

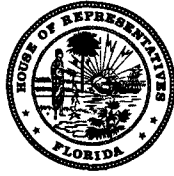
Justice Appropriations Subcommittee

**Tuesday, January 30, 2018
4:00 PM – 5:30 PM
Morris Hall (17 HOB)**

Meeting Packet

**Richard Corcoran
Speaker**

**Bill Hager
Chair**



The Florida House of Representatives

Appropriations Committee

Justice Appropriations Subcommittee

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Speaker

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AGENDA

Tuesday, January 30, 2018



4:00 – 5:30 p.m.

Morris Hall (17 HOB)

- I. Call to Order/Roll Call**
- II. Opening Remarks and Introductions**
- III. Consideration of the following bill(s):**
 - **HB 713 Theft Offenses by Donalds and Alexander**
 - **CS/HB 1065 Expunction of Criminal History Records by Criminal Justice Subcommittee, Eagle and Harrell**
 - **HB 1417 Juvenile Justice by McClure**
- IV. Closing Remarks/Adjournment**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 713 Theft Offenses
SPONSOR(S): Donalds
TIED BILLS: IDEN./SIM. **BILLS:** SB 928

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 2 N	Painter	Sumner
2) Justice Appropriations Subcommittee		Smith 	Gusky 
3) Judiciary Committee			

SUMMARY ANALYSIS

A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

A person commits retail theft when he or she, with the intent to deprive a merchant of possession, use, benefit, or full retail value of property, does any of the following:

- Takes possession of or carries away merchandise, property, money or negotiable documents;
- Alters or removes a label, universal product code, or price tag;
- Transfers merchandise from one container to another; or
- Removes a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

Thefts are classified as misdemeanors or felonies under s. 812.014, F.S. Whether a theft is a misdemeanor or a felony generally depends upon the value of the property taken by the offender, the offender's history of theft convictions or, in some cases, the type of property taken. Retail theft is punishable as a third degree felony under s. 812.015, F.S., if the property value is over \$300, but can be enhanced to a second degree felony if the offender has a prior retail theft conviction.

HB 713 amends s. 812.014, F.S. and s. 812.015, F.S., to increase the minimum threshold values for the following property theft crimes:

- Second degree misdemeanor petit theft - less than \$100 increased to less than \$500;
- First degree misdemeanor petit theft - \$100 or more, but less than \$300 increased to \$500 or more, but less than \$1,500;
- Third degree felony grand theft - \$300 or more increased to \$1,500 or more;
- Third degree felony grand theft from a dwelling or its unenclosed curtilage - \$100 or more, but less than \$300, increased to \$1,500 or more, but less than \$5,000; and
- Third degree felony retail theft - \$300 or more increased to \$1,500 or more.

The bill also deletes several items from the list of stolen property that constitutes third degree grand theft, punishable as a third degree felony. Finally, the bill provides that enhanced penalties for theft and retail theft offenses only apply if the offender has previously been convicted of theft or retail theft as an adult and the offense occurs within three years of the expiration of the sentence for the prior conviction.

The Criminal Justice Impact Conference met on January 8, 2018, and determined the bill will significantly decrease the need for prison beds.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Property Theft

A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property¹; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.²

Section 812.014, F.S., defines and categorizes thefts into misdemeanor or felony criminal violations. Whether a theft is a misdemeanor or a felony generally depends upon the value of the property taken by the offender, the offender's history of theft convictions or, in some cases, the type of property taken. Offense levels for theft crimes based on property value thresholds are classified as follows:

	Property Value	Offense Level
Grand Theft	≥ \$100,000	First Degree Felony ³
	≥ \$20,000, but < \$100,000	Second Degree Felony ⁴
	≥ \$10,000, but < \$20,000	Third Degree Felony ⁵
	≥ \$5,000, but < \$10,000	Third Degree Felony
	≥ \$300, but < \$5,000	Third Degree Felony
	≥ \$100, but < \$300 if taken from a dwelling or unenclosed curtilage of a dwelling	Third Degree Felony
Petit Theft	≥ \$100, but < \$300	First Degree Misdemeanor ⁶
	< \$100	Second Degree Misdemeanor ⁷

Additionally, s. 812.014, F.S., increases the severity of a petit theft offense if a person has one or more prior convictions. Specifically:

- A person who has previously been convicted of any theft, who commits petit theft, commits a first degree misdemeanor.⁸
- A person who has been previously convicted of theft two or more times, who commits a petit theft, commits a third degree felony.⁹

¹ S. 812.014(1)(a), F.S.

² S. 812.014(1)(b), F.S.

³ A first degree felony is punishable by up to 30 years imprisonment and a \$100,000 fine. SS. 775.082(3)(b)1 and 775.083(1)(b), F.S.

⁴ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. SS. 775.082(3)(d) and 775.083(1)(b), F.S.

⁵ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. SS. 775.082(3)(e) and 775.083(1)(c), F.S.

⁶ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. SS. 775.082(4)(a) and 775.083(1)(d), F.S.

⁷ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. SS. 775.082(4)(b) and 775.083(1)(e), F.S.

⁸ S. 812.014(3)(b), F.S.

⁹ S. 812.014(3)(c), F.S.

Florida last increased the minimum threshold property value for third degree grand theft in 1986.¹⁰ The third degree grand theft provisions related to property taken from a dwelling or its unenclosed curtilage were added in 1996.¹¹ The petit theft provisions were amended, including the thresholds, in 1996.¹²

Retail Theft

A person commits retail theft when he or she does any of the following with the intent to deprive a merchant of possession, use, benefit, or full retail value of property:

- The taking possession of or carrying away of merchandise, property, money or negotiable documents;
- Altering or removing a label, universal product code, or price tag;
- Transferring merchandise from one container to another; or
- Removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.¹³

Retail theft is a third degree felony, if the property stolen is valued at \$300 or more, and the person:

- Individually, or with one or more other persons, coordinates the activities of one or more individuals in committing the offense, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;
- Commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;
- Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or
- Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.

Retail theft is a second degree felony when:

- A person has previously been convicted of third degree felony retail theft; or
- Individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of \$3,000.¹⁴

The thresholds for third degree felony retail theft were created in 2001.¹⁵

Inmate and Probation Population in Florida for Theft Crimes

There are approximately 7,000 people in Florida prisons for theft crime.¹⁶ Of these 7,000 inmates:

- 603 are incarcerated for petit theft enhanced due to two or more prior theft convictions;
- 53 are incarcerated for retail theft of \$300 or more; and
- 1,136 are incarcerated for grand theft of \$300 or more but less than \$5,000.¹⁷

There are approximately 47,000 people on probation with the Florida Department of Corrections for theft crime.¹⁸ Out of those 47,000 individuals:

- 1,393 are on probation for petit thefts enhanced due to prior theft convictions;

¹⁰ Ch. 86-161, s. 1, L.O.F.

¹¹ Ch. 96-388, s. 49, L.O.F.

¹² Ch. 96-388, s. 49, L.O.F.

¹³ S. 812.015(1)(d), F.S.

¹⁴ S. 812.015(9), F.S.

¹⁵ Ch. 2001-115, s. 6, L.O.F.

¹⁶ Email from Florida Department of Corrections, December 18, 2017 (on file with Criminal Justice Subcommittee).

¹⁷ Id. For inmate populations as of December 15, 2017.

¹⁸ Supra, FN 17.

- 195 are on probation for retail theft of \$300 or more; and
- 13,895 are on probation for grand theft of \$300 or more but less than \$5,000.¹⁹

Theft Thresholds in Other States

Since 2000, 37 states have increased the threshold dollar amounts for felony theft crimes.²⁰

Year of Change	State	Previous threshold	Enacted threshold
2001	Oklahoma	\$50	\$500
2002	Missouri	\$150	\$500
2003	Alabama	\$250	\$500
	Mississippi	\$250	\$500
2004	Kansas	\$500	\$1,000
	Wyoming	\$500	\$1,000
2005	South Dakota	\$500	\$1,000
2006	Arizona	\$250	\$1,000
	New Mexico	\$250	\$500
	Vermont	\$500	\$900
2007	Colorado	\$500	\$1,000
	Minnesota	\$500	\$1,000
2009	Connecticut	\$1,000	\$2,000
	Delaware	\$1,000	\$1,500
	Kentucky	\$300	\$500
	Louisiana	\$300	\$500
	Maryland	\$500	\$1,000
	Montana	\$1,000	\$1,500
	Oregon	\$750	\$1,000
	Washington	\$250	\$750
2010	California	\$400	\$950
	Illinois	\$300	\$500
	New Hampshire	\$500	\$1,000
	South Carolina	\$1,000	\$2,000
	Utah	\$1,000	\$1,500
2011	Arkansas	\$500	\$1,000
	Nevada	\$250	\$650
	Ohio	\$500	\$1,000
2012	Georgia	\$500	\$1,500
	Rhode Island	\$500	\$1,500
2013	Colorado	\$1,000	\$2,000
	Indiana	Any amount	\$750
	North Dakota	\$500	\$1,000
2014	Alaska	\$500	\$750
	Louisiana	\$500	\$750
	Mississippi	\$500	\$1,000
2015	Alabama	\$500	\$1,500
	Nebraska	\$500	\$1,500

¹⁹ Supra, FN 17.

²⁰ Pew Charitable Trusts, *The Effects of Changing State Theft Penalties* (February 2016), available at http://www.pewtrusts.org/~media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en (last visited January 4, 2018).

2016	Texas	\$1,500	\$2,500
	Alaska	\$750	\$1,000
	Hawaii	\$300	\$750
	Kansas	\$1,000	\$1,500
	Maryland	\$1,000	\$1,500
	Oklahoma	\$500	\$1,000
	Tennessee	\$500	\$1,000

The majority of states (30) and the District of Columbia set a \$1,000-or-greater property value threshold for felony grand theft. Fifteen states have thresholds between \$500 and \$950, and five states, including Florida, have thresholds below \$500.²¹

Value Threshold	States	Total Number
\$200	NJ, VA	2
\$250	MA	1
\$300	FL	1
\$500	IL, KY, NM	3
\$650	NV	1
\$750	IN, HI, LA, MO, WA	5
\$900	VT	1
\$950	CA	1
\$1,000	AK, AZ, AR, DC, ID, IA, ME, MI, MN, MS, NH, NY, NC, ND, OH, OK, OR, SD, TN, WV, WY	21
\$1,500	AL, DE, GA, KS, MD, MT, NE, RI, UT	9
\$2,000	CO, CT, PA, SC	4
\$2,500	TX, WI	2

Twenty-three of the states that changed felony theft thresholds between 2001 and 2011 were examined and found:

- Raising the felony theft threshold had no impact on the states' overall property crime or larceny rates;
- States that increased thresholds reported roughly the same average decrease in crime as the 27 states that did not; and
- The amount of a state's felony theft threshold was not correlated with the state's property crime and larceny rates.²²

Effect of the Proposed Changes

Property Theft

The bill amends the following property theft provisions in s. 812.014, F.S., to increase the values that are the basis for the punishment for the offenses:

Offense	Current Threshold	Proposed Threshold
Second degree petit theft	< \$100	< \$500
First degree petit theft	≥ \$100, but < \$300	≥ \$500, but < \$1,500 ²³
Third degree grand theft	≥ \$300, but < \$20,000	≥ \$1,500, but < \$20,000 ²⁴

²¹ Id.

²² Supra, FN 20.

²³ According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$100 in 1996 has the same buying power as \$159.76 in 2017 dollars and \$300 in 1996 has the same buying power as \$479.28 in 2017 dollars. Available at: <https://data.bls.gov/cgi-bin/cpi/calc.pl> (last visited January 7, 2018).

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Third degree grand theft of property from a dwelling or its enclosed curtilage	≥ \$100, but < \$300	≥ \$1,500, but < \$5,000 ²⁵
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The bill also deletes the following items from the list of property which, if stolen, is a third degree grand theft and is punishable as a third degree felony:

- A will, codicil, or other testamentary instrument;
- Any fire extinguisher;
- Property taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d);
- Any stop sign; and
- Anhydrous ammonia²⁶

The deletion of these items from the property list would result in the offense level of the crime being based on the property value rather than automatically qualifying as a third degree grand theft.

The bill also amends the enhancement of the statute. Petit theft becomes a third-degree felony only if:

- The offender has two or more prior theft convictions as an adult; and
- The most recent subsequent petit theft offense occurred within three years of the expiration of the offender's sentence for the most recent theft conviction.

Retail Theft

The bill amends s. 812.015, F.S., to increase the property value of third degree felony retail theft from \$300 or more, to \$1,500 or more.²⁷ The bill enhances retail theft to a second degree felony only if:

- The offender has previously been convicted of retail theft as an adult; and
- The subsequent retail theft offense occurred within three years of the expiration of the offender's sentence for the most recent retail theft conviction.

Other

Lastly, the bill amends s. 921.0022, F.S., to conform the Criminal Punishment Code offense severity ranking chart to changes made by the bill.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends 812.014, F.S., relating to theft.

Section 2: Amends 812.015, F.S., relating to retail theft and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; and penalties.

Section 3: Amends 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4: Provides an effective date of July 1, 2018.

²⁴ According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 1986 has the same buying power as \$675.19 in 2017 dollars. Available at: <https://data.bls.gov/cgi-bin/cpicalc.pl> (last visited January 7, 2018).

²⁵ Supra, FN 24.

²⁶ Anhydrous ammonia is a colorless gas used as an agricultural fertilizer and industrial refrigerant, according to the Centers for Disease Control and Prevention, available at: <https://www.cdc.gov/healthcommunication/toolstemplates/entertainmented/tips/AnhydrousAmmonia.html> (last visited January 6, 2018).

²⁷ According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 2001 has the same buying power as \$422.62 in 2017 dollars. Available at: <https://data.bls.gov/cgi-bin/cpicalc.pl> (last visited January 7, 2018).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) considered a similar bill on January 8, 2018, and determined that the bill would significantly reduce the need for prison beds.

Per FDC, in FY 16-17 there were 14,630 offenders sentenced under ss. 812.014(2)(c)1, 812.014(2)(d), 812.014(3)(c), and 812.015(8), F.S. with 1,654 of these offenders sentenced to prison. The available data cannot determine exactly how many offenders would be impacted by the proposed changes.²⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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 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:

²⁸ Department of Economic and Demographic Research, SB 928 – Theft (Similar HB 713), "Criminal Justice Impact Conference", January 8, 2018.

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to theft offenses; amending s. 812.014, F.S.; increasing threshold amounts for certain theft offenses; revising the list of items the theft of which constitutes grand theft of the third degree; revising the circumstances under which petit theft by a person with prior petit theft convictions constitutes a felony of the third degree; amending s. 812.015, F.S.; increasing threshold amounts for certain theft offenses; revising circumstances under which an offense of retail theft by a person with a prior conviction of retail theft constitutes a felony of the second degree; amending s. 921.0022, F.S.; conforming provisions of the offense severity ranking chart of the Criminal Punishment Code to changes made by the act; providing an effective date.

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

Section 1. Paragraphs (c), (d), and (e) of subsection (2) and paragraphs (a), (b), and (c) of subsection (3) of section 812.014, Florida Statutes, are amended to read:

812.014 Theft.—

(2)

(c) It is grand theft of the third degree and a felony of

26 the third degree, punishable as provided in s. 775.082, s.
 27 775.083, or s. 775.084, if the property stolen is:

- 28 1. Valued at \$1,500 ~~\$300~~ or more, but less than \$5,000.
- 29 2. Valued at \$5,000 or more, but less than \$10,000.
- 30 3. Valued at \$10,000 or more, but less than \$20,000.
- 31 ~~4. A will, codicil, or other testamentary instrument.~~
- 32 4.5. A firearm.
- 33 ~~5.6.~~ A motor vehicle, except as provided in paragraph (a).
- 34 ~~6.7.~~ Any commercially farmed animal, including any animal
 35 of the equine, bovine, or swine class or other grazing animal; a
 36 bee colony of a registered beekeeper; and aquaculture species
 37 raised at a certified aquaculture facility. If the property
 38 stolen is aquaculture species raised at a certified aquaculture
 39 facility, then a \$10,000 fine shall be imposed.
- 40 ~~8. Any fire extinguisher.~~
- 41 ~~7.9.~~ Any amount of citrus fruit consisting of 2,000 or
 42 more individual pieces of fruit.
- 43 ~~10. Taken from a designated construction site identified~~
 44 ~~by the posting of a sign as provided for in s. 810.09(2)(d).~~
- 45 ~~11. Any stop sign.~~
- 46 ~~12. Anhydrous ammonia.~~
- 47 8.13. Any amount of a controlled substance as defined in
 48 s. 893.02. Notwithstanding any other law, separate judgments and
 49 sentences for theft of a controlled substance under this
 50 subparagraph and for any applicable possession of controlled

51 substance offense under s. 893.13 or trafficking in controlled
 52 substance offense under s. 893.135 may be imposed when all such
 53 offenses involve the same amount or amounts of a controlled
 54 substance.

55
 56 However, if the property is stolen within a county that is
 57 subject to a state of emergency declared by the Governor under
 58 chapter 252, the property is stolen after the declaration of
 59 emergency is made, and the perpetration of the theft is
 60 facilitated by conditions arising from the emergency, the
 61 offender commits a felony of the second degree, punishable as
 62 provided in s. 775.082, s. 775.083, or s. 775.084, if the
 63 property is valued at \$5,000 or more, but less than \$10,000, as
 64 provided under subparagraph 2., or if the property is valued at
 65 \$10,000 or more, but less than \$20,000, as provided under
 66 subparagraph 3. As used in this paragraph, the term "conditions
 67 arising from the emergency" means civil unrest, power outages,
 68 curfews, voluntary or mandatory evacuations, or a reduction in
 69 the presence of or the response time for first responders or
 70 homeland security personnel. For purposes of sentencing under
 71 chapter 921, a felony offense that is reclassified under this
 72 paragraph is ranked one level above the ranking under s.
 73 921.0022 or s. 921.0023 of the offense committed.

74 (d) It is grand theft of the third degree and a felony of
 75 the third degree, punishable as provided in s. 775.082, s.

76 775.083, or s. 775.084, if the property stolen is valued at
 77 \$1,500 ~~\$100~~ or more, but less than \$5,000 ~~\$300~~, and is taken
 78 from a dwelling as defined in s. 810.011(2) or from the
 79 unenclosed curtilage of a dwelling pursuant to s. 810.09(1).

80 (e) Except as provided in paragraph (d), if the property
 81 stolen is valued at \$500 ~~\$100~~ or more, but less than \$1,500
 82 ~~\$300~~, the offender commits petit theft of the first degree,
 83 punishable as a misdemeanor of the first degree, as provided in
 84 s. 775.082 or s. 775.083.

85 (3) (a) Theft of any property not specified in subsection
 86 (2) is petit theft of the second degree and a misdemeanor of the
 87 second degree, punishable as provided in s. 775.082 or s.
 88 775.083, and as provided in subsection (5), as applicable.

89 (b) A person who commits petit theft and who has
 90 previously been convicted of any theft commits a misdemeanor of
 91 the first degree, punishable as provided in s. 775.082 or s.
 92 775.083.

93 (c) A person who commits petit theft in the first degree,
 94 ~~and~~ who has previously been convicted two or more times as an
 95 adult of any theft, and if the third or subsequent petit theft
 96 offense occurred within 3 years of the expiration of his or her
 97 sentence for the most recent theft conviction, commits a felony
 98 of the third degree, punishable as provided in s. 775.082 or s.
 99 775.083.

100 Section 2. Subsections (8) and (9) of section 812.015,

101 Florida Statutes, are amended to read:

102 812.015 Retail and farm theft; transit fare evasion;
 103 mandatory fine; alternative punishment; detention and arrest;
 104 exemption from liability for false arrest; resisting arrest;
 105 penalties.—

106 (8) Except as provided in subsection (9), a person who
 107 commits retail theft commits a felony of the third degree,
 108 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 109 if the property stolen is valued at \$1,500 ~~\$300~~ or more, and
 110 the person:

111 (a) Individually, or in concert with one or more other
 112 persons, coordinates the activities of one or more individuals
 113 in committing the offense, in which case the amount of each
 114 individual theft is aggregated to determine the value of the
 115 property stolen;

116 (b) Commits theft from more than one location within a 48-
 117 hour period, in which case the amount of each individual theft
 118 is aggregated to determine the value of the property stolen;

119 (c) Acts in concert with one or more other individuals
 120 within one or more establishments to distract the merchant,
 121 merchant's employee, or law enforcement officer in order to
 122 carry out the offense, or acts in other ways to coordinate
 123 efforts to carry out the offense; or

124 (d) Commits the offense through the purchase of
 125 merchandise in a package or box that contains merchandise other

126 than, or in addition to, the merchandise purported to be
 127 contained in the package or box.

128 (9) A person commits a felony of the second degree,
 129 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 130 if the person:

131 (a) Violates subsection (8) as an adult and has previously
 132 been convicted of a violation of subsection (8) within 3 years
 133 of the expiration of his or her sentence for the conviction; or

134 (b) Individually, or in concert with one or more other
 135 persons, coordinates the activities of one or more persons in
 136 committing the offense of retail theft where the stolen property
 137 has a value in excess of \$3,000.

138 Section 3. Paragraphs (b), (e), and (f) of subsection (3)
 139 of section 921.0022, Florida Statutes, are amended to read:

140 921.0022 Criminal Punishment Code; offense severity
 141 ranking chart.—

142 (3) OFFENSE SEVERITY RANKING CHART

143 (b) LEVEL 2

144

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection

145

			Act.
146	379.2431 (1) (e) 4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
147	403.413 (6) (c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
148	517.07 (2)	3rd	Failure to furnish a prospectus meeting requirements.
149	590.28 (1)	3rd	Intentional burning of lands.
150	784.05 (3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
151	787.04 (1)	3rd	In violation of court order, take, entice, etc., minor

			beyond state limits.
152	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
153	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
154	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
155	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; <u>\$1,500</u> \$300 or more but less than \$5,000.
156	812.014(2)(d)	3rd	Grand theft, 3rd degree; <u>\$1,500</u> \$100 or more but less than <u>\$5,000</u> \$300 , taken from unenclosed curtilage of dwelling.

157

812.015(7) 3rd Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.

158

817.234(1)(a)2. 3rd False statement in support of insurance claim.

159

817.481(3)(a) 3rd Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.

160

817.52(3) 3rd Failure to redeliver hired vehicle.

161

817.54 3rd With intent to defraud, obtain mortgage note, etc., by false representation.

162

817.60(5) 3rd Dealing in credit cards of another.

163

817.60(6)(a) 3rd Forgery; purchase goods,

			services with false card.
164	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
165	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
166	831.01	3rd	Forgery.
167	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
168	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
169	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
170	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory

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			notes.
171	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
172	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
173	843.08	3rd	False personation.
174	893.13 (2) (a) 2.	3rd	Purchase of any 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 other than cannabis.
175	893.147 (2)	3rd	Manufacture or delivery of drug paraphernalia.
176			
177	(e) LEVEL 5		
178			
	Florida	Felony	
	Statute	Degree	Description

179	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
180	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
181	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
182	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
183	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
184	379.365(2)(c)1.	3rd	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 crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

185

379.367(4)

3rd

Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

186

379.407(5)(b)3.

3rd

Possession of 100 or more undersized spiny lobsters.

187

381.0041(11)(b)

3rd

Donate blood, plasma, or organs knowing HIV positive.

188

440.10(1)(g)

2nd

Failure to obtain workers' compensation coverage.

189

440.105(5) 2nd Unlawful solicitation for the purpose of making workers' compensation claims.

190

440.381(2) 2nd Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.

191

624.401(4)(b)2. 2nd Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.

192

626.902(1)(c) 2nd Representing an unauthorized insurer; repeat offender.

193

790.01(2) 3rd Carrying a concealed firearm.

194

790.162 2nd Threat to throw or discharge destructive device.

195

790.163(1) 2nd False report of bomb,

			explosive, weapon of mass destruction, or use of firearms in violent manner.
196	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
197	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
198	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
199	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
200	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
201	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or

			property.
202	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
203	812.015(8)	3rd	Retail theft; property stolen is valued at <u>\$1,500</u> \$300 or more and one or more specified acts.
204	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
205	812.131(2)(b)	3rd	Robbery by sudden snatching.
206	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
207	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
208	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.

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213

825.1025(4) 3rd Lewd or lascivious exhibition
in the presence of an elderly
person or disabled adult.

214

827.071(4) 2nd Possess with intent to promote
any photographic material,
motion picture, etc., which
includes sexual conduct by a
child.

215

827.071(5) 3rd Possess, control, or
intentionally view any
photographic material, motion
picture, etc., which includes
sexual conduct by a child.

216

839.13(2)(b) 2nd Falsifying records of an
individual in the care and
custody of a state agency
involving great bodily harm or
death.

217

843.01 3rd Resist officer with violence to
person; resist arrest with

			violence.
218	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
219	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
220	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
221	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
222	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
223	893.13 (1) (a) 1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03 (1) (a), (1) (b), (1) (d),

224	893.13(1)(c)2.	2nd	<p>(2)(a), (2)(b), or (2)(c)4. drugs).</p> <p>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, school, or state, county, or municipal park or publicly owned recreational facility or community center.</p>
225	893.13(1)(d)1.	1st	<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>
226	893.13(1)(e)2.	2nd	<p>Sell, manufacture, or deliver cannabis or other drug</p>

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.

227

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.

228

893.13(4)(b) 2nd Use or hire of minor; deliver
 to minor other controlled
 substance.

229

893.1351(1) 3rd Ownership, lease, or rental for
 trafficking in or manufacturing
 of controlled substance.

230

231 (f) LEVEL 6

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232	Florida	Felony	
	Statute	Degree	Description
233	316.027 (2) (b)	2nd	Leaving the scene of a crash involving serious bodily injury.
234	316.193 (2) (b)	3rd	Felony DUI, 4th or subsequent conviction.
235	400.9935 (4) (c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
236	499.0051 (2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
237	499.0051 (3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
238	499.0051 (4)	2nd	Knowing sale or transfer of

			prescription drug to unauthorized person.
239	775.0875 (1)	3rd	Taking firearm from law enforcement officer.
240	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
241	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
242	784.041	3rd	Felony battery; domestic battery by strangulation.
243	784.048 (3)	3rd	Aggravated stalking; credible threat.
244	784.048 (5)	3rd	Aggravated stalking of person under 16.
245	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
246	784.074 (1) (b)	2nd	Aggravated assault on sexually

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			violent predators facility staff.
247	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
248	784.081 (2)	2nd	Aggravated assault on specified official or employee.
249	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
250	784.083 (2)	2nd	Aggravated assault on code inspector.
251	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
252	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
253	790.161 (2)	2nd	Make, possess, or throw destructive device with intent

254	790.164(1)	2nd	to do bodily harm or damage property.
255	790.19	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
256	794.011(8)(a)	3rd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
257	794.05(1)	2nd	Solicitation of minor to participate in sexual activity by custodial adult.
258	800.04(5)(d)	3rd	Unlawful sexual activity with specified minor. Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.

259

800.04 (6) (b) 2nd Lewd or lascivious conduct;
offender 18 years of age or
older.

260

806.031 (2) 2nd Arson resulting in great bodily
harm to firefighter or any
other person.

261

810.02 (3) (c) 2nd Burglary of occupied structure;
unarmed; no assault or battery.

262

810.145 (8) (b) 2nd Video voyeurism; certain minor
victims; 2nd or subsequent
offense.

263

812.014 (2) (b) 1. 2nd Property stolen \$20,000 or
more, but less than \$100,000,
grand theft in 2nd degree.

264

812.014 (6) 2nd Theft; property stolen \$3,000
or more; coordination of
others.

265

812.015 (9) (a) 2nd Retail theft; property stolen

			<u>\$1,500</u> \$300 or more; second or subsequent <u>adult</u> conviction <u>in specified period</u> .
266	812.015(9) (b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
267	812.13(2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
268	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
269	817.505(4) (b)	2nd	Patient brokering; 10 or more patients.
270	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
271	825.102(3) (c)	3rd	Neglect of an elderly person or disabled adult.
272	825.1025(3)	3rd	Lewd or lascivious molestation

			of an elderly person or disabled adult.
273	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
274	827.03(2)(c)	3rd	Abuse of a child.
275	827.03(2)(d)	3rd	Neglect of a child.
276	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
277	836.05	2nd	Threats; extortion.
278	836.10	2nd	Written threats to kill or do bodily injury.
279	843.12	3rd	Aids or assists person to escape.
280	847.011	3rd	Distributing, offering to distribute, or possessing with

281			intent to distribute obscene materials depicting minors.
	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
282			
	847.0135 (2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
283			
	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
284			
	944.35 (3) (a) 2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
285			
	944.40	2nd	Escapes.
286			
	944.46	3rd	Harboring, concealing, aiding

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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 Donalds offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraphs (c), (d), and (e) of subsection (2)
 8 and paragraphs (a), (b), and (c) of subsection (3) of section
 9 812.014, Florida Statutes, are amended, and subsection (7) is
 10 added to that section, to read:

11 812.014 Theft.—

12 (2)

13 (c) It is grand theft of the third degree and a felony of
 14 the third degree, punishable as provided in s. 775.082, s.

15 775.083, or s. 775.084, if the property stolen is:

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

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- 17 2. Valued at \$5,000 or more, but less than \$10,000.
- 18 3. Valued at \$10,000 or more, but less than \$20,000.
- 19 ~~4. A will, codicil, or other testamentary instrument.~~
- 20 ~~4.5.~~ A firearm.
- 21 ~~5.6.~~ A motor vehicle, except as provided in paragraph (a).
- 22 ~~6.7.~~ Any commercially farmed animal, including any animal
- 23 of the equine, bovine, or swine class or other grazing animal; a
- 24 bee colony of a registered beekeeper; and aquaculture species
- 25 raised at a certified aquaculture facility. If the property
- 26 stolen is aquaculture species raised at a certified aquaculture
- 27 facility, then a \$10,000 fine shall be imposed.
- 28 ~~8. Any fire extinguisher.~~
- 29 ~~7.9.~~ Any amount of citrus fruit consisting of 2,000 or
- 30 more individual pieces of fruit.
- 31 ~~10. Taken from a designated construction site identified~~
- 32 ~~by the posting of a sign as provided for in s. 810.09(2)(d).~~
- 33 ~~11. Any stop sign.~~
- 34 ~~12. Anhydrous ammonia.~~
- 35 ~~8.13.~~ Any amount of a controlled substance as defined in
- 36 s. 893.02. Notwithstanding any other law, separate judgments and
- 37 sentences for theft of a controlled substance under this
- 38 subparagraph and for any applicable possession of controlled
- 39 substance offense under s. 893.13 or trafficking in controlled
- 40 substance offense under s. 893.135 may be imposed when all such

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41 offenses involve the same amount or amounts of a controlled
42 substance.

43

44 However, if the property is stolen within a county that is
45 subject to a state of emergency declared by the Governor under
46 chapter 252, the property is stolen after the declaration of
47 emergency is made, and the perpetration of the theft is
48 facilitated by conditions arising from the emergency, the
49 offender commits a felony of the second degree, punishable as
50 provided in s. 775.082, s. 775.083, or s. 775.084, if the
51 property is valued at \$5,000 or more, but less than \$10,000, as
52 provided under subparagraph 2., or if the property is valued at
53 \$10,000 or more, but less than \$20,000, as provided under
54 subparagraph 3. As used in this paragraph, the term "conditions
55 arising from the emergency" means civil unrest, power outages,
56 curfews, voluntary or mandatory evacuations, or a reduction in
57 the presence of or the response time for first responders or
58 homeland security personnel. For purposes of sentencing under
59 chapter 921, a felony offense that is reclassified under this
60 paragraph is ranked one level above the ranking under s.
61 921.0022 or s. 921.0023 of the offense committed.

62 (d) It is grand theft of the third degree and a felony of
63 the third degree, punishable as provided in s. 775.082, s.
64 775.083, or s. 775.084, if the property stolen is valued at
65 \$1,000 ~~\$100~~ or more, but less than \$5,000 ~~\$300~~, and is taken

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66 from a dwelling as defined in s. 810.011(2) or from the
67 unenclosed curtilage of a dwelling pursuant to s. 810.09(1).

68 (e) Except as provided in paragraph (d), if the property
69 stolen is valued at \$500 ~~\$100~~ or more, but less than \$1,000
70 ~~\$300~~, the offender commits petit theft of the first degree,
71 punishable as a misdemeanor of the first degree, as provided in
72 s. 775.082 or s. 775.083.

73 (3)(a) Theft of any property not specified in subsection
74 (2) is petit theft of the second degree and a misdemeanor of the
75 second degree, punishable as provided in s. 775.082 or s.
76 775.083, and as provided in subsection (5), as applicable.

77 (b) A person who commits petit theft and who has
78 previously been convicted of any theft commits a misdemeanor of
79 the first degree, punishable as provided in s. 775.082 or s.
80 775.083.

81 (c) A person who commits petit theft in the first degree,
82 and who has previously been convicted two or more times as an
83 adult of any theft, and if the third or subsequent petit theft
84 offense occurred within 3 years of the expiration of his or her
85 sentence for the most recent theft conviction, commits a felony
86 of the third degree, punishable as provided in s. 775.082 or s.
87 775.083.

88 (7) The threshold amounts for offenses specified in this
89 section shall be adjusted every 5 years in an amount equal to
90 the total of the annual increases for that 5-year period in the

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91 Consumer Price Index for All Urban Consumers, U.S. City Average,
92 All Items. The Office of Economic and Demographic Research shall
93 calculate the thresholds, rounded to the nearest \$50, and
94 publish the amounts, as adjusted, on its website by July 1 of
95 every fifth year to take effect on October 1 of that year. The
96 office shall certify the revised amounts to the Division of Law
97 Revision and Information, which is directed to conform the
98 statutes to the revised amounts.

99 Section 2. Subsections (8) and (9) of section 812.015,
100 Florida Statutes, are amended, and subsection (10) is added to
101 that section, to read:

102 812.015 Retail and farm theft; transit fare evasion;
103 mandatory fine; alternative punishment; detention and arrest;
104 exemption from liability for false arrest; resisting arrest;
105 penalties.—

106 (8) Except as provided in subsection (9), a person who
107 commits retail theft commits a felony of the third degree,
108 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
109 if the property stolen is valued at \$1,000 ~~\$300~~ or more, and
110 the person:

111 (a) Individually, or in concert with one or more other
112 persons, coordinates the activities of one or more individuals
113 in committing the offense, in which case the amount of each
114 individual theft is aggregated to determine the value of the
115 property stolen;

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116 (b) Commits theft from more than one location within a 48-
117 hour period, in which case the amount of each individual theft
118 is aggregated to determine the value of the property stolen;

119 (c) Acts in concert with one or more other individuals
120 within one or more establishments to distract the merchant,
121 merchant's employee, or law enforcement officer in order to
122 carry out the offense, or acts in other ways to coordinate
123 efforts to carry out the offense; or

124 (d) Commits the offense through the purchase of
125 merchandise in a package or box that contains merchandise other
126 than, or in addition to, the merchandise purported to be
127 contained in the package or box.

128 (9) A person commits a felony of the second degree,
129 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
130 if the person:

131 (a) Violates subsection (8) as an adult and has previously
132 been convicted of a violation of subsection (8) within 3 years
133 of the expiration of his or her sentence for the conviction; or

134 (b) Individually, or in concert with one or more other
135 persons, coordinates the activities of one or more persons in
136 committing the offense of retail theft where the stolen property
137 has a value in excess of \$3,000.

138 (10) The threshold amounts for offenses specified in this
139 section shall be adjusted every 5 years in an amount equal to
140 the total of the annual increases for that 5-year period in the

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141 Consumer Price Index for All Urban Consumers, U.S. City Average,
 142 All Items. The Office of Economic and Demographic Research shall
 143 calculate the thresholds, rounded to the nearest \$50, and
 144 publish the amounts, as adjusted, on its website by July 1 of
 145 every fifth year to take effect on October 1 of that year. The
 146 office shall certify the revised amounts to the Division of Law
 147 Revision and Information, which is directed to conform the
 148 statutes to the revised amounts.

149 Section 3. Paragraphs (b), (e), and (f) of subsection (3)
 150 of section 921.0022, Florida Statutes, are amended to read:

151 921.0022 Criminal Punishment Code; offense severity
 152 ranking chart.-

153 (3) OFFENSE SEVERITY RANKING CHART

154 (b) LEVEL 2

155

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation

156

157

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			of the Marine Turtle Protection Act.
158	403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
159	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
160	590.28(1)	3rd	Intentional burning of lands.
161	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
162	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
163	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public

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			communication or any other public service.
164	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
165	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
166	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; <u>1,000</u> \$300 or more but less than \$5,000.
167	812.014(2)(d)	3rd	Grand theft, 3rd degree; <u>1,000</u> \$100 or more but less than <u>\$5,000</u> \$300 , taken from unenclosed curtilage of dwelling.
168	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or

COMMITTEE/SUBCOMMITTEE AMENDMENT

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inventory control device
countermeasure.

169

817.234(1)(a)2. 3rd False statement in support of
insurance claim.

170

817.481(3)(a) 3rd Obtain credit or purchase with
false, expired, counterfeit,
etc., credit card, value over
\$300.

171

817.52(3) 3rd Failure to redeliver hired
vehicle.

172

817.54 3rd With intent to defraud, obtain
mortgage note, etc., by false
representation.

173

817.60(5) 3rd Dealing in credit cards of
another.

174

817.60(6)(a) 3rd Forgery; purchase goods,
services with false card.

175

COMMITTEE/SUBCOMMITTEE AMENDMENT

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176	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
177	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
178	831.01	3rd	Forgery.
179	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
180	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
181	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
182	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.

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183	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
184	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
185	843.08	3rd	False personation.
186	893.13 (2) (a) 2.	3rd	Purchase of any 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 other than cannabis.
187	893.147 (2)	3rd	Manufacture or delivery of drug paraphernalia.
188	(e) LEVEL 5		
189	Florida	Felony	
190	Statute	Degree	Description

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191	316.027(2) (a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
192	316.1935(4) (a)	2nd	Aggravated fleeing or eluding.
193	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
194	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
195	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
	379.365(2) (c) 1.	3rd	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,

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 713 (2018)

Amendment No.

aiding in supplying, or giving away 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 engaging in the commercial harvest of stone crabs while license is suspended or revoked.

196

379.367(4) 3rd Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

197

379.407(5)(b)3. 3rd Possession of 100 or more undersized spiny lobsters.

198

381.0041(11)(b) 3rd Donate blood, plasma, or organs knowing HIV positive.

199

440.10(1)(g) 2nd Failure to obtain workers' compensation coverage.

200

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 713 (2018)

Amendment No.

201	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
202	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
203	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
204	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
205	790.01(2)	3rd	Carrying a concealed firearm.
206	790.162	2nd	Threat to throw or discharge destructive device.
	790.163(1)	2nd	False report of bomb, explosive, weapon of mass

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Amendment No.

			destruction, or use of firearms in violent manner.
207	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
208	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
209	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
210	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
211	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
212	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 713 (2018)

Amendment No.

213
214
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216
217
218
219
220

- 812.0145(2) (b) 2nd Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
- 812.015(8) 3rd Retail theft; property stolen is valued at \$1,000 ~~\$300~~ or more and one or more specified acts.
- 812.019(1) 2nd Stolen property; dealing in or trafficking in.
- 812.131(2) (b) 3rd Robbery by sudden snatching.
- 812.16(2) 3rd Owning, operating, or conducting a chop shop.
- 817.034(4) (a) 2. 2nd Communications fraud, value \$20,000 to \$50,000.
- 817.234(11) (b) 2nd Insurance fraud; property value \$20,000 or more but less than \$100,000.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 713 (2018)

Amendment No.

221	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.
222	817.568(2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
223	817.611(2) (a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
224	817.625(2) (b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 713 (2018)

Amendment No.

225	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
226	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
227	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
228	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
	843.01	3rd	Resist officer with violence to person; resist arrest with violence.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 713 (2018)

Amendment No.

229

847.0135(5)(b) 2nd Lewd or lascivious exhibition
using computer; offender 18
years or older.

230

847.0137 3rd Transmission of pornography by
(2) & (3) electronic device or equipment.

231

847.0138 3rd Transmission of material
(2) & (3) harmful to minors to a minor by
electronic device or equipment.

232

874.05(1)(b) 2nd Encouraging or recruiting
another to join a criminal
gang; second or subsequent
offense.

233

874.05(2)(a) 2nd Encouraging or recruiting
person under 13 years of age to
join a criminal gang.

234

893.13(1)(a)1. 2nd Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 713 (2018)

Amendment No.

(2) (a), (2) (b), or (2) (c) 4.
drugs) .

235

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, school, or
state, county, or municipal
park or publicly owned
recreational facility or
community center.

236

893.13 (1) (d) 1. 1st 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.

237

893.13 (1) (e) 2. 2nd Sell, manufacture, or deliver
cannabis or other drug

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Amendment No.

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.

238

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.

239

893.13(4)(b) 2nd Use or hire of minor; deliver
to minor other controlled
substance.

240

893.1351(1) 3rd Ownership, lease, or rental for
trafficking in or manufacturing
of controlled substance.

241

242

(f) LEVEL 6

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Bill No. HB 713 (2018)

Amendment No.

243

Florida
Statute

Felony
Degree

Description

244

316.027(2)(b)

2nd

Leaving the scene of a crash
involving serious bodily
injury.

245

316.193(2)(b)

3rd

Felony DUI, 4th or subsequent
conviction.

246

400.9935(4)(c)

2nd

Operating a clinic, or offering
services requiring licensure,
without a license.

247

499.0051(2)

2nd

Knowing forgery of transaction
history, transaction
information, or transaction
statement.

248

499.0051(3)

2nd

Knowing purchase or receipt of
prescription drug from
unauthorized person.

249

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Amendment No.

250	499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
251	775.0875(1)	3rd	Taking firearm from law enforcement officer.
252	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
253	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
254	784.041	3rd	Felony battery; domestic battery by strangulation.
255	784.048(3)	3rd	Aggravated stalking; credible threat.
256	784.048(5)	3rd	Aggravated stalking of person under 16.
257	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.

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Amendment No.

258	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
259	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
260	784.081 (2)	2nd	Aggravated assault on specified official or employee.
261	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
262	784.083 (2)	2nd	Aggravated assault on code inspector.
263	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
264	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.

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Amendment No.

265	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
266	790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
267	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
268	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
269	794.05(1)	2nd	Unlawful sexual activity with specified minor.
	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older

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Amendment No.

			but less than 16 years of age; offender less than 18 years.
270	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
271	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
272	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
273	810.145 (8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
274	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
275	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.

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Bill No. HB 713 (2018)

Amendment No.

276	812.015(9)(a)	2nd	Retail theft; property stolen <u>1,000</u> \$300 or more; second or subsequent <u>adult conviction in specified period.</u>
277	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
278	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
279	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
280	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
281	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
282	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.

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Bill No. HB 713 (2018)

Amendment No.

283	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
284	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
285	827.03(2)(c)	3rd	Abuse of a child.
286	827.03(2)(d)	3rd	Neglect of a child.
287	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
288	836.05	2nd	Threats; extortion.
289	836.10	2nd	Written threats to kill or do bodily injury.
290	843.12	3rd	Aids or assists person to escape.
291			

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 713 (2018)

Amendment No.

292	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
293	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
294	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
295	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
296	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
	944.40	2nd	Escapes.

Amendment No.

297

944.46 3rd Harboring, concealing, aiding
escaped prisoners.

298

944.47(1)(a)5. 2nd Introduction of contraband
(firearm, weapon, or explosive)
into correctional facility.

299

951.22(1) 3rd Intoxicating drug, firearm, or
weapon introduced into county
facility.

300

Section 4. This act shall take effect July 1, 2018.

301

302

303

304

305

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

306

Remove everything before the enacting clause and insert:

307

308

A bill to be entitled

309

An act relating to theft offenses; amending s.

310

812.014, F.S.; increasing threshold amounts for

311

certain theft offenses; revising the list of items the

312

theft of which constitutes a felony of the third

313

degree; providing for periodic future adjustments of

COMMITTEE/SUBCOMMITTEE AMENDMENT

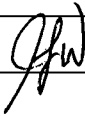

Bill No. HB 713 (2018)

Amendment No.

314 threshold amounts due to inflation; providing a
315 directive to the Division of Law Revision and
316 Information; amending s. 812.015, F.S.; increasing
317 threshold amounts for certain theft offenses; revising
318 circumstances under which an offense of retail theft
319 by a person with a prior conviction of retail theft
320 constitutes a felony of the second degree; providing
321 for periodic future adjustments of threshold amounts
322 due to inflation; providing a directive to the
323 Division of Law Revision and Information; amending s.
324 921.0022, F.S.; conforming provisions of the offense
325 severity ranking chart of the Criminal Punishment Code
326 to changes made by the act; providing an effective
327 date.
328

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1065 Expunction of Criminal History Records
SPONSOR(S): Criminal Justice Subcommittee; Eagle
TIED BILLS: IDEN./SIM. BILLS: SB 1142

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N, As CS	Bruno	Sumner
2) Justice Appropriations Subcommittee		 Welty	Gusky 
3) Judiciary Committee			

SUMMARY ANALYSIS

Expunction of a criminal history record requires all criminal justice agencies possessing such a record to physically destroy or obliterate it. Once the record is expunged, a person may lawfully deny or fail to acknowledge an arrest covered by the expunged record, subject to some exceptions.

A court, in its sole discretion, may order a criminal justice agency to expunge a person’s criminal history record if the Florida Department of Law Enforcement (FDLE) issues the person a valid certificate of eligibility for expunction. FDLE must issue this certificate to a person meeting all eligibility criteria, including that:

- The person has never had a record sealed or expunged previously;
- The person has never been adjudicated guilty as an adult for any offense or adjudicated delinquent as a juvenile for certain enumerated offenses;
- The person was not adjudicated guilty or delinquent for any acts stemming from the same arrest which the person seeks to expunge; and
- The case he or she seeks to have expunged:
 - Was dismissed by a no action, *nolle prosequi*, or court dismissal;
 - Does not relate to one of several enumerated offenses, which generally include violent and sexual crimes; and
 - Did not result in a trial, regardless of the outcome of the trial.

The statute prohibits expunction if the person was acquitted at trial. Consequently, a person who exercises his or her right to a trial is barred from the possibility of expunction, unless they first have their record sealed for ten years. In contrast, a person whose case was dismissed for reasons including uncooperative witnesses, lack of evidence, or participation in a diversion program is eligible for expunction immediately, if he or she meets all other criteria.

HB 1065 expands eligibility for court-ordered expunction to include a person who received a judgement of acquittal by a judge or a not guilty verdict, whether by judge or jury.

The bill has a fiscal impact on the Department of Law Enforcement, which can be absorbed within existing resources and has no impact on local government.

The bill provides an effective date of October 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A criminal history record includes any nonjudicial record maintained by a criminal justice agency¹ that contains criminal history information.² Criminal history information is information collected by criminal justice agencies consisting of identifiable descriptions of individuals and notations of arrests, detentions, indictments, informations, other formal criminal charges, and criminal dispositions.³

A person may have his or her criminal history record expunged under certain circumstances.⁴ When a record is expunged, the criminal justice agencies possessing such record must physically destroy or obliterate it.⁵ The Florida Department of Law Enforcement (FDLE) maintains a copy of the record in order to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.⁶ Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to some exceptions.⁷

Court-ordered expunction is one type of expunction authorized by Florida law.⁸ A court, in its sole discretion, may order a criminal justice agency to expunge a person's criminal history record if FDLE issues the person a valid certificate of eligibility for expunction.⁹

FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting all criteria.¹⁰ Generally, a person is eligible for expunction if:

- The person has never had a record sealed or expunged previously;¹¹
- The person has never been adjudicated guilty as an adult for any offense or adjudicated delinquent as a juvenile for certain enumerated offenses;¹² and
- If the case he or she seeks to have expunged:
 - Was dismissed by a no action,¹³ *nolle prosequi*,¹⁴ or court dismissal;¹⁵
 - Does not relate to one of several enumerated offenses, which generally include violent and sexual crimes;¹⁶ and
 - Did not result in a trial, regardless of the outcome of the trial.¹⁷

¹ Criminal justice agencies include the court, the Department of Law Enforcement (FDLE), the Department of Juvenile Justice (DJJ), components of the Department of Children and Families (DCF), and other governmental agencies that administrate criminal justice. S. 943.045(11), F.S.

² S. 943.045(6), F.S.

³ S. 943.045(5), F.S.

⁴ SS. 943.0581, 943.0582, 943.0583, & 943.0585, F.S.

⁵ S. 943.045(16), F.S.

⁶ *Id.*

⁷ S. 943.0585(4), F.S.

⁸ S. 943.0585, F.S.; other types of expunction include lawful self-defense expunction, S. 943.0585(5), F.S.; administrative expunction, S. 943.0581, F.S.; prearrest, postarrest, or teen court diversion, S. 943.0582, F.S.; human trafficking victim expunction, S. 943.0583, F.S.; and automatic juvenile expunction, S. 943.0515, F.S.

⁹ S. 943.0585(1), F.S.

¹⁰ S. 943.0585(2), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ A no action is the dismissal of the pending charges before an information or indictment has been filed. *Genden v. Fuller*, 648 So.2d 1183, 1183 n. 1 (Fla. 1994).

¹⁴ A *nolle prosequi* is the dismissal of a pending information or indictment. *Id.*

¹⁵ The court may dismiss a case under certain circumstances, including on a defense motion to dismiss under Rule 3.90(c)(4), Fla. R. Crim. P., upon expiration of the speedy trial period under Rule 3.191, Fla. R. Crim. P., or upon granting Stand Your Ground immunity under s. 776.032, F.S.

¹⁶ S. 943.0585(2)(a)3., F.S.

The statute prohibits expunction if the person was acquitted at trial, whether by a judge or the jury. A person may be acquitted either by a judgment of acquittal or a not-guilty verdict. A judgment of acquittal results when, at the close of evidence in the case, a court is of the opinion that the evidence is insufficient to warrant a conviction.¹⁸ A not guilty verdict results when the factfinder, whether judge or jury, determines that the prosecution did not prove the person's guilt beyond a reasonable doubt.¹⁹

Consequently, a person who exercises his or her right to a trial is barred from the possibility of expunction unless they first have their record sealed for ten years. In contrast, a person whose case was dismissed for reasons including uncooperative witnesses, lack of evidence, or participation in a diversion program is eligible for expunction immediately, if he or she meets all other criteria.

According to FDLE's Statistical Analysis Center, there are currently 48,991 criminal history records that have an acquittal with no conviction.²⁰

Effect of Proposed Changes

HB 1065 expands eligibility for court-ordered expunction to include a person whose case resulted in a judgment of acquittal or a not guilty verdict, whether by judge or jury. A person who has had a judgement of acquittal or a not guilty verdict may apply to have their record expunged without the prerequisite of first sealing the record for a period of ten years.

The bill provides an effective date of October 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 2: Provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Current law allows the department to collect a \$75 processing fee to complete the certificate of eligibility for expunction.²¹ According to FDLE's Statistical Analysis Center, there are currently 48,991 criminal history records that have an acquittal with no conviction. The department assumes ten percent of those eligible would apply for a certificate of eligibility for an expunction of their criminal history record, resulting in 4,899 new applications and \$367,425 in projected processing fee revenue.

2. Expenditures:

The bill may have an indeterminate fiscal impact on state government, as it expands the pool of people eligible for expunction of their criminal records. This may result in increased applications for expunction.

According to FDLE's Statistical Analysis Center, there are currently 48,991 criminal history records that have an acquittal with no conviction. The department assumes ten percent of those eligible would apply for a certificate of eligibility for an expunction of their criminal history record. The

¹⁷ S. 943.0585(2)(a)2., F.S.

¹⁸ Rule 3.380, Fla. R. Crim. P.

¹⁹ Fla. Std. Crim. Jury Instr. 3.7 (Plea of not guilty; reasonable doubt; and burden of proof).

²⁰ Florida Department of Law Enforcement, Agency Analysis of 2018 House Bill 1065, p. 2 (Jan. 18, 2018).

²¹ S.943.0585(2)(b), F.S.

department indicates an additional 4,899 applications would require one additional FTE with a first-year cost of \$62,441 and a recurring cost of \$58,686.²² However, these costs are offset by the projected processing fee revenue and the workload can be absorbed within existing resources of the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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. The bill does not appear to affect municipal or county governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

FDLE has sufficient rule-making authority to implement the requirements of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2018, the Criminal Justice Subcommittee considered one amendment and reported the bill favorably as a committee substitute. The amendment added judgment of acquittal as a disposition eligible for expunction.

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

26 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
27 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
28 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
29 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
30 s. 907.041, or any violation specified as a predicate offense
31 for registration as a sexual predator pursuant to s. 775.21,
32 without regard to whether that offense alone is sufficient to
33 require such registration, or for registration as a sexual
34 offender pursuant to s. 943.0435, may not be expunged, without
35 regard to whether adjudication was withheld, if the defendant
36 was found guilty of or pled guilty or nolo contendere to the
37 offense, or if the defendant, as a minor, was found to have
38 committed, or pled guilty or nolo contendere to committing, the
39 offense as a delinquent act. The court may only order expunction
40 of a criminal history record pertaining to one arrest or one
41 incident of alleged criminal activity, except as provided in
42 this section. The court may, at its sole discretion, order the
43 expunction of a criminal history record pertaining to more than
44 one arrest if the additional arrests directly relate to the
45 original arrest. If the court intends to order the expunction of
46 records pertaining to such additional arrests, such intent must
47 be specified in the order. A criminal justice agency may not
48 expunge any record pertaining to such additional arrests if the
49 order to expunge does not articulate the intention of the court
50 to expunge a record pertaining to more than one arrest. This

51 section does not prevent the court from ordering the expunction
 52 of only a portion of a criminal history record pertaining to one
 53 arrest or one incident of alleged criminal activity.

54 Notwithstanding any law to the contrary, a criminal justice
 55 agency may comply with laws, court orders, and official requests
 56 of other jurisdictions relating to expunction, correction, or
 57 confidential handling of criminal history records or information
 58 derived therefrom. This section does not confer any right to the
 59 expunction of any criminal history record, and any request for
 60 expunction of a criminal history record may be denied at the
 61 sole discretion of the court.

62 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
 63 petitioning the court to expunge a criminal history record, a
 64 person seeking to expunge a criminal history record shall apply
 65 to the department for a certificate of eligibility for
 66 expunction. The department shall, by rule adopted pursuant to
 67 chapter 120, establish procedures pertaining to the application
 68 for and issuance of certificates of eligibility for expunction.
 69 A certificate of eligibility for expunction is valid for 12
 70 months after the date stamped on the certificate when issued by
 71 the department. After that time, the petitioner must reapply to
 72 the department for a new certificate of eligibility. Eligibility
 73 for a renewed certification of eligibility must be based on the
 74 status of the applicant and the law in effect at the time of the
 75 renewal application. The department shall issue a certificate of

76 eligibility for expunction to a person who is the subject of a
77 criminal history record if that person:

78 (a) Has obtained, and submitted to the department, a
79 written, certified statement from the appropriate state attorney
80 or statewide prosecutor which indicates:

81 1. That an indictment, information, or other charging
82 document was not filed or issued in the case.

83 2. That an indictment, information, or other charging
84 document, if filed or issued in the case, was dismissed or nolle
85 prosequi by the state attorney or statewide prosecutor, ~~or~~ was
86 dismissed by a court of competent jurisdiction, or that a
87 judgment of acquittal was rendered by a judge, or that a verdict
88 of not guilty was rendered by a judge or jury ~~and that none of~~
89 ~~the charges related to the arrest or alleged criminal activity~~
90 ~~to which the petition to expunge pertains resulted in a trial,~~
91 ~~without regard to whether the outcome of the trial was other~~
92 ~~than an adjudication of guilt.~~

93 3. That the criminal history record does not relate to a
94 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
95 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
96 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
97 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
98 or any violation specified as a predicate offense for
99 registration as a sexual predator pursuant to s. 775.21, without
100 regard to whether that offense alone is sufficient to require

101 such registration, or for registration as a sexual offender
 102 pursuant to s. 943.0435, where the defendant was found guilty
 103 of, or pled guilty or nolo contendere to any such offense, or
 104 that the defendant, as a minor, was found to have committed, or
 105 pled guilty or nolo contendere to committing, such an offense as
 106 a delinquent act, without regard to whether adjudication was
 107 withheld.

108 (h) Has previously obtained a court order sealing the
 109 record under this section, former s. 893.14, former s. 901.33,
 110 or former s. 943.058 for a minimum of 10 years because
 111 adjudication was withheld or because all charges related to the
 112 arrest or alleged criminal activity to which the petition to
 113 expunge pertains were not dismissed before ~~prior to~~ trial,
 114 without regard to whether the outcome of the trial was other
 115 than an adjudication of guilt. The requirement for the record to
 116 have previously been sealed for a minimum of 10 years does not
 117 apply when a plea was not entered or all charges related to the
 118 arrest or alleged criminal activity to which the petition to
 119 expunge pertains were dismissed before ~~prior to~~ trial or a
 120 judgment of acquittal was rendered by a judge or a verdict of
 121 not guilty was rendered by a judge or jury.

122 Section 2. This act shall take effect October 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1417 Juvenile Justice
SPONSOR(S): McClure
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N	Painter	Sumner
2) Justice Appropriations Subcommittee		<i>JW</i> Welty	Gusky <i>KMG</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

HB 1417 addresses several provisions relating to juvenile justice:

- "Invest in Children" license plates: Currently, s. 320.08058(11), F.S., requires the annual use fee proceeds from the license plates go into the Juvenile Crime Prevention and Early Intervention Trust Fund within the Department of Juvenile Justice (DJJ). DJJ funds programs and services on a county level based on each county's proportionate share of the license plate annual use fee collected in that county. The bill deletes the requirement that the funds be used by the county based on each county's proportionate share.
- Secure detention for PJOs pending a detention hearing: When a youth violates the conditions of nonsecure release, s. 985.26, F.S., is silent as to whether a prolific juvenile offender (PJO) should be placed in secure or nonsecure detention pending a detention hearing. The department uses a risk assessment instrument (RAI) to determine if the child should remain in secure or nonsecure detention pending the hearing. Some youth who meet the criteria of a PJO will not necessarily score for secure detention based on the RAI and will be released until the detention hearing. The bill amends s. 985.26, F.S., to require that a PJO who is taken into custody for a violation of nonsecure detention be held in secure detention until the detention hearing.
- Predisposition reports: A predisposition report is completed by a juvenile probation officer in preparation for a judicial disposition of a youth's case. The report is a multidisciplinary assessment of the youth's priority needs, an individualized plan for treatment of those needs, and a recommendation of the most appropriate placement to meet the youth's needs in a setting that provides a level of security sufficient to ensure public safety. Currently, s. 985.433, F.S., does not require a court to consider a predisposition report prior to committing a child. The bill amends that section to require the court receive and consider the report prior to committing the child to DJJ.
- Florida Juvenile Justice Foundation: The bill amends s. 985.672, F.S., to delete the scheduled repeal of the department's direct-support organization, the Florida Juvenile Justice Foundation. In addition, the bill amends the section of the statute addressing the board of directors to allow the board of directors to be appointed by the secretary in accordance with the foundation's by laws.

The bill has an indeterminate, but likely insignificant, fiscal impact on local governments. The bill has an indeterminate fiscal impact on state government.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

"Invest in Children" License Plates

Section 320.08058(11), F.S., requires the Department of Highway Safety and Motor Vehicles to develop an Invest in Children license plate. The proceeds from the license plate annual use fee are deposited into the Juvenile Crime Prevention and Early Intervention Trust Fund within the Department of Juvenile Justice ("DJJ").¹ DJJ uses the fees to fund programming and services recommended by the county's juvenile justice council², designed to prevent juvenile delinquency.³ Funding is allocated on a county level based on each county's proportionate share of the license plate annual use fee collected by each individual county.

Below is a chart of the amount of annual use fees collected each fiscal year, for the past three years, among the 67 counties⁴:

FY 2014-2015	\$247,474.67
FY 2015-2016	\$230,422.31
FY 2016-2017	\$217,738.00
FY 2017-2018 (July 2017- Jan 2018)	\$135,614.83

Due to the requirement that funding be allocated based proportionally on the fees collected by each county, DJJ is unable to fund prevention services in many counties that do not sell many license plates. In FY 2015-16, license plate sales in 27 counties throughout the state resulted in revenue of less than \$500 per county.⁵ As a result, many low revenue-producing counties do not respond to grant offerings by DJJ. The Juvenile Crime Prevention and Early Intervention Trust Fund has a current balance of over \$1.2 million.⁶

Prolific Juvenile Offender Violations of Nonsecure Detention

Secure or Nonsecure Detention Pending Detention Hearings

When a child is taken into custody, DJJ first determines whether the child should be placed in secure⁷ or nonsecure⁸ detention pending a detention hearing. The detention hearing must be held within 24

¹ S. 320.08058(11)(b), F.S.

² Members of a juvenile justice council must include representative(s) of: the state attorney, the public defender, the chief judge, the Department of Children and Family Services, local enforcement agencies, a county commissioner, the superintendent of each school district within the county, a workforce organization, the business community, the faith community, a youth who has experience within the juvenile justice system, a healthcare service person specializing in mental-health care, victim-service programs and victims of crime, and the parent or family member of a youth who has been involved in the juvenile justice system. S. 985.664(4), F.S.

³ S. 320.08058(11)(b), F.S.

⁴ Transparency Florida, Trust Fund Revenues Report. Available at:

<http://www.transparencyflorida.gov/Reports/TrustFundRevReport.aspx?FY=&RT=TF> (Last accessed January 26, 2018).

⁵ Email from Department of Juvenile Justice, October 26, 2017 (on file with Criminal Justice Subcommittee).

⁶ Id.

⁷ S. 985.03(18)(b), F.S., defines "secure detention" to mean "temporary care of a child while the child is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement."

⁸ S. 984.03, F.S., defines "nonsecure detention" to mean "temporary, nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the department staff pending adjudication, disposition, or placement. Forms of nonsecure detention include, but are not limited to, home detention, electronic monitoring, day reporting centers, evening reporting centers, and nonsecure shelters. Nonsecure detention may include other requirements imposed by the courts."

hours of the child's arrest.⁹ A risk assessment instrument (RAI) is used to assist in making the determination of where to place the child. The RAI uses points that determine whether and what type of detention care should be imposed:

- Zero to six points - the child should be released.
- Seven to eleven points - the child should be placed in nonsecure detention.
- Twelve or more points - the child should be placed in secure detention.¹⁰

However, regardless of the RAI results, s. 985.25, F.S., requires secure detention of a child until the detention hearing in three circumstances:

- The child meets the criteria of PJO under s. 985.255(1)(j), F.S.¹¹
- The child is charged with possessing or discharging a firearm on school property.¹²
- The child has been taken into custody on three or more separate occasions within a 60-day period.¹³

The purpose of a detention hearing is for the judge to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she has been charged with and to determine the need for continued detention. Generally, the court makes this determination by using the RAI. The RAI contains information regarding a child's history of prior offenses, including, but not limited to, unlawful firearm possession, theft of a motor vehicle, or possession of a stolen vehicle; prior failures to appear; offenses committed pending adjudication; the probation status of the child at the time they are taken into custody; and other appropriate aggravating or mitigating circumstances.¹⁴

Once a detention hearing has been held and the state has filed a petition alleging a child committed a delinquent act or a violation of law, an adjudicatory hearing must be held as soon as practicable.¹⁵ If the child is a PJO, then the adjudicatory hearing must be held within 45 days after the child is taken into custody unless a delay is requested by the child.¹⁶ A child who is held in secure detention before his or her adjudicatory hearing may not be held in such detention for more than 21 days,¹⁷ except that the state or defense, in order to prepare its case, may seek up to a nine-day extension of detention care for a child charged with certain serious offenses.¹⁸

At the adjudicatory hearing, the judge must determine whether the state's evidence establishes beyond a reasonable doubt that the child committed the delinquent act alleged. The court may enter an order dismissing the case¹⁹ or may enter an order stating the facts upon which it finds the child committed the delinquent act and either withhold adjudication²⁰ or enter an adjudication of delinquency.²¹

If the child is found to have committed a delinquent act, the disposition of the case is typically entered at the same hearing; however, if the disposition is continued to a later date, statute provides that a child may not be held in secure detention care for more than 15 days following the entry of an order of adjudication.²² This 15-day period does not include periods of delay that result from continuances granted by the court for cause.²³

⁹ S. 985.255(1), F.S.

¹⁰ Rule 63D-8, F.A.C. (Department of Juvenile Justice Risk Assessment Instrument).

¹¹ S. 985.25(1)(b), F.S.

¹² Id.

¹³ Id.

¹⁴ S. 985.245(1)(b), F.S.

¹⁵ S. 985.35(1), F.S.

¹⁶ S. 985.35(1)(b), F.S.

¹⁷ S. 985.26(2), F.S.

¹⁸ These offenses include any offense, which if committed by an adult, would be a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual.

¹⁹ S. 985.35(3), F.S.

²⁰ S. 985.35(4), F.S.

²¹ S. 985.35(5), F.S.

²² S. 985.26(3)

²³ If such a continuance is granted the court must conduct a hearing at the end of each 72-hour period, to determine the need for continued detention of the child and the need for further continuance of the proceedings. See s. 985.26(4), F.S.

Prolific Juvenile Offender and s. 985.25, F.S.

Section 985.255(1)(j), F.S., establishes the designation of a prolific juvenile offender ("PJO"). A child is classified as a PJO if he or she:

- Is charged with a delinquent act that would be a felony if committed by an adult;
- Has been adjudicated or had adjudication withheld for a felony offense, or a delinquent act that would be a felony if committed by an adult, prior to the charge for which they are currently appearing; and
- Has five or more of any of the following:²⁴
 - An arrest event²⁵ for which a disposition²⁶ has not been entered;
 - An adjudication; or
 - An adjudication withheld.

When a child is taken into custody and qualifies as a PJO, that child must remain in secure detention pending the detention hearing.²⁷ At the detention hearing, a PJO must be placed in either secure detention or nonsecure detention with electronic monitoring until the disposition of the case.²⁸ The term "disposition" means the state declines to file charges;²⁹ the state enters a nolle prosequi for the charges; an indictment³⁰ or information³¹ is filed; the case is dismissed; or there is a final order of disposition by the court. If the PJO is placed in secure detention, such detention may not exceed:

- 21 days, unless an adjudicatory hearing begins or is extended by nine days under current law; or
- 15 days after the entry order of adjudication.

Section 985.25, F.S., states that a PJO must remain in secure detention pending a detention hearing whenever DJJ receives custody of a PJO who has been taken into custody from a law enforcement agency.³² Despite the plain language of the statute, DJJ says s. 985.25, F.S., only applies when a child is taken into custody based on new law offenses and not technical violations of nonsecure detention release.³³

As a result, when a PJO violates nonsecure detention and is taken into custody, DJJ uses a RAI to determine if the child should remain in secure or nonsecure detention pending the detention hearing. A subset of youth who meet the criteria of PJO will not necessarily score for secure detention based on the RAI and will be released pending the detention hearing.

DJJ Predisposition Report

Sections 985.43, F.S., and 985.433, F.S., address disposition hearings in delinquency cases and predisposition reports. When a child is found to have committed a delinquent act, a court must first determine the suitability or unsuitability for adjudication and commitment of the child to DJJ.³⁴ The

²⁴ Three of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult.

²⁵ S. 985.255(1)(j)3, F.S., defines an "arrest event" as an arrest or referral for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction.

²⁶ S. 985.26, F.S., defines "disposition" to mean a declination to file under s. 985.15(1)(h), the entry of nolle prosequi for the charges, the filing of an indictment under s. 985.56 or an information under s. 985.557, a dismissal of the case, or an order of final disposition by the court.

²⁷ S. 985.25(1)(b), F.S.

²⁸ S. 985.26, F.S.

²⁹ Pursuant to s. 985.15(1)(h), F.S.

³⁰ Pursuant to s. 985.56, F.S., this may occur if the child is charged with a violation of law punishable by death or by life imprisonment.

³¹ Pursuant to s. 985.577, F.S., the state attorney may direct file, or in certain cases must direct file, an information for juvenile offenders of a certain age charged with committing certain serious offenses if the state intends to seek adult sanctions.

³² Supra, FN 27.

³³ Phone call between Criminal Justice Subcommittee staff and Department of Juvenile Justice on November 16, 2017.

³⁴ S. 985.433, F.S.

court may order DJJ to prepare a predisposition report regarding the child's eligibility for adjudication, commitment, and, if appropriate, assignment to residential commitment.³⁵

Section 985.43, F.S.

The predisposition report is prepared by a DJJ probation officer and reports the result of a multidisciplinary assessment of the youth's priority needs, an individualized plan for treatment of those needs, and a recommendation of the most appropriate placement to meet the youth's needs in a setting that provides a level of security sufficient to ensure public safety.³⁶

Section 985.43, F.S., addresses predisposition reports and other evaluations to be used by a judge in sentencing a juvenile. If it is anticipated that the child will be recommended for residential commitment, then s. 985.43, F.S., requires the court to order a predisposition report.³⁷ The predisposition report evaluates the following criteria³⁸:

- The seriousness of the offense.
- Whether the protection of the community requires adjudication and commitment.
- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner.
- Whether the offense was against person or against property, with greater weight being given to an offense against a person.
- The child's sophistication and maturity.
- The child's record and previous criminal history.
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child if committed to a community services program or facility.
- The child's educational status.

The court must consider the child's entire assessment and predisposition report and review the records of earlier judicial proceedings prior to making a final disposition.³⁹ If the court determines that the child should be adjudicated and committed to DJJ, such determination must be in writing or on the record.⁴⁰ The determination must include a specific finding of the reasons for the decision, including any determination that the child is a member of a criminal gang.⁴¹ However, judges do not always consider the juvenile's entire assessment and the department's predisposition report before making the decision to commit to a residential facility. The department defines this practice as a "bench commitment."

Section 985.433, F.S.

Section 985.433, F.S., describes the procedures a court must follow at the disposition of a case where a child has been found to have committed a delinquent act. This statute does not discuss any requirement that a court must order and consider a predisposition report if the child is being recommended for commitment.

Bench Commitments

Juvenile arrests in Florida have continued to decline over the past decade, with juvenile arrests at the lowest point in more than 40 years.⁴² The use of residential commitment has also declined significantly, as residential placement is reserved for youth with a higher risk of reoffending. After several years of

³⁵ S. 985.43, F.S.

³⁶ S. 985.43(1)(a), F.S.

³⁷ Id.

³⁸ S. 985.433(6), F.S.

³⁹ S. 985.43(2), F.S.

⁴⁰ S. 985.433, F.S.

⁴¹ Id.

⁴² Email from Department of Juvenile Justice, October 26, 2017, citing Florida Department of Juvenile Justice's Office of Research and Data Integrity (on file with Criminal Justice Subcommittee).

decline in residential commitment, dispositions to residential commitment began to increase during FY 2015-16 to FY 2016-17.⁴³ According to DJJ, this has been driven primarily by two factors⁴⁴:

- A significant reduction in transfer to adult court (direct file); and
- An increase in bench commitments.

DJJ defines "bench commitments" to mean when the court fails to consider the department's recommendations in a predisposition report before committing the youth.⁴⁵ Below is a chart compiled from information received from the department regarding bench commitments.⁴⁶

	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Commitments	8,422	7,593	7,319	6,122	5,317	4,097	3,481	3,278	3,072	3,181	3,499
Bench	975	924	1,137	1,050	1,121	981	989	970	838	989	960
	12%	12%	16%	17%	21%	24%	28%	30%	27%	31%	27%

Agency Direct Support Organizations

Direct Support Organizations (DSOs)

A direct-support organization (DSO) is a non-profit organization⁴⁷ authorized by statute to carry out specific tasks in support of a public entity or public cause. The function and purpose of a DSO is detailed in its enacting statute and the written contract with the agency the DSO was created to support.⁴⁸

DSO Transparency and Reporting Requirements

In 2014, the Legislature created s. 20.058, F.S., establishing transparency and reporting requirements for DSOs.⁴⁹ Specifically, the law requires each DSO to submit annually the following information to the agency it was created to support by August 1st:⁵⁰

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent Internal Revenue Service (IRS) Form 990.⁵¹

Additionally, the information submitted annually by a DSO must be available on the respective agency's website along with a link to the DSO's website, if one exists.⁵² Any contract between an agency and a DSO must be contingent upon the DSO submitting the required information to the agency and posting the information on the agency's website.⁵³ The contract must include a provision for ending operations and returning state-issued funds if the authorizing statute is repealed, the contract is terminated, or the

⁴³ Florida Department of Juvenile Justice FY 2016-17 Delinquency Profile (online publication pending) (on file with Criminal Justice Subcommittee).

⁴⁴ Email from Department of Juvenile Justice, November 09, 2017 (on file with Criminal Justice Subcommittee).

⁴⁵ Email from Department of Juvenile Justice, November 22, 2017 (on file with Criminal Justice Subcommittee).

⁴⁶ Id.

⁴⁷ Ch. 617, F.S.

⁴⁸ SS. 14.29(9)(a), 16.616(1), and 258.015(1), F.S.; see also Rules of the Florida Auditor General, *Audits of Certain Nonprofit Organizations* (effective June 30, 2017), Rule 10.720(1)(b) and (d), available at: https://flauditor.gov/pages/pdf_files/10_700/pdf (last accessed January 11, 2018).

⁴⁹ S. 3, Ch. 2014-96, L.O.F.

⁵⁰ S. 20.058(1), F.S.

⁵¹ The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501. 26 C.F.R. 1.6033-2.

⁵² S. 20.058(2), F.S.

⁵³ S. 20.058(4), F.S.

organization is dissolved.⁵⁴ If a DSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate its contract with the DSO.⁵⁵

By August 15th of each year, each agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information submitted by the DSO, along with the agency's recommendation and supporting rationale to continue, terminate, or modify the agency's association with the DSO.⁵⁶ Any law creating, or authorizing the creation of a DSO must repeal its authorization on October 1st of the 5th year after enactment, unless reviewed and reenacted by the Legislature. A list of DSOs in existence prior to July 1, 2014 are scheduled for repeal in 2018, and 2019 is below:

DSOs Scheduled for Repeal ⁵⁷	
October 1, 2018	October 1, 2019
<ul style="list-style-type: none"> • Guardian ad Litem Program Foundation (s. 39.8298(8), F.S.) • Florida Department of Law Enforcement for Florida Missing Children's Day (s. 683.231(8), F.S.) • Department of Corrections (s. 944.802(4), F.S.) • Executive Office of the Governor to assist victims of adult and juvenile crime. (s. 960.002(6), F.S.) • Department of Juvenile Justice (s. 985.672(7), F.S.) 	<ul style="list-style-type: none"> • Department of Environmental Protection (s. 20.2551(6), F.S.) • Division of Library and Information Services (s. 257.43(4), F.S.) • Division of Recreation and Parks (s. 258.015(4), F.S.) • Babcock Ranch Preserve (s. 259.10521(4), F.S.) • Division of Cultural Affairs (s. 265.703(4), F.S.) • Division of Historical Resources (s. 267.17(4), F.S.) • Florida Tourism Industry Marketing Corporation (ss. 288.1226(9) and 288.923(6), F.S.) • Florida Intergovernmental Relations Foundation (s. 288.809(5), F.S.) • Fish and Wildlife Conservation Commission (s. 379.223(4), F.S.) • Department of Agriculture and Consumer Services (s. 570.691(10), F.S.) • Florida Beef Council (s. 570.83(14), F.S.)

Current law requires all DSOs in existence prior to July 1, 2014 must be reviewed by the Legislature by July 1, 2019.⁵⁸

⁵⁴ Ch. 2017-75, L.O.F.

⁵⁵ S. 20.058(4), F.S.

⁵⁶ S. 20.058(3), F.S.

⁵⁷ Supra, FN 3.

⁵⁸ S. 20.058(5), F.S.

DSO Audit Requirements

Section 215.981, F.S., requires each DSO with annual expenditures in excess of \$100,000 to annually audit its accounts and records.⁵⁹ The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the DSO. The audit report must be submitted within nine months of the fiscal year to the Auditor General and to the state agency the DSO supports. Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of DSO accounts and records.⁶⁰

Florida Juvenile Justice Foundation

In 1999, the Legislature created the direct support organization for DJJ under s. 985.672, F.S. The Business Partners became that organization through non-profit incorporation on January 28, 2000, as a 501(c)(3) education organization named Florida Business Partners for Juvenile Justice, Inc.⁶¹ In 2005, the Board of Directors voted to change the name of the organization from Florida Business Partners for Juvenile Justice to Florida Juvenile Justice Foundation (Foundation).

The Foundation's purpose is to raise funds that enhance, promote, and support initiatives of DJJ. The Foundation funds the You Investment Award program, which provides financial assistance designed to further the education and employability of juvenile justice-involved youth. The Foundation also funds back-to-school drives, Youth Success Week, the Human Trafficking Summit, the National Faith-Based Symposium, and provides support and recognition for the DJJ Teacher of the Year Award.⁶²

Under s. 985.672(3), F.S., the board of directors for the Foundation must include representatives from businesses, representatives from each of the juvenile justice service districts, and one representative appointed at large. While DJJ used to divide the state out into "districts," that system changed in the late 1990s.⁶³ The current system under DJJ breaks the state into "circuits." This involves a substantial geographical change from the old "district" system. Where there used to be 15 districts, there are now 20 circuits.⁶⁴ The statutory language of s. 985.672(3), F.S., was never updated to reflect the transition from "districts" to "circuits."

The by-laws of the Foundation state that the Secretary shall appoint the members and that shall include a diverse group of individuals with broad based representation from communities and business leaders with ethnic, age, gender and geographic diversity.⁶⁵ The language of the statute is not in keeping with the current bylaws of the Foundation.

Currently, the authorizing statute for the Foundation is scheduled for repeal October 1, 2018.

Effect of Proposed Changes

Invest in Children License Plates

HB 1417 amends s. 320.08058, F.S., to remove the requirement that DJJ use the proceeds from license plates to fund programs and services on a county level based on each county's proportionate share of the license plate annual use fee collected in that county. The amendment will allow DJJ to distribute the proceeds from the license plate fund on a statewide basis. The change should allow the

⁵⁹ The independent audit requirement does not apply to a DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

⁶⁰ S. 11.45(3), F.S.

⁶¹ Id.

⁶² Email from Department of Justice, November 20, 2017 (on file with Criminal Justice Subcommittee).

⁶³ Supra, FN. 4.

⁶⁴ Id.

⁶⁵ Florida Juvenile Justice Foundation, Inc. By-laws, Art. V (on file with Criminal Justice Subcommittee).

department to better utilize the revenues collected, rather than having those revenues accumulate unspent within the trust fund.

Prolific Juvenile Offender Violations of Nonsecure Detention

The bill requires PJOs taken into custody for a violation of nonsecure detention to be held in secure detention until the detention hearing is held. The risk assessment instrument will no longer apply when determining if a PJO youth who violates the conditions of nonsecure release will be held pending the detention hearing.

Consideration of DJJ Predisposition Report

The bill amends s. 985.433, F.S., to require the court to receive and consider the predisposition report prior to committing the child to the department. This will ensure a sentencing judge is considering the opinions of DJJ concerning the suitability of the youth's placement prior to commitment.

DJJ Direct Support Organizations

HB 1417 removes the scheduled repeal date for DJJ's direct support organization, the Florida Juvenile Justice Foundation. As a result, the DSO will remain in existence unless the legislature determines that another review is necessary. The bill also removes the requirement that members of the organization include representatives from businesses and each of the juvenile justice service districts, and one at large representative. The bill provides that the Secretary of the Department of Juvenile Justice must appoint members in accordance with the Foundation's bylaws.

B. SECTION DIRECTORY:

Section 1: Amending 320.08058, F.S., relating to specialty license plates.

Section 2: Amending 985.26, F.S., relating to length of detention.

Section 3: Amending 985.433, F.S., relating to disposition hearings in delinquency cases.

Section 4: Amending 985.672, F.S., relating to direct-support organizations; definitions; use of property board of directors; audit.

Section 5: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Prolific Juvenile Offenders

To the extent that additional youth are held in secure detention, there will be additional costs to the state to operate secure detention facilities. However, these costs are likely to be insignificant due to the minimal number of youth that qualify as prolific juvenile offenders but do not score to be held in secure detention. According to DJJ, these costs can be absorbed within existing resources.

Consideration of DJJ Predisposition Report

There is an indeterminate fiscal impact relating to the judicial consideration of DJJ predisposition reports. It is unknown how many youth that received a bench commitment would have been referred to a residential program if a predisposition report had been received and reviewed by the judge before committing the juvenile.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

To the extent that additional youth are held in secure detention, there will be additional costs to the non-fiscally constrained counties that contribute funding to operate secure detention facilities. However, these costs are likely to be insignificant due to the minimal number of youth that qualify as prolific juvenile offenders but do not score to be held in secure detention.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Invest in Children license plate generated approximately \$240,000 in revenues over the past four fiscal years. The Department of Highway Safety and Motor Vehicles (DHSMV) deposits these funds into the Juvenile Crime Prevention and Early Intervention Trust Fund. The department expended approximately \$137,000 per year from this trust fund during the last four fiscal years. As a result, the trust fund balance continues to increase. As of January 2018, the trust fund has available revenue of approximately \$1.2 million. The bill removes the current distribution limitations, allowing the department to use available funding for prevention programs around the state.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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

1 A bill to be entitled
 2 An act relating to the juvenile justice; amending s.
 3 320.08058, F.S.; allowing the department to distribute
 4 proceeds from the Invest in Children license plate
 5 annual use fee on a statewide basis; amending s.
 6 985.26, F.S.; requiring the department to hold a
 7 prolific juvenile offender in secure detention pending
 8 a detention hearing following a violation of nonsecure
 9 detention; amending s. 985.433, F.S.; requiring the
 10 court to consider a predisposition report from the
 11 department before committing a child; amending s.
 12 985.672, F.S.; requiring the board of directors of the
 13 department's direct-support organization to be
 14 appointed according to the organization's bylaws;
 15 deleting the scheduled repeal of provisions governing
 16 a direct-support organization established by the
 17 department; providing an effective date.

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

20
 21 Section 1. Paragraph (b) of subsection (11) of section
 22 320.08058, Florida Statutes, is amended to read:
 23 320.08058 Specialty license plates.—
 24 (11) INVEST IN CHILDREN LICENSE PLATES.—
 25 (b) The proceeds of the Invest in Children license plate

26 annual use fee must be deposited into the Juvenile Crime
 27 Prevention and Early Intervention Trust Fund within the
 28 Department of Juvenile Justice. Based on the recommendations of
 29 the juvenile justice councils, the department shall use the
 30 proceeds of the fee to fund programs and services that are
 31 designed to prevent juvenile delinquency. ~~The department shall~~
 32 ~~allocate moneys for programs and services within each county~~
 33 ~~based on that county's proportionate share of the license plate~~
 34 ~~annual use fee collected by the county.~~

35 Section 2. Paragraph (d) is added to subsection (2) of
 36 section 985.26, Florida Statutes, to read:

37 985.26 Length of detention.—

38 (2)

39 (d) A prolific juvenile offender under s. 985.255(1)(j)
 40 who is taken into custody for a violation of the conditions of
 41 his or her nonsecure detention must be held in secure detention
 42 until a detention hearing is held.

43 Section 3. Subsections (7) through (10) of section
 44 985.433, Florida Statutes, are renumbered as subsections (8)
 45 through (11), respectively, paragraph (c) of present subsection
 46 (7) is amended, and a new subsection (7) is added to that
 47 section, to read:

48 985.433 Disposition hearings in delinquency cases.—When a
 49 child has been found to have committed a delinquent act, the
 50 following procedures shall be applicable to the disposition of

51 the case:

52 (7) The court must receive and consider the department's
 53 predisposition report, which shall include the department's
 54 recommendations, before committing a child to the department.
 55 The predisposition report cannot be waived by any party or by
 56 agreement of the parties.

57 ~~(8)(7)~~ If the court determines that the child should be
 58 adjudicated as having committed a delinquent act and should be
 59 committed to the department, such determination shall be in
 60 writing or on the record of the hearing. The determination shall
 61 include a specific finding of the reasons for the decision to
 62 adjudicate and to commit the child to the department, including
 63 any determination that the child was a member of a criminal
 64 gang.

65 (c) The court may also require that the child be placed in
 66 a probation program following the child's discharge from
 67 commitment. Community-based sanctions under subsection ~~(9)(8)~~
 68 may be imposed by the court at the disposition hearing or at any
 69 time prior to the child's release from commitment.

70 Section 4. Subsections (3) and (7) of section 985.672,
 71 Florida Statutes, are amended to read:

72 985.672 Direct-support organization; definition; use of
 73 property; board of directors; audit.—

74 (3) BOARD OF DIRECTORS.—The Secretary of Juvenile Justice
 75 shall appoint a board of directors of the direct-support

76 organization. The board members shall be appointed according to
 77 the organization's bylaws ~~Members of the organization must~~
 78 ~~include representatives from businesses, representatives from~~
 79 ~~each of the juvenile justice service districts, and one~~
 80 ~~representative appointed at large.~~

81 ~~(7) REPEAL. This section is repealed October 1, 2018,~~
 82 ~~unless reviewed and saved from repeal by the Legislature.~~

83 Section 5. This act shall take effect July 1, 2018.

