. Reregistration must include any changes to the  
 1619 following information:

1620 1. Name; social security number; age; race; sex; date of  
 1621 birth; height; weight; tattoos or other identifying marks; hair  
 1622 and eye color; address of any permanent residence and address of  
 1623 any current temporary residence, within the state or out of  
 1624 state, including a rural route address and a post office box; if  
 1625 no permanent or temporary address, any transient residence;  
 1626 address, location or description, and dates of any current or  
 1627 known future temporary residence within the state or out of  
 1628 state; all electronic mail addresses and Internet identifiers  
 1629 required to be provided pursuant to s. 943.0435(4)(e); all home  
 1630 telephone numbers and cellular telephone numbers required to be  
 1631 provided pursuant to s. 943.0435(4)(e); ~~date and place of any~~  
 1632 employment information required to be provided pursuant to s.  
 1633 943.0435(4)(e); the make, model, color, vehicle identification  
 1634 number (VIN), and license tag number of all vehicles owned;  
 1635 fingerprints; palm prints; and photograph. A post office box may  
 1636 not be provided in lieu of a physical residential address. The  
 1637 sexual offender shall also produce his or her passport, if he or  
 1638 she has a passport, and, if he or she is an alien, shall produce

1639 or provide information about documents establishing his or her  
 1640 immigration status. The sexual offender shall also provide  
 1641 information about any professional licenses he or she has.

1642 2. If the sexual offender is enrolled or employed,  
 1643 whether for compensation or as a volunteer ~~volunteering, or~~  
 1644 ~~carrying on a vocation~~ at an institution of higher education in  
 1645 this state, the sexual offender shall also provide to the  
 1646 department the name, address, and county of each institution,  
 1647 including each campus attended, and the sexual offender's  
 1648 enrollment, volunteer, or employment status.

1649 3. If the sexual offender's place of residence is a motor  
 1650 vehicle, trailer, mobile home, or manufactured home, as defined  
 1651 in chapter 320, the sexual offender shall also provide the  
 1652 vehicle identification number; the license tag number; the  
 1653 registration number; and a description, including color scheme,  
 1654 of the motor vehicle, trailer, mobile home, or manufactured  
 1655 home. If the sexual offender's place of residence is a vessel,  
 1656 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 1657 sexual offender shall also provide the hull identification  
 1658 number; the manufacturer's serial number; the name of the  
 1659 vessel, live-aboard vessel, or houseboat; the registration  
 1660 number; and a description, including color scheme, of the  
 1661 vessel, live-aboard vessel or houseboat.

1662 4. Any sexual offender who fails to report in person as  
 1663 required at the sheriff's office, who fails to respond to any  
 1664 address verification correspondence from the department within 3



1665 weeks of the date of the correspondence, who fails to report all  
 1666 electronic mail addresses or Internet identifiers before ~~prior~~  
 1667 ~~to~~ use, or who knowingly provides false registration information  
 1668 by act or omission commits a felony of the third degree,  
 1669 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1670 (d) The sheriff's office shall, within 2 working days,  
 1671 electronically submit and update all information provided by the  
 1672 sexual offender to the Department of Law Enforcement in a manner  
 1673 prescribed by that department.

1674 Section 7. Subsection (1) and paragraph (a) of subsection  
 1675 (3) of section 985.481, Florida Statutes, are amended to read:

1676 985.481 Sexual offenders adjudicated delinquent;  
 1677 notification upon release.--

1678 (1) As used in this section:

1679 (a) "Convicted" has the same meaning as provided in s.  
 1680 943.0435.

1681 (b) "Electronic mail address" has the same meaning as  
 1682 provided in s. 668.602.

1683 (c) ~~(b)~~ "Internet identifier" has the same meaning as  
 1684 provided in s. 775.21.

1685 (d) "Permanent residence," "temporary residence," and  
 1686 "transient residence" have the same meaning as provided in s.  
 1687 775.21.

1688 (e) "Professional license" has the same meaning as  
 1689 provided in s. 775.21.

1690 (f) ~~(e)~~ "Sexual offender" means a person who has been

1691 adjudicated delinquent as provided in s. 943.0435(1)(h)1.d. ~~s.~~  
 1692 ~~943.0435(1)(a)1.d.~~

1693 (g) ~~(d)~~ "Vehicles owned" has the same meaning as provided  
 1694 in s. 775.21.

1695 (3)(a) The department shall provide information regarding  
 1696 any sexual offender who is being released after serving a period  
 1697 of residential commitment under the department for any offense,  
 1698 as follows:

1699 1. The department shall provide the sexual offender's  
 1700 name, any change in the offender's name by reason of marriage or  
 1701 other legal process, and any alias, if known; the correctional  
 1702 facility from which the sexual offender is released; the sexual  
 1703 offender's social security number, race, sex, date of birth,  
 1704 height, weight, and hair and eye color; tattoos or other  
 1705 identifying marks; the make, model, color, vehicle  
 1706 identification number (VIN), and license tag number of all  
 1707 vehicles owned; address of any planned permanent residence or  
 1708 temporary residence, within the state or out of state, including  
 1709 a rural route address and a post office box; if no permanent or  
 1710 temporary address, any transient residence within the state;  
 1711 address, location or description, and dates of any known future  
 1712 temporary residence within the state or out of state; date and  
 1713 county of disposition and each crime for which there was a  
 1714 disposition; a copy of the offender's fingerprints, palm prints,  
 1715 and a digitized photograph taken within 60 days before release;  
 1716 the date of release of the sexual offender; all home telephone

1717 numbers and cellular telephone numbers required to be provided  
 1718 pursuant to s. 943.0435(4)(e); all electronic mail addresses and  
 1719 Internet identifiers required to be provided pursuant to s.  
 1720 943.0435(4)(e); information about any professional licenses the  
 1721 offender has, if known; and passport information, if he or she  
 1722 has a passport, and, if he or she is an alien, information about  
 1723 documents establishing his or her immigration status. The  
 1724 department shall notify the Department of Law Enforcement if the  
 1725 sexual offender escapes, absconds, or dies. If the sexual  
 1726 offender is in the custody of a private correctional facility,  
 1727 the facility shall take the digitized photograph of the sexual  
 1728 offender within 60 days before the sexual offender's release and  
 1729 also place it in the sexual offender's file. If the sexual  
 1730 offender is in the custody of a local jail, the custodian of the  
 1731 local jail shall register the offender within 3 business days  
 1732 after intake of the offender for any reason and upon release,  
 1733 and shall notify the Department of Law Enforcement of the sexual  
 1734 offender's release and provide to the Department of Law  
 1735 Enforcement the information specified in this subparagraph and  
 1736 any information specified in subparagraph 2. which the  
 1737 Department of Law Enforcement requests.

1738         2. The department may provide any other information  
 1739 considered necessary, including criminal and delinquency  
 1740 records, when available.

1741         Section 8. Subsections (1), (4), and (13) of section  
 1742 985.4815, Florida Statutes, are amended, and paragraph (c) of

1743 subsection (10) is republished, to read:

1744 985.4815 Notification to Department of Law Enforcement of  
 1745 information on juvenile sexual offenders.-

1746 (1) As used in this section, the term:

1747 (a) "Change in enrollment or employment status at an  
 1748 institution of higher education" has the same meaning as  
 1749 provided in s. 775.21 ~~means the commencement or termination of~~  
 1750 ~~enrollment or employment or a change in location of enrollment~~  
 1751 ~~or employment.~~

1752 (b) "Conviction" has the same meaning as provided in s.  
 1753 943.0435.

1754 (c) "Electronic mail address" has the same meaning as  
 1755 provided in s. 668.602.

1756 (d)(e) "Institution of higher education" has the same  
 1757 meaning as provided in s. 775.21 ~~means a career center,~~  
 1758 ~~community college, college, state university, or independent~~  
 1759 ~~postsecondary institution.~~

1760 (e)(d) "Internet identifier" has the same meaning as  
 1761 provided in s. 775.21.

1762 (f) "Permanent residence," "temporary residence," and  
 1763 "transient residence" have the same meaning as provided in s.  
 1764 775.21.

1765 (g) "Professional license" has the same meaning as  
 1766 provided in s. 775.21.

1767 (h)(e) "Sexual offender" means a person who is in the care  
 1768 or custody or under the jurisdiction or supervision of the

1769 department or is in the custody of a private correctional  
 1770 facility and who:

1771 1. Has been adjudicated delinquent as provided in s.  
 1772 943.0435(1)(h)1.d. ~~s. 943.0435(1)(a)1.d.~~; or

1773 2. Establishes or maintains a residence in this state and  
 1774 has not been designated as a sexual predator by a court of this  
 1775 state but has been designated as a sexual predator, as a  
 1776 sexually violent predator, or by another sexual offender  
 1777 designation in another state or jurisdiction and was, as a  
 1778 result of such designation, subjected to registration or  
 1779 community or public notification, or both, or would be if the  
 1780 person were a resident of that state or jurisdiction, without  
 1781 regard to whether the person otherwise meets the criteria for  
 1782 registration as a sexual offender.

1783 (i)~~(f)~~ "Vehicles owned" has the same meaning as provided  
 1784 in s. 775.21.

1785 (4) A sexual offender, as described in this section, who  
 1786 is under the supervision of the department but who is not  
 1787 committed shall register with the department within 3 business  
 1788 days after adjudication and disposition for a registrable  
 1789 offense and otherwise provide information as required by this  
 1790 subsection.

1791 (a) The sexual offender shall provide his or her name;  
 1792 date of birth; social security number; race; sex; height;  
 1793 weight; hair and eye color; tattoos or other identifying marks;  
 1794 the make, model, color, vehicle identification number (VIN), and

1795 license tag number of all vehicles owned; permanent or legal  
 1796 residence and address of temporary residence within the state or  
 1797 out of state while the sexual offender is in the care or custody  
 1798 or under the jurisdiction or supervision of the department in  
 1799 this state, including any rural route address or post office  
 1800 box; if no permanent or temporary address, any transient  
 1801 residence; address, location or description, and dates of any  
 1802 current or known future temporary residence within the state or  
 1803 out of state; all home telephone numbers and cellular telephone  
 1804 numbers required to be provided pursuant to s. 943.0435(4)(e);  
 1805 all electronic mail addresses and Internet identifiers required  
 1806 to be provided pursuant to s. 943.0435(4)(e); and the name and  
 1807 address of each school attended. The sexual offender shall also  
 1808 produce his or her passport, if he or she has a passport, and,  
 1809 if he or she is an alien, shall produce or provide information  
 1810 about documents establishing his or her immigration status. The  
 1811 offender shall also provide information about any professional  
 1812 licenses he or she has. The department shall verify the address  
 1813 of each sexual offender and shall report to the Department of  
 1814 Law Enforcement any failure by a sexual offender to comply with  
 1815 registration requirements.

1816 (b) If the sexual offender is enrolled or, employed,  
 1817 whether for compensation or as a volunteer ~~volunteering, or~~  
 1818 ~~carrying on a vocation~~ at an institution of higher education in  
 1819 this state, the sexual offender shall provide the name, address,  
 1820 and county of each institution, including each campus attended,

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1821 and the sexual offender's enrollment, volunteer, or employment  
1822 status. Each change in ~~enrollment, volunteer, or employment~~  
1823 status at an institution of higher education must be reported to  
1824 the department within 48 hours after the change in status at an  
1825 institution of higher education. The department shall promptly  
1826 notify each institution of the sexual offender's presence and  
1827 any change in the sexual offender's enrollment, volunteer, or  
1828 employment status.

1829 (c) A sexual offender shall report in person to the  
1830 sheriff's office within 48 hours after any change in vehicles  
1831 owned to report those vehicle information changes.

1832 (10)

1833 (c) An arrest on charges of failure to register when the  
1834 offender has been provided and advised of his or her statutory  
1835 obligations to register under s. 943.0435(2), the service of an  
1836 information or a complaint for a violation of this section, or  
1837 an arraignment on charges for a violation of this section  
1838 constitutes actual notice of the duty to register. A sexual  
1839 offender's failure to immediately register as required by this  
1840 section following such arrest, service, or arraignment  
1841 constitutes grounds for a subsequent charge of failure to  
1842 register. A sexual offender charged with the crime of failure to  
1843 register who asserts, or intends to assert, a lack of notice of  
1844 the duty to register as a defense to a charge of failure to  
1845 register shall immediately register as required by this section.  
1846 A sexual offender who is charged with a subsequent failure to

1847 register may not assert the defense of a lack of notice of the  
 1848 duty to register.

1849 (13) (a) A sexual offender must report in person each year  
 1850 during the month of the sexual offender's birthday and during  
 1851 every third month thereafter to the sheriff's office in the  
 1852 county in which he or she resides or is otherwise located to  
 1853 reregister.

1854 (b) The sheriff's office may determine the appropriate  
 1855 times and days for reporting by the sexual offender, which must  
 1856 be consistent with the reporting requirements of this  
 1857 subsection. Reregistration must include any changes to the  
 1858 following information:

1859 1. Name; social security number; age; race; sex; date of  
 1860 birth; height; weight; hair and eye color; tattoos or other  
 1861 identifying marks; fingerprints; palm prints; address of any  
 1862 permanent residence and address of any current temporary  
 1863 residence, within the state or out of state, including a rural  
 1864 route address and a post office box; if no permanent or  
 1865 temporary address, any transient residence; address, location or  
 1866 description, and dates of any current or known future temporary  
 1867 residence within the state or out of state; passport  
 1868 information, if he or she has a passport, and, if he or she is  
 1869 an alien, information about documents establishing his or her  
 1870 immigration status; all home telephone numbers and cellular  
 1871 telephone numbers required to be provided pursuant to s.  
 1872 943.0435(4)(e); all electronic mail addresses and Internet



1873 identifiers required to be provided pursuant to s.  
 1874 943.0435(4)(e); name and address of each school attended; ~~date~~  
 1875 ~~and place of any~~ employment information required to be provided  
 1876 pursuant to s. 943.0435(4)(e); the make, model, color, vehicle  
 1877 identification number (VIN), and license tag number of all  
 1878 vehicles owned; and photograph. A post office box may not be  
 1879 provided in lieu of a physical residential address. The offender  
 1880 shall also provide information about any professional licenses  
 1881 he or she has.

1882         2. If the sexual offender is enrolled or, employed,  
 1883 whether for compensation or as a volunteer ~~volunteering, or~~  
 1884 ~~carrying on a vocation~~ at an institution of higher education in  
 1885 this state, the sexual offender shall also provide to the  
 1886 department the name, address, and county of each institution,  
 1887 including each campus attended, and the sexual offender's  
 1888 enrollment, volunteer, or employment status.

1889         3. If the sexual offender's place of residence is a motor  
 1890 vehicle, trailer, mobile home, or manufactured home, as defined  
 1891 in chapter 320, the sexual offender shall also provide the  
 1892 vehicle identification number; the license tag number; the  
 1893 registration number; and a description, including color scheme,  
 1894 of the motor vehicle, trailer, mobile home, or manufactured  
 1895 home. If the sexual offender's place of residence is a vessel,  
 1896 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 1897 sexual offender shall also provide the hull identification  
 1898 number; the manufacturer's serial number; the name of the

1899 vessel, live-aboard vessel, or houseboat; the registration  
 1900 number; and a description, including color scheme, of the  
 1901 vessel, live-aboard vessel, or houseboat.

1902 4. Any sexual offender who fails to report in person as  
 1903 required at the sheriff's office, who fails to respond to any  
 1904 address verification correspondence from the department within 3  
 1905 weeks after the date of the correspondence, or who knowingly  
 1906 provides false registration information by act or omission  
 1907 commits a felony of the third degree, punishable as provided in  
 1908 ss. 775.082, 775.083, and 775.084.

1909 (c) The sheriff's office shall, within 2 working days,  
 1910 electronically submit and update all information provided by the  
 1911 sexual offender to the Department of Law Enforcement in a manner  
 1912 prescribed by that department.

1913 Section 9. Paragraph (b) of subsection (1) of section  
 1914 92.55, Florida Statutes, is amended to read:

1915 92.55 Judicial or other proceedings involving victim or  
 1916 witness under the age of 16, a person who has an intellectual  
 1917 disability, or a sexual offense victim or witness; special  
 1918 protections; use of registered service or therapy animals.-

1919 (1) For purposes of this section, the term:

1920 (b) "Sexual offense" means any offense specified in s.  
 1921 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I) ~~s.~~  
 1922 ~~943.0435(1)(a)1.a.(I)~~.

1923 Section 10. Subsection (2) of section 775.0862, Florida  
 1924 Statutes, is amended to read:

1925           775.0862 Sexual offenses against students by authority  
1926 figures; reclassification.-

1927           (2) The felony degree of a violation of an offense listed  
1928 in s. 943.0435(1)(h)1.a. ~~s. 943.0435(1)(a)1.a.~~, unless the  
1929 offense is a violation of s. 794.011(4)(e)7. or s.  
1930 810.145(8)(a)2., shall be reclassified as provided in this  
1931 section if the offense is committed by an authority figure of a  
1932 school against a student of the school.

1933           Section 11. Subsection (3) of section 943.0515, Florida  
1934 Statutes, is amended to read:

1935           943.0515 Retention of criminal history records of minors.-

1936           (3) Notwithstanding any other provision of this section,  
1937 the Criminal Justice Information Program shall retain the  
1938 criminal history record of a minor adjudicated delinquent for a  
1939 violation committed on or after July 1, 2007, as provided in s.  
1940 943.0435(1)(h)1.d. ~~s. 943.0435(1)(a)1.d.~~ Such records may not be  
1941 destroyed and must be merged with the person's adult criminal  
1942 history record and retained as a part of the person's adult  
1943 record.

1944           Section 12. Subsection (12) of section 947.1405, Florida  
1945 Statutes, is amended to read:

1946           947.1405 Conditional release program.-

1947           (12) In addition to all other conditions imposed, for a  
1948 releasee who is subject to conditional release for a crime that  
1949 was committed on or after May 26, 2010, and who has been  
1950 convicted at any time of committing, or attempting, soliciting,

1951 or conspiring to commit, any of the criminal offenses listed in  
 1952 s. 943.0435(1)(h)1.a.(I) ~~s. 943.0435(1)(a)1.a.(I)~~, or a similar  
 1953 offense in another jurisdiction against a victim who was under  
 1954 18 years of age at the time of the offense, if the releasee has  
 1955 not received a pardon for any felony or similar law of another  
 1956 jurisdiction necessary for the operation of this subsection, if  
 1957 a conviction of a felony or similar law of another jurisdiction  
 1958 necessary for the operation of this subsection has not been set  
 1959 aside in any postconviction proceeding, or if the releasee has  
 1960 not been removed from the requirement to register as a sexual  
 1961 offender or sexual predator pursuant to s. 943.04354, the  
 1962 commission must impose the following conditions:

1963 (a) A prohibition on visiting schools, child care  
 1964 facilities, parks, and playgrounds without prior approval from  
 1965 the releasee's supervising officer. The commission may also  
 1966 designate additional prohibited locations to protect a victim.  
 1967 The prohibition ordered under this paragraph does not prohibit  
 1968 the releasee from visiting a school, child care facility, park,  
 1969 or playground for the sole purpose of attending a religious  
 1970 service as defined in s. 775.0861 or picking up or dropping off  
 1971 the releasee's child or grandchild at a child care facility or  
 1972 school.

1973 (b) A prohibition on distributing candy or other items to  
 1974 children on Halloween; wearing a Santa Claus costume, or other  
 1975 costume to appeal to children, on or preceding Christmas;  
 1976 wearing an Easter Bunny costume, or other costume to appeal to

1977 children, on or preceding Easter; entertaining at children's  
 1978 parties; or wearing a clown costume without prior approval from  
 1979 the commission.

1980 Section 13. Subsection (4) of section 948.30, Florida  
 1981 Statutes, is amended to read:

1982 948.30 Additional terms and conditions of probation or  
 1983 community control for certain sex offenses.—Conditions imposed  
 1984 pursuant to this section do not require oral pronouncement at  
 1985 the time of sentencing and shall be considered standard  
 1986 conditions of probation or community control for offenders  
 1987 specified in this section.

1988 (4) In addition to all other conditions imposed, for a  
 1989 probationer or community controllee who is subject to  
 1990 supervision for a crime that was committed on or after May 26,  
 1991 2010, and who has been convicted at any time of committing, or  
 1992 attempting, soliciting, or conspiring to commit, any of the  
 1993 criminal offenses listed in s. 943.0435(1)(h)1.a.(I) ~~s.~~  
 1994 ~~943.0435(1)(a)1.a.(I)~~, or a similar offense in another  
 1995 jurisdiction, against a victim who was under the age of 18 at  
 1996 the time of the offense; if the offender has not received a  
 1997 pardon for any felony or similar law of another jurisdiction  
 1998 necessary for the operation of this subsection, if a conviction  
 1999 of a felony or similar law of another jurisdiction necessary for  
 2000 the operation of this subsection has not been set aside in any  
 2001 postconviction proceeding, or if the offender has not been  
 2002 removed from the requirement to register as a sexual offender or

2003 sexual predator pursuant to s. 943.04354, the court must impose  
 2004 the following conditions:

2005 (a) A prohibition on visiting schools, child care  
 2006 facilities, parks, and playgrounds, without prior approval from  
 2007 the offender's supervising officer. The court may also designate  
 2008 additional locations to protect a victim. The prohibition  
 2009 ordered under this paragraph does not prohibit the offender from  
 2010 visiting a school, child care facility, park, or playground for  
 2011 the sole purpose of attending a religious service as defined in  
 2012 s. 775.0861 or picking up or dropping off the offender's  
 2013 children or grandchildren at a child care facility or school.

2014 (b) A prohibition on distributing candy or other items to  
 2015 children on Halloween; wearing a Santa Claus costume, or other  
 2016 costume to appeal to children, on or preceding Christmas;  
 2017 wearing an Easter Bunny costume, or other costume to appeal to  
 2018 children, on or preceding Easter; entertaining at children's  
 2019 parties; or wearing a clown costume; without prior approval from  
 2020 the court.

2021 Section 14. Section 948.31, Florida Statutes, is amended  
 2022 to read:

2023 948.31 Evaluation and treatment of sexual predators and  
 2024 offenders on probation or community control.—The court may  
 2025 require any probationer or community controllee who is required  
 2026 to register as a sexual predator under s. 775.21 or sexual  
 2027 offender under s. 943.0435, s. 944.606, or s. 944.607 to undergo  
 2028 an evaluation, at the probationer or community controllee's

2029 expense, by a qualified practitioner to determine whether such  
 2030 probationer or community controllee needs sexual offender  
 2031 treatment. If the qualified practitioner determines that sexual  
 2032 offender treatment is needed and recommends treatment, the  
 2033 probationer or community controllee must successfully complete  
 2034 and pay for the treatment. Such treatment must be obtained from  
 2035 a qualified practitioner as defined in s. 948.001. Treatment may  
 2036 not be administered by a qualified practitioner who has been  
 2037 convicted or adjudicated delinquent of committing, or  
 2038 attempting, soliciting, or conspiring to commit, any offense  
 2039 that is listed in s. 943.0435(1)(h)1.a.(I) ~~s.~~  
 2040 ~~943.0435(1)(a)1.a.(I)~~.

2041 Section 15. Subsection (4) of section 1012.315, Florida  
 2042 Statutes, is amended to read:

2043 1012.315 Disqualification from employment.—A person is  
 2044 ineligible for educator certification, and instructional  
 2045 personnel and school administrators, as defined in s. 1012.01,  
 2046 are ineligible for employment in any position that requires  
 2047 direct contact with students in a district school system,  
 2048 charter school, or private school that accepts scholarship  
 2049 students under s. 1002.39 or s. 1002.395, if the person,  
 2050 instructional personnel, or school administrator has been  
 2051 convicted of:

2052 (4) Any delinquent act committed in this state or any  
 2053 delinquent or criminal act committed in another state or under  
 2054 federal law which, if committed in this state, qualifies an

2055 individual for inclusion on the Registered Juvenile Sex Offender  
 2056 List under s. 943.0435(1)(h)1.d. ~~s. 943.0435(1)(a)1.d.~~

2057 Section 16. Paragraph (g) of subsection (2) of section  
 2058 1012.467, Florida Statutes, is amended to read:

2059 1012.467 Noninstructional contractors who are permitted  
 2060 access to school grounds when students are present; background  
 2061 screening requirements.-

2062 (2)

2063 (g) A noninstructional contractor for whom a criminal  
 2064 history check is required under this section may not have been  
 2065 convicted of any of the following offenses designated in the  
 2066 Florida Statutes, any similar offense in another jurisdiction,  
 2067 or any similar offense committed in this state which has been  
 2068 redesignated from a former provision of the Florida Statutes to  
 2069 one of the following offenses:

2070 1. Any offense listed in s. 943.0435(1)(h)1. ~~s.~~  
 2071 ~~943.0435(1)(a)1.~~, relating to the registration of an individual  
 2072 as a sexual offender.

2073 2. Section 393.135, relating to sexual misconduct with  
 2074 certain developmentally disabled clients and the reporting of  
 2075 such sexual misconduct.

2076 3. Section 394.4593, relating to sexual misconduct with  
 2077 certain mental health patients and the reporting of such sexual  
 2078 misconduct.

2079 4. Section 775.30, relating to terrorism.

2080 5. Section 782.04, relating to murder.



2081           6. Section 787.01, relating to kidnapping.

2082           7. Any offense under chapter 800, relating to lewdness and

2083 indecent exposure.

2084           8. Section 826.04, relating to incest.

2085           9. Section 827.03, relating to child abuse, aggravated

2086 child abuse, or neglect of a child.

2087           Section 17. For the purpose of incorporating the amendment

2088 made by this act to section 775.21, Florida Statutes, in a

2089 reference thereto, section 938.085, Florida Statutes, is

2090 reenacted to read:

2091           938.085 Additional cost to fund rape crisis centers.—In

2092 addition to any sanction imposed when a person pleads guilty or

2093 nolo contendere to, or is found guilty of, regardless of

2094 adjudication, a violation of s. 775.21(6) and (10)(a), (b), and

2095 (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;

2096 s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.

2097 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.

2098 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.

2099 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s.

2100 796.07(2)(a)–(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.

2101 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s.

2102 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s.

2103 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and

2104 (14)(c); or s. 985.701(1), the court shall impose a surcharge of

2105 \$151. Payment of the surcharge shall be a condition of

2106 probation, community control, or any other court-ordered

2107 supervision. The sum of \$150 of the surcharge shall be deposited  
 2108 into the Rape Crisis Program Trust Fund established within the  
 2109 Department of Health by chapter 2003-140, Laws of Florida. The  
 2110 clerk of the court shall retain \$1 of each surcharge that the  
 2111 clerk of the court collects as a service charge of the clerk's  
 2112 office.

2113 Section 18. For the purpose of incorporating the  
 2114 amendments made by this act to sections 775.21 and 943.0435,  
 2115 Florida Statutes, in references thereto, subsection (1) of  
 2116 section 794.056, Florida Statutes, is reenacted to read:

2117 794.056 Rape Crisis Program Trust Fund.—

2118 (1) The Rape Crisis Program Trust Fund is created within  
 2119 the Department of Health for the purpose of providing funds for  
 2120 rape crisis centers in this state. Trust fund moneys shall be  
 2121 used exclusively for the purpose of providing services for  
 2122 victims of sexual assault. Funds credited to the trust fund  
 2123 consist of those funds collected as an additional court  
 2124 assessment in each case in which a defendant pleads guilty or  
 2125 nolo contendere to, or is found guilty of, regardless of  
 2126 adjudication, an offense provided in s. 775.21(6) and (10)(a),  
 2127 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.  
 2128 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.  
 2129 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.  
 2130 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;  
 2131 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.  
 2132 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s.

2133 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.  
 2134 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s.  
 2135 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a),  
 2136 (13), and (14)(c); or s. 985.701(1). Funds credited to the trust  
 2137 fund also shall include revenues provided by law, moneys  
 2138 appropriated by the Legislature, and grants from public or  
 2139 private entities.

2140 Section 19. For the purpose of incorporating the  
 2141 amendments made by this act to sections 775.21, 943.0435,  
 2142 944.607, and 985.4815, Florida Statutes, in references thereto,  
 2143 paragraph (g) of subsection (3) of section 921.0022, Florida  
 2144 Statutes, is reenacted to read:

2145 921.0022 Criminal Punishment Code; offense severity  
 2146 ranking chart.—

2147 (3) OFFENSE SEVERITY RANKING CHART

2148 (g) LEVEL 7

2149

Florida	Felony	Description
Statute	Degree	
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily

2150

2151

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2152	316.1935(3)(b)	1st	<p style="text-align: center;">injury.</p> <p>Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.</p>
2153	327.35(3)(c)2.	3rd	<p>Vessel BUI resulting in serious bodily injury.</p>
2154	402.319(2)	2nd	<p>Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.</p>
2155	409.920 (2)(b)1.a.	3rd	<p>Medicaid provider fraud; \$10,000 or less.</p>

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2156	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
2157	456.065(2)	3rd	Practicing a health care profession without a license.
2158	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
2159	458.327(1)	3rd	Practicing medicine without a license.
2160	459.013(1)	3rd	Practicing osteopathic medicine without a license.
2161	460.411(1)	3rd	Practicing chiropractic medicine without a license.
2162	461.012(1)	3rd	Practicing podiatric medicine without a

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license.

2163

462.17 3rd Practicing naturopathy without a license.

2164

463.015 (1) 3rd Practicing optometry without a license.

2165

464.016 (1) 3rd Practicing nursing without a license.

2166

465.015 (2) 3rd Practicing pharmacy without a license.

2167

466.026 (1) 3rd Practicing dentistry or dental hygiene without a license.

2168

467.201 3rd Practicing midwifery without a license.

2169

468.366 3rd Delivering respiratory care services without a license.

2170

483.828 (1) 3rd Practicing as clinical laboratory personnel

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2171			without a license.
	483.901(9)	3rd	Practicing medical physics without a license.
2172			
	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
2173			
	484.053	3rd	Dispensing hearing aids without a license.
2174			
	494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
2175			
	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.

2176	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
2177	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
2178	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
2179	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
2180	775.21(10)(g)	3rd	Failure to report or providing false information about a



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2181	782.051(3)	2nd	<p>sexual predator; harbor or conceal a sexual predator.</p> <p>Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.</p>
2182	782.07(1)	2nd	<p>Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).</p>
2183	782.071	2nd	<p>Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).</p>
2184	782.072	2nd	<p>Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).</p>
2185			

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2186	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
2187	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
2188	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
2189	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
2190	784.048(7)	3rd	Aggravated stalking; violation of court order.
2191	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.

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2192	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
2193	784.081(1)	1st	Aggravated battery on specified official or employee.
2194	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
2195	784.083(1)	1st	Aggravated battery on code inspector.
2196	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
2197	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.

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2198	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
2199	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
2200	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
2201	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
2202	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
2203	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or

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			attempting to commit a felony.
2204	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
2205	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
2206	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
2207	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
2208	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger

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than 18 years of age.

2209

800.04 (5) (c) 2.

2nd

Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.

2210

800.04 (5) (e)

1st

Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.

2211

806.01 (2)

2nd

Maliciously damage structure by fire or explosive.

2212

810.02 (3) (a)

2nd

Burglary of occupied dwelling; unarmed; no assault or battery.

2213

810.02 (3) (b)

2nd

Burglary of unoccupied dwelling; unarmed; no

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assault or battery.

2214

810.02 (3) (d)

2nd

Burglary of occupied conveyance; unarmed; no assault or battery.

2215

810.02 (3) (e)

2nd

Burglary of authorized emergency vehicle.

2216

812.014 (2) (a) 1.

1st

Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.

2217

812.014 (2) (b) 2.

2nd

Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.

2218

812.014 (2) (b) 3.

2nd

Property stolen, emergency medical

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2219	812.014(2)(b)4.	2nd	equipment; 2nd degree grand theft. Property stolen, law enforcement equipment from authorized emergency vehicle.
2220	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
2221	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
2222	812.131(2)(a)	2nd	Robbery by sudden snatching.
2223	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
2224			



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2225	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
2226	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
2227	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
2228	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
2229	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.

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2230	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
2231	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
2232	825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
2233	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
2234	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
	837.05(2)	3rd	Giving false information about alleged capital felony

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to a law enforcement  
officer.

2235

838.015 2nd Bribery.

2236

838.016 2nd Unlawful compensation or reward  
for official behavior.

2237

838.021(3)(a) 2nd Unlawful harm to a  
public servant.

2238

838.22 2nd Bid tampering.

2239

843.0855(2) 3rd Impersonation of a public  
officer or employee.

2240

843.0855(3) 3rd Unlawful simulation of  
legal process.

2241

843.0855(4) 3rd Intimidation of a public  
officer or employee.

2242

847.0135(3) 3rd Solicitation of a child,  
via a computer service, to  
commit an unlawful sex act.

2243

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2244	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
2245	872.06	2nd	Abuse of a dead human body.
2246	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
2247	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care

2248	893.13(1)(e)1.	1st	<p>facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.</p> <p>Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.</p>
2249	893.13(4)(a)	1st	<p>Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).</p>
2250	893.135(1)(a)1.	1st	<p>Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.</p>

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2251	893.135 (1) (b) 1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
2252	893.135 (1) (c) 1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
2253	893.135 (1) (c) 2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
2254	893.135 (1) (c) 2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
2255	893.135 (1) (c) 3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
2256	893.135 (1) (c) 3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
2257	893.135 (1) (d) 1.	1st	Trafficking in

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phencyclidine, more than  
28 grams, less than 200  
grams.

2258

893.135(1)(e)1.

1st Trafficking in methaqualone,  
more than 200 grams, less than  
5 kilograms.

2259

893.135(1)(f)1.

1st Trafficking in  
amphetamine, more than  
14 grams, less than 28  
grams.

2260

893.135  
(1)(g)1.a.

1st Trafficking in flunitrazepam, 4  
grams or more, less than 14  
grams.

2261

893.135  
(1)(h)1.a.

1st Trafficking in gamma-  
hydroxybutyric acid (GHB), 1  
kilogram or more, less than 5  
kilograms.

2262

893.135  
(1)(j)1.a.

1st Trafficking in 1,4-  
Butanediol, 1 kilogram or  
more, less than 5  
kilograms.

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2263	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
2264	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
2265	896.101(5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
2266	896.104(4) (a) 1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
2267	943.0435(4) (c)	2nd	Sexual offender vacating permanent residence; failure to comply with



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reporting requirements.

2268

943.0435(8)

2nd

Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.

2269

943.0435(9)(a)

3rd

Sexual offender; failure to comply with reporting requirements.

2270

943.0435(13)

3rd

Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

2271

943.0435(14)

3rd

Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

2272

944.607(9)

3rd

Sexual offender; failure to

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comply with reporting requirements.

2273

944.607(10)(a)

3rd Sexual offender; failure to submit to the taking of a digitized photograph.

2274

944.607(12)

3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

2275

944.607(13)

3rd Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

2276

985.4815(10)

3rd Sexual offender; failure to submit to the taking of a digitized photograph.

2277

985.4815(12)

3rd Failure to report or

providing false  
 information about a  
 sexual offender; harbor  
 or conceal a sexual  
 offender.

2278

985.4815(13)

3rd

Sexual offender; failure to  
 report and reregister;  
 failure to respond to  
 address verification;  
 providing false registration  
 information.

2279

2280

Section 20. For the purpose of incorporating the  
 amendments made by this act to sections 775.21, 943.0435,  
 944.606, 944.607, 985.481, and 985.4815, Florida Statutes, in  
 references thereto, paragraph (b) of subsection (6) of section  
 985.04, Florida Statutes, is reenacted to read:

2281

2282

2283

2284

985.04 Oaths; records; confidential information.—

2285

2286

(6)

2287

(b) Sexual offender and predator registration information  
 as required in ss. 775.21, 943.0435, 944.606, 944.607, 985.481,  
 and 985.4815 is a public record pursuant to s. 119.07(1) and as  
 otherwise provided by law.

2288

2289

2290

2291

Section 21. For the purpose of incorporating the  
 amendments made by this act to sections 775.21, 943.0435, and

2292

2293 944.607, Florida Statutes, in references thereto, subsections  
 2294 (3) and (4) of section 322.141, Florida Statutes, are reenacted  
 2295 to read:

2296 322.141 Color or markings of certain licenses or  
 2297 identification cards.—

2298 (3) All licenses for the operation of motor vehicles or  
 2299 identification cards originally issued or reissued by the  
 2300 department to persons who are designated as sexual predators  
 2301 under s. 775.21 or subject to registration as sexual offenders  
 2302 under s. 943.0435 or s. 944.607, or who have a similar  
 2303 designation or are subject to a similar registration under the  
 2304 laws of another jurisdiction, shall have on the front of the  
 2305 license or identification card the following:

2306 (a) For a person designated as a sexual predator under s.  
 2307 775.21 or who has a similar designation under the laws of  
 2308 another jurisdiction, the marking "SEXUAL PREDATOR."

2309 (b) For a person subject to registration as a sexual  
 2310 offender under s. 943.0435 or s. 944.607, or subject to a  
 2311 similar registration under the laws of another jurisdiction, the  
 2312 marking "943.0435, F.S."

2313 (4) Unless previously secured or updated, each sexual  
 2314 offender and sexual predator shall report to the department  
 2315 during the month of his or her reregistration as required under  
 2316 s. 775.21(8), s. 943.0435(14), or s. 944.607(13) in order to  
 2317 obtain an updated or renewed driver license or identification  
 2318 card as required by subsection (3).

2319 Section 22. For the purpose of incorporating the  
 2320 amendments made by this act to sections 775.21, 943.0435, and  
 2321 944.607, Florida Statutes, in references thereto, subsection (4)  
 2322 of section 948.06, Florida Statutes, is reenacted to read:

2323 948.06 Violation of probation or community control;  
 2324 revocation; modification; continuance; failure to pay  
 2325 restitution or cost of supervision.—

2326 (4) Notwithstanding any other provision of this section, a  
 2327 felony probationer or an offender in community control who is  
 2328 arrested for violating his or her probation or community control  
 2329 in a material respect may be taken before the court in the  
 2330 county or circuit in which the probationer or offender was  
 2331 arrested. That court shall advise him or her of the charge of a  
 2332 violation and, if such charge is admitted, shall cause him or  
 2333 her to be brought before the court that granted the probation or  
 2334 community control. If the violation is not admitted by the  
 2335 probationer or offender, the court may commit him or her or  
 2336 release him or her with or without bail to await further  
 2337 hearing. However, if the probationer or offender is under  
 2338 supervision for any criminal offense proscribed in chapter 794,  
 2339 s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a  
 2340 registered sexual predator or a registered sexual offender, or  
 2341 is under supervision for a criminal offense for which he or she  
 2342 would meet the registration criteria in s. 775.21, s. 943.0435,  
 2343 or s. 944.607 but for the effective date of those sections, the  
 2344 court must make a finding that the probationer or offender is

2345 not a danger to the public prior to release with or without  
 2346 bail. In determining the danger posed by the offender's or  
 2347 probationer's release, the court may consider the nature and  
 2348 circumstances of the violation and any new offenses charged; the  
 2349 offender's or probationer's past and present conduct, including  
 2350 convictions of crimes; any record of arrests without conviction  
 2351 for crimes involving violence or sexual crimes; any other  
 2352 evidence of allegations of unlawful sexual conduct or the use of  
 2353 violence by the offender or probationer; the offender's or  
 2354 probationer's family ties, length of residence in the community,  
 2355 employment history, and mental condition; his or her history and  
 2356 conduct during the probation or community control supervision  
 2357 from which the violation arises and any other previous  
 2358 supervisions, including disciplinary records of previous  
 2359 incarcerations; the likelihood that the offender or probationer  
 2360 will engage again in a criminal course of conduct; the weight of  
 2361 the evidence against the offender or probationer; and any other  
 2362 facts the court considers relevant. The court, as soon as is  
 2363 practicable, shall give the probationer or offender an  
 2364 opportunity to be fully heard on his or her behalf in person or  
 2365 by counsel. After the hearing, the court shall make findings of  
 2366 fact and forward the findings to the court that granted the  
 2367 probation or community control and to the probationer or  
 2368 offender or his or her attorney. The findings of fact by the  
 2369 hearing court are binding on the court that granted the  
 2370 probation or community control. Upon the probationer or offender

2371 being brought before it, the court that granted the probation or  
 2372 community control may revoke, modify, or continue the probation  
 2373 or community control or may place the probationer into community  
 2374 control as provided in this section. However, the probationer or  
 2375 offender shall not be released and shall not be admitted to  
 2376 bail, but shall be brought before the court that granted the  
 2377 probation or community control if any violation of felony  
 2378 probation or community control other than a failure to pay costs  
 2379 or fines or make restitution payments is alleged to have been  
 2380 committed by:

2381 (a) A violent felony offender of special concern, as  
 2382 defined in this section;

2383 (b) A person who is on felony probation or community  
 2384 control for any offense committed on or after the effective date  
 2385 of this act and who is arrested for a qualifying offense as  
 2386 defined in this section; or

2387 (c) A person who is on felony probation or community  
 2388 control and has previously been found by a court to be a  
 2389 habitual violent felony offender as defined in s. 775.084(1)(b),  
 2390 a three-time violent felony offender as defined in s.  
 2391 775.084(1)(c), or a sexual predator under s. 775.21, and who is  
 2392 arrested for committing a qualifying offense as defined in this  
 2393 section on or after the effective date of this act.

2394 Section 23. For the purpose of incorporating the  
 2395 amendments made by this act to sections 775.21, 943.0435, and  
 2396 944.607, Florida Statutes, in references thereto, section

2397 948.063, Florida Statutes, is reenacted to read:

2398 948.063 Violations of probation or community control by  
 2399 designated sexual offenders and sexual predators.-

2400 (1) If probation or community control for any felony  
 2401 offense is revoked by the court pursuant to s. 948.06(2)(e) and  
 2402 the offender is designated as a sexual offender pursuant to s.  
 2403 943.0435 or s. 944.607 or as a sexual predator pursuant to s.  
 2404 775.21 for unlawful sexual activity involving a victim 15 years  
 2405 of age or younger and the offender is 18 years of age or older,  
 2406 and if the court imposes a subsequent term of supervision  
 2407 following the revocation of probation or community control, the  
 2408 court must order electronic monitoring as a condition of the  
 2409 subsequent term of probation or community control.

2410 (2) If the probationer or offender is required to register  
 2411 as a sexual predator under s. 775.21 or as a sexual offender  
 2412 under s. 943.0435 or s. 944.607 for unlawful sexual activity  
 2413 involving a victim 15 years of age or younger and the  
 2414 probationer or offender is 18 years of age or older and has  
 2415 violated the conditions of his or her probation or community  
 2416 control, but the court does not revoke the probation or  
 2417 community control, the court shall nevertheless modify the  
 2418 probation or community control to include electronic monitoring  
 2419 for any probationer or offender not then subject to electronic  
 2420 monitoring.

2421 Section 24. For the purpose of incorporating the amendment  
 2422 made by this act to section 943.0435, Florida Statutes, in a



2423 reference thereto, paragraph (c) of subsection (10) of section  
 2424 944.607, Florida Statutes, is reenacted to read:

2425 944.607 Notification to Department of Law Enforcement of  
 2426 information on sexual offenders.--

2427 (10)

2428 (c) An arrest on charges of failure to register when the  
 2429 offender has been provided and advised of his or her statutory  
 2430 obligations to register under s. 943.0435(2), the service of an  
 2431 information or a complaint for a violation of this section, or  
 2432 an arraignment on charges for a violation of this section  
 2433 constitutes actual notice of the duty to register. A sexual  
 2434 offender's failure to immediately register as required by this  
 2435 section following such arrest, service, or arraignment  
 2436 constitutes grounds for a subsequent charge of failure to  
 2437 register. A sexual offender charged with the crime of failure to  
 2438 register who asserts, or intends to assert, a lack of notice of  
 2439 the duty to register as a defense to a charge of failure to  
 2440 register shall immediately register as required by this section.  
 2441 A sexual offender who is charged with a subsequent failure to  
 2442 register may not assert the defense of a lack of notice of the  
 2443 duty to register.

2444 Section 25. For the purpose of incorporating the amendment  
 2445 made by this act to section 943.04354, Florida Statutes, in a  
 2446 reference thereto, subsection (2) of section 397.4872, Florida  
 2447 Statutes, is reenacted to read:

2448 397.4872 Exemption from disqualification; publication.--

2449 (2) The department may exempt a person from ss. 397.487(6)  
 2450 and 397.4871(5) if it has been at least 3 years since the person  
 2451 has completed or been lawfully released from confinement,  
 2452 supervision, or sanction for the disqualifying offense. An  
 2453 exemption from the disqualifying offenses may not be given under  
 2454 any circumstances for any person who is a:

- 2455 (a) Sexual predator pursuant to s. 775.21;
- 2456 (b) Career offender pursuant to s. 775.261; or
- 2457 (c) Sexual offender pursuant to s. 943.0435, unless the  
 2458 requirement to register as a sexual offender has been removed  
 2459 pursuant to s. 943.04354.

2460 Section 26. For the purpose of incorporating the amendment  
 2461 made by this act to section 943.04354, Florida Statutes, in a  
 2462 reference thereto, paragraph (b) of subsection (4) of section  
 2463 435.07, Florida Statutes, is reenacted to read:

2464 435.07 Exemptions from disqualification.—Unless otherwise  
 2465 provided by law, the provisions of this section apply to  
 2466 exemptions from disqualification for disqualifying offenses  
 2467 revealed pursuant to background screenings required under this  
 2468 chapter, regardless of whether those disqualifying offenses are  
 2469 listed in this chapter or other laws.

2470 (4)  
 2471 (b) Disqualification from employment under this chapter  
 2472 may not be removed from, nor may an exemption be granted to, any  
 2473 person who is a:

- 2474 1. Sexual predator as designated pursuant to s. 775.21;

- 2475           2. Career offender pursuant to s. 775.261; or  
 2476           3. Sexual offender pursuant to s. 943.0435, unless the  
 2477 requirement to register as a sexual offender has been removed  
 2478 pursuant to s. 943.04354.

2479           Section 27. For the purpose of incorporating the  
 2480 amendments made by this act to sections 944.606 and 944.607,  
 2481 Florida Statutes, in references thereto, section 775.25, Florida  
 2482 Statutes, is reenacted to read:

2483           775.25 Prosecutions for acts or omissions.—A sexual  
 2484 predator or sexual offender who commits any act or omission in  
 2485 violation of s. 775.21, s. 943.0435, s. 944.605, s. 944.606, s.  
 2486 944.607, or former s. 947.177 may be prosecuted for the act or  
 2487 omission in the county in which the act or omission was  
 2488 committed, in the county of the last registered address of the  
 2489 sexual predator or sexual offender, in the county in which the  
 2490 conviction occurred for the offense or offenses that meet the  
 2491 criteria for designating a person as a sexual predator or sexual  
 2492 offender, in the county where the sexual predator or sexual  
 2493 offender was released from incarceration, or in the county of  
 2494 the intended address of the sexual predator or sexual offender  
 2495 as reported by the predator or offender prior to his or her  
 2496 release from incarceration. In addition, a sexual predator may  
 2497 be prosecuted for any such act or omission in the county in  
 2498 which he or she was designated a sexual predator.

2499           Section 28. For the purpose of incorporating the amendment  
 2500 made by this act to section 944.607, Florida Statutes, in a

2501 reference thereto, subsection (2) of section 775.24, Florida  
 2502 Statutes, is reenacted to read:

2503           775.24 Duty of the court to uphold laws governing sexual  
 2504 predators and sexual offenders.—

2505           (2) If a person meets the criteria in this chapter for  
 2506 designation as a sexual predator or meets the criteria in s.  
 2507 943.0435, s. 944.606, s. 944.607, or any other law for  
 2508 classification as a sexual offender, the court may not enter an  
 2509 order, for the purpose of approving a plea agreement or for any  
 2510 other reason, which:

2511           (a) Exempts a person who meets the criteria for  
 2512 designation as a sexual predator or classification as a sexual  
 2513 offender from such designation or classification, or exempts  
 2514 such person from the requirements for registration or community  
 2515 and public notification imposed upon sexual predators and sexual  
 2516 offenders;

2517           (b) Restricts the compiling, reporting, or release of  
 2518 public records information that relates to sexual predators or  
 2519 sexual offenders; or

2520           (c) Prevents any person or entity from performing its  
 2521 duties or operating within its statutorily conferred authority  
 2522 as such duty or authority relates to sexual predators or sexual  
 2523 offenders.

2524           Section 29. For the purpose of incorporating the amendment  
 2525 made by this act to section 944.607, Florida Statutes, in a  
 2526 reference thereto, subsection (7) of section 944.608, Florida

2527 Statutes, is reenacted to read:

2528 944.608 Notification to Department of Law Enforcement of  
 2529 information on career offenders.-

2530 (7) A career offender who is under the supervision of the  
 2531 department but who is not incarcerated shall, in addition to the  
 2532 registration requirements provided in subsection (3), register  
 2533 in the manner provided in s. 775.261(4)(c), unless the career  
 2534 offender is a sexual predator, in which case he or she shall  
 2535 register as required under s. 775.21, or is a sexual offender,  
 2536 in which case he or she shall register as required in s.  
 2537 944.607. A career offender who fails to comply with the  
 2538 requirements of s. 775.261(4) is subject to the penalties  
 2539 provided in s. 775.261(8).

2540 Section 30. This act shall take effect October 1, 2016.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Baxley offered the following:

3



4 **Amendment**

5 Remove line 781 and insert:  
 6 principal, or child care facility owner; and



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7075      PCB CRJS 16-05      Victim and Witness Protection  
**SPONSOR(S):** Criminal Justice Subcommittee; Trujillo  
**TIED BILLS:** None    **IDEN./SIM. BILLS:** SB 1382

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	11 Y, 0 N	Keegan	White
1) Justice Appropriations Subcommittee	13 Y, 0 N	McAuliffe	Lloyd
2) Judiciary Committee		Keegan 	Havlicak 

### SUMMARY ANALYSIS

Florida law currently has a number of statutes providing for the fair treatment of victims and witnesses. Sections 92.53, 92.54, and 92.55, F.S., authorize the court to provide special protections to a victim or witness who is under 16 years of age or who has an intellectual disability or to a victim or witness of a sexual offense who is under 16 years of age. For example, protective orders may be entered by the court to allow protected persons to testify via closed circuit television or to limit the frequency or nature of depositions to which the protected person has to attend. Additionally, s. 794.022, F.S., Florida's Rape Shield law, prevents most evidence regarding a victim's prior sexual conduct from being admitted at trial in a prosecution for sexual battery under s. 794.011, F.S. Currently, the Rape Shield law does not apply in other sexual misconduct prosecutions.

The bill broadens the application of ss. 92.53, 92.54, and 92.55, F.S., by increasing the age range for protected persons from victims or witnesses under 16 years of age to victims or witnesses under 18 years of age. Additionally, the bill adds advocates appointed by the court under s. 914.17, F.S., to the list of persons authorized to make a motion for protection under s. 92.55, F.S.

The bill expands the application of the Florida's Rape Shield law to prosecutions under s. 787.06, F.S., relating to human trafficking, and s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of children under 16 years of age.

The bill does not appear to have a fiscal impact on state or local government revenues.

The bill is effective October 1, 2016.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### Testimony by Victims and Witnesses

Florida law currently has several statutes providing for the fair treatment of victims and witnesses.<sup>1</sup> A number of these statutes authorize the court to provide special protections to a victim or witness who is under 16 years of age or who has an intellectual disability or to a victim or witness of a sexual offense who is under 16 years of age.

Sections 92.53 and 92.54, F.S., authorize a court to enter a protective order after a motion and hearing in camera<sup>2</sup> if the court finds that the protected individual is a victim or witness who is under the age of 16 or has an intellectual disability,<sup>3</sup> and that:

- It is substantially likely the protected individual would suffer at least moderate emotional or mental harm due to the presence of the defendant if the protected individual were required to testify in open court; or
- The court determines that the protected individual is unavailable<sup>4</sup> to testify.

When the above circumstances are met, the court has several options. The court may order the protected individual's testimony be videotaped and used in lieu of testimony in open court.<sup>5</sup> In the event of such an order, the defendant and the defendant's counsel must be permitted to be present at any videotaping, but the court may order the defendant to view the testimony from outside the presence of the protected individual.<sup>6</sup> Alternatively, the court may require that the protected individual's testimony be taken outside the courtroom and shown in the courtroom by means of closed circuit television.<sup>7</sup> Only the specified parties<sup>8</sup> may be permitted in the room when the testimony is recorded.<sup>9</sup> The judge may require the defendant to view the testimony from the courtroom, but must permit the defendant to observe and hear the person's testimony.<sup>10</sup>

Section 92.55, F.S., authorizes the court to enter a wide variety of protective orders to protect victims and witnesses under 16 years of age, sexual offense<sup>11</sup> victims or witnesses under 16 years of age,<sup>12</sup>

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<sup>1</sup> See, e.g., FLA. CONST. art. I, s. 16; ss. 92.53-55, F.S.; s. 914.25, F.S.; s. 914.27.

<sup>2</sup> A hearing "in camera" means the hearing is held in the judge's chambers or held in a courtroom where all spectators are excluded from being present. DUHAIME'S LAW DICTIONARY, *In Camera Definition*, <http://www.duhaime.org/LegalDictionary/I/InCamera.aspx> (last visited Jan. 14, 2016).

<sup>3</sup> Under the procedure provided in s. 92.53, F.S., "intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. s. 393.063, F.S.

<sup>4</sup> A witness or potential witness is considered unavailable to testify when he or she: 1) Is exempted from testifying by a ruling of a court due to a legal privilege; 2) Refuses to testify concerning the subject matter of his or her statement despite a court order to testify; 3) Has suffered a lack of memory of the subject matter of his or her statement; 4) Is unable to be present or to testify at the hearing because of death, illness or infirmity; or 5) Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant's attendance by reasonable means. s. 90.804(1), F.S.

<sup>5</sup> s. 92.53(1), F.S.

<sup>6</sup> s. 92.53(4), F.S.

<sup>7</sup> s. 92.54(1), F.S.

<sup>8</sup> Only the judge, prosecutor, the defendant and his or her attorney, any video equipment operators, and interpreter, or any other person who is not going to be a witness in the case and, in the opinion of the court, benefits the well-being of the protected individual. s. 92.54(3), F.S.

<sup>9</sup> s. 92.54(3), F.S.

<sup>10</sup> s. 92.54(4), F.S.

<sup>11</sup> "Sexual offense" means any offense specified in s. 775.21(4)(a)1., or s. 943.0435(1)(a)1.a.(I).

<sup>12</sup> A "sexual offense victim or witness" means a person who was under 16 years old when he or she was the victim of or a witness to a sexual offense. s. 92.55(1)(a), F.S.

and persons with an intellectual disability.<sup>13</sup> A motion for protection can be raised by any party to the case, a parent, a guardian, an attorney, a guardian ad litem, or the court.<sup>14</sup> The court must find that such order is necessary to protect the person from severe emotional or mental harm due to the defendant's presence if the person is required to testify in open court.<sup>15</sup> The court is required to consider a lengthy list of factors, including, but not limited to the age of the person, the nature of the offense, and the functional capacity of the person if he or she has an intellectual disability.<sup>16</sup> The court may enter orders taking the following actions, in addition to any other relief available under the law:

- Limit the number of times that the person may be interviewed;
- Prohibit depositions of the person;
- Require the submission of questions prior to examination of the person;
- Set the place and conditions for interviewing the person or for other proceedings;
- Permit or prohibit the attendance of any person at a proceeding; and
- Permit the use of a service or therapy animal during the person's testimony in any sexual offense proceeding.<sup>17</sup>

### Rape Shield

In many U.S. jurisdictions, laws exist to prevent specific instances of the victim's prior sexual conduct from being admitted at trial in a prosecution for sexual battery or other sexual misconduct charges.<sup>18</sup> These laws are commonly referred to as "Rape Shield" laws.<sup>19</sup> Section 794.022, F.S., is Florida's Rape Shield law, and it has long been considered a codification of the rule of relevancy that a victim's prior sexual conduct is generally irrelevant in determining the defendant's guilt.<sup>20</sup> It applies only to criminal prosecutions for sexual battery under s. 794.011, F.S.,<sup>21</sup> and provides that:

- The victim's testimony doesn't have to be corroborated by other evidence;
- Specific instances of the victim's sexual history with people other than the offender are inadmissible unless:
  - The evidence is introduced to prove that the defendant wasn't the source of physical evidence, such as semen; or
  - When consent is at issue, the evidence proves a pattern of the victim's conduct or behavior that is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.
- The victim's reputation for sexual behavior is inadmissible;
- Evidence presented to prove the victim's appearance prompted the sexual battery is inadmissible;
- When consent is a defense, evidence of the victim's mental incapacity or defect can be admitted to prove that consent was not given;
- An offender's use of a prophylactic device, or a victim's request that an offender use a prophylactic device, is not independently relevant.<sup>22</sup>

The United States Code also has a Rape Shield statute. In contrast to Florida's Rape Shield law, the federal statute is not limited to sexual battery offenses; rather, the federal statute applies to *any* criminal

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<sup>13</sup> s. 92.55(1)(b), F.S.

<sup>14</sup> s. 92.55(2), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> s. 92.55(3), F.S.

<sup>17</sup> s. 92.55(4) and (5), F.S.

<sup>18</sup> Nat'l Dist. Attorney's Ass'n, *Rape Shield Statutes*, NAT'L DIST. ATTORNEY'S ASS'N (March 2011) (*available at* [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiMI-Xc06XKAhWFHD4KHVs-ByAQFggcMAA&url=http%3A%2F%2Fwww.ndaa.org%2Fpdf%2FNCPCA%2520Rape%2520Shield%25202011.pdf&usq=AFQjCNGB9ME\\_OADBM-qIDOCmtYCs3dYB7g](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiMI-Xc06XKAhWFHD4KHVs-ByAQFggcMAA&url=http%3A%2F%2Fwww.ndaa.org%2Fpdf%2FNCPCA%2520Rape%2520Shield%25202011.pdf&usq=AFQjCNGB9ME_OADBM-qIDOCmtYCs3dYB7g)) (last visited Jan. 12, 2016).

<sup>19</sup> *See Lewis v. State*, 591 So. 2d 922, 924 (Fla. 1991); *see also* ENCYCLOPEDIA BRITANNICA, *Rape Shield Law*, <http://www.britannica.com/topic/rape-shield-law> (last visited Jan. 12, 2016).

<sup>20</sup> *Marr v. Florida*, 494 So. 2d 1139, 1142-43 (Fla. 1986).

<sup>21</sup> Section 794.011, F.S., prohibits various forms of sexual battery.

<sup>22</sup> s. 794.022, F.S.

or civil proceeding involving alleged sexual misconduct.<sup>23</sup> As such, federal courts have repeatedly held that a victim's prior history of sexual behavior, such as exotic dancing or prostitution, is irrelevant and inadmissible in prosecutions for crimes such as sex trafficking, forced labor, sex trafficking by force, fraud, or coercion, and sex trafficking of a child.<sup>24</sup> The Fourth Circuit illustrated this concept in *United States v. Saunders*, by holding that 28 U.S.C. 412(b)(1)(B) "manifests the policy that it is unreasonable for a defendant to base his belief of consent on the victim's past sexual experiences with third persons, since it is intolerable to suggest that because the victim is a prostitute, she automatically is assumed to have consented with anyone at any time."<sup>25</sup>

### **Effect of the Bill**

The bill broadens the application of ss. 92.53, 92.54, and 92.55, F.S., by increasing the age range for protected persons from victims or witnesses under 16 years of age to victims or witnesses under 18 years of age. Additionally, the bill adds advocates appointed by the court under s. 914.17, F.S.,<sup>26</sup> to the list of persons authorized to make a motion for protection under s. 92.55, F.S.

The bill expands the application of s. 794.022, F.S., Florida's Rape Shield law, to prosecutions under s. 787.06, F.S., relating to human trafficking, and s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of children under 16 years of age.

Finally, the bill reenacts s. 90.404, F.S., to incorporate amendments made by the bill to s. 794.022, F.S., that are cross-referenced in the reenacted section.

### **B. SECTION DIRECTORY:**

Section 1. Amending s. 92.53, F.S., relating to videotaping the testimony of a victim or witness under age 16 or who has an intellectual disability.

Section 2. Amending s. 92.54, F.S., relating to use of closed circuit television in proceedings involving a victim or witness under the age 16 or who has an intellectual disability.

Section 3. Amending s. 92.55, F.S., relating to judicial and other proceedings involving victim or witness under the age of 16, a person who has an intellectual disability, or a sexual offense victim or witness; special protections; use of registered service or therapy animals.

Section 4. Amending s. 794.022, F.S., relating to rules of evidence.

Section 5. Reenacting s. 90.404, F.S., relating to character evidence; when admissible.

Section 6. Provides an effective date of October 1, 2016.

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<sup>23</sup> 28 U.S.C. § 412.

<sup>24</sup> See *United States v. Rivera*, 799 F.3d 180, 185 (2d Cir. 2015) (holding that "[e]vidence of victims' prior acts of commercial sex is irrelevant to whether those victims were coerced into working as prostitutes."); *United States v. Roy*, 781 F.3d 416, 420 (8th Cir. 2015) (holding that the victim's participation in prostitution before or after the alleged incident is irrelevant to whether the defendant threatened her, beat her, or took her money); *United States v. Cephus*, 684 F.3d 703, 708 (7th Cir. 2012) (holding that the victim's prior history of prostitution was irrelevant to proving that she consented to having her wages withheld and be beaten).

<sup>25</sup> *United States v. Saunders*, 943 F.2d 388, 392 (4th Cir. 1991).

<sup>26</sup> Section 914.17, F.S., provides for a guardian ad litem or other advocate to be appointed by the court to represent the interests of a minor in a criminal proceeding where the minor is a victim of or a witness to child abuse or neglect, a victim of a sexual offense, or a witness to a sexual offense committed against another minor. "Advocate" is not defined in Chapter 914, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for rulemaking or rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to victim and witness protection;  
 amending ss. 92.53 and 92.54, F.S.; increasing the age  
 limit for the use of videotaped testimony and closed  
 circuit television in court proceedings by victims or  
 witnesses; amending s. 92.55, F.S.; revising the  
 definition of the term "sexual offense victim or  
 witness"; increasing the age limit for victims and  
 witnesses for whom the court may enter protective  
 orders; authorizing certain advocates to file motions  
 for such orders; amending s. 794.022, F.S.; revising  
 the corroboration requirements for certain victim  
 testimony and the admissibility of certain evidence in  
 prosecutions for specified human trafficking and lewd  
 or lascivious offenses; reenacting s. 90.404(1)(b),  
 F.S., relating to character evidence, to incorporate  
 the amendment made by the act to s. 794.022, F.S., in  
 a reference thereto; providing an effective date.

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

Section 1. Subsection (1) of section 92.53, Florida  
 Statutes, is amended to read:

92.53 Videotaping the testimony of a victim or witness  
 under age 18 ~~16~~ or who has an intellectual disability.—

(1) On motion and hearing in camera and a finding that

27 | there is a substantial likelihood that a victim or witness who  
 28 | is under the age of 18 ~~16~~ or who has an intellectual disability  
 29 | as defined in s. 393.063 would suffer at least moderate  
 30 | emotional or mental harm due to the presence of the defendant if  
 31 | such victim or witness is required to testify in open court, or  
 32 | is unavailable as defined in s. 90.804(1), the trial court may  
 33 | order the videotaping of the testimony of the victim or witness  
 34 | in a case, whether civil or criminal in nature, in which  
 35 | videotaped testimony is to be used at trial in lieu of trial  
 36 | testimony in open court.

37 |       Section 2. Subsection (1) of section 92.54, Florida  
 38 | Statutes, is amended to read:

39 |       92.54 Use of closed circuit television in proceedings  
 40 | involving a victim or witness under the age of 18 ~~16~~ or who has  
 41 | an intellectual disability.—

42 |       (1) Upon motion and hearing in camera and upon a finding  
 43 | that there is a substantial likelihood that a victim or witness  
 44 | under the age of 18 ~~16~~ or who has an intellectual disability  
 45 | will suffer at least moderate emotional or mental harm due to  
 46 | the presence of the defendant if such victim or witness is  
 47 | required to testify in open court, or is unavailable as defined  
 48 | in s. 90.804(1), the trial court may order that the testimony of  
 49 | the victim or witness be taken outside of the courtroom and  
 50 | shown by means of closed circuit television.

51 |       Section 3. Paragraph (a) of subsection (1) and subsection  
 52 | (2) of section 92.55, Florida Statutes, are amended to read:

53           92.55 Judicial or other proceedings involving victim or  
 54 witness under the age of 18 ~~16~~, a person who has an intellectual  
 55 disability, or a sexual offense victim or witness; special  
 56 protections; use of registered service or therapy animals.—

57           (1) For purposes of this section, the term:

58           (a) "Sexual offense victim or witness" means a person who  
 59 was under the age of 18 ~~16~~ when he or she was the victim of or a  
 60 witness to a sexual offense.

61           (2) Upon motion of any party, upon motion of a parent,  
 62 guardian, attorney, or guardian ad litem or other advocate  
 63 appointed by the court under s. 914.17 for a victim or witness  
 64 under the age of 18 ~~16~~, a person who has an intellectual  
 65 disability, or a sexual offense victim or witness, or upon its  
 66 own motion, the court may enter any order necessary to protect  
 67 the victim or witness in any judicial proceeding or other  
 68 official proceeding from severe emotional or mental harm due to  
 69 the presence of the defendant if the victim or witness is  
 70 required to testify in open court. Such orders must relate to  
 71 the taking of testimony and include, but are not limited to:

72           (a) Interviewing or the taking of depositions as part of a  
 73 civil or criminal proceeding.

74           (b) Examination and cross-examination for the purpose of  
 75 qualifying as a witness or testifying in any proceeding.

76           (c) The use of testimony taken outside of the courtroom,  
 77 including proceedings under ss. 92.53 and 92.54.

78           Section 4. Subsections (1) through (4) of section 794.022,

79 Florida Statutes, are amended to read:

80 794.022 Rules of evidence.—

81 (1) The testimony of the victim need not be corroborated  
82 in a prosecution under s. 787.06, s. 794.011, or s. 800.04.

83 (2) Specific instances of prior consensual sexual activity  
84 between the victim and any person other than the offender shall  
85 not be admitted into evidence in a prosecution under s. 787.06,  
86 s. 794.011, or s. 800.04. However, such evidence may be admitted  
87 if it is first established to the court in a proceeding in  
88 camera that such evidence may prove that the defendant was not  
89 the source of the semen, pregnancy, injury, or disease; or, when  
90 consent by the victim is at issue, such evidence may be admitted  
91 if it is first established to the court in a proceeding in  
92 camera that such evidence tends to establish a pattern of  
93 conduct or behavior on the part of the victim which is so  
94 similar to the conduct or behavior in the case that it is  
95 relevant to the issue of consent.

96 (3) Notwithstanding any other provision of law, reputation  
97 evidence relating to a victim's prior sexual conduct or evidence  
98 presented for the purpose of showing that manner of dress of the  
99 victim at the time of the offense incited the offense ~~sexual~~  
100 ~~battery~~ shall not be admitted into evidence in a prosecution  
101 under s. 787.06, s. 794.011, or s. 800.04.

102 (4) When consent of the victim is a defense to prosecution  
103 under s. 787.06, s. 794.011, or s. 800.04, evidence of the  
104 victim's mental incapacity or defect is admissible to prove that



105 | the consent was not intelligent, knowing, or voluntary; and the  
 106 | court shall instruct the jury accordingly.

107 |       Section 5. For the purpose of incorporating the amendment  
 108 | made by this act to section 794.022, Florida Statutes, in a  
 109 | reference thereto, paragraph (b) of subsection (1) of section  
 110 | 90.404, Florida Statutes, is reenacted to read:

111 |       90.404 Character evidence; when admissible.—

112 |       (1) CHARACTER EVIDENCE GENERALLY.—Evidence of a person's  
 113 | character or a trait of character is inadmissible to prove  
 114 | action in conformity with it on a particular occasion, except:

115 |       (b) Character of victim.—

116 |       1. Except as provided in s. 794.022, evidence of a  
 117 | pertinent trait of character of the victim of the crime offered  
 118 | by an accused, or by the prosecution to rebut the trait; or

119 |       2. Evidence of a character trait of peacefulness of the  
 120 | victim offered by the prosecution in a homicide case to rebut  
 121 | evidence that the victim was the aggressor.

122 |       Section 6. This act shall take effect October 1, 2016.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7085      PCB CRJS 16-06      Juvenile Civil Citation and Similar Diversion Programs  
**SPONSOR(S):** Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Trujillo and others  
**TIED BILLS:** None    **IDEN./SIM. BILLS:** CS/SB 408

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	10 Y, 0 N	Cox	White
1) Justice Appropriations Subcommittee	12 Y, 1 N, As CS	Smith	Lloyd
2) Judiciary Committee		Cox <i>JCC</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Civil Citation Programs (CCP) give law enforcement officers (LEO) an alternative to arresting youth who have committed non-serious delinquent acts. Under a CCP, a LEO has discretion to:

- Issue a warning or inform the juvenile's parent when a juvenile admits to having committed a misdemeanor;
- Issue a civil citation or require participation in a similar diversion program if he or she decides not to issue a warning or notify the juvenile's parents; or
- Arrest the juvenile, conditioned upon the LEO providing written documentation as to why an arrest was warranted.

The above-mentioned options are available to a LEO that comes into contact with a juvenile who admits to committing a first-, second-, or third-time misdemeanor.

If the LEO issues a civil citation to a juvenile, the juvenile is assessed not more than 50 community service hours, and must participate in intervention services appropriate to any identified needs of the juvenile.

Currently, law enforcement agencies are not required to issue civil citations and there is variation in current use of the program among agencies and counties.

As of January 2016, CCPs were operational in 61 of Florida's 67 counties.

The bill states a law enforcement officer *shall* issue a civil citation or require participation in a similar diversion program to a juvenile that admits to having committed one or more specified first-time "misdemeanor offenses" that are part of the same criminal episode. For misdemeanors not specified, the bill permits a LEO to issue a civil citation for first-time "misdemeanor offenses", and for any second- or third-time misdemeanors.

The bill defines "misdemeanor offense," and "law enforcement officer."

The bill also provides that the existence of a CCP does not modify the authority of a LEO to issue a warning or inform the juvenile's guardian or parent of the alleged offense.

This bill would have an indeterminate impact on state and local government expenditures.

The bill is effective July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Juvenile Justice Process**

The juvenile justice process usually starts when a law enforcement officer (LEO) arrests a youth<sup>1</sup> for a criminal offense.<sup>2</sup> Depending on the seriousness of the offense and the LEO's view of what is needed to appropriately address the offense, the LEO may:

- Deliver the youth to a Juvenile Assessment Center (JAC) for intake screening to further assess the youth's risk to the community and to determine if some type of detention is necessary;
- Call an "on call screener" to assess the youth's risk and determine if detention is necessary (this is done in localities where a JAC is not available);
- Release the youth to a parent or guardian and forward the charges to the local clerk of court and Department of Juvenile Justice (DJJ) Probation office; or
- Release the youth to parent or guardian with a direct referral to a diversion program.<sup>3</sup>

In lieu of arresting a youth, LEOs have the option of issuing certain youth a civil citation.

##### **Civil Citation Program**

The Civil Citation Program (CCP), created by s. 985.12, F.S., gives law enforcement an alternative to taking juveniles who have committed non-serious delinquent acts into custody while ensuring swift and appropriate consequences.<sup>4</sup> CCPs are open to juveniles with no offense history who admit to committing a qualifying misdemeanor.<sup>5</sup> Misdemeanors involving sex or firearm offenses are currently exempt from civil citation under DJJ's guidelines.<sup>6</sup> Law enforcement agencies are not required to issue civil citations and there is variation in current use of CCPs among agencies and counties.<sup>7</sup>

Under a CCP, a LEO has discretion to:

- Issue a warning or inform the juvenile's parent when a juvenile admits to having committed a misdemeanor;
- Issue a civil citation or require participation in a similar diversion program if he or she decides not to issue a warning or notify the juvenile's parents; or
- Arrest the juvenile, conditioned upon the LEO providing written documentation as to why an arrest was warranted.<sup>8</sup>

The above-mentioned options are available to a LEO that comes into contact with a juvenile who admits to committing a first-time, second-time, or third-time misdemeanor.<sup>9</sup>

If a civil citation is issued under a CCP, the LEO must assess not more than 50 community service hours and require participation in intervention services appropriate to identified needs of the juvenile.

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<sup>1</sup> "Child" or "juvenile" or "youth" means any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years. s. 985.03(7), F.S.

<sup>2</sup> Florida Department of Juvenile Justice, Probation and Community Intervention, General. <http://www.djj.state.fl.us/faqs/probation-community-intervention> (last visited January 13, 2016).

<sup>3</sup> *Id.*

<sup>4</sup> s. 985.12(1), F.S.

<sup>5</sup> Department of Juvenile Justice (DJJ), Agency Analysis of 2016 SB 408, p. 2 (November 5, 2015)(hereinafter cited as "DJJ Analysis").

<sup>6</sup> DJJ, *Civil Citation Model Plan, A Guide to Implementation*, DJJ (October 2015) <http://www.djj.state.fl.us/docs/probation-policy-memos/civil-citation-model-plan.pdf?Status=Master&sfvrsn=4> (last visited January 12, 2016).

<sup>7</sup> *Id.*

<sup>8</sup> s. 985.12, F.S.

<sup>9</sup> *Id.*

The statute requires the LEO issuing the civil citation<sup>10</sup> to advise the juvenile of his or her option to refuse the citation and instead be arrested and referred to a DJJ intake office.<sup>11</sup>

A juvenile that elects to participate in the CCP must report to a community service performance monitor within seven working days after the date of issuance of the civil citation, and must complete the work assignment at a rate of not less than five hours per week.<sup>12</sup> Upon completion of the program, the agency operating the CCP must report the outcome to DJJ.<sup>13</sup>

If the juvenile fails to report timely for a work assignment, complete a work assignment, comply with assigned intervention services within the prescribed time, or commits a subsequent misdemeanor, the LEO must issue a report alleging the juvenile has committed a delinquent act.<sup>14</sup> A juvenile probation officer must then process the original delinquent act as a referral to DJJ and refer the report to the state attorney for review.<sup>15</sup>

Currently, s. 985.12, F.S., requires CCPs or another similar diversion program<sup>16</sup> to be established at the local level with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency. The program may be operated by a law enforcement agency, DJJ, a JAC, a county or municipality, or an entity selected by a county or municipality.<sup>17</sup>

The CCP program has been implemented in 61 counties in Florida.<sup>18</sup> The following five counties in Florida have no established CCP: Bradford, Calhoun, Gulf, Hardee, and Washington.<sup>19</sup> These counties utilize a diversion program without the civil citation overlay.<sup>20</sup>

For Fiscal Year 2014-15, 20,833 juveniles were eligible for civil citation (first-time misdemeanants who were not accused of firearm or sex-related offenses) and 8,961 juveniles (43%) were issued civil citations.

### **Effect of the Bill**

As mentioned above, there are no circumstances under CCPs where a LEO is required to issue a civil citation or similar diversion program. The bill states a LEO<sup>21</sup> shall issue a civil citation or require the juvenile's participation in a similar diversion program for specified first-time "misdemeanor offenses". The bill stipulates that a civil citation or similar diversion program shall be issued if the "misdemeanor offense" is a violation of:

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<sup>10</sup> If the LEO issues a civil citation, a copy must be provided to the county sheriff, state attorney, the appropriate DJJ intake office or the community performance monitor designated by DJJ, the parents or guardian of the youth, and the victim. s. 985.12(3), F.S.

<sup>11</sup> The youth has the right to opt out of the CCP and be referred to a DJJ intake office at any time before completion of the work assignment. s. 985.12(6), F.S.

<sup>12</sup> s. 985.12(4), F.S.

<sup>13</sup> s. 985.12(1), F.S.

<sup>14</sup> s. 985.12(5), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Diversion programs are non-judicial alternatives used to keep youth who have committed a delinquent act from being handled through the traditional juvenile justice system. Diversion programs may be pre-arrest or post-arrest programs and are established by law enforcement agencies or school districts in cooperation with state attorneys. See s. 985.125, F.S., and *DJJ Youth and Families, Glossary*, <http://www.djj.state.fl.us/youth-families/glossary> (last visited January 12, 2016).

<sup>17</sup> s. 985.12(1), F.S.

<sup>18</sup> Email from Meredith Stanfield, Legislative Affairs Director, Re: Civil Citation Reminder, January 13, 2016 (on file with the Criminal Justice Subcommittee) and DJJ Analysis at p. 2.

<sup>19</sup> *Id.*

<sup>20</sup> DJJ Analysis at p. 2.

<sup>21</sup> The bill defines "law enforcement officer" to have the same meaning as in s. 943.10, F.S. Section 943.10, F.S., defines the term to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

- Possession of alcoholic beverages by a minor;<sup>22</sup>
- Battery, provided the victim approves of the issuance of the civil citation or similar diversion program;<sup>23</sup>
- Petit theft;<sup>24</sup>
- Retail theft;<sup>25</sup>
- Affrays;<sup>26</sup>
- Disorderly conduct;<sup>27</sup>
- Possession of cannabis or other controlled substances;<sup>28</sup> and
- Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia.<sup>29</sup>

The bill *permits* the issuance of a civil citation or similar diversion program for:

- A first-time misdemeanor offense that is not one of the above-mentioned offenses; or
- Any second- or third-time misdemeanors, regardless of whether the offenses are one of the above-mentioned offenses.

Written documentation articulating why an arrest is warranted must be provided when a LEO arrests a juvenile in the above-referenced instances where CCP is permitted.

The bill retains current law regarding:

- The program requirements placed upon a juveniles participating in CCPs, including community service hours, intervention services, reporting to the community service performance monitor, and time frames to complete the program;
- The ability of juveniles to refuse participation in CCPs;
- Participation in CCPs not being considered a referral to DJJ;
- The requirement of DJJ and LEAs to forward civil citations to specified parties; and
- The requirement for CCPs to report the juveniles' outcomes to DJJ.

The bill clarifies that each county must establish one or more CCPs that must individually or collectively serve all juveniles who are alleged to have committed a misdemeanor offense. The bill also clarifies that CCPs do not apply to a:

- Juvenile who is currently alleged to have committed, or is currently charged with, and awaiting final disposition of an offense that would be a felony if committed by an adult.
- Juvenile who has entered a plea of nolo contendere or guilty to, or has been found to have committed, an offense that would be a felony if committed by an adult.
- Misdemeanor arising out of an episode in which the juvenile is also alleged to have committed an offense that would be a felony if committed by an adult.

The bill provides that s. 985.12, F.S., does not modify the authority of a LEO to issue only a simple warning to the juvenile or to notice the juvenile's guardian or parent of the alleged offense.

Lastly, the bill makes conforming changes to ss. 943.051 and 985.11, F.S.

## B. SECTION DIRECTORY:

Section 1. Amends s. 985.12, F.S., relating to civil citation.

<sup>22</sup> s. 562.111, F.S.

<sup>23</sup> s. 784.03, F.S.

<sup>24</sup> s. 812.014(2)(e) and (3)(a), F.S.

<sup>25</sup> s. 812.015(2), F.S.

<sup>26</sup> s. 870.01(1), F.S.

<sup>27</sup> s. 877.03, F.S.

<sup>28</sup> s. 893.13(6)(b), F.S.

<sup>29</sup> s. 893.147, F.S.

Section 2. Amends s. 943.051, F.S., relating to criminal justice information; collection and storage; fingerprinting.

Section 3. Amends s. 985.11, F.S., relating to fingerprinting.

Section 4. Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill would have an indeterminate impact on the State Courts.

In general, civil citation and similar diversion programs reduce court workload to the extent that they are utilized and are successful, because they divert participants in the programs who would otherwise enter the courts system.<sup>30</sup> There were 31,852 juvenile misdemeanor arrests in FY 2014-15, with 536 resulting in commitment to a detention facility.<sup>31</sup> However it is unknown the number of juvenile offenders who admit their offenses to law enforcement officers and would therefore be diverted.

The bill would have an indeterminate impact on the Department of Juvenile Justice.

The bill requires a law enforcement officer to issue civil citations to certain juvenile misdemeanor first offenders who admit to committing said offense. Juveniles diverted from detention facilities would reduce local and state expenditures. However, the number of juvenile misdemeanor first offenders which admitted their offense cannot accurately be determined. Under current law, LEOs have the discretion to issue a warning, issue a civil citation, or report the offense to the juvenile's parent or guardian rather than making an arrest.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill would have an indeterminate impact on local government expenditures because the number of juveniles who would be diverted from detention cannot be accurately determined.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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<sup>30</sup> Email from Sarah Naf, Legislative Affairs Director, State Courts System, *Re: HB 7085*. (On file with the House Justice Appropriation Subcommittee.)

<sup>31</sup> Department of Juvenile Justice, "Delinquency Profile Report", 2015

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 8, 2016, the House Justice Appropriations Subcommittee adopted one amendment. The amendment made the following changes:

- Reorganized and reworded a substantial portion of the bill;
- Changed the language requiring civil citation programs in each judicial circuit to each county;
- Changed “delinquent act” to “violation of law”;
- Replaces the term “Episode” with “ Misdemeanor offense”;
- Removes the term “Eligible Offense”;
- Further clarifies that a juvenile may accept or refuse participation in a civil citation or similar diversion program;
- Replaces the term “Require” with “shall” in reference to the actions of law enforcement officers responding to misdemeanor offenses of a juvenile.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.



1                                   A bill to be entitled  
 2           An act relating to juvenile civil citation and similar  
 3           diversion programs; amending s. 985.12, F.S.;  
 4           requiring the establishment of civil citation and  
 5           similar diversion programs for juveniles; providing  
 6           definitions; specifying program eligibility,  
 7           participation, and implementation requirements;  
 8           providing exceptions; providing applicability;  
 9           amending ss. 943.051 and 985.11, F.S.; conforming  
 10          provisions to changes made by the act; providing an  
 11          effective date.

12  
 13   Be It Enacted by the Legislature of the State of Florida:

14  
 15           Section 1. Section 985.12, Florida Statutes, is amended to  
 16   read:

17           985.12 Civil citation and similar diversion programs.—

18           (1) (a) There is established a process for the use of  
 19   juvenile civil citation and similar diversion programs to  
 20   provide ~~process for the purpose of providing~~ an efficient and  
 21   innovative alternative to custody by the department ~~of Juvenile~~  
 22   ~~Justice~~ for juveniles ~~children~~ who commit nonserious delinquent  
 23   acts and to ensure swift and appropriate consequences. The  
 24   department shall encourage and assist in the implementation and  
 25   improvement of civil citation and ~~programs or other~~ similar  
 26   diversion programs in ~~around~~ the state.

27           **(b)** ~~One or more~~ ~~The~~ civil citation or similar diversion  
 28 ~~programs~~ ~~program~~ shall be established in each county which must  
 29 individually or collectively serve all juveniles who are alleged  
 30 to have committed a violation of law which would be a  
 31 misdemeanor offense if committed by an adult. Such programs must  
 32 be established ~~at the local level~~ with the concurrence of the  
 33 chief judge of the circuit, state attorney, public defender, and  
 34 ~~the~~ head of each local law enforcement agency involved and. ~~The~~  
 35 ~~program~~ may be operated by an entity such as a law enforcement  
 36 agency, the department, a juvenile assessment center, the county  
 37 or municipality, or another entity selected by the county or  
 38 municipality. An entity operating such a ~~the civil citation or~~  
 39 ~~similar diversion~~ program must do so in consultation and  
 40 agreement with the state attorney and local law enforcement  
 41 agencies.

42           **(2)** As used in this section, the term:

43           **(a)** "Law enforcement officer" has the same meaning as  
 44 provided in s. 943.10.

45           **(b)** "Misdemeanor offense" means one or more misdemeanor  
 46 violations of law arising out of the same criminal episode, act,  
 47 or transaction.

48           **(3)** Under such a juvenile civil citation or similar  
 49 diversion program, a law enforcement officer who makes, ~~upon~~  
 50 ~~making~~ contact with a juvenile who admits having committed a  
 51 first-time misdemeanor offense: ~~misdemeanor,~~ ~~may choose to issue~~  
 52 ~~a simple warning or inform the child's guardian or parent of the~~

53 ~~child's infraction, or may~~

54 (a) Shall issue a civil citation to the juvenile or  
 55 require the juvenile's participation in a similar diversion  
 56 program if each violation of law in the misdemeanor offense is  
 57 one of the following:

58 1. Section 562.111, relating to possession of alcoholic  
 59 beverages by persons under age 21;

60 2. Section 784.03(1), relating to battery, if the victim  
 61 approves the juvenile's participation in a civil citation or  
 62 similar diversion program;

63 3. Section 812.014(2)(e) or s. 812.014(3)(a), relating to  
 64 theft;

65 4. Section 812.015(2), relating to retail and farm theft;

66 5. Section 870.01(1), relating to affrays;

67 6. Section 877.03, relating to breach of the peace or  
 68 disorderly conduct;

69 7. Section 893.13(6)(b), relating to possession of certain  
 70 amounts of cannabis or controlled substances; or

71 8. Section 893.147, relating to the use, possession,  
 72 manufacture, delivery, transportation, advertisement, or retail  
 73 sale of drug paraphernalia; or

74 (b) May issue a civil citation to the juvenile or require  
 75 the juvenile's participation in a similar diversion program if  
 76 none of the violations of law in the misdemeanor offense are  
 77 enumerated in paragraph (a).

78 (4) Under such a juvenile civil citation or similar

79 diversion program, a law enforcement officer who makes contact  
 80 with a juvenile who admits having committed a second-time or  
 81 third-time misdemeanor offense may issue a civil citation to the  
 82 juvenile or require the juvenile's participation in a similar  
 83 diversion program, regardless of whether the violations of law  
 84 in the misdemeanor offense are enumerated in paragraph (3)(a).

85 (5) If an arrest is made for a misdemeanor offense subject  
 86 to paragraph (3)(b) or subsection (4), a law enforcement officer  
 87 must provide written documentation as to why the arrest was  
 88 warranted.

89 (6) A law enforcement officer shall advise a juvenile who  
 90 is subject to subsection (3) or subsection (4) that the juvenile  
 91 has the option to refuse the civil citation or other similar  
 92 diversion program and be referred to the department. This option  
 93 may be exercised at any time before completion of the community  
 94 service assignment required under subsection (8). Participation  
 95 in a civil citation or similar diversion program is not  
 96 considered a referral to the department.

97 (7) Upon issuance of the civil citation or documentation  
 98 requiring a similar diversion program, the law enforcement  
 99 officer shall send a copy of such citation or documentation to  
 100 the county sheriff, state attorney, appropriate intake office of  
 101 the department or community service performance monitor  
 102 designated by the department, parent or guardian of the child,  
 103 and victim. The department shall enter such information into the  
 104 juvenile offender information system.

105           (8) A juvenile who elects to participate in a civil  
 106 citation or similar diversion program shall complete, ~~and assess~~  
 107 up to 50 community service hours, ~~and participate~~ require  
 108 ~~participation~~ in intervention services as indicated by an  
 109 assessment of the needs of the juvenile, including family  
 110 counseling, urinalysis monitoring, and substance abuse and  
 111 mental health treatment services.

112           (a) The juvenile shall report to the community service  
 113 performance monitor within 7 business days after the date of  
 114 issuance of the civil citation or documentation for a similar  
 115 diversion program. The juvenile shall spend a minimum of 5 hours  
 116 per week completing the community service assignment. The  
 117 monitor shall immediately notify the intake office of the  
 118 department that a juvenile has reported to the monitor and the  
 119 expected date on which the juvenile will complete the community  
 120 service assignment ~~A copy of each citation issued under this~~  
 121 ~~section shall be provided to the department, and the department~~  
 122 ~~shall enter appropriate information into the juvenile offender~~  
 123 ~~information system. Use of the civil citation or similar~~  
 124 ~~diversion program is not limited to first-time misdemeanors and~~  
 125 ~~may be used in up to two subsequent misdemeanors. If an arrest~~  
 126 ~~is made, a law enforcement officer must provide written~~  
 127 ~~documentation as to why an arrest was warranted.~~

128           (b) At the conclusion of a juvenile's civil citation  
 129 ~~program~~ or similar diversion program, the entity agency  
 130 operating the program shall report the outcome of the program to

131 the department.

132 (c) If the juvenile fails to timely report for a community  
 133 service assignment, complete such assignment, or comply with  
 134 assigned intervention services within the prescribed time, or if  
 135 the juvenile commits a subsequent misdemeanor, the law  
 136 enforcement officer shall issue a report alleging the juvenile  
 137 has committed a delinquent act, at which time a juvenile  
 138 probation officer shall process the original delinquent act as a  
 139 referral to the department and refer the report to the state  
 140 attorney for review ~~The issuance of a civil citation is not~~  
 141 ~~considered a referral to the department.~~

142 (9) ~~(2)~~ The department shall develop guidelines for ~~the~~  
 143 civil citation and similar diversion programs ~~program~~ which  
 144 include intervention services that are based on ~~upon~~ proven  
 145 civil citation or similar diversion programs in ~~within~~ the  
 146 state.

147 (10) This section does not apply to:

148 (a) A juvenile who is currently alleged to have committed,  
 149 or is currently charged with, and awaiting final disposition of  
 150 an offense that would be a felony if committed by an adult.

151 (b) A juvenile who has entered a plea of nolo contendere  
 152 or guilty to, or has been found to have committed, an offense  
 153 that would be a felony if committed by an adult.

154 (c) A misdemeanor arising out of an episode in which the  
 155 juvenile is also alleged to have committed an offense that would  
 156 be a felony if committed by an adult.

157        (11) This section does not modify the authority of a law  
 158 enforcement officer who comes into contact with a juvenile who  
 159 is alleged to have committed a misdemeanor to issue only a  
 160 simple warning to the juvenile or notice to a juvenile's parent  
 161 or guardian of the alleged offense.

162        ~~(3) Upon issuing such citation, the law enforcement~~  
 163 ~~officer shall send a copy to the county sheriff, state attorney,~~  
 164 ~~the appropriate intake office of the department, or the~~  
 165 ~~community service performance monitor designated by the~~  
 166 ~~department, the parent or guardian of the child, and the victim.~~

167        ~~(4) The child shall report to the community service~~  
 168 ~~performance monitor within 7 working days after the date of~~  
 169 ~~issuance of the citation. The work assignment shall be~~  
 170 ~~accomplished at a rate of not less than 5 hours per week. The~~  
 171 ~~monitor shall advise the intake office immediately upon~~  
 172 ~~reporting by the child to the monitor, that the child has in~~  
 173 ~~fact reported and the expected date upon which completion of the~~  
 174 ~~work assignment will be accomplished.~~

175        ~~(5) If the child fails to report timely for a work~~  
 176 ~~assignment, complete a work assignment, or comply with assigned~~  
 177 ~~intervention services within the prescribed time, or if the~~  
 178 ~~juvenile commits a subsequent misdemeanor, the law enforcement~~  
 179 ~~officer shall issue a report alleging the child has committed a~~  
 180 ~~delinquent act, at which point a juvenile probation officer~~  
 181 ~~shall process the original delinquent act as a referral to the~~  
 182 ~~department and refer the report to the state attorney for~~

183 ~~review.~~

184 ~~(6) At the time of issuance of the citation by the law~~  
 185 ~~enforcement officer, such officer shall advise the child that~~  
 186 ~~the child has the option to refuse the citation and to be~~  
 187 ~~referred to the intake office of the department. That option may~~  
 188 ~~be exercised at any time before completion of the work~~  
 189 ~~assignment.~~

190 Section 2. Paragraph (b) of subsection (3) of section  
 191 943.051, Florida Statutes, is amended to read:

192 943.051 Criminal justice information; collection and  
 193 storage; fingerprinting.-

194 (3)

195 (b) A minor who is charged with or found to have committed  
 196 the following offenses shall be fingerprinted and the  
 197 fingerprints shall be submitted electronically to the  
 198 department, unless the minor participates in ~~is issued~~ a civil  
 199 citation or similar diversion program pursuant to s. 985.12:

- 200 1. Assault, as defined in s. 784.011.
- 201 2. Battery, as defined in s. 784.03.
- 202 3. Carrying a concealed weapon, as defined in s.
- 203 790.01(1).
- 204 4. Unlawful use of destructive devices or bombs, as
- 205 defined in s. 790.1615(1).
- 206 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 207 6. Assault or battery on a law enforcement officer, a
- 208 firefighter, or other specified officers, as defined in s.



- 209 | 784.07(2)(a) and (b).
- 210 |       7. Open carrying of a weapon, as defined in s. 790.053.
- 211 |       8. Exposure of sexual organs, as defined in s. 800.03.
- 212 |       9. Unlawful possession of a firearm, as defined in s.
- 213 | 790.22(5).
- 214 |       10. Petit theft, as defined in s. 812.014(3).
- 215 |       11. Cruelty to animals, as defined in s. 828.12(1).
- 216 |       12. Arson, as defined in s. 806.031(1).
- 217 |       13. Unlawful possession or discharge of a weapon or
- 218 | firearm at a school-sponsored event or on school property, as
- 219 | provided in s. 790.115.
- 220 |       Section 3. Paragraph (b) of subsection (1) of section
- 221 | 985.11, Florida Statutes, is amended to read:
- 222 |       985.11 Fingerprinting and photographing.—
- 223 |       (1)
- 224 |       (b) Unless the child is participating in ~~is issued~~ a civil
- 225 | citation or ~~is participating in~~ a similar diversion program
- 226 | pursuant to s. 985.12, a child who is charged with or found to
- 227 | have committed one of the following offenses shall be
- 228 | fingerprinted, and the fingerprints shall be submitted to the
- 229 | Department of Law Enforcement as provided in s. 943.051(3)(b):
- 230 |       1. Assault, as defined in s. 784.011.
- 231 |       2. Battery, as defined in s. 784.03.
- 232 |       3. Carrying a concealed weapon, as defined in s.
- 233 | 790.01(1).
- 234 |       4. Unlawful use of destructive devices or bombs, as

235 defined in s. 790.1615(1).

236 5. Neglect of a child, as defined in s. 827.03(1)(e).

237 6. Assault on a law enforcement officer, a firefighter, or  
238 other specified officers, as defined in s. 784.07(2)(a).

239 7. Open carrying of a weapon, as defined in s. 790.053.

240 8. Exposure of sexual organs, as defined in s. 800.03.

241 9. Unlawful possession of a firearm, as defined in s.  
242 790.22(5).

243 10. Petit theft, as defined in s. 812.014.

244 11. Cruelty to animals, as defined in s. 828.12(1).

245 12. Arson, resulting in bodily harm to a firefighter, as  
246 defined in s. 806.031(1).

247 13. Unlawful possession or discharge of a weapon or  
248 firearm at a school-sponsored event or on school property as  
249 defined in s. 790.115.

250

251 A law enforcement agency may fingerprint and photograph a child  
252 taken into custody upon probable cause that such child has  
253 committed any other violation of law, as the agency deems  
254 appropriate. Such fingerprint records and photographs shall be  
255 retained by the law enforcement agency in a separate file, and  
256 these records and all copies thereof must be marked "Juvenile  
257 Confidential." These records are not available for public  
258 disclosure and inspection under s. 119.07(1) except as provided  
259 in ss. 943.053 and 985.04(2), but shall be available to other  
260 law enforcement agencies, criminal justice agencies, state

261 attorneys, the courts, the child, the parents or legal  
 262 custodians of the child, their attorneys, and any other person  
 263 authorized by the court to have access to such records. In  
 264 addition, such records may be submitted to the Department of Law  
 265 Enforcement for inclusion in the state criminal history records  
 266 and used by criminal justice agencies for criminal justice  
 267 purposes. These records may, in the discretion of the court, be  
 268 open to inspection by anyone upon a showing of cause. The  
 269 fingerprint and photograph records shall be produced in the  
 270 court whenever directed by the court. Any photograph taken  
 271 pursuant to this section may be shown by a law enforcement  
 272 officer to any victim or witness of a crime for the purpose of  
 273 identifying the person who committed such crime.

274 Section 4. This act shall take effect July 1, 2016.