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# **Justice Appropriations Subcommittee**

# **Meeting Packet**

**February 16, 2016  
9:30 a.m. – 11:30 a.m.  
Reed Hall**



**The Florida House of Representatives**  
APPROPRIATION COMMITTEE

Justice Appropriations Subcommittee

**Steve Crisafulli**  
Speaker

**Larry Metz**  
Chair

**MEETING AGENDA**

Reed Hall

February 16, 2016

- I.** Meeting Called To Order
- II.** Opening Remarks by Chair
- III.** Consideration of the following bill(s):
  - CS/HB 1043 - Interviews of Suspects or Defendants with Autism Spectrum Disorders by Criminal Justice Subcommittee and Rep. Hager
  - CS/HB 1095 - Prevention of Acts of War by Criminal Justice Subcommittee and Rep. Ray
  - CS/HB 1301 - Use or Operation of a Drone by Certain Offenders by Criminal Justice Subcommittee and Rep. Metz.
- IV.** Presentation by Clerks of Courts
- V.** Closing Remarks
- VI.** Meeting Adjourned



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1043 Interviews of Suspects or Defendants with Autism Spectrum Disorder  
**SPONSOR(S):** Criminal Justice Subcommittee; Hager and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** 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		McAuliffe	Lloyd
3) Judiciary Committee			

### 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 defines key terms and requires qualified professional to be present to assist a law enforcement officer, if practicable, during an interview of an individual if:

- The individual is a 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 county/municipality mandates provision of article VII, section 18, of the Florida Constitution may apply because agencies will have to procure the services of a qualified professional, if practicable, in certain circumstances.

This bill is effective July 1, 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 qualified professional to be present to assist a law enforcement officer, if practicable, during an interview of an individual if:

- The individual is a 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.
- "Law enforcement officer" has the same meaning as provided in s. 943.10.
- "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 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 procure the services of a qualified professional in certain circumstances.

### **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 procure the services of a qualified professional in certain circumstances.

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

None.

#### D. FISCAL COMMENTS:

The exact number of individuals diagnosed with ASD is unknown. Additionally, most law enforcement agencies do not collect data on the number or type of encounters that law enforcement officers have with individuals diagnosed with ASD. However, the bill requires 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 an autism spectrum disorder; and (3) the law enforcement officer knows or should have known that the individual has been diagnosed with an autism spectrum disorder. While it is likely that a fiscal impact on law enforcement agencies will occur, the amount of that fiscal impact is unknown.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of article VII, section 18, of the Florida Constitution may apply because this bill requires county and municipal law enforcement agencies to procure the services of a qualified professional in certain circumstances. To the extent that counties and municipalities are obligated to pay for a qualified professional's services, the bill could constitute a mandate; however, an exemption may apply to the county/municipality mandates provision if the bill results in an insignificant fiscal impact to county or municipal governments.

##### 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.

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 interviews of 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 to  
 6 assist a law enforcement officer during interviews in  
 7 certain circumstances; providing an effective date.

8  
 9 Be It Enacted by the Legislature of the State of Florida:

10  
 11 Section 1. This act may be cited as the "Wes Kleinert Fair  
 12 Interview Act."

13 Section 2. Section 943.0439, Florida Statutes, is created  
 14 to read:

15 943.0439 Interviews of suspects or defendants with autism  
 16 spectrum disorder.-

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

18 (a) "Autism spectrum disorder" has the same meaning as  
 19 provided in s. 627.6686.

20 (b) "Law enforcement officer" has the same meaning as  
 21 provided in s. 943.10.

22 (c) "Qualified professional" means a mental health  
 23 counselor, a behavioral therapist, or a related professional  
 24 with professional experience in teaching, treating, or caring  
 25 for patients or clients with autism spectrum disorder, or a  
 26 psychiatrist or psychologist.



27        (2) A qualified professional must be present to assist a  
28 law enforcement officer, if practicable, during an interview of  
29 an individual if:

30        (a) The individual is a suspect or defendant in a criminal  
31 case;

32        (b) The individual has been diagnosed with autism spectrum  
33 disorder; and

34        (c) The law enforcement officer knows or should know that  
35 the individual has been diagnosed with autism spectrum disorder.

36        Section 3. 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: Justice Appropriations  
 2 Subcommittee

3 Representative Hager offered the following:  
 4

**Amendment (with title amendment)**

6 Remove lines 15-35 and insert:

7 943.0439 Interviews of victims, suspects, or defendants  
 8 with autism spectrum disorder.-

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

10 (a) "Autism spectrum disorder" has the same meaning as  
 11 provided in s. 627.6686.

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

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

Amendment No. 1

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

19 (e) "Qualified professional" means a mental health  
20 counselor, a behavioral therapist, or a related professional  
21 with professional experience in teaching, treating, or caring  
22 for patients or clients with autism spectrum disorder or a  
23 similar disorder, or a psychiatrist or a psychologist.

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

30 (a) The presence of a qualified professional, a relative,  
31 or a caretaker is practicable;

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

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

37 (3) All expenses related to the attendance of a qualified  
38 professional at an interview shall be borne by the individual  
39 who has been diagnosed with autism spectrum disorder or the  
40 parent or guardian of such individual. If the individual is a  
41 victim, the defendant shall reimburse the victim for all  
42 expenses related to the attendance of the qualified

Amendment No. 1

43 professional, in addition to other restitution or penalties  
44 provided by law, upon conviction of the offense for which the  
45 individual is a victim.

46 (4) Failure to have a qualified professional, a relative,  
47 or a caretaker present as provided by this section is not a  
48 basis for suppression of the statement or the contents of the  
49 interview or for a cause of action against a law enforcement  
50 officer, a correctional officer, or other public safety  
51 official, or an agency employing such officer or official.

52 (5) Each agency employing law enforcement officers,  
53 correctional officers, or other public safety officials must  
54 develop appropriate policies and procedures to implement this  
55 section and provide training to its officers and officials.

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**T I T L E   A M E N D M E N T**

58

59 Remove lines 2-7 and insert:

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60 An act relating to interviews of victims, suspects, or  
61 defendants with autism spectrum disorder; providing a short  
62 title; creating s. 943.0439, F.S.; providing definitions;  
63 requiring a qualified professional, relative, or caretaker to  
64 assist a law enforcement officer, correctional officer, or other  
65 public safety official during interviews in specified  
66 circumstances; providing responsibility for payment of related  
67 expenses; specifying that absence of a qualified professional,  
68 relative, or caretaker may not be a basis for specified actions;

Amendment No. 1

69 requiring agencies to develop and implement appropriate policies  
70 and provide training; providing an effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1095 Prevention of Acts of War  
**SPONSOR(S):** Criminal Justice Subcommittee; Ray and others  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 1712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 4 N, As CS	Malcolm	White
2) Justice Appropriations Subcommittee		Smith	Lloyd
3) State Affairs Committee			

### SUMMARY ANALYSIS

The bill creates a process for the reporting, screening, and possible monitoring and exclusion of certain foreign immigrants and refugees (defined in the bill as a "restricted person"). Specifically, the bill:

- Prohibits any state or local governmental entity or employee from cooperating or assisting with the entry or resettlement of a restricted person into the state unless authorized by the Governor;
- Prohibits any person who receives funds from the state from assisting with the entry or resettlement of a restricted person into the state for a period of 5 years;
- Prohibits any person who assisted with the entry or resettlement of a restricted person into the state from receiving funds from the state for a period of 5 years;
- Requires that any person who assists with the entry or resettlement of a foreign refugee or immigrant into the state through a public or private resettlement assistance program must submit to the Department of Law Enforcement (Department) the personal identifying information of the foreign refugee or immigrant the person assisted;
- Requires the Department to conduct background screenings on new foreign refugees or immigrants and certain current foreign refugees or immigrants who have been in the state since 2011;
- Requires the Department to submit a report of the results of the background screening, including any information indicating whether the foreign refugee or immigrant is a restricted person or an invader, to the Governor and the United States Department of Homeland Security;
- Authorizes the Governor to:
  - monitor a restricted person in the state;
  - to use all powers and resources, including emergency powers and military force, to prevent a restricted person from entering or resettling in the state or to prevent a restricted person residing in the state from committing an act of war; and
  - exempt individuals or categories of individuals from the bill.
- Authorizes the Governor and the Attorney General to review and challenge the lawfulness of any federal law or action that encourage or authorizes the entry or resettlement of a restricted person into the state.

The bill would have an indeterminate fiscal impact on state government revenues and expenditures.

The bill provides that it will be effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The federal government has “broad, undoubted power over the subject of immigration and the status of aliens,” and thus has established an “extensive and complex” set of rules governing the admission and removal of aliens, along with conditions for aliens’ continued presence within the United States.<sup>1</sup> Federal law creates a number of immigrant classifications, such as family members of U.S. citizens, spouses and fiancés of U.S. citizens, employment-based immigrants, asylees, and refugees.<sup>2</sup>

##### **Refugee**

A refugee is generally defined in federal law as a person who is outside his or her home country, and who is unable or unwilling to return to and avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>3</sup> The admission and resettlement of refugees in the United States is governed by the federal Immigration and Nationality Act, as amended by the Refugee Act of 1980.<sup>4</sup> The President is responsible for determining the total number of refugees that will be admitted to the United States each year.<sup>5</sup> Subject to the President’s numerical limitations, the U.S. Citizenship and Immigration Services within the Department of Homeland Security processes applications for refugee status and determines whether to admit an individual to the United States as a refugee.<sup>6</sup>

##### **Refugee Application and Processing**

The refugee application process typically begins when the United Nations High Council on Refugees (UNHCR) refers a refugee applicant’s case to the United States for resettlement.<sup>7</sup> The case is first received and processed by one of nine Department of State-funded Resettlement Support Centers (RSCs) located outside the U.S. The RSC prepares the refugee application for U.S. resettlement consideration.<sup>8</sup> It collects biographic and other information from the applicant to prepare for an adjudication interview and security screening. Enhanced security screening is a joint responsibility of the Department of State, the Department of Homeland Security, and includes the participation of multiple U.S. Government intelligence and security agencies, including the Federal Bureau of Investigation and the Department of Defense.<sup>9</sup>

Officers from the Department of Homeland Security’s U.S. Citizenship and Immigration Services (USCIS) review all the information that the RSC has collected and conduct an in-person interview with

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<sup>1</sup> *Arizona v. United States*, 132 S. Ct. 2492, 2497 (2012).

<sup>2</sup> See Directory of Visa Categories, U.S. Department of State, Bureau of Consular Affairs, <https://travel.state.gov/content/visas/en/general/all-visa-categories.html> (last visited Jan. 29, 2015).

<sup>3</sup> 8 U.S.C. § 1101(a)(42)(A).

<sup>4</sup> 8 U.S.C. §§ 1157, 1521-1524.

<sup>5</sup> 8 U.S.C. § 1157(a)(2)-(3). The President may increase the number of refugees to be admitted in a given year if he determines that an “unforeseen refugee situation exists” and certain other conditions are met. 8 U.S.C. § 1157(b).

<sup>6</sup> *Id.* § 1157(c)(1); 8 C.F.R. 207.

<sup>7</sup> Some refugees can start the application process with the RSC without a referral from UNHCR or other entity. This includes close relatives of asylees and refugees already in the United States and refugees who belong to specific groups set forth in statute or identified by the Department of State as being eligible for direct access to the program.

<sup>8</sup> U.S. Refugee Admissions Program, Application and Case Processing, U.S. Department of State, <http://www.state.gov/j/prm/ra/admissions/index.htm> (last visited Jan. 29, 2015).

<sup>9</sup> Background Briefing on Refugee Screenings and Admissions, U.S. Department of State (Nov. 17, 2015), <http://www.state.gov/r/pa/prs/ps/2015/11/249613.htm> (last visited Jan. 29, 2015).



each refugee applicant before deciding whether to approve the applicant for entry and resettlement in the United States.

Approved refugees undergo a health screening to identify medical needs and to ensure that those with a contagious disease do not enter the United States. Finally, the RSC requests a “sponsorship assurance” from a one of nine U.S.-based resettlement agencies which then decides where in the United States the refugee will be placed, subject to final approval from the Department of State’s Bureau of Population, Refugees, and Migration.<sup>10</sup>

Those refugees who are approved for entry in to the United States by USCIS receive assistance upon arrival in the United States through the Department of State’s Reception and Placement Program – a cooperative public-private program made up of a number of participants. After one year being in the United States, refugees are required to apply for permanent residence (commonly referred to as a green card) and after five years in the United States, a refugee is eligible to apply for U.S. citizenship.<sup>11</sup>

The total processing time for a refugee application varies depending on an applicant’s location and other circumstances, but the average time from the initial UNHCR referral to arrival as a refugee in the United States is about 18-24 months.<sup>12</sup>

### State Involvement in Refugee Settlement

Both the Director of the Office of Refugee Resettlement and the Bureau of Population, Refugees, and Migration are required to consult regularly with state and local governments and private nonprofit agencies concerning the sponsorship process and the distribution of refugees among the states and localities.<sup>13</sup> The Director is also required to “develop and implement, in consultation with representatives of voluntary agencies and state and local governments, policies and strategies for the placement and resettlement of refugees . . . .”<sup>14</sup> Such policies and strategies must:

- insure that a refugee is not placed or resettled in an area highly impacted by the presence of refugees or comparable populations unless the refugee has family residing in that area;
- provide for a mechanism whereby representatives of local affiliates of voluntary agencies regularly meet with state and local government officials to plan and coordinate the appropriate placement of refugees; and
- take into account:
  - the proportion of refugees and comparable entrants in the population in the area;
  - the availability of employment opportunities, affordable housing, and public and private resources for refugees in the area;
  - the likelihood of refugees placed in the area becoming self-sufficient and free from long-term dependence on public assistance; and
  - the secondary migration of refugees to and from the area that is likely to occur.<sup>15</sup>

Congress has also required that, “[w]ith respect to the location of placement of refugees within a State,” the Bureau must, consistent with the above policies and strategies and to the maximum extent possible, take into account recommendations of the state in determining where to place a refugee.<sup>16</sup>

### Refugee Services Program in Florida

<sup>10</sup> 8 U.S.C. § 1522(b)(1)(A); U.S. Gov’t Accountability Office, GAO-12-729, *Refugee Resettlement: Greater Consultation with Community Stakeholders Could Strengthen Program* 4-5, 7 (2012); see U.S. Dep’t of State, *The Reception and Placement Program*, available at <http://www.state.gov/j/prm/ra/receptionplacement/index.htm> (last visited Jan. 29, 2015).

<sup>11</sup> U.S. Dep’t of State, *The Reception and Placement Program*, available at <http://www.state.gov/j/prm/ra/receptionplacement/index.htm> (last visited Jan. 29, 2015).

<sup>12</sup> U.S. Refugee Admissions Program, *supra* note 8.

<sup>13</sup> 8 U.S.C. § 1522(a)(2)(A).

<sup>14</sup> *Id.* § 1522(a)(2)(B).

<sup>15</sup> *Id.* § 1522(a)(2)(C).

<sup>16</sup> *Id.* § 1522(a)(2)(D).

The Office of Refugee Resettlement within the United States Department of Health and Human Services makes federal funds available to states to support the resettlement of refugees.<sup>17</sup> In Florida, the Department of Children and Families' Refugee Services Program is the recipient of these federal funds.<sup>18</sup> Florida's Refugee Services Program is the largest in the nation, receiving more than 27,000 refugees, asylees, and Cuban/Haitian entrants each year.<sup>19</sup> Refugee Services' clients all have a legal immigration status.<sup>20</sup> The Refugee Services Program only provides services to individuals with specific legal immigration statuses: refugees, asylees, Cuban/Haitian entrants, and foreign victims of human trafficking. Cubans account for more than 80% of the arrivals to the state each year.<sup>21</sup>

### **Effect of the Bill**

The bill creates s. 940.0323, F.S., titled "Prevention of acts of war," which creates a process for the reporting, screening, and possible monitoring and exclusion of certain foreign refugees.

### **Definitions**

The following significant terms are defined in the bill:

- An "invader" is a person who is not a United States citizen and who enters into or remains in the state with the intent of doing violence to persons or destroying property as part of any conspiracy or plan to:
  - Violently injure the way of life for citizens of the state;
  - Weaken or conquer all or any portion of the state or the United States; or
  - Wage war against the United States, ally with its enemies, or provide comfort and aid to its enemies.
- A "restricted person" is a foreign refugee or immigrant for whom there is reasonable cause to believe that he or she originates from, or has been in close proximity to, any location designated by the Governor in which: invaders, prospective invaders, or designated foreign terrorist organizations<sup>22</sup> are known to originate, organize, or train.
- The "personal identifying information" of a foreign refugee or immigrant includes passport information and fingerprints, addresses and geographical location of any temporary or permanent residence, and other information required by the Governor under s. 940.0323, F.S.

### **Restriction on Cooperation with the Entry or Resettlement of Restricted Person**

The bill prohibits any state or local governmental entity or employee from cooperating or assisting with the entry or resettlement of a restricted person into the state unless authorized by the Governor.

The bill also prohibits any person who, before, on, or after the effective date of the bill, receives state funds for any purpose from assisting with the entry or resettlement of a restricted person in the state for 5 years after receiving such funds unless the Governor expressly authorizes such assistance. A person, who, after the effective date of the bill, assists with the entry or resettlement of a restricted person in the state, may not receive state funds for any purpose for 5 years after the most recent act of assistance unless the Governor authorizes the assistance.

### **Screening of Refugees and Immigrants**

The bill requires that any person who assists with the entry or resettlement of a foreign refugee or immigrant into the state through a public or private resettlement assistance program must submit to the

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<sup>17</sup> 8 U.S.C. §1522; 45 C.F.R. pt. 400.

<sup>18</sup> Refugee Services Program, Department of Children and Families, *General Program Overview*, <http://www.myflfamilies.com/service-programs/refugee-services/overview> (last visited Jan. 15, 2016).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> 8 U.S.C. §1189 authorizes the United States Secretary of State to designate foreign terrorist organizations.

Department of Law Enforcement (Department) the personal identifying information of the foreign refugee or immigrant the person assisted. The time-frame for submitting the information to the Department is as follows:

- A person who was providing assistance upon the effective date of the bill must submit the information within 30 days after the effective date of the bill.
- A person who provides assistance after the effective date of the bill must submit the information upon agreeing to provide assistance.
- A person who was providing assistance before the effective date of the bill must submit the information within 90 days after the effective date of the bill,.

The bill exempts from the background screening requirement those refugees and immigrants who were born in the western hemisphere and reside in the state on the effective date of the bill.

The Department must conduct a background screening of a foreign refugee or immigrant within 15 days after receipt of the personal identifying information of those refugees and immigrants who enter the state on or after the effective date of the bill. The Department has 30 days to conduct a background screening after receiving the personal identifying information of those refugees and immigrants who entered the state before the effective date of the bill. However, for refugees or immigrants who have continually resided in the state since January 1, 2011, the Department has 90 days after receipt of the personal identifying information to conduct the screening. The Department may cooperate and share information with federal agencies as necessary to conduct the background screening.

The Department must submit a report of the results of the background screening, including any information indicating whether the foreign refugee or immigrant is a restricted person or an invader, to the Governor and the United States Department of Homeland Security. Within 10 days after submitting the report, the Department must submit a separate report to the person who submitted the personal identifying information, unless directed otherwise by the Governor. The Department may also provide background screening information to any local law enforcement agency as directed by the Governor.

### **Gubernatorial Powers**

The bill authorizes the Governor to use all powers and resources, including police powers, emergency powers, and military force, to prevent a restricted person from entering or resettling in the state and to prevent a restricted person residing in the state from committing an act of war, unless the Governor has reasonable cause to believe that the restricted person is not an invader. The governor is also authorized to:

- Monitor the presence of a restricted person entering, resettling, or residing in the state.
- Adopt emergency and permanent rules necessary to implement the bill.
- Adopt forms and procedures for the collection of personal identifying information.
- Exempt individuals or categories of individuals from the bill in order to efficiently use resources for public safety.

### **Actions to Prevent the Resettlement of Restricted Persons**

The bill authorizes the Governor and the Attorney General to review and challenge the lawfulness of any federal law or regulation encouraging or providing for the entry or resettlement of a restricted person into the state. The bill also directs the Governor and the Attorney General to take any action authorized by law to prevent the entry or resettlement into the state of a restricted person by the federal government or any person unless the Governor has reasonable cause to believe that the restricted person is not an invader.

### **Additional Provisions**

The bill provides a number of whereas clauses related to the subject of the bill.

The bill also provides that it does not supplement or limit any emergency or military powers otherwise authorized by law.

The bill provides that it will be effective upon becoming law.

**B. SECTION DIRECTORY:**

Section 1 amends s. 943.0323, F.S., related to prevention of acts of war.

Section 2 provides an effective date of upon becoming law.

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

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

**1. Revenues:**

The bill would have an indeterminate impact on state revenue.

The bill requires the Florida Department of Law Enforcement to collect personal identifying information (PII) and conduct background screenings of foreign refugees and immigrants who use a public or private resettlement assistance program. Pursuant to Rule 11C-6.010 (5) of the Florida Administrative Code, the cost to retain fingerprints at the state level is \$6 per applicant annually. The first year of retention is included in the cost of the state criminal history record check. The cost for a state and national criminal history record check is \$38.75, of which \$24 goes into the FDLE Operating Trust Fund. An accurate estimate of the potential increase of PII and background screenings cannot be quantified at this time.

**2. Expenditures:**

The bill would have an indeterminate impact on state expenditures.

The bill may result in increased workload due to the additional background screenings the department would conduct. According to FDLE, "these duties could not be absorbed with current resources."<sup>23</sup> The number of additional background screenings that would be required is unknown; therefore an exact cost cannot be accurately quantified at this time.

**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:**

The bill does not appear to have any direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

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<sup>23</sup> Florida Department of Law Enforcement, "FLDE Legislative Bill Analysis: HB 1095", January 26, 2016, On file with the House Justice Appropriations Subcommittee,  
**STORAGE NAME:** h1095b.JUAS.DOCX  
**DATE:** 2/11/2016

## 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:

### Preemption

It appears that to the extent the bill attempts to regulate immigration, it may be precluded under principles of preemption, specifically field preemption, pursuant to the Supremacy Clause of the United States Constitution.<sup>25</sup> “Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards.”<sup>26</sup> While the United States Supreme Court has “never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus per se pre-empted,” it has found field preemption in certain core areas of immigration law, such as the field of alien registration and determining what aliens may be admitted into the country.<sup>27</sup> The Court has stated that the “[p]ower to regulate immigration,” which it described as the power to “determin[e] who should or should not be admitted into the country, and the conditions under which a legal entrant may remain,” is “unquestionably exclusively a federal power.”<sup>28</sup> Consequently, it appears that only the federal government has the authority to decide which aliens should be admitted to the United States as refugees.<sup>29</sup>

### Due Process and Equal Protection

The United States Supreme Court has held that the due process and equal protection clauses of the Fourteenth Amendment “encompass lawfully admitted resident aliens as well as citizens of the United States and entitles both citizens and aliens to the equal protection of the laws of the State in which they reside.”<sup>30</sup> Accordingly, statutory “classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny.”<sup>31</sup> The Court has explained that “[a]liens as a class are a prime example of a ‘discrete and insular’ minority for whom such heightened judicial solicitude is appropriate [, thus] the power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits.”

### Right to Travel

Freedom of movement and interstate travel has been recognized by the United States Supreme Court as a fundamental right under the United States Constitution since 1868.<sup>32</sup> The Court “has made it clear that, whatever may be the scope of the constitutional right of interstate travel, aliens

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<sup>25</sup> U.S. Const. art. VI, cl. 2. Field preemption occurs when Congress has determined to exercise exclusive authority and “displace state law altogether” in a particular field. *Arizona v. United States*, 132 S. Ct. 2492, 2501 (2012).

<sup>26</sup> *Arizona*, 132 S. Ct. at 2502.

<sup>27</sup> *DeCanas v. Bica*, 424 U.S. 351, 355 (1976); *Arizona*, 132 S. Ct. at 2502 (“the Federal Government has occupied the field of alien registration”); *Hines v. Davidowitz*, 312 U.S. 52, 66-67 (1941) (“where the federal government, in the exercise of its superior authority in this field, has enacted . . . a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations”); *Toll v. Moreno*, 458 U.S. 1, 11 (1982) (“The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States . . .”)

<sup>28</sup> 424 U.S. at 354-55; see also *Arizona*, 132 S. Ct. at 2498 (“The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”); *Hines*, 312 U.S. at 62 (recognizing “the supremacy of the national power in the general field of foreign affairs, including power over immigration, naturalization and deportation”).

<sup>29</sup> See Op. Tenn. Att’y Gen. 15-17 (Nov. 30, 2015); *United States v. Alabama*, 691 F.3d 1269, 1295 (11th Cir. 2012) (“Congress intended that the Executive Branch determine who must be removed and who may permissibly remain. []Alabama has taken it upon itself to unilaterally determine that any alien unlawfully present in the United States cannot live within the state’s territory, regardless of whether the Executive Branch would exercise its discretion to permit the alien’s presence. This is not a decision for Alabama to make . . .”)

<sup>30</sup> *Graham v. Richardson*, 403 U.S. 365, 371 (1971) (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); *Truax v. Raich*, 239 U.S. 33, 39, (1915); *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 420 (1948)).

<sup>31</sup> *Graham*, 403 U.S. at 371-72 (1971) (citing *United States v. Carolene Products Co.*, 304 U.S. 144, 152—153, n. 4 (1938))

<sup>32</sup> See *Crandall v. Nevada*, 73 U.S. 35

lawfully within this country have a right to enter and abide in any State in the Union 'on an equality of legal privileges with all citizens under nondiscriminatory laws.'<sup>33</sup>

**B. RULE-MAKING AUTHORITY:**

The bill authorizes the governor to adopt emergency and permanent rules necessary to implement the bill and to adopt forms and procedures for the collection of personal identifying information as required by the bill.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 3, 2016, the Criminal Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- revise the definition of "restricted person" to authorize the Governor to designate the locations from which a refugee or immigrant originates that classifies him or her as a "restricted person";
- add locations in which a foreign terrorist organization organizes, operates, or trains to the types of locations from which a refugee or immigrant originates that classifies him or her as a "restricted person";
- exempt immigrants and refugees from the western hemisphere who are currently in the state from the required background screening;
- make technical and stylistic changes.

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

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<sup>33</sup>*Graham*, 403 U.S. at 377-7); see *Takahashi*, 334 U.S. at 420 ("The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all persons lawfully in this country shall abide 'in any state' on an equality of legal privileges with all citizens under non-discriminatory laws.")



27 | an effective date.

28 |

29 | WHEREAS, since the entry into Florida of foreign persons  
 30 | who trained in the state and subsequently attacked the United  
 31 | States on September 11, 2001, Florida has remained under  
 32 | imminent threat of the surreptitious invasion of foreign persons  
 33 | intending to conquer or violently destroy the way of life for  
 34 | the citizens of the United States and its constituent states,  
 35 | and

36 | WHEREAS, such persons are organized or affiliated with  
 37 | armies presently holding and administering territories outside  
 38 | the United States and insurgencies engaged in capturing such  
 39 | territories, and

40 | WHEREAS, such persons have and may continue to find safe  
 41 | haven through alliances with foreign governments or the  
 42 | sympathies of nongovernmental organizations, and

43 | WHEREAS, the State of Florida has sufficient sovereign  
 44 | power to defend itself against invasion or imminent threat of  
 45 | invasion pursuant to Section 10, Article I of the United States  
 46 | Constitution, and

47 | WHEREAS, the State Constitution and Florida law fully  
 48 | empower the Governor, as commander-in-chief of all military  
 49 | forces in Florida not in active service of the United States  
 50 | Armed Forces, including the general militia, to defend the state  
 51 | against the entry and actions of such persons, and

52 | WHEREAS, principles of federalism applied in various United



53 States Supreme Court decisions preclude the commandeering of  
54 state agencies in the pursuit of federal policies or in  
55 execution of federal law, except by consent of the state, NOW,  
56 THEREFORE,

57  
58 Be It Enacted by the Legislature of the State of Florida:

59  
60 Section 1. Section 943.0323, Florida Statutes, is created  
61 to read:

62 943.0323 Prevention of acts of war.-

63 (1) DEFINITIONS.-As used in this section, the term:

64 (a) "Foreign refugee or immigrant" means a person who is  
65 not a United States citizen but who seeks entry into or  
66 resettlement in the state.

67 (b) "Invader" means a person who is not a United States  
68 citizen who enters into or remains in the state with the intent  
69 of doing violence to persons or destroying property as part of  
70 any conspiracy or plan to:

71 1. Violently injure the way of life for citizens of the  
72 state;

73 2. Weaken or conquer all or any portion of the state or of  
74 the United States; or

75 3. Wage war against the United States to ally with its  
76 enemies or provide comfort and aid to its enemies.

77 (c) "Personal identifying information" of a foreign  
78 refugee or immigrant includes passport information and

79 fingerprints, addresses and geographical location of any  
 80 temporary or permanent residence that has been or may be used,  
 81 and other information required by the Governor under this  
 82 section.

83 (d) "Restricted person" means a foreign refugee or  
 84 immigrant for whom there is reasonable cause to believe that he  
 85 or she originates from, or has been in close proximity to, any  
 86 location designated by the Governor in which:

87 1. Invaders or prospective invaders are known to  
 88 originate, organize, or train for violent acts of war; or

89 2. A foreign terrorist organization designated by the  
 90 United States Secretary of State pursuant to 8 U.S.C. s. 1189  
 91 organizes, operates, or trains.

92 (2) NONCOOPERATION WITH ENTRY OR RESETTLEMENT OF  
 93 RESTRICTED PERSONS.—

94 (a) The state or an agency or employee thereof, or a  
 95 political subdivision of the state or an agency or employee  
 96 thereof, may not cooperate with or assist any person, including  
 97 a federal agent, with the entry into or resettlement in the  
 98 state of a restricted person unless the Governor expressly  
 99 authorizes such cooperation or assistance.

100 (b) A person who, on or after the effective date of this  
 101 act, receives state funds for any purpose may not, for 5 years  
 102 after receiving such funds, assist with the entry into or  
 103 resettlement in the state of a restricted person unless the  
 104 Governor expressly authorizes such assistance.

105 (c) A person who, after the effective date of this act,  
 106 assists with the entry into or resettlement in the state of a  
 107 restricted person may not receive state funds for any purpose  
 108 for 5 years after the most recent act of such assistance unless  
 109 the Governor expressly authorizes such assistance.

110 (3) SCREENING OF FOREIGN REFUGEES AND IMMIGRANTS.—

111 (a) A person who, upon the effective date of this act, is  
 112 engaged through a public or private resettlement assistance  
 113 program in assisting with the entry into or resettlement in the  
 114 state of a foreign refugee or immigrant, shall, within 30 days  
 115 after the effective date of this act, submit to the department  
 116 the personal identifying information of any foreign refugee or  
 117 immigrant the person assisted before the effective date of this  
 118 act, unless the foreign refugee or immigrant was born in the  
 119 Western Hemisphere.

120 (b) A person who, after the effective date of this act,  
 121 engages through any public or private resettlement assistance  
 122 program in assisting with the entry into or resettlement in the  
 123 state of a foreign refugee or immigrant, shall, upon agreeing to  
 124 provide such assistance, submit to the department the personal  
 125 identifying information of the foreign refugee or immigrant.

126 (c) A person who, before the effective date of this act,  
 127 engaged through any public or private resettlement assistance  
 128 program in assisting with the entry into or resettlement in the  
 129 state of a foreign refugee or immigrant, shall, within 90 days  
 130 after the effective date of this act, submit to the department

131 the personal identifying information of each such foreign  
 132 refugee or immigrant currently residing in this state, unless  
 133 the foreign refugee or immigrant was born in the Western  
 134 Hemisphere.

135 (d)1. The department shall conduct a background screening  
 136 of a foreign refugee or immigrant within 15 days after receipt  
 137 of his or her personal identifying information pursuant to  
 138 paragraph (a) or paragraph (b), within 30 days after receipt of  
 139 his or her personal identifying information pursuant to  
 140 paragraph (c), or within 90 days after receipt of his or her  
 141 personal identifying information for any foreign refugee or  
 142 immigrant continuously residing in the state since January 1,  
 143 2011. The department may cooperate and share information with  
 144 federal agencies as may be expedient in conducting the  
 145 background screening.

146 2. The department shall submit a report, as soon as  
 147 practicable, of the results of the background screening,  
 148 including any information indicating whether the foreign refugee  
 149 or immigrant is a restricted person or an invader, to the  
 150 Governor and the United States Department of Homeland Security.  
 151 Within 10 days after submitting such report, the Department of  
 152 Law Enforcement shall submit a separate report to the person who  
 153 submitted the personal identifying information, unless directed  
 154 otherwise by the Governor. The department may also provide  
 155 background screening information to any local law enforcement  
 156 agency as directed by the Governor.

157        (4) GUBERNATORIAL POWERS.—The Governor is authorized to:  
 158        (a) Use all powers and resources, including police powers,  
 159 emergency powers, and military force, to prevent a restricted  
 160 person from entering into or resettling in the state and to  
 161 prevent a restricted person residing in the state from  
 162 committing violent acts of war, unless the Governor has  
 163 reasonable cause to believe that the restricted person is not an  
 164 invader.  
 165        (b) Monitor the presence of a restricted person entering  
 166 into, resettling in, or residing in the state.  
 167        (c) Adopt emergency rules and permanent rules necessary to  
 168 implement this section.  
 169        (d) Adopt forms and procedures for the collection of  
 170 personal identifying information under this section.  
 171        (e) Exempt individuals or categories of individuals from  
 172 this section in order to efficiently use departmental resources  
 173 for public safety.  
 174        (5) ACTIONS TO PREVENT THE RESETTLEMENT OF RESTRICTED  
 175 PERSONS.—  
 176        (a) The Governor and the Attorney General are  
 177 independently authorized to review and challenge the lawfulness  
 178 of any federal law or regulation encouraging or providing for  
 179 the entry into or resettlement of restricted persons in the  
 180 state.  
 181        (b) The Governor and the Attorney General are  
 182 independently directed to take any action authorized by law to

183 | prevent the entry into or resettlement in the state of a  
 184 | restricted person by the Federal Government or any person unless  
 185 | the Governor has reasonable cause to believe that the restricted  
 186 | person is not an invader.

187 |       (6) APPLICABILITY.—This section supplements and does not  
 188 | limit any emergency or military powers otherwise authorized by  
 189 | law.

190 |       Section 2. This act shall take effect upon becoming a law.

Amendment No.

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: Justice Appropriations  
2 Subcommittee

3 Representative Ray offered the following:

4  
5 **Amendment (with title amendment)**

6 Between lines 156 and 157, insert:

7 (e) Any fees that must be assessed by the department to  
8 process and retain personal identifying information, and conduct  
9 a background screening of a foreign refugee or immigrant  
10 pursuant to this subsection shall be paid for by either the  
11 foreign refugee or immigrant subject to the background  
12 screening, or the person who is engaged through a public or  
13 private resettlement assistance program in assisting with the  
14 entry into or resettlement in the state of the foreign refugee  
15 or immigrant subject to the background screening. The department  
16 may not assess under this paragraph a fee higher than the lowest  
17 fee permitted under s. 943.053.

Amendment No.

18  
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**T I T L E   A M E N D M E N T**

Remove lines 16-17 and insert:



Security, and certain persons; specifying the fees for personal identifying information and background screenings are at the expense of the foreign refugee or immigrant, or the individuals or entities assisting with entry or resettlement in the state; authorizing the Governor to exercise certain powers, monitor the





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 1301 Use or Operation of a Drone by Certain Offenders  
**SPONSOR(S):** Criminal Justice Subcommittee; Metz  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 510

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Keegan	White
2) Justice Appropriations Subcommittee		Smith 	Lloyd 
3) Judiciary Committee			

**SUMMARY ANALYSIS**

A drone is an unmanned aircraft that is manufactured in varying sizes and can be flown by remote control or on a programmed flight path. Drones can be equipped with surveillance devices such as thermal imaging cameras, laser scanners, and devices that intercept electronic transmissions. The Federal Aviation Administration (FAA) is in charge of overseeing the integration of drones into U.S. airspace. Using drones for research or commercial purposes requires special FAA approval, but flying model aircraft or drones for recreational purposes does not.

The Florida Sexual Predators Act (Act) contains various registration requirements for sexual predators, and provides in part, that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of a list of enumerated offenses.

The bill creates a third degree felony for a sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, a violation or attempted violation of a qualifying offense, to use or operate a drone for the purpose of viewing or recording an image of a minor who is on or at the minor's domicile or on or at a business, school, child care facility, park, playground, or other place where children regularly congregate.

The bill would have an insignificant impact on prison beds.

The bill is effective October 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Drones**

A drone is an unmanned aircraft that can be flown by remote control or on a programmed flight path<sup>1</sup> and can be as small as an insect or as large as a commercial airliner.<sup>2</sup> Drones can be equipped with various devices such as thermal imaging cameras,<sup>3</sup> laser scanners,<sup>4</sup> and devices that intercept electronic transmissions.<sup>5</sup> The demand for drones is concentrated primarily in military, civil government, and commercial use.<sup>6</sup>

##### Non-Military Drone Use

The Federal Aviation Administration (FAA) is in charge of overseeing the integration of drones into U.S. airspace.<sup>7</sup> In doing so, it must balance the integration of drones with the safety of the nation's airspace.<sup>8</sup> The FAA has allowed the use of drones since 1990 for essential public operations such as firefighting, disaster relief, search and rescue, law enforcement, border patrol, and scientific research.<sup>9</sup> More recently the FAA has exercised more control over the operation of drones in national airspace, such as prohibiting drone operations over major urban areas.<sup>10</sup>

Flying model aircraft or drones for recreational purposes does not require FAA approval, but recreational users must still follow the laws and safety guidelines that apply to operating drones in national airspace.<sup>11</sup> The FAA authorizes non-recreational drone operations through separate processes for private<sup>12</sup> and governmental<sup>13</sup> drone operators.

##### **Sex Offenders**

Section 775.21, F.S., provides the Florida Sexual Predators Act (Act). The Act contains various registration requirements for sexual predators, and provides in part, that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of:

- 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:

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<sup>1</sup> Richard M. Thompson, II, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, CONGRESSIONAL RESEARCH SERVICE (April 3, 2013), [www.fas.org/sgp/crs/natsec/R42701.pdf](http://www.fas.org/sgp/crs/natsec/R42701.pdf).

<sup>2</sup> Jeremiah Gertler, *U.S. Unmanned Aerial Systems*, CONGRESSIONAL RESEARCH SERVICE (Jan. 3, 2012), [www.fas.org/sgp/crs/natsec/R42136.pdf](http://www.fas.org/sgp/crs/natsec/R42136.pdf).

<sup>3</sup> See, e.g., MICRODRONES, *Products*, <https://www.microdrones.com/en/products/equipment/> (last visited Jan. 26, 2016).

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

<sup>5</sup> Andy Greenberg, *Flying Drone Can Crack Wi-Fi Networks, Snoop on Cell Phones*, FORBES (July 28, 2011), <http://www.forbes.com/sites/andygreenberg/2011/07/28/flying-drone-can-crack-wifi-networks-snoop-on-cell-phones/#5cab449e66f9> (last visited Jan. 26, 2016).

<sup>6</sup> FEDERAL AVIATION ADMIN., *FAA Aerospace Forecast: Fiscal Years 2011-2031*, [https://www.faa.gov/data\\_research/aviation/aerospace\\_forecasts/media/2011%20Forecast%20Doc.pdf](https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/2011%20Forecast%20Doc.pdf) (last visited Jan. 26, 2016).

<sup>7</sup> FEDERAL AVIATION ADMIN., *Unmanned Aircraft Systems*, <https://www.faa.gov/uas/> (last visited Jan. 26, 2016).

<sup>8</sup> FEDERAL AVIATION ADMIN., *Fact Sheet—Unmanned Aircraft Systems (UAS)*, (Feb. 15, 2015) [http://www.faa.gov/news/fact\\_sheets/news\\_story.cfm?newsId=18297](http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297) (last visited Jan. 26, 2016).

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

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*; FEDERAL AVIATION ADMIN., *Model Aircraft Operations*, [https://www.faa.gov/uas/model\\_aircraft/](https://www.faa.gov/uas/model_aircraft/) (last visited Jan. 27, 2016) (providing a list of general safety guidelines that recreational model aircraft operators must follow).

<sup>12</sup> Private drone operators are non-governmental and non-recreational operators, often referred to as "civil" operators. FEDERAL AVIATION ADMIN., *Civil Operations (Non-Governmental)*, [https://www.faa.gov/uas/civil\\_operations/](https://www.faa.gov/uas/civil_operations/) (last visited Jan. 27, 2016).

<sup>13</sup> Federal Aviation Admin., *Public Operations (Governmental)*, [https://www.faa.gov/uas/public\\_operations/](https://www.faa.gov/uas/public_operations/) (last visited Jan. 27, 2016).

- 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>14</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. (buying or selling minors); or
- Any felony violation, or attempted violation 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 offender is not the victim's parent or guardian;<sup>15</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>16</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
- The offender has previously been convicted of any of the statutes enumerated above, including s. 847.0133, F.S. (protection of minors / obscenity).<sup>17</sup>

If the court makes a written finding that the offender is a sexual predator, the offender must be designated as a sexual predator, must register or be registered as a sexual predator with the department as provided<sup>18</sup> in the Act, and is subject to the community and public notification as provided<sup>19</sup> in the Act.<sup>20</sup>

Section 775.21(10)(b), F.S., creates a third degree felony<sup>21</sup> for certain acts committed by a sexual predator who has been held criminally liable for committing crimes enumerated in the Act. Specifically, the section provides that a sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication of guilt, any violation, or attempted violation, of ss. 787.01, 787.02, or 787.025(2)(c), F.S., where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S., excluding s. 794.011(10), F.S.; ss. 794.05; former

<sup>14</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).

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

<sup>16</sup> Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

<sup>17</sup> s. 775.21(4)(a)1.a., F.S.

<sup>18</sup> Registration requirements are provided under s. 775.21(6), F.S.

<sup>19</sup> Community and public notification requirements are provided under s. 775.21(7), F.S.

<sup>20</sup> s. 775.21(4)(c), F.S.

<sup>21</sup> 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.

796.03; former 796.035; 800.04; 827.071; 847.0133; 847.0135(5); 847.0145; or 985.701(1), F.S.; or a violation of a similar law of another jurisdiction when the victim of the offense was a minor, and who works, whether for compensation or as a volunteer, at any business, school, child care facility, park, playground, or other place where children regularly congregate, commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

Florida law currently does not have any similar provisions in place to prohibit a sexual offender from using a drone or similar device for the purpose of viewing a minor.

### **Effect of the Bill**

The bill creates s. 810.146, F.S., making it a third degree felony for a sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, a violation or attempted violation of a qualifying offense, to use or operate a drone for the purpose of viewing or recording an image of a minor who is on or at the minor's domicile or on or at a business, school, child care facility, park, playground, or other place where children regularly congregate.

The bill defines key terms:

- A drone is defined in accordance with s. 934.50, F.S.
- A qualifying offense is an offense under:
  - Sections 787.01 (kidnapping), 787.02 (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), involving a minor victim;
  - 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 involving persons less than 16 years of age);
  - Section 827.071, F.S. (sexual performance by a child);
  - Section 847.0133, F.S. (protection of minors / obscenity);
  - Section 847.0135(5), F.S. (lewd and lascivious exhibition via a computer transmission);
  - Section 847.0145, F.S. (selling or buying of minors);
  - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); or
  - A violation of another jurisdiction's similar law when the victim of the offense was a minor; and

The bill adds the new criminal prohibition to the Offense Severity Ranking Chart.

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

Section 1. Creates s. 810.146, F.S., relating to use or operation of a drone by certain offenders; penalty.

Section 2. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 3. 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:

The Criminal Justice Impact Conference met on January 29, 2016, and determined this bill would have an insignificant impact on prison beds.

Per FDLE, as of June 2015, there were 3,051 sexual predators in Florida who were not incarcerated or civilly committed. There is no available data on drone usage by sexual predators.<sup>22</sup>

There were 80 sexual predators sentenced in FY 14-15 for the various penalties listed under s. 775.21, F.S., with 46 sentenced to prison, which generally involved failure to report address changes, providing false information, and failure to register. There were no sexual predators sentenced for "working, whether for compensation or as a volunteer, at any business, school, child care facility, park, playground, or other place where children regularly congregate."<sup>23</sup>

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:

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<sup>22</sup> Criminal Justice Impact Conference, "SB 510- Sexual Predators (Identical HB 1301)", January 29, 2016, On file with the House Justice Appropriations Subcommittee.

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

The bill places the new criminal prohibition in s. 775.21, F.S., which is intended to govern administrative sexual predator registration rather than criminal prohibitions. The criminal prohibition should be moved to a section of statute more appropriate for criminal prohibitions.

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

On February 3, 2016, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Moves the criminal prohibition from s. 775.21, F.S., into newly-created s. 810.146, F.S.
- Removes unnecessary conforming changes.
- Clarifies language in the bill.

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

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A bill to be entitled  
 An act relating to use or operation of a drone by  
 certain offenders; creating s. 810.146, F.S.;  
 prohibiting the use or operation of a drone by certain  
 offenders for the purpose of viewing or recording an  
 image of a minor in specified locations; providing a  
 definition; providing criminal penalties; amending s.  
 921.0022, F.S.; assigning an offense severity ranking  
 in the Criminal Punishment Code; providing an  
 effective date.

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

Section 1. Section 810.146, Florida Statutes, is created  
 to read:

810.146 Use or operation of a drone by certain offenders;  
 penalty.-

(1) A sexual predator who has been convicted of or found  
 to have committed, or has pled nolo contendere or guilty to,  
 regardless of adjudication, a violation or attempted violation  
 of a qualifying offense may not use or operate a drone, as  
 defined in s. 934.50, for the purpose of viewing or recording an  
 image of a minor who is on or at the minor's domicile or on or  
 at a business, school, child care facility, park, playground, or  
 other place where children regularly congregate.

(2) For the purposes of this section, a qualifying offense



27 is an offense under s. 787.01, s. 787.02, or s. 787.025(2)(c),  
 28 when the victim of the offense was a minor; s. 794.011,  
 29 excluding s. 794.011(10); s. 794.05; former s. 796.03; former s.  
 30 796.035; s. 800.04; s. 827.071; s. 847.0133; s. 847.0135(5); s.  
 31 847.0145; or s. 985.701(1); or a violation of a similar law of  
 32 another jurisdiction when the victim of the offense was a minor.

33 (3) A violation of this section is a felony of the third  
 34 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 35 775.084.

36 Section 2. Paragraph (g) of subsection (3) of section  
 37 921.0022, Florida Statutes, is amended to read:

38 921.0022 Criminal Punishment Code; offense severity  
 39 ranking chart.—

40 (3) OFFENSE SEVERITY RANKING CHART

41 (g) LEVEL 7

42

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury

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			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.
46	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
47	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
48	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
49	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
50	456.065(2)	3rd	Practicing a health care profession without a license.

51

456.065(2) 2nd Practicing a health care profession without a license which results in serious bodily injury.

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458.327(1) 3rd Practicing medicine without a license.

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459.013(1) 3rd Practicing osteopathic medicine without a license.

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460.411(1) 3rd Practicing chiropractic medicine without a license.

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461.012(1) 3rd Practicing podiatric medicine without a license.

56

462.17 3rd Practicing naturopathy without a license.

57

463.015(1) 3rd Practicing optometry without a license.

58

464.016(1) 3rd Practicing nursing without a license.

59	465.015(2)	3rd	Practicing pharmacy without a license.
60	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
61	467.201	3rd	Practicing midwifery without a license.
62	468.366	3rd	Delivering respiratory care services without a license.
63	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
64	483.901(9)	3rd	Practicing medical physics without a license.
65	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
66	484.053	3rd	Dispensing hearing aids without a license.
67			

	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.
68	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.
69	560.125(5) (a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
70	655.50(10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
71	775.21(10) (a)	3rd	Sexual predator; failure to register; failure to renew driver license or

			identification card; other registration violations.
72	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
73	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
74	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
75	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
76	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular

			homicide).
77	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
78	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
79	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
80	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
81	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
82	784.048(7)	3rd	Aggravated stalking; violation of court order.
83	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
84			

85	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
86	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
87	784.081 (1)	1st	Aggravated battery on specified official or employee.
88	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
89	784.083 (1)	1st	Aggravated battery on code inspector.
90	787.06 (3) (a) 2.	1st	Human trafficking using coercion for labor and services of an adult.
	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.



91	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
92	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
93	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
94	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
95	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
96	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

97	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
98	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.
99	796.05 (1)	1st	Live on earnings of a prostitute; 2nd offense.
100	796.05 (1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
101	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
102	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.
103	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.
104	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
105	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
106	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
107	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
108	810.02 (3) (e)	2nd	Burglary of authorized

			emergency vehicle.
109	<u>810.146</u>	<u>3rd</u>	<u>Use or operation of a drone by certain offenders.</u>
110	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.
111	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
112	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
113	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
114	812.0145 (2) (a)	1st	Theft from person 65 years of

			age or older; \$50,000 or more.
115	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
116	812.131(2)(a)	2nd	Robbery by sudden snatching.
117	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
118	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
119	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
120	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
121	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
122			

123	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.
124	817.535(2) (a)	3rd	Filing false lien or other unauthorized document.
125	825.102(3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
126	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.
127	827.03(2) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
	827.04(3)	3rd	Impregnation of a child under

			16 years of age by person 21 years of age or older.
128	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
129	838.015	2nd	Bribery.
130	838.016	2nd	Unlawful compensation or reward for official behavior.
131	838.021(3)(a)	2nd	Unlawful harm to a public servant.
132	838.22	2nd	Bid tampering.
133	843.0855(2)	3rd	Impersonation of a public officer or employee.
134	843.0855(3)	3rd	Unlawful simulation of legal process.
135	843.0855(4)	3rd	Intimidation of a public officer or employee.
136			

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137	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
138	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
139	872.06	2nd	Abuse of a dead human body.
140	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
141	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 facility, school, or



			state, county, or municipal park or publicly owned recreational facility or community center.
142	893.13(1)(e)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 property used for religious services or a specified business site.
143	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
144	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
145	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.

146

893.135 (1) (c) 1.a. 1st Trafficking in illegal drugs,  
more than 4 grams, less than 14  
grams.

147

893.135 (1) (c) 2.a. 1st Trafficking in hydrocodone, 14  
grams or more, less than 28  
grams.

148

893.135 (1) (c) 2.b. 1st Trafficking in hydrocodone, 28  
grams or more, less than 50  
grams.

149

893.135 (1) (c) 3.a. 1st Trafficking in oxycodone, 7  
grams or more, less than 14  
grams.

150

893.135 (1) (c) 3.b. 1st Trafficking in oxycodone, 14  
grams or more, less than 25  
grams.

151

893.135 (1) (d) 1. 1st Trafficking in phencyclidine,  
more than 28 grams, less than  
200 grams.

152

893.135 (1) (e) 1. 1st Trafficking in methaqualone,

			more than 200 grams, less than 5 kilograms.
153	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
154	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
155	893.135 (1)(h)1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
156	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
157	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
158	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing

of controlled substance.

159

896.101(5)(a) 3rd Money laundering, financial transactions exceeding \$300 but less than \$20,000.

160

896.104(4)(a)1. 3rd Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.

161

943.0435(4)(c) 2nd Sexual offender vacating permanent residence; failure to comply with reporting requirements.

162

943.0435(8) 2nd Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.

163

943.0435(9)(a) 3rd Sexual offender; failure to comply with reporting requirements.

164

165	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
166	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
167	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
168	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
169	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure

170	985.4815(10)	3rd	to respond to address verification; providing false registration information.
171	985.4815(12)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
172	985.4815(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
173			Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
174	Section 3. This act shall take effect October 1, 2016.		





FLORIDA  
**COURT CLERKS &  
COMPTROLLERS**

**HOUSE APPROPRIATIONS  
SUBCOMMITTEE ON CRIMINAL AND CIVIL JUSTICE**

**Hon. Karen Rushing, Sarasota County Clerk of Court  
Chair, Legislative Committee**

**Tuesday, February 16, 2016**



# Consultant's Findings

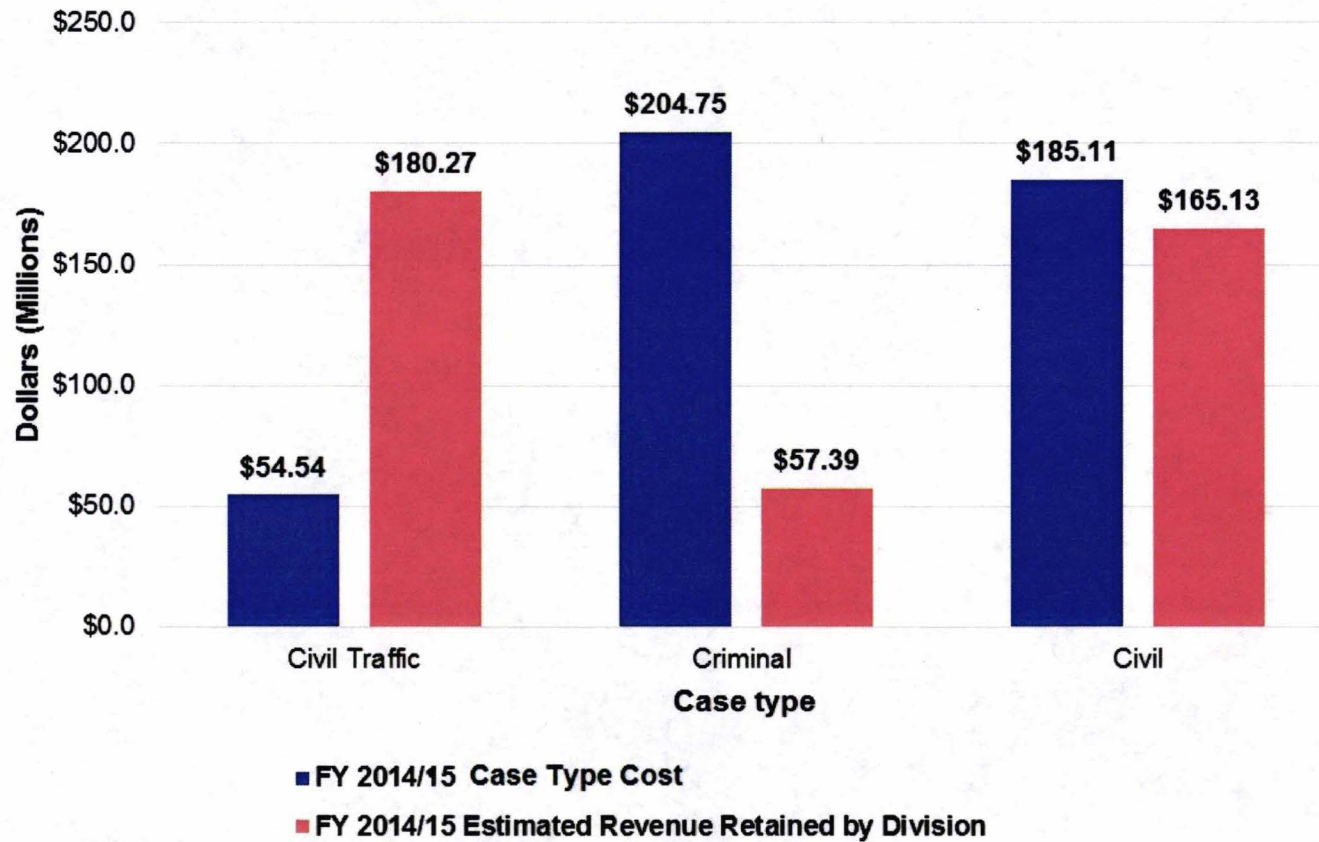
2

- Case Filings are down, coupled with Increased Workload
- Revenue does not correlate with workload
- New and expanded mandates drive workload and costs
- Clerk budgets are not keeping pace with costs
- Resources are inadequate to meet workload demand

# Consultant Findings

3

Estimated annual revenues as compared to authorized expenditure for FY14-15



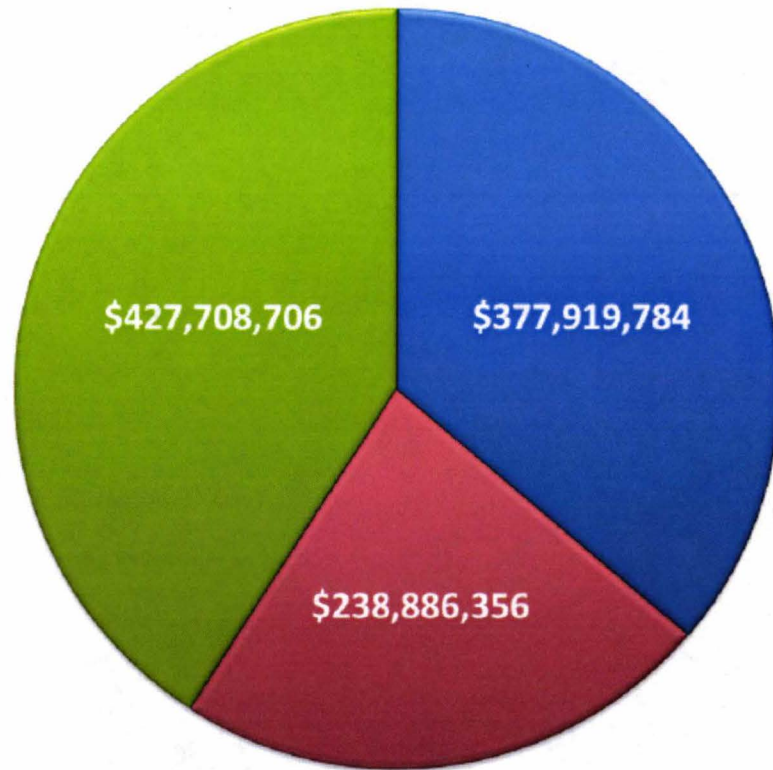
# Cost Drivers / New & Expanded Duties

4

- Redaction – Required for electronic access
- eFiling, including back-scanning
- Payment plan setup, monitor and maintenance
- Technology system testing, implementation, upgrades
- Pro se activity – indigence assistance, guidance, support
- Electronic records on appeal
- Public access online – technology and workload

# Distribution of Revenues Collected by Clerks

5



**\$1.045 Billion Collected by Clerks in FY 2014/15**

- To General Revenue
- To State Trust Funds
- Retained in Clerks' Fine & Forfeiture Funds, plus 10% of certain fines to Public Records Modernization TF



# Clerks' Proposed Solution

6

- ❑ Retain \$65 M of filing fees & Costs now directed to GR
- ❑ Authorize automatic appropriation from GR should projected revenues fall below the LBC-approved budget
- ❑ Reimbursement for Jury related costs
- ❑ Reimburse Clerks for cases with no associated fees