



Justice Appropriations Subcommittee

**Tuesday, February 13, 2018
12:30 – 2:30 PM
Mashburn Hall (306 HOB)**

Meeting Packet

**Richard Corcoran
Speaker**

**Bill Hager
Chair**



The Florida House of Representatives

Appropriations Committee

Justice Appropriations Subcommittee

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AGENDA

Tuesday, February 13, 2018



12:30 -2:30 p.m.

Mashburn Hall (306 HOB)

- I. Call to Order/Roll Call
- II. Opening Remarks and Introductions
- III. Consideration of the following bills:
 - CS/HB 957 Crime Stoppers Organizations by Criminal Justice Subcommittee and Gruters
 - CS/HB 1249 Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-Enabled Household Devices by Criminal Justice Subcommittee and Grant, J.
 - HB 1301 Sexual Offenders and Predators by Fitzenhagen and Hager
 - CS/HB 1309 Fraudulently Obtaining or Retaining Personal Property or Equipment by Criminal Justice Subcommittee and Alexander
 - HB 7061 Jurisdiction of County Courts by Civil Justice & Claims Subcommittee and Perez and Leek
 - HB 7071 by Criminal Justice Data Transparency by Judiciary Committee and Sprowls
- IV. Closing Remarks/Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 957 Crime Stoppers Organizations
SPONSOR(S): Criminal Justice Subcommittee; Gruters and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 706

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Jones	Sumner
2) Justice Appropriations Subcommittee		 Welty	Gusky 
3) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court. In part, the Code makes certain communications privileged, meaning their disclosure cannot be compelled, even in legal proceedings.

Crime Stoppers organizations are nonprofit entities that partner with law enforcement and the community to fight crime. Crime Stoppers organizations receive information about alleged criminal activity through a designated hotline or through electronic means and then forward the information to appropriate law enforcement agencies.

CS/HB 957 creates a new category of privileged communication in the Code. The bill provides that when a person reports alleged criminal activity to a Crime Stoppers organization, that communication and the reporting person's identity are privileged and cannot be disclosed, except on a limited basis in criminal proceedings where the information is constitutionally required to be disclosed.

The bill makes it a third-degree felony for any person—other than the person reporting the information—to disclose privileged or protected information relating to a communication made to a Crime Stoppers organization.

To the extent that persons are arrested for, charged with, and convicted of, the criminal offense created in the bill, this bill will have an indeterminate fiscal impact on state and local governments as these cases are processed through the criminal justice system.

The Criminal Justice Impact Conference (CJIC) considered this bill on February 12, 2018, and determined that it would increase the prison population by an insignificant amount.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Crime Stoppers Organizations

Crime Stoppers organizations are nonprofit entities that partner with law enforcement and the community to fight crime.¹ Crime Stoppers organizations receive information about alleged criminal activity through a designated hotline or through electronic means and then forward the information to appropriate law enforcement agencies.² Such organizations often create incentives to report crimes by providing monetary rewards or by allowing the person reporting the crime to remain anonymous.³

Florida Evidence Code

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.⁴ The Code makes certain communications privileged, meaning their disclosure generally cannot be compelled, even in legal proceedings. Examples of generally privileged communications include communications between a lawyer and client,⁵ communications between a husband and wife,⁶ and communications between a psychotherapist and a patient.⁷

Criminal Punishment Code

The Criminal Punishment Code (Code) applies to all felony offenses, except capital felonies, committed on or after October 1, 1998.⁸ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10), either by being specifically listed in the offense severity ranking chart⁹ or by default.¹⁰ Judges must use the Criminal Punishment Code worksheet to compute a sentence score for each felony offender.¹¹

Sentence points are assigned and accrue based on the level ranking assigned to the primary offense, additional offenses and prior offenses.¹² Sentence points increase as the offense severity level increases from Level 1 (least severe) to Level 10 (most severe). Sentence points are added for victim injury, and increase based on the type of injury and severity.¹³ Sentence points may also be added or multiplied for other factors including possession of a firearm or the commission of certain offenses, such as drug trafficking.¹⁴

If total sentence points equal or are less than 44 points, the lowest permissible sentence is any nonstate prison sanction, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by

¹ <http://www.leoncountysoc.com/crime-stoppers> (last visited Jan. 26, 2018).

² *Id.*; <http://www.facsflorida.org/what-we-do/how-they-do-it/> (last visited Jan. 26, 2018).

³ *Id.*

⁴ Chapter 90, F.S.

⁵ S. 90.502, F.S.

⁶ S. 90.504, F.S.

⁷ S. 90.503, F.S.

⁸ s. 921.002, F.S.

⁹ s. 921.0022, F.S.

¹⁰ s. 921.0023, F.S., addresses ranking unlisted felony offenses. For example, an unlisted felony of the third degree is ranked within offense level 1.

¹¹ s. 921.0024, F.S.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.¹⁵ Absent mitigation,¹⁶ the permissible range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.¹⁷

Effect of Proposed Changes

CS/HB 957 adds a new category of privileged communication to the Florida Evidence Code. Specifically, the bill provides that when a person reports alleged criminal activity to a Crime Stoppers organization, that communication and the reporting person's identity are privileged and cannot be disclosed, except on a limited basis in criminal proceedings where the information is constitutionally required to be disclosed.

Definitions

The bill defines:

- "Crime stoppers organization" as a private, not-for-profit organization that collects and expends donations for rewards to persons who report to the organization information concerning criminal activity and forwards that information to appropriate law enforcement agencies.
- "Privileged communication" as the act of providing information to a Crime Stoppers organization for the purpose of reporting alleged criminal activity.
- "Protected information" as the identity of a person who engages in privileged communication with a Crime Stoppers program and any records, recordings, oral or written statements, papers, documents, or other tangible things provided to or collected by:
 - A Crime Stoppers organization,
 - A law enforcement Crime Stoppers coordinator or his or her staff, or
 - A law enforcement agency in connection with such privileged communication.

Protection of Privileged Communication in Legal Proceedings

Under the bill, any person who engages in privileged communication—as well as any law enforcement officer or staff thereof, or any member of a Crime Stoppers organization's board of directors—cannot be compelled to:

- Disclose, by way of testimony or any other means, privileged communication or protected information unless failure to do so would infringe on the constitutional rights of an accused person.
- Produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to privileged communication or protected information, whether in connection with a criminal case, criminal proceeding, or any administrative hearing; or by way of any discovery procedure.

In a criminal proceeding, upon the defendant's petition, a court may order the production and disclosure of all or a part of protected information if it finds that the privileged or protected information:

- May provide favorable evidence for the defendant,
- Is specifically related to the determination of the innocence or guilt of the defendant, and
- Is such that, if not disclosed, would deprive the defendant's constitutional rights.

In such a case, the court must, to the fullest extent possible, protect the identity of the persons who engaged in the privileged communication.

¹⁵ s. 921.0022(2), F.S.

¹⁶ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

¹⁷ s. 921.0022(2), F.S.

Criminal Penalty for Disclosure of Privileged Communication

The bill makes it an unranked third-degree felony for any person other than the person reporting the information to disclose any information related to the privileged communication or protected information. This means that when a person reports information about alleged criminal activity to a Crime Stoppers organization, any person (other than the person reporting the information) who discloses the identity of the reporter or the reported information commits a third-degree felony.

An unranked third-degree felony is a descriptive term for a noncapital felony that is not specifically ranked in the offense severity ranking chart in s. 921.0022, F.S. If the felony is not ranked in the chart, it is ranked pursuant to s. 921.0023, F.S., based on its felony degree. An unranked third degree felony is a Level 1 offense.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 90.595, F.S., relating to privileged communication with and the provision of protected information to Crime Stoppers organizations.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference, which provides the final official estimate of a bill's prison bed impact, met on February 12, 2018, and determined the bill would have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).¹⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

To the extent that persons are arrested for, charged with, and convicted of, the criminal offense created in the bill, this bill will have an indeterminate fiscal impact on state and local governments as these cases are processed through the criminal justice system.

¹⁸ Criminal Justice Impact Conference, Office of Economic and Demographic Research, Narrative Analysis of Adopted Impacts: CS/SB 706 – Crime Stoppers Organizations (Identical CS/HB 957), February 12, 2018.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

The First Amendment of the United States Constitution prevents the government from creating laws that restrict a citizen from communicating nonprotected opinions or information with other people.¹⁹ The bill could implicate the First Amendment right to free speech, since it makes it a crime for a person other than the reporter of the information to disclose any information related to privileged communication or protected information made to a Crime Stoppers organization.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2018, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified that the criminal penalties do not apply to the person who reports information to a Crime Stoppers organization.

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

¹⁹ U.S.Const. amend. I.
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A bill to be entitled
 An act relating to crime stoppers organizations;
 creating s. 90.595, F.S.; providing definitions;
 prohibiting a person who engages in privileged
 communication, a law enforcement crime stoppers
 coordinator or his or her staff, or a member of a
 crime stoppers organization's board of directors from
 being required to disclose privileged communications
 or produce protected information; providing an
 exception; authorizing a person charged with a
 criminal offense to petition the court to inspect the
 protected information under certain circumstances;
 authorizing a court to disclose all or a portion of
 the protected information; providing criminal
 penalties; providing an effective date.

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

Section 1. Section 90.595, Florida Statutes, is created to read:

90.595 Privileged communication with and the provision of protected information to crime stoppers organizations.-

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

(a) "Crime stoppers organization" means a private not-for-profit organization that collects and expends donations for

26 rewards to persons who report to the organization information
27 concerning criminal activity and forwards that information to
28 appropriate law enforcement agencies.

29 (b) "Privileged communication" means the act of providing
30 information to a crime stoppers organization for the purpose of
31 reporting alleged criminal activity.

32 (c) "Protected information" includes the identity of a
33 person who engages in privileged communication with a crime
34 stoppers program and any records, recordings, oral or written
35 statements, papers, documents, or other tangible things provided
36 to or collected by a crime stoppers organization, a law
37 enforcement crime stoppers coordinator or his or her staff, or a
38 law enforcement agency in connection with such privileged
39 communication.

40 (2) A person who engages in privileged communication under
41 this section, a law enforcement crime stoppers coordinator or
42 his or her staff, or a member of a crime stoppers organization's
43 board of directors may not be required:

44 (a) To disclose, by way of testimony or any other means, a
45 privileged communication or protected information unless such
46 failure to disclose would infringe on the constitutional rights
47 of an accused person.

48 (b) To produce, under subpoena, any records, documentary
49 evidence, opinions, or decisions relating to such privileged
50 communication or protected information:



51 1. In connection with a criminal case, criminal
 52 proceeding, or any administrative hearing; or
 53 2. By way of any discovery procedure.
 54 (3)(a) A person charged with a criminal offense may
 55 petition the court for inspection in camera of the protected
 56 information. The petition must allege that the protected
 57 information meets all of the following criteria:
 58 1. Provides evidence favorable to the defendant.
 59 2. Is specifically related to the determination of the
 60 innocence or guilt of the petitioner.
 61 3. Is such that, if it is not disclosed, will cause a
 62 deprivation of a constitutional right of the petitioner.
 63 (b) If the court determines that all of the criteria
 64 specified in paragraph (a) are satisfied, the court may order
 65 the production and disclosure of all or any part of the
 66 protected information, while, to the fullest extent possible,
 67 protecting the identity of the persons who engaged in privileged
 68 communication.
 69 (4) A person, other than the person who provides the
 70 privileged communication, who discloses any information related
 71 to privileged communication or protected information commits a
 72 felony of the third degree, punishable as provided in s.
 73 775.082, s. 775.083, or s. 775.083.
 74 Section 2. This act shall take effect October 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1249 Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-Enabled Household Devices

SPONSOR(S): Criminal Justice Subcommittee; Grant

TIED BILLS: IDEN./SIM. BILLS: SB 1256

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

Currently, unlawful access of stored communications only addresses accessing a facility where electronic communications are stored. CS/HB 1249 significantly broadens the scope of conduct constituting the unlawful access of stored communications by including accessing a cell phone, portable electronic communication device, or microphone-enabled household device when used to obtain wire, oral, or electronic communications stored within the device.

The bill amends Chapter 934, F.S., relating to security of communications and surveillance, to:

- Expand the types of location tracking methods available to law enforcement to include:
 - Cell-site location data;
 - Precise global positioning satellite location data; and
 - Historical global positioning satellite location data.
- Provide that a court may issue a warrant based upon probable cause for a law enforcement officer to obtain cellular-site location data, precise global positioning satellite location data, or historical global positioning satellite data. The bill:
 - Requires a law enforcement officer to install a mobile tracking device within 10 days of the warrant's issuance, and
 - Provides time constraints on how long a mobile tracking device may be used or the location data may be obtained and the timeframe must be specified in the warrant.
- Require the law enforcement officer who executed the warrant to serve a copy of the warrant to the person who, or whose property, was tracked within 10 days after the surveillance timeframe specified in the warrant has ended.
- Authorize the court to delay the notice requirement for up to 90 days upon request of the law enforcement agency.
- Provide a definition of a "mobile tracking device" and allow for emergency location tracking under certain circumstances.

To the extent that persons are arrested for, charged with, and convicted of, the criminal offenses modified in the bill, this bill will have an indeterminate fiscal impact on state and local governments as these cases are processed through the criminal justice system.

The Criminal Justice Impact Conference (CJIC) considered this bill on February 12, 2018, and determined that the bill would increase the prison population by an insignificant amount.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Fourth Amendment, Generally

The Fourth Amendment of the United States Constitution guarantees:

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated; and
- No warrants shall issue without probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.¹

Under Fourth Amendment jurisprudence, a search occurs whenever the government intrudes upon an area in which a person has reasonable expectation of privacy.² A warrantless search is generally per se unreasonable,³ unless an exception to the warrant requirement applies.⁴

The Florida Constitution similarly protects the people against unreasonable searches and seizures, and that right is construed in conformity with the Fourth Amendment of the U.S. Constitution.⁵ Both the Florida and federal constitutions law require a warrant to be supported by probable cause, as established by oath or affirmation, and to particularly describe the place to be searched and items or people to be seized.

Advancing technology has presented law enforcement with new means of investigation and surveillance, and the courts with new questions about the Fourth Amendment implications of this technology.

Searches of Cell Phones

An exception to the warrant requirement is a search incident to arrest, which allows law enforcement to perform a warrantless search of an arrested person, and the area within the arrestee's immediate control, in the interest of officer safety, and to prevent escape and the destruction of evidence.⁶

In *Riley v. California*,⁷ the U.S. Supreme Court held that law enforcement must obtain a search warrant to search the digital contents of a cell phone seized incident to arrest. The Court considered the advanced capabilities of modern cell phones, which it further noted "are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy."⁸ It reasoned that a modern smartphone's immense storage capacity allows that phone to carry tremendous quantity and variety of records regarding a person's private life, such as photographs, prescriptions, bank records, contacts, and videos.⁹

¹ U.S. CONST. AMEND. IV.

² *Katz v. United States*, 389 U.S. 347 (1967).

³ *United States v. Harrison*, 689 F.3d 301, 306 (3d Cir.2012)

⁴ Examples of exceptions to the warrant requirement include exigent circumstances, searches of motor vehicles, and searches incident to arrest.

⁵ Fla. Const. Art. 1, s. 12.

⁶ *Chimel v. California*, 395 U.S. 752 (1969).

⁷ 134 S.Ct. 2473 (2014).

⁸ *Id.* at 2484.

⁹ *Id.* at 2489.

Wiretapping and Stored Communications

By Law Enforcement

Wiretapping generally refers to electronic or mechanical eavesdropping on communications.¹⁰ Law enforcement use of a wiretap is subject to Fourth Amendment protections under the United States Constitution.¹¹

In Florida, law enforcement officers may apply for an order authorizing the interception of wire, oral or electronic communication.¹² The requirements to obtain an interception order include the standard requirements of probable cause, oath or affirmation, and particularity as required with a search warrant, but the statute imposes a number of heightened requirements in order for law enforcement to intercept private wire, oral, or electronic communications. The application for an interception order must include:

- The identity of the investigative or law enforcement officer making the application and the officer authorizing the application.
- A full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that an order should be issued, including:
 - Details as to the particular offense that has been, is being, or is about to be committed.
 - A particular description of the nature and location of the facilities from which, or the place where, the communications are to be intercepted, with exceptions.
- A particular description of the type of communications sought to be intercepted.
- The identity of the person, if known, committing the offense and whose communications are to be intercepted.
- A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.
- A statement of the period of time for which the interception is required to be maintained and, if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter.
- A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application.
- When the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception or a reasonable explanation of the failure to obtain such results.¹³

Additionally, the court may require an applicant to furnish additional testimony or documentary evidence in support of the application for an interception order. Only the Governor, the Attorney General, the statewide prosecutor, or any state attorney may authorize the application for an interception order, and the order must pertain to certain enumerated crimes.¹⁴ Upon receiving such an order, a provider of wire, oral, or electronic communication service, or a landlord, custodian, or other person may not disclose the existence of any interception or the device used to accomplish the interception.¹⁵

¹⁰ BLACK'S LAW DICTIONARY (10th ed. 2014), wiretapping.

¹¹ *Katz v. United States*, 389 U.S. 347 (1967).

¹² S. 934.09, F.S.

¹³ *Id.*

¹⁴ S. 934.07, F.S.

¹⁵ S. 934.03(2)(a)3., F.S.

By the General Public

Wiretapping by the general public is prohibited under Florida law.¹⁶ Subject to exceptions, it is a third degree felony¹⁷ for a person to:

- Intentionally intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept any wire, oral, or electronic communication;
- Intentionally use, endeavor to use, or procure any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:
 - Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or
 - Such device transmits communications by radio or interferes with the transmission of such communication;
- Intentionally disclose, or endeavor to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the illegal interception of a wire, oral, or electronic communication;
- Intentionally use, or endeavor to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the illegal interception of a wire, oral, or electronic communication; or
- Intentionally disclose, or endeavor to disclose, to any other person the contents of any wire, oral, or electronic communication intercepted by authorized means when that person:
 - Knows or has reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation;
 - Has obtained or received the information in connection with a criminal investigation; and
 - Intends to improperly obstruct, impede, or interfere with a duly authorized criminal investigation.¹⁸

The penalty for wiretapping may be decreased to a misdemeanor¹⁹ under the following circumstances:

- The person has no prior wiretapping offenses;
- The conduct was not done for tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; and
- The intercepted communication was a radio communication that was not scrambled, encrypted, or transmitted using modulation techniques intended to preserve the privacy of such communication.²⁰

Stored Communications

Separate from wiretapping, Florida law also criminally penalizes unlawful accessing stored communications by:

- Intentionally accessing without authorization a facility through which an electronic communication service is provided, or
- Intentionally exceeding an authorization to access such facility.²¹

The penalties for unlawfully accessing stored communications varies based on specific intent and number of offenses. If the offense is committed for the purpose of commercial advantage, malicious destruction or damage, or private commercial gain, it is a first degree misdemeanor for a first offense and a third degree felony for second and subsequent offenses.²² If the offense was not committed for

¹⁶ S. 934.03, F.S.

¹⁷ A third degree felony is punishable by up to five years in prison and a \$5,000 fine. SS. 775.082 & 775.083, F.S.

¹⁸ S. 934.03(1), F.S.

¹⁹ Misdemeanors are classified as either first- or second-degree. A first degree misdemeanor is punishable by up to 1 year in the county jail and a \$1,000 fine. A second degree misdemeanor is punishable by up to 60 days in the county jail and a \$500 fine. SS. 775.082 & 775.083, F.S. Under s. 934.03(4), F.S., wiretapping may be either a first- or second-degree misdemeanor, depending on the specific type of communication intercepted.

²⁰ S. 934.03(4), F.S.

²¹ S. 934.21(1), F.S.

²² S. 934.21(2)(a), F.S.

commercial advantage, malicious destruction or damage, or private commercial gain, it is a second degree misdemeanor.²³

New Technologies

Several technologies now use microphone-enabled features. These devices may be activated in different ways. Some, such as many Smart TVs, require the user to manually activate the microphone by pressing a button.²⁴ Some respond to a trigger phrase that activates the device to begin transmitting information. These devices, which include many home assistant devices such as the Google Home and Amazon Echo, constantly “listen” for the trigger phrase in order to activate.²⁵ The devices record commands in order to fulfill the requests, and the recordings are stored remotely.²⁶ Other devices, such as baby-monitors and home security systems, are always recording.²⁷

As these microphone-enabled devices grow in popularity, concerns mount about privacy. A security expert recently demonstrated how an Amazon Echo might be hacked.²⁸ Additionally, prosecutors in Arkansas requested to obtain recordings possibly made by an Amazon Echo in a murder case.²⁹

Pen Registers and Trap and Trace Devices

Pen registers and trap and trace devices can track incoming and outgoing phone calls in real time. Historically, a pen register was understood to record the telephone numbers dialed from the target telephone, and a trap and trace device to record the telephone numbers from incoming calls to the target telephone.³⁰

Florida law defines a pen register as a device or process that records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, but such information does not include the contents of any communication.³¹ A trap and trace device under the statute means a device or process that captures the incoming electronic or other impulses that identify the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication, but such information does not include the contents of any communication.³² Florida’s definition of these terms are substantially similar to the definitions in the federal Pen Register Act.³³ The broader statutory definitions draw more types of non-content information under the purview of a pen register or trap and trace device orders.³⁴

Law enforcement may only install a pen register or trap and trace device pursuant to an order under s. 934.33, F.S. The application for such an order must include:

- The identity of the applicant specified in the section and the identity of the law enforcement agency conducting the investigation; and

²³ S. 934.21(2)(b), F.S.

²⁴ Future of Privacy Forum, *Microphones and the Internet of Things* (August 2017), available at: <https://fpf.org/wp-content/uploads/2017/08/Microphones-Infographic-Final.pdf> (last visited January 22, 2018).

²⁵ Id.

²⁶ Nicole Chavez, *Arkansas judge drops murder charge in Amazon Echo case*, CNN (Dec. 2, 2017), available at: <http://www.cnn.com/2017/11/30/us/amazon-echo-arkansas-murder-case-dismissed/index.html> (last visited January 22, 2018).

²⁷ Supra FN 24.

²⁸ Jay McGregor, *Listening-in on a Hacked Amazon Echo is Terrifying*, Forbes (Sept. 7, 2017), available at: <https://www.forbes.com/sites/jaymcgregor/2017/09/07/listening-in-on-a-hacked-amazon-echo-is-terrifying/#32744f415c7f> (last visited January 22, 2018).

²⁹ Supra FN 26.

³⁰ *Tracey v. State*, 152 So.3d 504, 506 (Fla. 2014).

³¹ S. 934.02(20), F.S.

³² S. 934.02(21), F.S.

³³ 18 USC § 3127.

³⁴ For example, the U.S. Department of Justice used pen register orders to track real-time locations of a cell-phone using a cell-site simulator until September 2015. U.S. Department of Justice, *Department of Justice Policy Guidance: Use of Cell-Site Simulator Technology* (Sept. 3, 2015), available at: <https://www.justice.gov/opa/file/767321/download> (last visited January 22, 2018).

- A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency.³⁵

The statutory requirement of relevancy to an ongoing criminal investigation falls short of the probable cause standard, as required for the issuance of a search warrant.

Case Law

In *Smith v. Maryland*,³⁶ the U.S. Supreme Court considered whether Fourth Amendment protections applied where the government installed and used a pen register at a telephone company's offices without a warrant to record the telephone numbers a target phone dialed. Through the pen register, law enforcement discovered that a telephone in Smith's home had been used to place a telephone call to a robbery victim who had received threatening calls. The Court held that there was no expectation of privacy in dialed telephone numbers, as they were voluntarily transmitted to the telephone company.³⁷

The Florida Supreme Court (FSC) considered a pen register and trap and trace order in *Tracey v. State*³⁸ in which law enforcement obtained not only numbers dialed but real-time location information. Officers in *Tracey* applied for the numbers associated with incoming and outgoing calls; however, the phone company also provided real-time cell-site location information, which officers used to track Tracey's location and movements.³⁹ The FSC held that the real-time location tracking of Tracey through his cell phone was a search under the Fourth Amendment and therefore required either a warrant or an exception to the warrant requirement.

Mobile Tracking Devices

A mobile tracking device is an electronic or mechanical device which permits the tracking of the movement of a person or object, such as a GPS tracker.⁴⁰ Law enforcement officers are authorized to install mobile tracking devices for the purpose of collecting tracking and location information after a court order is issued under s. 934.42(2), F.S. The statute requires law enforcement to provide a statement to the court that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency.⁴¹ A certification of relevance is a lower standard than probable cause standard required for obtaining a lawful warrant.

In 2012, the United States Supreme Court addressed mobile tracking devices in *United States v. Jones*.⁴² The Court held that the installation of a GPS tracking device on a vehicle without a warrant violated the Fourth Amendment as an unlawful search.⁴³ Prior to the *Jones* decision, installation of a mobile tracking device was not considered a search when used to track a person's public movements.⁴⁴ As searches are generally per se unreasonable absent a warrant, it is likely that the *Jones* decision requires a warrant, supported by probable cause, for installation of a mobile tracking unit.

Historical Cell Site Data

Cell phones connect to cell sites or base towers in order to make calls, send text messages, use data, and perform other functions.⁴⁵ These cell sites are located at fixed geographic locations. The phone

³⁵ S. 934.32(2), F.S.

³⁶ 442 U.S. 735 (1979).

³⁷ *Id.* at 742-44.

³⁸ 152 So.3d 504 (Fla. 2014).

³⁹ *Id.* at 507-508.

⁴⁰ S. 934.42, F.S.

⁴¹ S. 934.42(2)(b), F.S.

⁴² 565 U.S. 400 (2012).

⁴³ *Id.*

⁴⁴ *United States v. Knotts*, 460 U.S. 276 (1983).

⁴⁵ Center for the Advancement of Public Integrity, *Does Seeking Cell Site Location Information Require a Warrant? The Current State of Law in a Rapidly Changing Field* (August 1, 2016), available at: <http://www.law.columbia.edu/sites/default/files/microsites/public->

connects to the cell site with the strongest available signal and may connect to different cell sites as it moves through a coverage area.⁴⁶ The phone company keeps a record of the cell sites that a phone connects to for certain actions.⁴⁷ This data can approximate a person's location, although it is possible for a cell site to have a coverage area of approximately 2,700 miles⁴⁸ and for a phone to connect to a tower other than the one closest to it.⁴⁹

Under current Florida law, law enforcement may obtain historical cell site data without a warrant under s. 934.23, F.S., which allows an officer to seek a court order compelling an electronic communication service provider to release records other than the content of communications.⁵⁰ To obtain such an order, the officer must offer specific and articulable facts showing that there are reasonable grounds to believe the records are relevant and material to an ongoing criminal investigation,⁵¹ which is a lower standard than probable cause.

Florida's Fourth District Court of Appeals (4th DCA) considered whether obtaining historical cell site data requires a finding of probable cause and warrant in *Johnson v. State*.⁵² The 4th DCA held that there was no expectation of privacy in the data because:

- The data is not content based; and
- The data reveals only a person's past location, rather than pinpointing a current location.⁵³

Under the *Johnson* holding, if there is no expectation of privacy in historical cell site data, then law enforcement does not conduct a search under the Fourth Amendment by obtaining it. However, more recently, the FSC noted a federal circuit split on the issue of requiring a probable cause determination to obtain historical cell site data in *Tracey v. State*.⁵⁴ Although the FSC discussed historical cell site data in its analysis, the issue in *Tracey* related to pen register and trap and trace devices; therefore the FSC did not decide whether historical cell site data requires more than the statutory criteria under s. 934.23, F.S.⁵⁵

The Sixth Circuit Court of Appeals (6th Circuit) addressed the issue of requiring probable cause to obtain historical cell site information in *U.S. v. Carpenter*.⁵⁶ The 6th Circuit held that the Government did not conduct a search, for Fourth Amendment purposes, when it obtained historical cell site data, and thus, government could obtain the records pursuant to Stored Communications Act,⁵⁷ based on reasonable grounds for believing that the records were relevant and material to an ongoing investigation.⁵⁸ *Carpenter* appealed, and the case is now pending before the U.S. Supreme Court.⁵⁹

[integrity/files/does_seeking_cell_site_location_information_require_a_search_warrant_-_wesley_cheng_-_august_2016_update_0.pdf](#) (last visited January 22, 2018).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Aaron Blank, *The Limitations and Admissibility of Using Historical Cellular Site Data to Track the Location of a Cellular Phone*, 18 Richmond J.L. & Tech.3 (2011), available at: <http://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1354&context=joll> (last visited Jan. 21, 2018).

⁴⁹ *Supra* FN 17.

⁵⁰ S. 934.23(4)(a)2., F.S.

⁵¹ S. 934.23(5), F.S.

⁵² 110 So.3d 954 (Fla. 4th DCA 2013).

⁵³ *Id.* at 958.

⁵⁴ 152 So.3d 504 (Fla. 2014).

⁵⁵ *Id.* at 516.

⁵⁶ 819 F.3d 880 (6th Cir. 2016).

⁵⁷ The federal Stored Communications Act, 18 USC. § 2703(d), requires the same standard as Florida's s. 934.23(5), F.S. to obtain historical cell site data through a court order.

⁵⁸ *Carpenter*, 819 F.3d at 886.

⁵⁹ *Carpenter v. U.S.*, Docket No. 16-402, available at: <https://www.supremecourt.gov/docket/docketfiles/html/public/16-402.html> (last visited January 22, 2018).

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Cell-Site Simulators

A cell-site simulator functions like a cellular tower.⁶⁰ The simulator causes each cellular device within a certain radius to connect and transmit its standard unique identifying number to the simulator.⁶¹ Law enforcement can use this capability to help locate a cell phone whose unique identifying number is known or to determine the unique identifier of a cell phone in the simulator's proximity.⁶² A cell-site simulator provides only the relative signal strength and general direction of a target phone; it does not have the same capabilities as a GPS locator.⁶³

In 2015, the U.S. Department of Justice (USDOJ) issued written guidance on the use of a cell-site simulator. In this memorandum, USDOJ began requiring federal agencies to obtain a search warrant supported by probable cause in order to use a cell-site simulator.⁶⁴ The District of Columbia Court of Appeals,⁶⁵ U.S. District Court for Northern California,⁶⁶ and U.S. District Court for Southern New York⁶⁷ have held that use of a cell-site simulator constitutes a search under the Fourth Amendment, requiring either probable cause and a warrant or that an exception to the warrant requirement.

Criminal Punishment Code

The Criminal Punishment Code (Code) applies to all felony offenses, except capital felonies, committed on or after October 1, 1998.⁶⁸ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10), either by being specifically listed in the offense severity ranking chart⁶⁹ or by default.⁷⁰ Judges must use the Criminal Punishment Code worksheet to compute a sentence score for each felony offender.⁷¹

Sentence points are assigned and accrue based on the level ranking assigned to the primary offense, additional offenses and prior offenses.⁷² Sentence points increase as the offense severity level increases from Level 1 (least severe) to Level 10 (most severe). Sentence points are added for victim injury, and increase based on the type of injury and severity.⁷³ Sentence points may also be added or multiplied for other factors including possession of a firearm or the commission of certain offenses, such as drug trafficking.⁷⁴

If total sentence points equal or are less than 44 points, the lowest permissible sentence is any nonstate prison sanction, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.⁷⁵

⁶⁰ U.S. Department of Justice, *Department of Justice Policy Guidance: Use of Cell-Site Simulator Technology*, at 1 (Sept. 3, 2015), available at: <https://www.justice.gov/opa/file/767321/download> (last visited January 22, 2018).

⁶¹ *Id.* at 2

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 3.

⁶⁵ *Jones v. U.S.*, Case No. 15-CF-322 (Sept. 21, 2017), available at: <https://www.dccourts.gov/sites/default/files/2017-09/15-CF-322.pdf> (last visited January 22, 2018).

⁶⁶ *U.S. v. Ellis*, Case No. 13-CR-00818, Pretrial Order No. 3 Denying Motions to Suppress (Aug. 24, 2017), available at: <https://www.documentcloud.org/documents/3962321-Gov-Uscourts-Cand-273044-337-0.html> (last visited January 22, 2018).

⁶⁷ *U.S. v. Lambis*, Case No. 15cr734, Opinion and Order (July 12, 2016), available at: <https://www.documentcloud.org/documents/2992109-Pauley-Stingray-Opinion-7-12-16.html#document/p6/a307678> (last visited January 22, 2018).

⁶⁸ s. 921.002, F.S.

⁶⁹ s. 921.0022, F.S.

⁷⁰ s. 921.0023, F.S., addresses ranking unlisted felony offenses. For example, an unlisted felony of the third degree is ranked within offense level 1.

⁷¹ s. 921.0024, F.S.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ s. 921.0022(2), F.S.

Absent mitigation,⁷⁶ the permissible range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.⁷⁷

Effect of Proposed Changes

Wiretapping and Stored Communications

CS/HB 1249 amends the definition of oral communication to explicitly include communication recorded by a microphone-enabled device. The bill defines microphone-enabled device as a device, sensor, or other physical object within a residence:

- Capable of connecting to the Internet, directly or indirectly, or to another connected device;
- Capable of creating, receiving, accessing, processing, or storing electronic data or communications;
- That communicates with, by any means, another entity or individual; and
- That contains a microphone designed to listen for and respond to environmental cues.

By including communication recorded by a microphone-enabled device in the definition of oral communication, the bill ensures that communication intercepted through a microphone-enabled device is subject to Florida's wiretapping protections, including criminal penalties for those who violate the wiretapping statute and stringent requirements for law enforcement interception of such communication.

The bill significantly broadens the scope of conduct constituting unlawful access of stored communications by including accessing a cell phone, portable electronic communication device, or microphone-enabled household device when used to obtain wire, oral, or electronic communications stored within the device. Current law only covers accessing a facility where electronic communications are stored. The punishment scheme remains the same as current law:

- If the offense is committed for the purpose of commercial advantage, malicious destruction or damage, or private commercial gain, it is:
 - A first degree misdemeanor, punishable by up to 1 year in the county jail and a \$1,000 fine, for a first offense; or
- An unranked third degree felony, punishable by up to 5 years in prison and a \$5,000 fine, for second and subsequent offenses. An unranked third degree felony is a descriptive term for a noncapital felony that is not specifically ranked in the offense severity ranking chart in s. 921.0022, F.S. If the felony is not ranked in the chart, it is ranked pursuant to s. 921.0023, F.S., based on its felony degree. An unranked third degree felony is a Level 1 offense.
- If the offense was not committed for commercial advantage, malicious destruction or damage, or private commercial gain, it is a second degree misdemeanor, punishable by up to 60 days in the county jail and a \$500 fine.

Location Tracking

The bill groups several types of location tracking methods available to law enforcement under s. 934.42, F.S., currently relating to mobile tracking devices. The bill expands the scope of this statute to also include:

- Cell-site location data;
- Precise global positioning satellite location data; or
- Historical global positioning satellite location data.

The bill requires the court to find probable cause and issue a warrant in order to authorize the use of any location tracking device. The officer must install the device within 10 days of the warrant's

⁷⁶ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

⁷⁷ s. 921.0022(2), F.S.

issuance. Additionally, the bill places time constraints on how long such a device may be used; the timeframe in which the device is used must be specified in the warrant and may not exceed 45 days from when the warrant was issued. Upon a showing of good cause the court may grant one or more extensions. The extensions must also not exceed 45 days.

The bill imposes notice requirements for law enforcement use of a location tracking device. Within 10 days after the surveillance timeframe specified in the warrant, the officer executing the warrant must serve a copy on the person whom, or whose property, law enforcement tracked. The officer may serve this notice by delivering a copy to the person or leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who lives there and by mailing a copy to the person's last known address. The court may grant an extension of the notice requirement for up to 90 days upon law enforcement request.

The bill allows for the installation of a mobile tracking device before a warrant if an emergency exists which:

- Involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner; and
- Requires the installation or use of a mobile tracking device before a warrant authorizing such installation or use can, with due diligence, be obtained; and
- There are grounds upon which a warrant could be issued to authorize the installation and use,

When tracking someone without a warrant under this provision of the bill, law enforcement must terminate the surveillance when the information sought is obtained, when the application for the warrant is denied or when 48 hours have lapsed since the installation or use of the mobile tracking device began, whichever is earlier.

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

B. SECTION DIRECTORY:

- Section 1:** Amends s. 934.01, F.S., relating to legislative findings.
- Section 2:** Amends s. 934.02, F.S., relating to definitions.
- Section 3:** Amends s. 934.21, F.S., relating to unlawful access to stored communications; penalties.
- Section 4:** Amends s. 934.42, F.S., relating to mobile tracking device authorization.
- 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:

The bill expands the scope of activity for which a person may be criminally liable for unlawfully accessing stored communications. To the extent that persons are arrested for, charged with and convicted of, the criminal offenses modified in the bill, this bill will have an indeterminate fiscal impact on state government.

The Criminal Justice Impact Conference, which provides the final official estimate of a bill's prison bed impact, met on February 12, 2018, and determined the bill would have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).⁷⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill expands the scope of activity for which a person may be criminally liable for unlawfully accessing stored communications. To the extent that persons are arrested for, charged with and convicted of, the criminal offenses modified in the bill, this bill will have an indeterminate fiscal impact on local government.

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 does not appear to affect municipal or county governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 24, 2018, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed all provisions changing the word "order" to "warrant" in the context of interception orders.
- Retained the requirement in current law that the prosecution must disclose the application and order authorizing interception of communications of intercepted communications at least 10 days before introducing the intercepted communications into evidence. The bill as originally filed had eliminated the 10 day component of this requirement.
- Removed other non-substantive provisions.

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

1 A bill to be entitled
 2 An act relating to the search of the content,
 3 information, and communications of cellular phones,
 4 portable electronic communication devices, and
 5 microphone-enabled household devices; amending s.
 6 934.01, F.S.; providing legislative findings; amending
 7 s. 934.02, F.S.; providing definitions; amending s.
 8 934.21, F.S.; conforming provisions to changes made by
 9 the act; prohibiting unlawful access to communications
 10 stored in specified devices; providing penalties;
 11 amending s. 934.42, F.S.; requiring that law
 12 enforcement obtain a warrant to acquire certain
 13 location information; providing procedures for such
 14 warrants; providing limited exceptions in certain
 15 circumstances; providing an effective date.

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

18
 19 Section 1. Section 934.01, Florida Statutes, is amended to
 20 read:

21 934.01 Legislative findings.—On the basis of its own
 22 investigations and of published studies, the Legislature makes
 23 the following findings:

24 (1) Wire communications are normally conducted through the
 25 use of facilities which form part of an intrastate network. The

26 same facilities are used for interstate and intrastate
 27 communications.

28 (2) In order to protect effectively the privacy of wire,
 29 ~~and~~ oral, and electronic communications, to protect the
 30 integrity of court and administrative proceedings, and to
 31 prevent the obstruction of intrastate commerce, it is necessary
 32 for the Legislature to define the circumstances and conditions
 33 under which the interception of wire, ~~and~~ oral, and electronic
 34 communications may be authorized and to prohibit any
 35 unauthorized interception of such communications and the use of
 36 the contents thereof in evidence in courts and administrative
 37 proceedings.

38 (3) Organized criminals make extensive use of wire, ~~and~~
 39 oral, and electronic communications in their criminal
 40 activities. The interception of such communications to obtain
 41 evidence of the commission of crimes or to prevent their
 42 commission is an indispensable aid to law enforcement and the
 43 administration of justice.

44 (4) To safeguard the privacy of innocent persons, the
 45 interception of wire, ~~or~~ oral, or electronic communications when
 46 none of the parties to the communication has consented to the
 47 interception should be allowed only when authorized by a court
 48 of competent jurisdiction and should remain under the control
 49 and supervision of the authorizing court. Interception of wire,
 50 ~~and~~ oral, and electronic communications should further be

51 | limited to certain major types of offenses and specific
52 | categories of crime with assurance that the interception is
53 | justified and that the information obtained thereby will not be
54 | misused.

55 | (5) To safeguard the privacy of innocent persons, the
56 | Legislature recognizes that the subjective expectation of
57 | privacy in precision location data that society is now prepared
58 | to accept is objectively reasonable. As such, the law
59 | enforcement collection of the precise location of a person, cell
60 | phone, or portable electronic communication device without the
61 | consent of the person or owner of the cell phone or portable
62 | electronic communication device should be allowed only when
63 | authorized by a warrant issued by a court of competent
64 | jurisdiction and should remain under the control and supervision
65 | of the authorizing court.

66 | (6) The Legislature recognizes that the use of portable
67 | electronic communication devices is growing at a rapidly
68 | increasing rate. These devices can store, and encourage the
69 | storing of, an almost limitless amount of personal and private
70 | information. Often linked to the Internet, these devices are
71 | commonly used to access personal and business information and
72 | databases in computers and servers that can be located anywhere
73 | in the world. The user of a portable electronic communication
74 | device has a reasonable and justifiable expectation of privacy
75 | in the information that these devices contain.

76 (7) The Legislature recognizes that the use of household
 77 electronic devices, including microphone-enabled household
 78 devices, is growing at a rapidly increasing rate. These devices
 79 often contain microphones that listen for and respond to
 80 environmental triggers. These household devices are generally
 81 connected to and communicate through the Internet resulting in
 82 the storage of and accessibility to daily household information
 83 in a device itself or in a remote computing service. Persons
 84 should not have to choose between using household technological
 85 enhancements and conveniences or preserving the right to privacy
 86 in one's home.

87 Section 2. Subsection (2) of section 934.02, Florida
 88 Statutes, is amended, and subsections (27) and (28) are added to
 89 that section, to read:

90 934.02 Definitions.—As used in this chapter:

91 (2) "Oral communication" means any oral communication
 92 uttered by a person exhibiting an expectation that such
 93 communication is not subject to interception under circumstances
 94 justifying such expectation, including the use of a microphone-
 95 enabled household device, and does not mean any public oral
 96 communication uttered at a public meeting or any electronic
 97 communication.

98 (27) "Microphone-enabled household device" means a device,
 99 sensor, or other physical object within a residence:

100 (a) Capable of connecting to the Internet, directly or

101 indirectly, or to another connected device;

102 (b) Capable of creating, receiving, accessing, processing,
 103 or storing electronic data or communications;

104 (c) That communicates with, by any means, another entity
 105 or individual; and

106 (d) That contains a microphone designed to listen for and
 107 respond to environmental cues.

108 (28) "Portable electronic communication device" means an
 109 object capable of being easily transported or conveyed by a
 110 person which is capable of creating, receiving, accessing, or
 111 storing electronic data or communications and that communicates
 112 with, by any means, another device, entity, or individual.

113 Section 3. Section 934.21, Florida Statutes, is amended to
 114 read:

115 934.21 Unlawful access to stored communications;
 116 penalties.—

117 (1) Except as provided in subsection (4)~~(3)~~, whoever:

118 (a) Intentionally accesses without authorization a
 119 facility through which an electronic communication service is
 120 provided, or

121 (b) Intentionally exceeds an authorization to access such
 122 facility,

123

124 and thereby obtains, alters, or prevents authorized access to a
 125 wire or electronic communication while it is in electronic

126 storage in such system shall be punished as provided in
 127 subsection (3)~~(2)~~.

128 (2) Except as provided in subsection (4), whoever
 129 intentionally and unlawfully accesses without authorization a
 130 cell phone, portable electronic communication device, or
 131 microphone-enabled household device and thereby obtains wire,
 132 oral, or electronic communications stored within the cell phone,
 133 portable electronic communication device, or microphone-enabled
 134 household device shall be punished as provided in subsection
 135 (3).

136 ~~(3)(2)~~ The punishment for an offense under subsection (1)
 137 or subsection (2) is as follows:

138 (a) If the offense is committed for purposes of commercial
 139 advantage, malicious destruction or damage, or private
 140 commercial gain, the person ~~is~~:

141 1. In the case of a first offense under this subsection,
 142 commits ~~guilty of~~ a misdemeanor of the first degree, punishable
 143 as provided in s. 775.082, s. 775.083, or s. 934.41.

144 2. In the case of any subsequent offense under this
 145 subsection, commits ~~guilty of~~ a felony of the third degree,
 146 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
 147 s. 934.41.

148 (b) In any other case, the person commits ~~is guilty of~~ a
 149 misdemeanor of the second degree, punishable as provided in s.
 150 775.082 or s. 775.083.

151 ~~(4)(3)~~ Subsection (1) does not apply with respect to
 152 conduct authorized:

153 (a) By the person or entity providing a wire or electronic
 154 communications service;

155 (b) By a user of a wire or electronic communications
 156 service with respect to a communication of or intended for that
 157 user; or

158 (c) In s. 934.09, s. 934.23, or s. 934.24.

159 Section 4. Section 934.42, Florida Statutes, is amended to
 160 read:

161 934.42 Mobile tracking device and location tracking
 162 authorization.—

163 (1) An investigative or law enforcement officer may make
 164 application to a judge of competent jurisdiction for a warrant
 165 ~~an order~~ authorizing or approving the installation and use of a
 166 mobile tracking device or the acquisition of cell-site location
 167 data, precise global positioning satellite location data, or
 168 historical global positioning satellite location data.

169 (2) An application under subsection (1) ~~of this section~~
 170 must include:

171 (a) A statement of the identity of the applicant and the
 172 identity of the law enforcement agency conducting the
 173 investigation.

174 (b) A statement setting forth a reasonable period of time
 175 that the device may be used or the location data may be

176 obtained. The time must not exceed 45 days from the date the
 177 warrant was issued. The court may, for good cause, grant one or
 178 more extensions for a reasonable period of time not to exceed 45
 179 days each ~~certification by the applicant that the information~~
 180 ~~likely to be obtained is relevant to an ongoing criminal~~
 181 ~~investigation being conducted by the investigating agency.~~

182 (c) A statement of the offense to which the information
 183 likely to be obtained relates.

184 (d) A statement whether it may be necessary to use and
 185 monitor the mobile tracking device outside the jurisdiction of
 186 the court from which authorization is being sought.

187 (3) Upon application made as provided under subsection
 188 (2), the court, if it finds probable cause, ~~that the~~
 189 ~~certification~~ and the statements required by subsection (2) have
 190 been made in the application, shall grant a warrant ~~enter an~~ ex
 191 parte ~~order~~ authorizing the installation and use of a mobile
 192 tracking device. Such warrant ~~order~~ may authorize the use of the
 193 device within the jurisdiction of the court and outside that
 194 jurisdiction but within the State of Florida if the device is
 195 installed within the jurisdiction of the court. The warrant must
 196 command the officer to complete any installation authorized by
 197 the warrant within a specified period of time not to exceed 10
 198 calendar days.

199 (4) A court may not require greater specificity or
 200 additional information beyond that which is required by law and

201 | this section as a requisite for issuing a warrant ~~an order~~.

202 | (5) Within 10 days after the time period specified in
203 | paragraph (2)(b) has ended, the officer executing a warrant must
204 | return the warrant to the issuing judge. The officer may do so
205 | by reliable electronic means.

206 | (6) Within 10 days after the time period specified in
207 | paragraph (2)(b) has ended, the officer executing a warrant must
208 | serve a copy of the warrant on the person who, or whose
209 | property, was tracked. Service may be accomplished by delivering
210 | a copy to the person who, or whose property, was tracked or by
211 | leaving a copy at the person's residence or usual place of abode
212 | with an individual of suitable age and discretion who resides at
213 | that location and by mailing a copy to the person's last known
214 | address. Upon request of the law enforcement agency, the court
215 | may delay notice for a period of 90 days as provided in s.
216 | 934.25.

217 | ~~(7)(5)~~ The standards established by Florida courts and the
218 | United States Supreme Court for the installation, use, or ~~and~~
219 | monitoring of mobile tracking devices shall apply to the
220 | installation, use, or monitoring ~~and use~~ of any device as
221 | authorized by this section.

222 | ~~(8)(6)~~ As used in this section, the term "mobile tracking
223 | device" or a "tracking device" means an electronic or mechanical
224 | device, including a cell phone or a portable electronic
225 | communication device, which permits the tracking of the movement

226 | of a person or object and may be used to access cell-site
 227 | location data, precise global positioning satellite location
 228 | data, or historical global positioning satellite location data.

229 | (9)(a) Notwithstanding any other provision of this
 230 | chapter, any investigative or law enforcement officer specially
 231 | designated by the Governor, the Attorney General, the statewide
 232 | prosecutor, or a state attorney acting pursuant to this chapter
 233 | who reasonably determines that:

234 | 1. An emergency exists which:

235 | a. Involves immediate danger of death or serious physical
 236 | injury to any person or the danger of escape of a prisoner; and

237 | b. Requires the installation or use of a mobile tracking
 238 | device before a warrant authorizing such installation or use
 239 | can, with due diligence, be obtained; and

240 | 2. There are grounds upon which a warrant could be issued
 241 | under this chapter to authorize such installation or use,

242 |
 243 | may install or use a mobile tracking device if, within 48 hours
 244 | after the installation or use has occurred or begins to occur, a
 245 | warrant approving the installation or use is issued in
 246 | accordance with this section.

247 | (b) In the absence of an authorizing warrant, such
 248 | installation or use shall immediately terminate when the
 249 | information sought is obtained, when the application for the
 250 | warrant is denied, or when 48 hours have lapsed since the

251 installation or use of the mobile tracking device began,
 252 whichever is earlier.

253 (c) The knowing installation or use by any investigative
 254 or law enforcement officer of a mobile tracking device pursuant
 255 to paragraph (a) without application for the authorizing warrant
 256 within 48 hours after the installation or use begins constitutes
 257 a violation of this section.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1301 Sexual Offenders and Predators

SPONSOR(S): Fitzenhagen

TIED BILLS: **IDEN./SIM. BILLS:** SB 1226

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 0 N	Sumner	Sumner
2) Justice Appropriations Subcommittee		Gusky <i>KPB</i>	Gusky <i>KPB</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

A person may qualify as either a sexual predator or sexual offender based on a conviction for a sexual offense in Florida or from another state. The distinction between a sexual predator and a sexual offender depends on the type of offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred. A sexual predator or sexual offender must comply with a number of statutory registration requirements. Failure to comply with these requirements is generally a third degree felony.

HB 1301 reduces the number of days used to determine residency from 5 days to 3 days for a sexual predator or sexual offender to abide, lodge or reside at a place for registry reporting purposes.

The bill also requires mandatory community control with electronic monitoring for sexual predators and sexual offenders who commit certain third degree felonies under the registry laws, as follows:

- For a first offense, 6 months
- For a second offense, 1 year
- For a third offense, 2 years

A third degree felony under the registry laws is ranked in Level 7 of the Criminal Punishment Code's offense severity ranking chart. A Level 7 offense scores sufficient sentence points to require a prison sentence, which a sentencing court must impose absent mitigation of a prison sentence. It is unclear if the intent is to impose community control as prescribed in the bill only when a prison sentence is not imposed. Absent clarification, the community control mandated by the bill could be construed as superseding an authorized or required prison sentence under ch. 921, F.S.

To the extent that persons are arrested for, charged with, and convicted of, the criminal offenses modified in the bill, this bill will have an indeterminate fiscal impact on state and local governments as these cases are processed through the criminal justice system. According to the Florida Department of Law Enforcement, the bill could have a fiscal impact on sheriff's offices if they have to expand registration hours.

The Criminal Justice Impact Conference met on February 12, 2018, and determined the bill would increase the need for prison beds by an unquantifiable amount.

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

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Sexual Offenders and Sexual Predators: Designation Criteria

Sexual Offenders

Under Florida law, a person is a sexual offender if he or she:

- Was released on or after October 1, 1997 from a criminal sanction resulting from a qualifying conviction;¹
- Establishes or maintains a residence in Florida and has not been designated a sexual predator by a court of this state but has been designated a sexual predator, sexually violent predator, or another sexual offender designation in another state or jurisdiction, if such designation subjected or would have subjected him or her to registration or public notification in that state or jurisdiction;²
- Establishes or maintains a residence in this state and is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a qualifying conviction;³ or
- Has been adjudicated delinquent on or after July 1, 2007, for a qualifying offense, if the juvenile was at least 14 years old at the time he or she committed the offense.⁴

Qualifying convictions for sexual offender designation include:

- Sexual misconduct with an individual with a developmental disability;⁵
- Sexual misconduct with a mental health patient by an employee;⁶
- Kidnapping or false imprisonment, where the victim is a minor and there is a sexual component to the crime;⁷
- Luring or enticing a child, with a prior sexual conviction;⁸
- Human trafficking;⁹
- Sexual battery;¹⁰
- Unlawful sexual activity with minors;¹¹
- Lewd or lascivious battery, molestation, conduct, or exhibition;¹²
- Video voyeurism with prior video voyeurism conviction;¹³
- Lewd or lascivious offense on an elderly person;¹⁴
- Sexual performance by a child;¹⁵
- Providing obscene materials to a minor;¹⁶
- Computer pornography involving minors;¹⁷

¹ S. 943.0435(1)(h)1.a.(II), F.S.

² S. 934.0435(1)(h)1.b., F.S.

³ S. 934.0435(1)(h)1.c., F.S.

⁴ S. 934.0435(1)(h)1.d., F.S.

⁵ S. 393.135(2), F.S.

⁶ S. 394.4593(2), F.S.

⁷ SS. 787.01 & 787.02, F.S.

⁸ S. 787.025(2), F.S.

⁹ S. 787.06(3)(b), (d), (f), or (g), F.S.

¹⁰ S. 794.011, excluding 794.011(10), F.S.

¹¹ S. 794.05, F.S.

¹² S. 800.04, F.S.

¹³ S. 810.145(8), F.S.

¹⁴ S. 825.1025, F.S.

¹⁵ S. 827.071, F.S.

¹⁶ S. 847.0133, F.S.

¹⁷ S. 847.0135(2), F.S.

- Soliciting a minor over the internet;¹⁸
- Traveling to meet minors;¹⁹
- Lewd or lascivious exhibition over the internet;²⁰
- Transmission of child pornography by electronic device or equipment;²¹
- Transmission of material harmful to minors;²²
- Selling or buying minors to engage in sexually explicit conduct;²³
- Racketeering with written findings that the racketeering involved at least one sexual offense;²⁴
- Sexual misconduct with a forensic client;²⁵ and
- Sexual misconduct by an employee on a juvenile offender.²⁶

Qualifying delinquency adjudications for sexual offender designation include:

- Sexual battery;²⁷
- Lewd or lascivious battery by encouraging, forcing, or enticing any person under 16 years old to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity,²⁸ if either:
 - The victim is under 12 years old; or
 - The court finds sexual activity by the use of force or coercion;
- Lewd or lascivious molestation against a victim less than 12 years old,²⁹ if the court finds molestation involving unclothed genitals;
- Lewd or lascivious molestation against a victim at least 12 years old but less than 16 years old,³⁰ if the court finds both:
 - Use of force or coercion; and
 - Unclothed genitals.

Sexual Predators

A person is a sexual predator in Florida if he or she:

- Was convicted of a qualifying offense committed on or after October 1, 1993; and
- Has not received a pardon or otherwise had the conviction set aside for the qualifying offense.

Qualifying convictions for sexual predator designation include:

- Capital, life, or first degree felony kidnapping or false imprisonment, where the victim is a minor and there is a sexual component to the crime;³¹
- Capital, life, or first degree felony sexual battery;³²
- Capital, life, or first degree felony lewd or lascivious battery or molestation;³³
- Capital, life, or first degree felony selling or buying minors to engage in sexually explicit conduct;³⁴

¹⁸ S. 847.0135(3), F.S.

¹⁹ S. 847.0135(4), F.S.

²⁰ S. 847.0135(5), F.S.

²¹ S. 847.0137, F.S.

²² S. 847.0138, F.S.

²³ S. 847.0145, F.S.

²⁴ S. 895.03, F.S.

²⁵ S. 916.1075(2), F.S.

²⁶ S. 985.701(1), F.S.

²⁷ S. 794.011, F.S.

²⁸ S. 800.04(4)(a)2., F.S.

²⁹ S. 800.04(5)(c)1., F.S.

³⁰ S. 800.04(5)(d), F.S.

³¹ SS. 787.01 & 787.02, F.S.; *Raines v. State*, 805 So.2d 999 (Fla. 4th DCA 2001).

³² *Supra*, FN 27.

³³ S. 800.04, F.S.

³⁴ *Supra*, FN 23.

- An offense that would require registration as a sexual offender, other than transmission of child pornography by electronic device or transmission of material harmful to minors, by a person with a prior conviction for a sexual offense;³⁵ or
- A conviction for a similar offense committed in another jurisdiction.³⁶

The court must make written findings designating a person who meets the criteria as a sexual predator.³⁷

Registration Requirements for Sexual Offenders and Sexual Predators

Initial Registration

Current law requires all sexual offenders and sexual predators to comply with a number of statutory registration requirements. A sexual offender must report in person to the sheriff's office to register within 48 hours of:

- Establishing permanent, temporary, or transient residence in Florida; or
- Being released from the custody, control, or supervision of the Department of Corrections (FDC) or from the custody of a private correctional facility.³⁸

A sexual predator must register:

- With FDC if the sexual predator is in FDC's custody or control, under FDC's supervision, or in custody of a private correctional facility;³⁹
 - If the sexual predator is under FDC's supervision but not in custody, he or she must register within 3 days of the court designating him or her as a sexual predator;⁴⁰
- With the custodian of the local jail, within 3 days of the court designating him or her as a sexual predator, if the sexual predator is in the custody of a local jail;⁴¹
- In person at the sheriff's office in the county where:
 - The sexual predator establishes or maintains a residence within 48 hours of establishing or maintaining a residence in Florida;⁴² or
 - The sexual predator was designated a sexual predator within 48 hours after such finding is made.⁴³

Additionally, within 48 hours of registration, a sexual offender and a sexual predator who is not incarcerated and resides in the community must register in person at a driver license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and:

- Secure a Florida driver license, renew a Florida driver license, or secure an identification card, if otherwise qualified;
- Identify himself or herself as a sexual offender or sexual predator;
- Provide his or her permanent, temporary, or transient residence; and
- Submit to a photograph.⁴⁴

Information Required for Registration

During his or her initial registration, the sexual offender or sexual predator must provide the following information:

- Name;

³⁵ S. 775.21(4)(a)1.b., F.S.

³⁶ S. 775.21(4), F.S.

³⁷ SS. 775.21(4)(c) & 775.21(5), F.S.

³⁸ S. 943.0435(2)(a)1., F.S.

³⁹ S. 775.21(6)(b), F.S.

⁴⁰ Id.

⁴¹ S. 775.21(6)(c), F.S.

⁴² S. 775.21(6)(e)a., F.S.

⁴³ S. 775.21(6)(2)b., F.S.

⁴⁴ S. 775.21(6)(f)1., F.S.

- Date of birth;
- Social Security number;
- Race;
- Sex;
- Height and weight;
- Hair and eye color;
- Tattoos or other identifying marks;
- Fingerprints and palm prints;
- Photograph;
- Employment information;
- Address of permanent or legal residence;
- Address of any current temporary residence;
- Address, location, or description of any transient residence, if the person does not have a permanent or temporary address;
- Dates of any current or known future temporary residence;
- Make, model, color, vehicle information number, and license tag number of all vehicles owned;
- Home and cellular telephone numbers;
- Electronic mail addresses;
- Internet identifiers and each Internet identifier's corresponding website homepage or application software name;
- Date and place of each conviction and a brief description of the crime or crimes committed by the offender;
- Information about immigration status, if the person is an alien;
- Information about any professional licenses;
- Vehicle identification number, license tag number, registration number, and a description of a motor vehicle, trailer, mobile home, or manufactured home, if it is the person's residence;
- Hull identification number, manufacturer's serial number, name, registration number, and description of a vessel, live-aboard vessel, or houseboat, if it is the person's residence; and
- Enrollment, volunteer, or employment status at an institution of higher education and the name and address of the institution, if applicable.⁴⁵

Residence

Residence, for the purposes of registration, is defined as follows:

- "Permanent residence" means a place where the person abides, lodges, or resides for 5 or more consecutive days.
- "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destination in or out of this state for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address. For a person whose permanent residence is not in this state, it means a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.
- "Transient residence" means a county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has not specific street address.⁴⁶

Continuing Reporting Requirements

A sexual offender or sexual predator must report the following updates within 48 hours:

- Change in the offender's permanent, temporary, or transient residence;

⁴⁵ SS. 775.21(6)(a) & 943.0435(2)(b), F.S.

⁴⁶ S. 775.21, F.S.

- Change in the offender's name, by reason of marriage or other legal process;
- When the offender vacates a permanent, temporary, or transient residence, or when the offender remains in a permanent, temporary, or transient residence after reporting his or her intent to vacate such a residence;
- Use of a new electronic mail address or Internet identifier;
- Change in vehicles owned;
- Change to home or cellular telephone numbers;
- Change to employment information;
- Change in status related to enrollment, volunteering, or employment at institutions of higher education; and
- International and out-of-state travel information.⁴⁷

A sexual offender or sexual predator must report in person to reregister at specified intervals:

- Twice a year for most sexual offenders;⁴⁸
- Four times a year for all sexual predators, some sexual offenders, and all juvenile sexual offenders;⁴⁹ or
- Every 30 days for a sexual offender or sexual predator with a transient residence.⁵⁰

Generally, failing to comply with registration requirements is a third degree felony,⁵¹ punishable by up to 5 years in prison and a \$5,000 fine.⁵²

Criminal Sentencing

Types of Sentences

Available felony sentencing options available to a court include:

- Incarceration in state prison;
- Incarceration in the county jail;
- Probation; and
- Community control.

For an incarcerative sentence, a court may sentence a person to jail for up to 1 year or to prison for over 1 year. A supervisory sentence may be probation or community control. Probation is a form of community supervision requiring specified contacts with probation officers and other terms and conditions,⁵³ while community control is a more intensive form of supervision involving an individualized program in which the freedom of an offender is restricted within the community, home, or residential placement.⁵⁴ The court may also impose a split sentence, in which an offender is sentenced to a term of incarceration followed by a term of supervision.⁵⁵

Criminal Punishment Code

Felony offenses subject to the Criminal Punishment Code⁵⁶ are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe (1) to most severe (10).

⁴⁷ SS. 943.0435(4)(e)2. & 775.21(6)(a)1.a., F.S.

⁴⁸ S. 943.0435(14), F.S.

⁴⁹ SS. 775.21(8)(a) & 943.0435(14), F.S.

⁵⁰ SS. 775.21(6)(g)2.a. & 943.0435(4)(b)2., F.S.

⁵¹ SS. 775.082 & 775.083, F.S.

⁵² SS. 775.21(10) & 943.0435(9)(a), F.S.; but see, SS. 775.21(6)(f)3., 775.21(6)(j), 943.0435(4)(c), & 943.0435(8), F.S. (providing for circumstances in which failure to comply with registration requirements is a second degree felony, punishable by up to 15 years in prison and a \$10,000 fine. SS. 775.082 & 775.083, F.S.).

⁵³ S. 948.001(8), F.S.

⁵⁴ S. 948.001(3), F.S.

⁵⁵ S. 948.012, F.S.

⁵⁶ All felony offenses, other than capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute.⁵⁷ A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense.⁵⁸ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers.⁵⁹ The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.⁶⁰

If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula.⁶¹ If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control.⁶²

Downward Departure

A court may downward depart from the lowest permissible sentence upon finding circumstances or factors to reasonably justify doing so.⁶³ Mitigating circumstances that justify a downward departure may include:

- The departure results from a legitimate, uncoerced plea bargain;
- The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct;
- The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired;
- The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment;
- The need for payment of restitution to the victim outweighs the need for a prison sentence;
- The victim was an initiator, willing participant, aggressor, or provoker of the incident;
- The defendant acted under extreme duress or under the domination of another person;
- Before the identity of the defendant was determined, the victim was substantially compensated;
- The defendant cooperated with the state to resolve the current offense or any other offense;
- The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse;
- At the time of the offense the defendant was too young to appreciate the consequences of the offense;
- The defendant is to be sentenced as a youthful offender;
- The defendant's offense is a nonviolent felony, the defendant's Criminal Punishment Code scoresheet total sentence points are 60 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence; or
- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.⁶⁴

Failure to Register Offenses under the Criminal Punishment Code

Failure to register as a sexual offender or sexual predator scores a level 7 under the Criminal Punishment Code.⁶⁵ A person convicted of a level 7 offense automatically scores a minimum prison sentence of 21 months, without taking into account any other current offenses, prior history, or other

⁵⁷ S. 921.0022, F.S.

⁵⁸ SS. 921.0022 & 921.0024, F.S.

⁵⁹ S. 921.0024(2), F.S.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ S. 921.0026, F.S.

⁶⁴ Id.

⁶⁵ S. 921.0022(3)(g), F.S.

factors that may contribute additional points.⁶⁶ Because a person must have been convicted of a sexual offense in order to qualify as a sexual offender or predator, a person usually has significant criminal history points, leading to an even higher minimum permissible sentence.

The court would have to find a valid reason for downward departure in order to sentence a person convicted of failure to register to any nonprison sanction.

Mandatory Minimum Sentences

Florida law imposes mandatory minimum sentences for certain offenses. For example, a person who commits certain violent offenses while carrying a firearm is subject to a 10 year mandatory minimum sentence,⁶⁷ and a person who traffics 28 grams or more but less than 200 grams of cocaine is subject to a 3 year minimum mandatory sentence.⁶⁸ Absent waiver by the prosecutor, a judge may not sentence an offender below the statutory mandatory minimum sentence; however, the prosecutor may waive the mandatory minimum.⁶⁹

Although mandatory minimum sentences are typically incarcerative, some require a degree of supervision. For example, in crimes of domestic violence, the court must order a person to a minimum term of 1 year of probation and require him or her to complete the batterers' intervention program.⁷⁰ The statute does not specify whether this probationary term must be in addition to any term of incarceration; however, the Third District Court of Appeal reversed a trial court for failing to impose 1 year of probation for a domestic violence offense when it sentenced the offender to 3 years of prison.⁷¹

Additionally, when sentencing for certain sexual offenses committed on or after October 1, 2014,⁷² if the court sentences the offender to prison for a term less than the maximum possible sentence, it must include as part of the sentence either:

- 2 years of probation or community control; or
- The remainder of the maximum term as probation or community control, if appending 2 years of supervision to the sentence would exceed the statutory maximum for the offense.⁷³

Effect of Proposed Changes

HB 1301 reduces the aggregate and consecutive number of days to determine residency from 5 to 3 for sexual predator or sexual offender registration. Penalties for failure to register offenses committed after July 1, 2018, carry a mandatory minimum sentence as follows:

- For a first offense, 6 months of community control with electronic monitoring.
- For a second offense, 1 year of community control with electronic monitoring.
- For a third or subsequent offense, 2 years of community control with electronic monitoring.

The bill does not specify whether the mandatory minimum community control terms must follow any prison or jail sentence or are intended to be imposed only if the sentence does not include incarceration. Given the holding in *Scanes*,⁷⁴ a court may interpret the bill to impose a minimum mandatory community control term in all cases, regardless of whether incarceration was included as part of the sentence.

⁶⁶ S. 921.0024, F.S.

⁶⁷ S. 775.087, F.S.

⁶⁸ S. 893.135(1)(b)a., F.S.

⁶⁹ *Madrigal v. State*, 545 So.2d 392 (Fla. 3d DCA 1989) (prosecutor has right to waive the mandatory minimum sentence requirement absent any rule or statutory authority).

⁷⁰ S. 741.281, F.S.

⁷¹ *State v. Scanes*, 973 So.2d 659 (Fla. 3d DCA 2008).

⁷² Unlawful killing of a person engaged in the perpetration of sexual battery, S. 782.04(1)(a)2.c.; aggravated kidnapping or false imprisonment of a child under 13, SS. 787.01(3)(a)2. or 3. & 787.02(3)(a)2. or 3. F.S.; sexual battery, S. 794.011, F.S.; lewd or lascivious offenses, SS. 800.04 & 825.1025, F.S.; lewd or lascivious exhibition over the internet, S. 847.0135(5), F.S.

⁷³ S. 948.012(5), F.S.

⁷⁴ *Supra*, FN 71.

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

B. SECTION DIRECTORY:

- Section 1:** Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.
Section 2: Amends s. 943.0435, F.S., relating to sexual offenders required to register with department; penalty.
Section 3: 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:

The Criminal Justice Impact Conference met on February 12, 2018, and determined the bill would increase the need for prison beds by an unquantifiable amount.⁷⁵

Per FDLE, as of June 2017, there were a total of 28,958 sexual predators and sexual offenders who were not incarcerated in the state of Florida. Per DOC, in FY 16-17, there were 1,179 offenders sentenced for registration offences, and 618 of these offenders were sentenced to prison. It is not known how many more offenders will be charged with these offenses with the reduction in days used to determine residency.⁷⁶

The Department of Corrections (DOC) states that correctional probation officers who supervise sex offenders on community control with electronic monitoring have reduced caseloads compared to other correctional probation officers due to the workload associated with this type of supervision and the monitoring required. The fiscal impact to DOC is indeterminate due to the unknown number of offenders who will be sentenced under the mandatory minimum sentence.⁷⁷

According to DOC, for FY 15-16 the average per diem for community supervision was \$5.52 and the current rate for electronic monitoring is \$4.50 per day. The costs of any programming changes related to the mandatory minimum sentence can be absorbed within existing resources.⁷⁸

The Florida Department of Law Enforcement (FDLE) states that the proposed changes in the bill will require updating sexual offender and sexual predator registration forms and e-forms, the Florida Sexual Offender/Predator Public Registry website, the CJNet website, and training materials. FDLE has determined the implementation costs can be absorbed within existing resources.⁷⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁷⁵ The Office of Economic and Demographic Research, *HB 1301 – Sexual Offenders and Predators; Criminal Justice Impact Conference*, February 12, 2018.

⁷⁶ *Id.*

⁷⁷ Florida Department of Corrections, *SB 1226: Sentencing for Sexual Offenders and Sexual Predators (Similar HB 1301)*, 2018 Agency Legislative Bill Analysis, January 19, 2018.

⁷⁸ *Id.*

⁷⁹ Florida Department of Law Enforcement, *HB 1301 – Sexual Offenders and Predators*, 2018 FDLE Legislative Bill Analysis, January 9, 2018.

1. Revenues:

None.

2. Expenditures:

According to FDLE, eighteen sheriffs' offices have three or more consecutive days where sexual offender or sexual predator registration is unavailable and more than 15 percent (4,637) of the offenders/predators that have an active, permanent, temporary, or transient address in Florida list an active address in those 18 counties. Seven sheriffs' offices have limited registration times and more than 16 percent (4,963) of offenders/predators that have an active permanent, temporary, or transient address in Florida list an active address in those counties. The fiscal impact of the new registration requirements and enforcement provisions on these offices is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

To the extent that persons are arrested for, charged with, and convicted of, the criminal offenses modified in the bill, this bill will have an indeterminate fiscal impact on state and local governments as these cases are processed through the criminal justice system.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A third degree felony under the registry laws is ranked in Level 7 of the Criminal Punishment Code's offense severity ranking chart. A Level 7 offense scores sufficient sentence points to require a prison sentence, which a sentencing court must impose absent mitigation of a prison sentence. It is unclear if the intent is to impose community control as prescribed in the bill only when a prison sentence is not imposed. Absent clarification, the community control mandated by the bill could be construed as superseding an authorized or required prison sentence under ch. 921, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to sexual offenders and predators;
 3 amending s. 775.21, F.S.; reducing the aggregate and
 4 consecutive number of days used to determine residency
 5 for purposes of sexual predator or sexual offender
 6 registration; providing for a mandatory minimum
 7 sentence of community control with electronic
 8 monitoring for certain offenses committed by sexual
 9 predators; amending s. 943.0435, F.S.; providing for a
 10 mandatory minimum sentence of community control with
 11 electronic monitoring for certain offenses committed
 12 by sexual offenders; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Paragraphs (k), (n), and (o) of subsection (2)
 17 and paragraph (a) of subsection (10) of section 775.21, Florida
 18 Statutes, are amended to read:

19 775.21 The Florida Sexual Predators Act.—

20 (2) DEFINITIONS.—As used in this section, the term:

21 (k) "Permanent residence" means a place where the person
 22 abides, lodges, or resides for 3 ~~5~~ or more consecutive days.

23 (n) "Temporary residence" means a place where the person
 24 abides, lodges, or resides, including, but not limited to,
 25 vacation, business, or personal travel destinations in or out of

26 | this state, for a period of 3 ~~5~~ or more days in the aggregate
 27 | during any calendar year and which is not the person's permanent
 28 | address or, for a person whose permanent residence is not in
 29 | this state, a place where the person is employed, practices a
 30 | vocation, or is enrolled as a student for any period of time in
 31 | this state.

32 | (o) "Transient residence" means a county where a person
 33 | lives, remains, or is located for a period of 3 ~~5~~ or more days
 34 | in the aggregate during a calendar year and which is not the
 35 | person's permanent or temporary address. The term includes, but
 36 | is not limited to, a place where the person sleeps or seeks
 37 | shelter and a location that has no specific street address.

38 | (10) PENALTIES.—

39 | (a) Except as otherwise specifically provided, a sexual
 40 | predator who fails to register; who fails, after registration,
 41 | to maintain, acquire, or renew a driver license or an
 42 | identification card; who fails to provide required location
 43 | information; who fails to provide electronic mail addresses,
 44 | Internet identifiers, and each Internet identifier's
 45 | corresponding website homepage or application software name; who
 46 | fails to provide all home telephone numbers and cellular
 47 | telephone numbers, employment information, change in status at
 48 | an institution of higher education, or change-of-name
 49 | information; who fails to make a required report in connection
 50 | with vacating a permanent residence; who fails to reregister as

51 required; who fails to respond to any address verification
52 correspondence from the department within 3 weeks of the date of
53 the correspondence; who knowingly provides false registration
54 information by act or omission; or who otherwise fails, by act
55 or omission, to comply with the requirements of this section
56 commits a felony of the third degree, punishable as provided in
57 s. 775.082, s. 775.083, or s. 775.084 and, for offenses
58 committed after July 1, 2018, shall carry a mandatory minimum
59 sentence as follows:

60 1. For a first offense, a mandatory minimum sentence of 6
61 months of community control with electronic monitoring as
62 provided in chapter 948.

63 2. For a second offense, a mandatory minimum sentence of 1
64 year of community control with electronic monitoring as provided
65 in chapter 948.

66 3. For a third or subsequent offense, a mandatory minimum
67 sentence of 2 years of community control with electronic
68 monitoring as provided in chapter 948.

69 Section 2. Paragraph (a) of subsection (9) of section
70 943.0435, Florida Statutes, is amended to read:

71 943.0435 Sexual offenders required to register with the
72 department; penalty.—

73 (9)(a) Except as otherwise specifically provided, a sexual
74 offender who does not comply with the requirements of this
75 section commits a felony of the third degree, punishable as

76 provided in s. 775.082, s. 775.083, or s. 775.084 and, for
 77 offenses committed after July 1, 2018, shall carry a mandatory
 78 minimum sentence as follows:

79 1. For an initial offense, a mandatory minimum sentence of
 80 6 months of community control with electronic monitoring as
 81 provided in chapter 948.

82 2. For a second offense, a mandatory minimum sentence of 1
 83 year of community control with electronic monitoring as provided
 84 in chapter 948.

85 3. For a third or subsequent offense, a mandatory minimum
 86 sentence of 2 years of community control with electronic
 87 monitoring as provided in chapter 948.

88 Section 3. This act shall take effect July 1, 2018.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
 2 Subcommittee

3 Representative Fitzenhagen offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraphs (k), (n), and (o) of subsection (2)
 8 and paragraphs (c), (d), (e), (f), and (g) of subsection (10) of
 9 section 775.21, Florida Statutes, are amended to read:

10 775.21 The Florida Sexual Predators Act.—

11 (2) DEFINITIONS.—As used in this section, the term:

12 (k) "Permanent residence" means a place where the person
 13 abides, lodges, or resides for 3 ~~5~~ or more consecutive days.

14 (n) "Temporary residence" means a place where the person
 15 abides, lodges, or resides, including, but not limited to,
 16 vacation, business, or personal travel destinations in or out of

Amendment No. 1

17 | this state, for a period of 3 5 or more days in the aggregate
18 | during any calendar year and which is not the person's permanent
19 | address or, for a person whose permanent residence is not in
20 | this state, a place where the person is employed, practices a
21 | vocation, or is enrolled as a student for any period of time in
22 | this state.

23 | (o) "Transient residence" means a county where a person
24 | lives, remains, or is located for a period of 3 5 or more days
25 | in the aggregate during a calendar year and which is not the
26 | person's permanent or temporary address. The term includes, but
27 | is not limited to, a place where the person sleeps or seeks
28 | shelter and a location that has no specific street address.

29 | (10) PENALTIES.—

30 | (c) For a felony violation of this section, excluding
31 | paragraph (10)(g), committed on or after July 1, 2018, if the
32 | court does not impose a prison sentence, the court shall impose
33 | as part of the sentence a term of community control, as defined
34 | in s. 948.001, as follows:

35 | 1. For a first offense, a mandatory minimum term of 6
36 | months with electronic monitoring.

37 | 2. For a second offense, a mandatory minimum term of 1 year
38 | with electronic monitoring.

39 | 3. For a third or subsequent offense, a mandatory minimum
40 | term of 2 years with electronic monitoring.

Amendment No. 1

41 (d) Any person who misuses public records information
42 relating to a sexual predator, as defined in this section, or a
43 sexual offender, as defined in s. 943.0435 or s. 944.607, to
44 secure a payment from such a predator or offender; who knowingly
45 distributes or publishes false information relating to such a
46 predator or offender which the person misrepresents as being
47 public records information; or who materially alters public
48 records information with the intent to misrepresent the
49 information, including documents, summaries of public records
50 information provided by law enforcement agencies, or public
51 records information displayed by law enforcement agencies on
52 websites or provided through other means of communication,
53 commits a misdemeanor of the first degree, punishable as
54 provided in s. 775.082 or s. 775.083.

55 (e)~~(d)~~ A sexual predator who commits any act or omission
56 in violation of this section may be prosecuted for the act or
57 omission in the county in which the act or omission was
58 committed, in the county of the last registered address of the
59 sexual predator, in the county in which the conviction occurred
60 for the offense or offenses that meet the criteria for
61 designating a person as a sexual predator, in the county where
62 the sexual predator was released from incarceration, or in the
63 county of the intended address of the sexual predator as
64 reported by the predator prior to his or her release from
65 incarceration. In addition, a sexual predator may be prosecuted

Amendment No. 1

66 for any such act or omission in the county in which he or she
67 was designated a sexual predator.

68 ~~(f)(e)~~ An arrest on charges of failure to register, the
69 service of an information or a complaint for a violation of this
70 section, or an arraignment on charges for a violation of this
71 section constitutes actual notice of the duty to register when
72 the predator has been provided and advised of his or her
73 statutory obligation to register under subsection (6). A sexual
74 predator's failure to immediately register as required by this
75 section following such arrest, service, or arraignment
76 constitutes grounds for a subsequent charge of failure to
77 register. A sexual predator charged with the crime of failure to
78 register who asserts, or intends to assert, a lack of notice of
79 the duty to register as a defense to a charge of failure to
80 register shall immediately register as required by this section.
81 A sexual predator who is charged with a subsequent failure to
82 register may not assert the defense of a lack of notice of the
83 duty to register.

84 ~~(f)~~ Registration following such arrest, service, or
85 arraignment is not a defense and does not relieve the sexual
86 predator of criminal liability for the failure to register.

87 (g) Any person who has reason to believe that a sexual
88 predator is not complying, or has not complied, with the
89 requirements of this section and who, with the intent to assist
90 the sexual predator in eluding a law enforcement agency that is

Amendment No. 1

91 seeking to find the sexual predator to question the sexual
92 predator about, or to arrest the sexual predator for, his or her
93 noncompliance with the requirements of this section:

94 1. Withholds information from, or does not notify, the law
95 enforcement agency about the sexual predator's noncompliance
96 with the requirements of this section, and, if known, the
97 whereabouts of the sexual predator;

98 2. Harbors, or attempts to harbor, or assists another
99 person in harboring or attempting to harbor, the sexual
100 predator;

101 3. Conceals or attempts to conceal, or assists another
102 person in concealing or attempting to conceal, the sexual
103 predator; or

104 4. Provides information to the law enforcement agency
105 regarding the sexual predator which the person knows to be false
106 information,

107
108 commits a felony of the third degree, punishable as provided in
109 s. 775.082, s. 775.083, or s. 775.084. This paragraph does not
110 apply if the sexual predator is incarcerated in or is in the
111 custody of a state correctional facility, a private correctional
112 facility, a local jail, or a federal correctional facility.

113 Section 2. Subsection (9) of section 943.0435, Florida
114 Statutes, is amended to read:

Amendment No. 1

115 943.0435 Sexual offenders required to register with the
116 department; penalty.—

117 (9) (a) A sexual offender who does not comply with the
118 requirements of this section commits a felony of the third
119 degree, punishable as provided in s. 775.082, s. 775.083, or s.
120 775.084.

121 (b) For a felony violation of this section, excluding
122 subsection (13), committed on or after July 1, 2018, if the
123 court does not impose a prison sentence, the court shall impose
124 as part of the sentence a term of community control, as defined
125 in s. 948.001, as follows:

126 1. For a first offense, a mandatory term of 6 months with
127 electronic monitoring.

128 2. For a second offense, a mandatory term of 1 year with
129 electronic monitoring.

130 3. For a third or subsequent offense, a mandatory minimum
131 term of 2 years with electronic monitoring.

132 (c) A sexual offender who commits any act or omission in
133 violation of this section may be prosecuted for the act or
134 omission in the county in which the act or omission was
135 committed, in the county of the last registered address of the
136 sexual offender, in the county in which the conviction occurred
137 for the offense or offenses that meet the criteria for
138 designating a person as a sexual offender, in the county where
139 the sexual offender was released from incarceration, or in the

Amendment No. 1

140 county of the intended address of the sexual offender as
141 reported by the offender prior to his or her release from
142 incarceration.

143 ~~(d)~~ ~~(e)~~ An arrest on charges of failure to register when
144 the offender has been provided and advised of his or her
145 statutory obligations to register under subsection (2), the
146 service of an information or a complaint for a violation of this
147 section, or an arraignment on charges for a violation of this
148 section constitutes actual notice of the duty to register. A
149 sexual offender's failure to immediately register as required by
150 this section following such arrest, service, or arraignment
151 constitutes grounds for a subsequent charge of failure to
152 register. A sexual offender charged with the crime of failure to
153 register who asserts, or intends to assert, a lack of notice of
154 the duty to register as a defense to a charge of failure to
155 register shall immediately register as required by this section.
156 A sexual offender who is charged with a subsequent failure to
157 register may not assert the defense of a lack of notice of the
158 duty to register.

159 ~~(d)~~ Registration following such arrest, service, or
160 arraignment is not a defense and does not relieve the sexual
161 offender of criminal liability for the failure to register.

162 Section 3. This act shall take effect July 1, 2018.

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Amendment No. 1

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

Remove everything before the enacting clause and insert:

A bill to be entitled
An act relating to sexual offenders and predators;
amending s. 775.21, F.S.; reducing the aggregate and
consecutive number of days used to determine residency
for purposes of sexual predator or sexual offender
registration; providing for a mandatory minimum
sentence of community control with electronic
monitoring for certain offenses committed by sexual
predators if the court does not impose a prison
sentence; amending s. 943.0435, F.S.; providing for a
mandatory minimum sentence of community control with
electronic monitoring for certain offenses committed
by sexual offenders if the court does not impose a
prison sentence; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1309 Fraudulently Obtaining or Retaining Personal Property or Equipment
SPONSOR(S): Criminal Justice Subcommittee; Alexander
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Painter	Sumner
2) Justice Appropriations Subcommittee		Smith 	Gusky 
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law prohibits the taking, leasing, hiring, or obtaining by fraudulent means the property of another person. The statute establishes three ways in which an individual can commit this offense:

- Obtaining any personal property or equipment by trick, deceit, or fraudulent or willful false representation;
- Hiring or leasing personal property or equipment with intent to defraud; and
- Knowingly abandoning or refusing to return hired or leased personal property or equipment at the conclusion of the rental period where the failure to return such property or equipment is done without the consent of the person leasing such property or equipment.

The statute does not distinguish between a rental purchase agreement and a lease agreement when a person knowingly abandons or refuses to return hired or leased personal property. A rental purchase agreement is described as a short-term lease of property that transfers ownership of that property to the renter at the end of the agreement. A lease agreement does not transfer ownership of property but requires the return of property at a certain time, as dictated by the terms of the agreement.

The offense of taking, hiring, or obtaining by fraudulent means the property of another is a second degree misdemeanor if the value of the property is less than \$300, or is a third degree felony if the value of the property is \$300 or more.

CS/HB 1309 increases the threshold amounts for the felony offenses related to hiring, leasing, or obtaining personal property or equipment with the intent to defraud from \$300 to \$750.

The bill also excludes rental purchase agreements from criminal sanctions imposed under the statute prohibiting failure to return hired or leased personal property. Such agreements remain eligible for civil actions based on a breach of the agreement.

To the extent that persons are arrested for, charged with, and convicted of, the criminal offenses modified in the bill, this bill will have an indeterminate fiscal impact on state and local governments as these cases are processed through the criminal justice system.

The Criminal Justice Impact Conference met on February 12, 2018, and determined the bill would insignificantly decrease the need for prison beds. The bill has an indeterminate impact on local governments by potentially increasing the need for local jail beds.

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

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Offenses Related to the Hiring, Leasing, or Obtaining Personal Property or Equipment

Section 812.155, F.S., establishes criminal offenses related to individuals obtaining property by fraudulent means. The statute specifies three ways in which the offense can be committed:

- Obtaining any personal property or equipment by trick, deceit, or fraudulent or willful false representation;¹
- Hiring or leasing personal property or equipment with intent to defraud;² and
- Knowingly abandoning or refusing to return hired or leased personal property or equipment at the conclusion of the rental period where the failure to return such property or equipment is done without the consent of the person leasing such property or equipment.³

Depending on the property value taken, the offense is either a second degree misdemeanor or a third degree felony. If the value of the property is under \$300, the offense is a second degree misdemeanor.⁴ If the property is valued at \$300 or more, then the offense is a third degree felony.⁵

There are approximately 15 people in prison in the state for violations of offenses related to hiring, leasing, or obtaining personal property or equipment with the intent to defraud.⁶ There are approximately 662 people on probation with the Department of Corrections for offenses related to hiring, leasing, or obtaining personal property or equipment with the intent to defraud.⁷

The threshold value has remained \$300 since the creation of the original statute in 1992.⁸

Rental Purchase Agreements and Lease Agreements

Rental Purchase Agreements

In a rental purchase agreement (RPA), the consumer (lessee) agrees to a self-renewing short-term lease to rent an item with the option to purchase from a merchant (lessor). The lessee is not obligated to extend the lease beyond the current monthly or weekly period. If the agreement is not renewed, the item may simply be returned. Typically, the lessee may choose to purchase the item by either continuing to pay rent for a period of time agreed to in the RPA or by early payment of a specified portion of the remaining lease payments.

RPAs do not require a down payment or credit check, and provide lessees with immediate access to household goods for a weekly or monthly payment. RPAs attract individuals who cannot afford a cash purchase, may be unable to qualify for traditional credit, or who want a product right away without the

¹ S. 812.155(1), F.S.

² S. 812.155(2), F.S.

³ S. 812.155(3), F.S.

⁴ 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.

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 Email from Department of Corrections for inmate populations as of 01/19/2018, January 23, 2018 (on file with House Criminal Justice Subcommittee).

⁷ Id.

⁸ Ch. 92-79, Laws of Fla.

need to pay the full purchase price.⁹ Merchants in the rent-to-own industry typically offer high cost, durable, household items such as furniture, household appliances, or automobile wheels and tires.¹⁰ The final purchase price of the rent-to-own merchandise is often much greater than the price of the same item bought outright from a retail store or financed over time.¹¹

Florida's "Rental-Purchase Agreement Act" (Act) outlines the structure and requirements for an RPA.¹² An RPA allows for the use of personal property by a natural person primarily for personal, family, or household purposes for an initial period for 4 months or less.¹³ These agreements automatically renew with each payment after the initial period and allow the lessee to acquire ownership of the property.¹⁴ The Act details the form, notices, and information required in the RPA in addition to prohibited provisions, the requirement for reinstatement,¹⁵ and a list of agreements that are not considered RPAs.¹⁶ The Act allows for civil remedies for damages that relate to the rental-purchase agreement by:

- Allowing the lessee to recover from the lessor, or counterclaim in an action brought by that lessor, an amount equal to the greater of actual damages or 25 percent of the total cost to acquire ownership, plus attorney's fees and court costs;¹⁷ and
- Providing for the payment of reasonable attorney fees incurred in the course of collection, and for court costs.¹⁸

However, an RPA agreement does not allow the lessor to unlawfully enter the lessee's premises or permit any breach of the peace in the repossession of the property.¹⁹

Lease Agreements

A lease agreement does not transfer ownership of property. Rather, the agreement requires the return of property at a certain time, as dictated by the terms of the agreement. In a lease agreement, the lessor retains title to the property throughout the duration of the agreement. There is no underlying option to purchase the property and the lessee agrees to return it at a specific time.

Legislative History

When s. 812.155, F.S., was enacted in 1992, the Legislature exempted RPAs entirely from the criminal statute.²⁰ The Legislature amended the law in 2001 to narrow the exclusion to only those RPAs in which the lessor did not retain title to the personal property throughout the period of the rental-purchase

⁹ Federal Trade Commission, Press Release, *FTC Testifies on Consumer Protection and the Rent-to-Own Industry*, available at: <https://www.ftc.gov/news-events/press-releases/2011/07/ftc-testifies-consumer-protection-rent-own-industry> (last visited January 29, 2018).

¹⁰ See generally, Rent-A-Center, <http://rentacenter.com/>; Aaron's, <http://www.aarons.com/>; Rent-A-Wheel, <http://www.rentawheel.com/How-it-Works>; RnR Tire Express, <http://www.mrwheels.com/>.

¹¹ *Supra*, FN 12.

¹² Part X of Ch. 559, F.S.

¹³ S. 559.9232, F.S.

¹⁴ *Id.*

¹⁵ S. 559.9235, F.S., Reinstatement.—

(1) A lessee who fails to make timely rental payments has the right to reinstate the original rental-purchase agreement without losing any rights or options previously acquired under the rental-purchase agreement, if:

(a) The lessee promptly surrenders the rental property to the lessor or its agent upon request; and

(b) The lessee tenders the reinstatement fees within 60 days after the expiration of the last rental period for which the lessee made a timely payment.

(2) Before reinstating the rental-purchase agreement, a lessor may require a lessee to pay unpaid rental payments, including any rental renewal charges incurred, a reinstatement fee of not more than \$5, and a delivery charge if redelivery of the rental property is necessary.

(3) If reinstatement occurs pursuant to this section, the lessor shall provide the lessee with the same personal property rented by the lessee prior to the reinstatement or with substitute personal property of comparable quality and condition. If substitute personal property is provided, the lessor must provide new disclosures to the lessee, including all of the information required by s. 559.9233.

¹⁶ SS. 559.9232(2) and 559.9233, F.S.

¹⁷ S. 559.9239, F.S.

¹⁸ S. 559.9237, F.S.

¹⁹ S. 559.9234(2), F.S.

²⁰ Ch. 92-79, L.O.F.

agreement.²¹ In 2006, the Legislature removed the exclusion for RPAs altogether, allowing prosecution under the criminal statute for failure to return leased property.²² The removal of the exclusion of RPAs entirely was made due to confusion caused by the 2001 change, namely that the 2001 narrowed exclusion appeared to render the RPA exclusion meaningless.²³

Effect of Proposed Changes

CS/HB 1309 increases the threshold amounts from \$300 to \$750 for felony offenses related to the hiring, leasing or obtaining personal property or equipment. Any violation of s. 812.155, F.S., in which the property is valued at less than \$750, will be a second-degree misdemeanor punishable by up to sixty days in jail. If the property is valued at \$750 or more, the offense is a third degree felony punishable by up to five years in prison.

The bill also specifically excludes rental purchase agreements from criminal sanctions imposed under the statute prohibiting failure to return hired or leased personal property or equipment. Lessors may still pursue civil remedies for any wrongdoings, but the offense would no longer be criminal.

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

B. SECTION DIRECTORY:

Section 1: Amending s. 812.155, F.S., relating to hiring, leasing, or obtaining personal property or equipment with the intent to defraud; failing to return hired or leased personal property or equipment; rules of evidence.

Section 2: 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:

The Criminal Justice Impact Conference met on February 12, 2018, and determined the bill would insignificantly²⁴ reduce the need for prison beds.²⁵

Per DOC, in FY 16-17, there were 359 offenders sentenced for these offenses, and 12 of these offenders were sentenced to prison. It is not known how many offenders sentenced to prison for these offenses fell between the \$300 and \$750 thresholds.²⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

²¹ Ch. 2001-141, L.O.F.

²² Ch. 2006-51, L.O.F.

²³ House of Representatives Staff Analysis of CS/HB 73 (2006), p. 3, March 22, 2006.

²⁴ An "insignificant" impact means a change in the need of prison beds by ten or fewer beds.

²⁵ The Office of Economic and Demographic Research, *CS/HB 1309 – Fraudulently Obtaining or Retaining Personal Property or Equipment*, Criminal Justice Impact Conference, February 12, 2018.

²⁶ *Id*

None.

2. Expenditures:

The bill raises the monetary thresholds for the second degree misdemeanor and third degree felony offenses related to hiring, leasing or obtaining personal property or equipment. Penalties that would potentially carry prison time may now carry jail time. The bill has an indeterminate impact on local governments by potentially increasing the need for local jail beds.

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2018, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment excluded rental purchase agreements from criminal sanctions imposed under the statute prohibiting failure to return hired or leased personal property

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

1 A bill to be entitled
 2 An act relating to fraudulently obtaining or retaining
 3 personal property or equipment; amending s. 812.155,
 4 F.S.; revising the threshold amounts for certain
 5 offenses relating to hiring, leasing, or obtaining
 6 personal property or equipment with the intent to
 7 defraud and failing to return hired or leased personal
 8 property or equipment; providing an exclusion for
 9 rental purchase agreements; providing an effective
 10 date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Subsections (1), (2), and (3) of section
 15 812.155, Florida Statutes, are amended, subsections (7) and (8)
 16 of that section are renumbered as subsections (8) and (9),
 17 respectively, and a new subsection (7) is added to that section,
 18 to read:

19 812.155 Hiring, leasing, or obtaining personal property or
 20 equipment with the intent to defraud; failing to return hired or
 21 leased personal property or equipment; rules of evidence.—

22 (1) OBTAINING BY TRICK, FALSE REPRESENTATION, ETC.—
 23 Whoever, with the intent to defraud the owner or any person
 24 lawfully possessing any personal property or equipment, obtains
 25 the custody of the personal property or equipment by trick,

26 | deceit, or fraudulent or willful false representation commits a
27 | misdemeanor of the second degree, punishable as provided in s.
28 | 775.082 or s. 775.083, unless the value of the personal property
29 | or equipment is of a value of \$750 ~~\$300~~ or more; in that case
30 | the person commits a felony of the third degree, punishable as
31 | provided in s. 775.082, s. 775.083, or s. 775.084.

32 | (2) HIRING OR LEASING WITH THE INTENT TO DEFRAUD.—Whoever,
33 | with intent to defraud the owner or any person lawfully
34 | possessing personal property or equipment of the rental thereof,
35 | hires or leases the personal property or equipment from the
36 | owner or the owner's agents or any person in lawful possession
37 | thereof commits a misdemeanor of the second degree, punishable
38 | as provided in s. 775.082 or s. 775.083, unless the value of the
39 | personal property or equipment is of a value of \$750 ~~\$300~~ or
40 | more; in that case the person commits a felony of the third
41 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
42 | 775.084.

43 | (3) FAILURE TO RETURN HIRED OR LEASED PERSONAL PROPERTY.—
44 | Whoever, after hiring or leasing personal property or equipment
45 | under an agreement to return the personal property to the person
46 | letting the personal property or equipment or his or her agent
47 | at the termination of the period for which it was let, shall,
48 | without the consent of the person or persons knowingly abandon
49 | or refuse to return the personal property or equipment as
50 | agreed, commits a misdemeanor of the second degree, punishable

51 as provided in s. 775.082 or s. 775.083, unless the value of the
52 personal property or equipment is of a value of \$750 ~~\$300~~ or
53 more; in that case the person commits a felony of the third
54 degree, punishable as provided in s. 775.082, s. 775.083, or s.
55 775.084.

56 (7) EXCLUSION OF RENTAL PURCHASE AGREEMENTS.—This section
57 does not apply to personal property or equipment that is the
58 subject of a rental purchase agreement that permits the lessee
59 to acquire ownership of the personal property or equipment.



60 Section 2. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7061 PCB CJC 18-01 Jurisdiction of County Courts

SPONSOR(S): Civil Justice & Claims Subcommittee, Perez

TIED BILLS: IDEN./SIM. BILLS: SB 1384

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice & Claims Subcommittee	15 Y, 0 N	Jones	Bond
1) Justice Appropriations Subcommittee		Smith 	Gusky 
2) Judiciary Committee			

SUMMARY ANALYSIS

In Florida, the two types of trial courts that hear civil lawsuits are county courts and circuit courts. Pursuant to the Florida Constitution, county courts exercise jurisdiction as provided by general law, and circuit courts exercise jurisdiction in matters not within the jurisdiction of county courts. County courts generally have jurisdiction of actions at law where the amount in controversy does not exceed \$15,000; actions at law where the amount in controversy exceeds \$15,000 must be filed in circuit court. The current jurisdictional threshold was last changed in 1992.

HB 7061 increases the jurisdictional threshold between county court and circuit courts from \$15,000 to \$50,000 through June 30, 2020. The bill requires the Florida Supreme Court to adjust the jurisdictional threshold beginning in July 1, 2020, and every five years thereafter based on the unadjusted Consumer Price Index for All Urban Consumers. The jurisdictional limit must be rounded to the nearest \$1,000.

The Revenue Impact Conference met on February 2, 2018, and determined the bill would reduce recurring state revenues by approximately \$4.8 million, and increase recurring local government revenues by \$2.3 million in FY 2018-2019.

The bill is effective on July 1, 2018, and applies to a cause of action filed on or after that date, regardless of when the cause of action accrued.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

County and Circuit Courts

In Florida, the two types of trial courts that hear civil lawsuits are county courts and circuit courts.¹ The Florida Constitution provides that county courts exercise jurisdiction as provided by general law, and that circuit courts exercise jurisdiction in matters not within the jurisdiction of county courts.² Section 34.01, F.S., implements the constitutional provision, establishing that county courts have jurisdiction of certain cases including actions at law where the amount in controversy does not exceed \$15,000, exclusive of interest, costs, and attorney's fees, except those cases within the exclusive jurisdiction of circuit courts.³ Any general action at law where the amount in controversy exceeds \$15,000 must be filed in circuit court. The \$15,000 threshold has not changed since 1992.⁴

Filing Fees

The filing fee for a civil lawsuit in circuit court is \$400 or more (depending on the number of defendants and the nature of the case).⁵ The Legislature last raised filing fees for basic circuit court filings in 2009.⁶ The circuit court filing fee is allocated:

- \$195 to the clerk as a filing fee;
- \$196 to the State Courts Revenue Trust Fund;
- \$5.50 to the Department of Financial Services Trust Fund; and
- \$3.50 to the Court Education Trust.⁷

The filing fee for a civil lawsuit in county court ranges from \$50 to a maximum of \$300, depending on the amount in controversy.⁸ The Legislature last raised filing fees for basic county court filings in 2008.⁹ The county court filing fee for a case with an amount in controversy greater than \$2,500 and up to \$15,000 is allocated:

- \$280 to the clerk as a filing fee;
- \$16 to the State Courts Revenue Trust Fund
- \$3.50 to the Court Education Trust; and
- \$0.50 to the Department of Financial Services Trust Fund.¹⁰

When a case is appealed from circuit court to a district court of appeal, the filing fee is \$400.¹¹ That fee is allocated:

- \$50 to the State Courts Revenue Trust Fund;
- \$250 to General Revenue;
- and \$100 to the clerks of court.¹²

¹ SS. 26.012(5), F.S., and 34.01(5), F.S.

² FLA. CONST. Art. V, ss. 5 and 6.; S. 26.012(2)(a), F.S.

³ S. 34.01(1)(c), F.S.

⁴ S. 1, Ch. 90-269, Laws of Fla. (raising the jurisdictional threshold from \$10,000 to \$15,000, effective July 1, 1992)

⁵ SS. 28.241, F.S., and 44.108(1), F.S.

⁶ S. 5, Ch. 2009-61, Laws of Fla.

⁷ SS. 28.241(1), F.S., and 44.108, F.S.

⁸ S. 34.041(1)(a), F.S.

⁹ S. 11, Ch. 2008-111, Laws of Fla.

¹⁰ SS. 34.041(1), F.S., and 44.108(1), F.S.

¹¹ SS. 28.241(2), F.S., and 35.22(2)(a), F.S.

¹² SS. 28.241(2), F.S., and 35.22(5), F.S.

When a case is appealed from county court to circuit court, the filing fee is \$281.¹³ That fee is allocated:

- \$1 to the State Courts Revenue Trust Fund; and
- \$280 to the clerks of court.¹⁴

Small Claims Court

Small claims court is a proceeding in county court where the amount in controversy is less than a specified amount, which is set by the Florida Supreme Court.¹⁵ Currently, the threshold is \$5,000,¹⁶ which was established in 1996.¹⁷ The small claims court threshold is independent of the county court jurisdictional threshold set by the Legislature.

Effect of Proposed Changes

HB 7061 amends s. 34.01, F.S., to increase the county court's jurisdictional amount in controversy to \$50,000, beginning on July 1, 2018, through June 30, 2020. Actions at law with an amount in controversy up to \$50,000 will be filed in county court beginning July 1, 2018. The new threshold applies to all causes of action filed on or after July 1, 2018, regardless of when the cause of action accrues.

The bill also directs the Florida Supreme Court, beginning July 1, 2020, and every five years thereafter, to adjust the county court jurisdictional amount to reflect inflation. The adjusted jurisdictional limit is to equal the sum of the current jurisdictional amount at the time of adjustment and the cumulative percentage change in the preceding five years of the unadjusted Consumer Price Index for All Urban Consumers.¹⁸ The amount must be rounded to the nearest \$1,000.

The language in the bill would effectively increase the county court's jurisdictional amount effective July 1, 2018 and again on July 1, 2020, based on the change of inflation since July 1, 2015.

The bill is effective on July 1, 2018, and applies to a cause of action filed on or after that date, regardless of when the cause of action accrued.

B. SECTION DIRECTORY:

Section 1: Amends s. 34.01, F.S., relating to jurisdiction of county courts.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Impact Conference met on February 2, 2018, and determined the bill would reduce recurring state revenues by approximately \$4.8 million in FY 2018-2019.¹⁹ See Fiscal Comments.

¹³ S. 28.241(2), F.S.

¹⁴ S. 28.241(2), F.S.; *Increasing County Court Jurisdiction: Issues to Consider*, Report by Office of State Courts Administrator (Jan. 16, 2018).

¹⁵ Fla. Sm. Cl. R. 7.010(b)

¹⁶ Fla. Sm. Cl. R. 7.010(b)

¹⁷ In re Amendments to the Florida Small Claims Rules, 682 So. 2d 1075 (Fla. 1996) (raising the amount from \$2,500 to \$5,000).

¹⁸ The Consumer Price Index (CPI) is a measure of the average change of prices over time (that is, inflation) and is widely used as an accurate way to adjust dollar values. It is published monthly by the U.S. Bureau of Labor Statistics. See

<https://www.bls.gov/cpi/questions-and-answers.htm>.

¹⁹ Department of Economic and Demographic Research, *HB 7061 – Jurisdiction of County Courts*, Revenue Estimating Conference, http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/Impact0202.pdf, February 2, 2018.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Impact Conference met on February 2, 2018, and determined the bill would increase recurring revenue to the clerks of court by an estimated \$2.3 million in FY 2018-2019. See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appears to have a positive fiscal impact on the private sector. Raising the county court threshold increases the number of cases filed in county court with a lower filing fee. The lower filing fee will benefit businesses and individuals litigating an amount in controversy ranging from \$15,001 to \$50,000.

D. FISCAL COMMENTS:

In FY 2018-2019, an estimated 25,632 civil case filings would be shifted from the circuit court jurisdiction to the county court.²⁰ The related filing fees would then be allocated in accordance with statute regarding county court filing fees, which would result in a greater portion going to the local clerks. Most significantly, the annual revenue for the State Courts Revenue Trust Fund would be reduced by \$4.4 million in FY 2018-2019.

		Revenue Impact (in millions)		
	Filings Shifted	GR	Trust	Local/Clerks
2018-19	25,632	(0.2)	(4.6)	2.3
2019-20	25,888	(0.2)	(4.6)	2.4
2020-21	29,882	(0.3)	(5.4)	2.7
2021-22	29,882	(0.3)	(5.4)	2.7
2022-23	29,882	(0.3)	(5.4)	2.7
*in millions				

The Office of the State Courts Administrator (OSCA) estimate of the fiscal impact the bill may have on the court system is based on comparative analysis of data from Virginia.²¹ There is no Florida-specific data to identify cases by the amount in controversy and thereby determine with certainty the number of circuit court cases that would move to county court under the bill. It is also unclear how those numbers will change over time under the bill, especially considering that cases originating in county court can be appealed to circuit court.

Data reported from a Virginia Department of Planning and Budget fiscal impact statement and Virginia case filing statistics were used to estimate the impact of the bill. OSCA determined that this Virginia data was the most comparable and recent data available to estimate the fiscal impact in Florida.²² Without Florida-specific data, any estimate should be used with caution.

²⁰ Id.

²¹ *Increasing County Court Jurisdiction: Issues to Consider*, Report by Office of State Courts Administrator (Jan. 16, 2018) at 3.

²² Id.

Raising the county court threshold to \$50,000 will result in more cases being filed in county court, changing the amount of revenue distributed to the State Courts Revenue Trust Fund, the Department of Financial Services Trust Fund, and the clerks of court.

The bill will result in more cases originating in county court, meaning that an appeal from the county court will be taken to the circuit court instead of the district court of appeal. The disparity in appellate filing fees for a litigant appealing a case from county court to circuit court versus a litigant appealing a case from circuit court to a district court of appeal contributes to the indeterminate fiscal impact and is taken into consideration in the estimated fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the jurisdiction of county courts;
 3 amending s. 34.01, F.S.; increasing the jurisdictional
 4 limit for actions at law by county courts for a
 5 specified period of time; providing a formula for use
 6 by the Supreme Court when adjusting the jurisdictional
 7 limit; providing applicability; providing an effective
 8 date.

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

11
 12 Section 1. Subsections (2) through (5) of section 34.01,
 13 Florida Statutes, are renumbered as subsections (3) through (6),
 14 respectively, paragraph (c) of subsection (1) is amended, and a
 15 new subsection (2) is added to that section, to read:

16 34.01 Jurisdiction of county court.—

17 (1) County courts shall have original jurisdiction:

18 (c) Of all actions at law in which the matter in
 19 controversy does not exceed the sum of \$50,000 through June 30,
 20 2020, and as set by the Supreme Court under subsection (2) on
 21 and after July 1, 2020 ~~\$15,000~~, exclusive of interest, costs,
 22 and ~~attorney~~ attorney's fees, except those within the exclusive
 23 jurisdiction of the circuit courts; and

24 (2) The Supreme Court shall adjust the jurisdictional
 25 limit for the county courts every 5 years beginning July 1,

26 2020. The adjusted jurisdictional limit shall equal the sum of
 27 the current jurisdictional amount and the cumulative percentage
 28 change in the preceding 5 years of the unadjusted Consumer Price
 29 Index for All Urban Consumers published by the United States
 30 Department of Labor. The jurisdictional limit shall be rounded
 31 to the nearest \$1,000.

32 Section 2. This act shall take effect July 1, 2018, and
 33 applies to each cause of action filed on or after that date
 34 regardless of when the cause of action accrued.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7071 PCB JDC 18-02 Criminal Justice Data Transparency
SPONSOR(S): Judiciary Committee, Sprowls
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	19 Y, 0 N	Painter	Poche
1) Justice Appropriations Subcommittee	<i>JAN</i>	Welty	Gusky <i>KB</i>

SUMMARY ANALYSIS

The criminal justice system is the network and processes established to handle a criminal case, beginning with an arrest and ending with the disposition of the case. Several departments and agencies are involved in the system, each with its own protocols and procedures. To gauge the efficiency and effectiveness of the criminal justice system, as well as identify strengths and weaknesses, data must be collected consistently and comprehensively. With accurate, valid, and structured data, policymakers can make more informed decisions regarding the criminal justice system. Open data also provides transparency and understanding for the public.

In an effort to increase the collection and reporting of accurate and valid data in the criminal justice system, and promote transparency, HB 7071 centralizes the majority of criminal justice data by:

- Requiring the clerks of the circuit court, state attorneys, public defenders, county jail operators, and the Department of Corrections (FDC) to collect specific data elements and transmit them to the Department of Law Enforcement (FDLE) on a weekly basis, beginning January 1, 2019.
- Requiring FDLE to publish the data on the department's website and make it searchable, at a minimum, by data element, county, circuit, and unique identifier.
- Directing FDLE to create a unique identifier for each person who is a subject of a criminal case received by the clerks of court, which will allow that person to be tracked throughout the criminal justice system.
- Digitizing the Criminal Punishment Code sentencing scoresheet with individual cells for each data field.
- Expanding the annual reporting requirements for pretrial release programs to gather information regarding the use of pretrial risk assessment tools, whether pretrial release program participants paid a surety or cash bail or bond and the types of criminal offenses programs participants are charged with.
- Requiring FDC to report and publish, on a quarterly basis, inmate admissions by offense type and recidivism rates. HB 7071 expands the definition of recidivism to include rearrest, reconviction, reincarceration, and probation revocation within a three-year period.
- Authorizing a pilot project in the 6th Judicial Circuit to allow the clerk of the circuit court, the state attorney, the public defender, or a sheriff to enter into an agreement with a national, nonpartisan, not-for-profit entity that establishes the duties and responsibilities of a data fellow and embeds that fellow with the office.
- Authorizing nine positions and associated salary rate, and appropriating \$1,750,000 in nonrecurring general revenue funds for FDLE to implement the data collection requirements and begin the transition to incident-based crime reporting.

The bill will have a significant, and largely indeterminate, fiscal impact on the clerks of the circuit courts, state attorneys, public defenders, county jail operators, FDC, and FDLE. See Fiscal Analysis Statement.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Data collection is the process of gathering and measuring information on variables of interest, in an established systematic fashion, to answer research questions, test hypotheses, and evaluate outcomes.¹ In order for data to be effective, it must be accurate, reliable, and valid.² A strong foundation in research methods and data analysis techniques allows for evidence-based decision making, greater understanding, and identifying strengths, weaknesses, or potential issues.³

Data Collection by Florida's Criminal Justice Agencies

Currently, Florida does not have a publicly accessible website containing comprehensive criminal justice data. Several state departments, local agencies and local offices, including clerks of the circuit courts, state attorneys, public defenders, county jails, and the Department of Corrections (FDC) collect data within the criminal justice system. Each entity collects and maintains data in different ways and for different purposes. As a result, available criminal justice data is fractured and unstructured.

Clerks of the Circuit Court

The clerks of the circuit court (clerks) use a secured single point-of-search database portal for statewide court case information, the Comprehensive Case Information System (CCIS).⁴ The clerks implemented CCIS in 2002 as an initiative to view court case information across county and circuit lines.⁵ All clerks are statutorily required to participate in CCIS and submit data for criminal, civil, juvenile, probate and traffic cases.⁶ Section 28.24(12)(e), F.S., directs the clerks to maintain CCIS as the custodian of records generated by the system.

The clerks of the circuit courts collect the following data, which is searchable by name or case information:

- Individual name and demographic information
- Case/charge information.
- Court events.
- Progress dockets.
- Financial (assessments/collections).
- Warrant/summons information.
- Sentencing information.

¹ Responsible Conduct of Research, Northern Illinois University, available at: https://ori.hhs.gov/education/products/n_illinois_u/dfront.html (last visited January 28, 2017).

² Id.

³ Kristie R. Blevings, Ph.D., Eastern Kentucky University, March 26, 2013, available at: <http://plsonline.eku.edu/insidelook/importance-research-and-analysis-policing> (last visited January 28, 2017).

⁴ Comprehensive Case Information System access site, available at: <https://www.flccis.com/ocrs/login.xhtml> (last visited January 27, 2018).

⁵ Upgraded versions of this system have since been implemented in 2009 and again in 2016.

⁶ S. 28.2405, F.S.

- Document images.⁷

CCIS contains approximately 150 million cases and 400 million names.⁸ There are approximately 80 governmental organizations that use CCIS, with over 45,000 active users.⁹ These organizations include federal, state, and local level entities.¹⁰ The clerks assign each user or organization a security level that allows them to view certain data available on CCIS.¹¹ For example, an assistant public defender may not have the same level of access as a deputy sheriff. Not all data elements are available to all users, and CCIS is not publicly available.

A government organization granted access to CCIS may use the database to search information on past or present cases. A user may search for information by using a person's name, social security number or date of birth.¹² There is also an option to narrow the search field results to within a date range or specific county.¹³ In order to search by case number, the user will need to know the county where the case originated, the court case type, and the year.¹⁴ A user may also enter a party name to see if there are any active warrants in a case.¹⁵

CCIS is limited to person and court case information, and allows a user to search a person's case history and the information within each case. However, CCIS is not interactive, meaning a user cannot search data using other elements, such as offense charges or race and ethnicity.

Below is a chart of organizations with over 100 users currently using CCIS:¹⁶

CCIS Users	
Organization	Active Users
Department of Children and Families	6825
County Sheriff	3650
Department of Corrections	3211
State Attorney	2349
Local Police	1972
U.S. Department of Homeland Security	1777
Department of Revenue	1665
Public Defender	1527
Judicial Circuits	928
Department of Juvenile Justice	706
Department of Law Enforcement	576
Department of Highway Safety and Motor Vehicles	504
Fish and Wildlife Commission	474
U.S. Probation Office	461

⁷ Florida Court Clerks & Comptrollers, *Criminal Court Case Data Collection*, power point presentation to House Judiciary Committee on November 14, 2017 (on file with Judiciary Committee staff).

⁸ Id.

⁹ Email from the Association of Court Clerks & Comptrollers, January 26, 2018 (on file with Judiciary Committee staff).

¹⁰ Supra, FN 7.

¹¹ Id.

¹² CCIS User Guide, February 21, 2017, available at:

http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/Temporary_Files/CCIS_User_Guide.pdf (last visited January 27, 2018).

¹³ Id. at 5.

¹⁴ Id. at 9.

¹⁵ Id. at 10.

¹⁶ Supra, FN 9.

Attorney General	433
County Office	304
Department of Financial Services	297
Justice Administrative Commission	268
Department of Health	267
Highway Patrol	215
Department of Education	196
Department of Agriculture and Consumer Services	191
Guardian Ad Litem	180
Department of Business and Profession Regulation	178
FL District Court of Appeals	135
Offices of Criminal Conflict and Civil Regional Council	114
Commission on Offender Review	112

County Detention Facilities

A county detention facility is a jail, stockade, work camp, residential probation center, or any other place, except a municipal detention facility, used by a county or county officer for the detention of persons charged with or convicted of a crime.¹⁷

There are 67 county jail facilities in Florida:

- Fifty-nine jail facilities are operated by the sheriff's office.¹⁸
- Seven jail facilities are operated by the county.¹⁹
- One jail facility is operated by a private company.²⁰

Data collection and storage by jail facilities varies greatly from county to county.²¹ Larger jails, such as Miami-Dade and Duval, have data systems allowing for direct data input and report generation.²² Smaller jails have created databases using Microsoft Access or other commercially available templates.²³

Statute requires administrators of county detention facilities to collect and report to the Department of Corrections (FDC) the following information:

- The number of persons housed per day, admitted per month, and housed on the last day of the month, by age, race, and sex, who are:
 - Felons sentenced to cumulative sentences of incarceration of 364 days or less.
 - Felons sentenced to cumulative sentences of incarceration of 365 days or more.
 - Sentenced misdemeanants.
 - Awaiting trial on at least one felony charge.
 - Awaiting trial on misdemeanor charges only.

¹⁷ S. 951.23(1)(a), F.S.

¹⁸ Email from Florida Sheriffs Association, October 10, 2017 (on file with Judiciary Committee).

¹⁹ Escambia, Gulf, Jefferson, Miami-Dade, Okaloosa, Orange, Osceola, and Volusia. *Id.*

²⁰ Citrus County. *Id.*

²¹ Florida Sheriffs Association, *Criminal Justice Data Collection*, Power Point presentation to Judiciary Committee on November 14, 2017 (on file with Judiciary Committee staff).

²² *Id.*

²³ *Id.*

- Convicted felons and misdemeanants who are awaiting sentencing.
- Juveniles.
- State parole violators.
- State inmates who were transferred from a state correctional facility to a county detention facility.
- The number of persons housed per day, admitted per month, and housed on the last day of the month, by age, race, sex, country of citizenship, country of birth, and immigration status, classified as one of the following:
 - Permanent legal resident of the United States.
 - Legal visitor.
 - Undocumented or illegal alien.
 - Unknown status.
- The number of persons housed per day, and admitted per month by age, race, and sex under part I of chapter 394, "The Florida Mental Health Act," or pursuant to chapter 397, "Substance Abuse Services."²⁴

FDC uses such data to analyze and evaluate county detention facilities.²⁵

Many jails also collect data relating to jail capacity, per diems, demographic data, criminal charges, custody levels, and medical information for internal purposes.²⁶ Jail administrators use this data to manage daily operations, including custody level and safety trends, verifying total jail costs and budgets, and ensuring proper staffing and training.²⁷

State Attorneys and Public Defenders

Statute prescribes the roles, duties, and obligations of state attorneys and public defenders in parts II and III of ch. 27, F.S., respectively. There is no statutory requirement for a state attorney or public defender to collect, publish or report specific data. Many circuits, on their own initiative, collect data elements for internal purposes. However, this data is not publicly available or consistently shared among agencies.

Department of Corrections

The Offender Based Information System (OBIS) is the FDC's data system.²⁸ The Agency for State Technology's State Data Center hosts OBIS and allows access to FDC employees around the state.²⁹ The data collected includes sentencing information and scoresheets from the clerks of the circuit courts, the criminal history information from the Department of Law Enforcement (FDLE), and background information self-reported by inmates.³⁰

The data maintained in OBIS includes:

²⁴ S. 951.23(2), F.S.

²⁵ S. 951.23(3), F.S.

²⁶ *Supra*, FN 21.

²⁷ *Id.*

²⁸ S. 20.315(10), F.S.

²⁹ Florida Department of Corrections, *Overview of FDC Criminal Justice Data*, Power Point presentation to Judiciary Committee on November 14, 2017 (on file with Judiciary Committee staff).

³⁰ *Id.*

- **Sentencing Information:** offense of conviction, offense data, imposed date, presentence credit, sentence length, special provisions, county of conviction and scoresheet calculated points.
- **Criminal History Information:** arrest history, offense dates, and dispositions.
- **Demographic and Background Information:** marital status, employment history, and education.
- **Operational Information:** gang affiliation, substance abuse treatment needs, Tests of Adult Basic Education, spectrum assessment, job assignments, program participation, disciplinary reports, and employer information for probationers.³¹

The department shares OBIS information with law enforcement and other state and federal agencies pursuant to relevant statute, federal law, or other directives, such as Memoranda of Understanding or Data Sharing Agreements.³²

The Bureau of Research and Data Analysis (Bureau) at FDC analyzes OBIS data to generate information for the department, the Governor's office, the Legislature, and other state agencies.³³ One of the reports issued by the Bureau is the recidivism rate.³⁴ FDC defines recidivism as a return to prison due to a new conviction or a violation of post-prison supervision, within three years of an inmate's prison release date.³⁵ FDC uses the data on recidivism to analyze factors that influence an inmate's likelihood to recidivate, as well as recidivism based on gender, race, and primary offenses.³⁶ A report issued in December 2017 examined recidivism from 2009 to 2015 and found:

- Female inmates' recidivism rate was 13.2% compared to male inmates' recidivism rate at 27.1%.
- Inmates with the primary offense of burglary were most likely to recidivate at 31%.
- Inmates with the primary offense of murder/manslaughter were least likely to recidivate at 18%.
- Inmates less than twenty-five years old were most likely to recidivate at a rate of 31%.
- Other factors that increase recidivism include homelessness, gang membership, and supervision following prison time.³⁷

Other reports and statistical information published by the Bureau include reports on the most common primary offenses committed by imprisoned inmates, inmate population by primary offense, and the per diem cost of each inmate.³⁸ The department updates reports yearly and makes the reports publicly accessible; however, users are only able to download and view these reports.³⁹ Users cannot search the data DOC collects to create the reports.

Data Transparency in Other Industries

³¹ Supra, FN 29.

³² Id.

³³ Florida Department of Corrections, *Bureau of Research and Data Analysis*, available at: <http://www.dc.state.fl.us/orginfo/research.html> (last visited January 27, 2018).

³⁴ Florida Department of Corrections, *Florida Prison Recidivism Study*, December 2017, available at: <http://www.dc.state.fl.us/pub/recidivism/2016/index.html> (last visited January 27, 2018).

³⁵ Id.

³⁶ Florida Department of Corrections, *Florida Prison Recidivism Report: Releases form 2009 to 2015*, December 2017, available at: <http://www.dc.state.fl.us/pub/recidivism/2016/RecidivismReport2017.pdf> (last visited January 28, 2018).

³⁷ Id.

³⁸ Florida Department of Corrections, *Quick Facts about the Florida Department of Corrections*, December 2017, available at: <http://www.dc.state.fl.us/oth/Quickfacts.html> (last visited January 27, 2018).

³⁹ Florida Department of Corrections, *Index to Statistics & Publications*, available at: <http://www.dc.state.fl.us/pub/index.html> (last visited January 28, 2017).

Healthcare Industry

In 2016, the Legislature passed CS/CS/HB 1175, which promotes greater consumer access to health care price and quality information by requiring certain health care providers, insurers, and health maintenance organizations (HMOs) to give that information to patients. The bill was in response to record numbers of newly insured persons enrolling in both public and private health insurance and bearing a greater share of the health care costs associated with higher deductible health plans.⁴⁰ Clear, factual information about the cost and quality of health care was necessary for consumers to select value driven health care options and for consumers and providers to be involved in and accountable for decisions about health and health care services.⁴¹ In order to reach this goal and promote consumer involvement, the bill required health care pricing and other data to be free, timely, reliable, and reflect individual health care needs and insurance coverage.⁴²

The bill created pre-treatment transparency obligations for hospitals, ambulatory surgical centers, health care practitioners providing non-emergency services in these facilities, and insurers and HMOs. Facilities must post online the average payments and payment ranges received for bundles of health care services defined by the Agency of Health Care Administration (AHCA).⁴³ The information must be searchable by consumers.⁴⁴ The facilities must also provide, within 7 days of a request, a written, good faith, personalized estimate of charges, including facility fees, using either bundles of health care services defined by AHCA or patient-specific information.⁴⁵ Facilities must inform patients of health care practitioners providing their nonemergency care in hospitals and these practitioners must publish information on their financial assistance policies and procedures.⁴⁶

A website is now available for all consumers to research and compare the cost of health care services and procedures in Florida.⁴⁷ Patients can search the information without a password or registration requirement.⁴⁸ As a result of the data collection and the requirement for public access, consumers now have access to a database that provides the average cost of health care service bundles for procedures and treatment.⁴⁹ This tool empowers consumers to plan for health care and negotiate prices for medical services and treatment.

Transportation

The transportation industry continually collects and analyzes data in order to improve safety. In Florida, the Department of Transportation houses the Transportation Data and Analytics Office, which offers highway, traffic, multimodal, and freight and passenger data information.⁵⁰ The goal of the office is to provide lawmakers and community leaders with evidence-based information to make transportation

⁴⁰ Final Analysis of HB 1175, Florida House of Representatives Committee on Health & Human Services, April 15, 2016, at 2.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 1.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Agency for Health Care Administration, Florida Health Price Finder, available at: [https://pricing.floridahealthfinder.gov/#!](https://pricing.floridahealthfinder.gov/) (last visited January 28, 2018).

⁴⁸ *Supra*, FN 40 at 19.

⁴⁹ *Supra*, FN 40 at 20.

⁵⁰ The Florida Department of Transportation, *Transportation Data and Analytics Office*, available at: <http://www.fdot.gov/planning/statistics/> (last visited January 27, 2018).

decisions and improve safety.⁵¹ For example, the website offers a web-based mapping application that provides real-time traffic count information during emergencies such as hurricanes and wildfires.⁵²

Efforts to collect data are not limited to ground transportation. In 2015, Boeing donated \$7.5 million to establish a data analytics lab at Carnegie Mellon,⁵³ with the goal of improving flight experience and aircraft maintenance and design. Using data, a maintenance schedule for aircrafts can be based on actual flight history and component performance instead of historic norms.⁵⁴ This allows for automatic analysis of written reports for the evidence-based predictive maintenance of aircrafts.⁵⁵

Education

Many schools and education facilities have expanded the ways they use student data information to inform them on needed changes and ways to improve the education system.⁵⁶ Student data, as part of the education record from each student's school experience, is an important tool for teachers, administrators, districts and states to identify trends, show patterns, and evaluate the success of educational changes to ensure that new programs or services achieve the desired results.⁵⁷ Schools are using data to identify which students might be at risk of dropping out of school, or what groups of students may need more help in particular learning areas.⁵⁸ The information gathered from data can assist teachers in adjusting their plans and teaching style.⁵⁹ Through data collection and analysis, policymakers can predict trends throughout the school year. For example, students score lower on standardized tests at the end of summer vacation than they do on the same test at the beginning of summer.⁶⁰

Data-Driven Decision Making in Other States and Organizations

Data-driven decision making in criminal justice is the objective, evidence-based decision process based on data collection. Data allows the public, as well as lawmakers, researchers, and analysts, to track how criminal cases are handled from arrest to post-conviction.⁶¹ It allows users to break down data by race and ethnicity, gender, indigent status, age, offense type and attorney type. In addition to tracking the experience of offenders, data collection provides information on victims.⁶² Data can project what

⁵¹ Id.
⁵² Id.
⁵³ Carnegie Mellon, *Boeing Join Forces on New Aerospace Data Analytics Lab*, September 30, 2015, available at: <https://www.lti.cs.cmu.edu/news/carnegie-mellon-boeing-join-forces-new-aerospace-data-analytics-lab> (last visited January 27, 2018).
⁵⁴ Aerospace Manufacture and Design, *Boeing establishes analytics lab at Carnegie Mellon*, October 7, 2015, available at: <http://www.aerospacemanufacturinganddesign.com/article/boeing-establishes-analytics-lab-carnegie-100715/> (last visited January 31, 2018).
⁵⁵ *Supra*, FN 2.
⁵⁶ Allie Bidwell, *More States are Collecting and Using Student Data to Improve Education*, November 19, 2013, available at: <https://www.usnews.com/news/articles/2013/11/19/more-states-are-collecting-and-using-student-data-to-improve-education> (last visited January 28, 2018).
⁵⁷ Elana Zeide, *19 Times Data Analysis Empowered Students and Schools*, March 2016, available at: https://fpf.org/wp-content/uploads/2016/03/Final_19Times-Data_Mar2016-1.pdf (last visited January 28, 2018).
⁵⁸ Id.
⁵⁹ Id.
⁶⁰ Lindsey Ravis, *Curriculum News: Data Collection and Its Importance in the Classroom*, May 2013, available at: http://ensc.ss5.sharpschool.com/UserFiles/Servers/Server_3056961/File/Migration/Curriculum/Newsletters/Curriculum_Newsletter_-_May_2013.pdf (last visited January 28, 2018).
⁶¹ MacArthur Foundation, *Enhancing Transparency in the Criminal Justice System*, May 23, 2017, available at: <https://www.macfound.org/press/publications/enhancing-transparency-criminal-justice-system/> (last visited January 28, 2018).
⁶² Ryan Sibley, *The benefits of criminal justice data: Beyond policing*, Sunlight Foundation, available at: <https://sunlightfoundation.com/2015/05/01/the-benefits-of-criminal-justice-data-beyond-policing/> (last visited January 26, 2018).

demographic or age group is more likely to be targeted, which can assist lawmakers in developing preventative and safety measures for the community.⁶³

Measures for Justice

Measures for Justice is a not-for-profit research organization founded in 2011 to develop a data-driven set of performance measures to assess and compare the criminal justice process from arrest to post-conviction on a county-by-county basis.⁶⁴ The organization's headquarters is in Rochester, New York, and it has a staff of over thirty researchers and technologists with PhD and Master Degrees in Criminal Justice, Public Administration, Cognitive Science, and Computer Science, working on verifying the accuracy of and standardizing criminal justice data. The organization also works on software automation to streamline the process of verifying and standardizing data from disparate sources.

Measures for Justice developed a web-based platform that contains all its data and analyses and offers them free to the public. This platform is searchable and can be configured to break down performance data across multiple factors including race/ethnicity, sex, indigent status, age, and offense type. The platform also allows for county-to-county comparison within and across states. It currently has information for counties in: Washington, Utah, Wisconsin, Pennsylvania, North Carolina, and Florida.

Hot Spot Policing

Data collection can also assist cities and municipalities in identifying "hot-spot" or high crime areas to focus on crime prevention and better policing.⁶⁵ Using accessible data, crime-mapping technologies can collect and analyze crime statistics so that police districts can produce information about the level, rate, and geographic location of crimes in any given area.⁶⁶ The data can assist law enforcement in formulating plans to reduce crime in certain areas and possibly even prevent crime before it occurs.⁶⁷

Police Data Initiative

Accessible and open data can also create trust among criminal justice agencies and the public. For example, since 2016, over 129 law enforcement agencies across the nation have adopted the Police Data Initiative (PDI).⁶⁸ The PDI supports local police departments in their efforts to increase transparency and accountability in order to build trust in their communities.⁶⁹ Jurisdictions participating in the PDI commit to releasing at least three policing datasets to the public.⁷⁰ The datasets may include data on stops and searches, uses of force, officer-involved shootings, or other police actions.⁷¹ The following Florida jurisdictions are listed as participating in the PDI: Jacksonville Sheriff's Department,

⁶³ Bureau of Justice Statistics, *Data Collection: National Crime Victimization Survey (NCVS)*, available at: <https://www.bjs.gov/index.cfm?ty=dcdetail&lid=245> (last visited January 27, 2018).

⁶⁴ Measures for Justice, available at: <https://measuresforjustice.org/about/overview/> (last visited January 28, 2018).

⁶⁵ Andrew Guthrie Ferguson, *Crime Mapping and the Fourth Amendment: Redrawing "High-Crime Areas,"* 63 *Hastings L.J.* 179 (Dec. 2011).

⁶⁶ *Id.*

⁶⁷ Anthony Braga, Andrew Papachristos, David Hureau, *Hot spots policing effects on crime*, available at: https://www.campbellcollaboration.org/media/k2/attachments/Braga_Hot_Spots_Policing_Review.pdf (last visited January 26, 2018).

⁶⁸ The Police Data Initiative, *Public Safety Open Data Portal*, available at: <https://www.policedatainitiative.org/> (last visited February 7, 2018).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

Gainesville Police Department, Orlando Police Department, Ft. Lauderdale Police Department, Doral Police Department, and Miami Beach Police Department.⁷²

North Carolina Jail Data

North Carolina recently highlighted the lack of a centralized database for jail operations and public awareness.⁷³ Without uniform collection of data across counties, the state found that the public and lawmakers were unable to determine the number of people in jail due to their inability to post bond, or the number of people pleading guilty to be released for time served.⁷⁴ To obtain this information, several state agencies are acting independently to track, and make publicly accessible, the data.⁷⁵

Criminal Punishment Code Sentencing Scoresheets

The Criminal Punishment Code (Code) applies to all felony offenses, except capital felonies, committed on or after October 1, 1998.⁷⁶ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10), either by being specifically listed in the offense severity ranking chart⁷⁷ or by default.⁷⁸ Judges must use the Criminal Punishment Code worksheet to compute a sentence score for each felony offender.⁷⁹

Sentence points are assigned and accrue based on the level ranking assigned to the primary offense, additional offenses and prior offenses.⁸⁰ Sentence points increase as the offense severity level increases from Level 1 (least severe) to Level 10 (most severe). Sentence points are added for victim injury, and increase based on the type of injury and severity.⁸¹ Sentence points may also be added or multiplied for other factors including possession of a firearm or the commission of certain offenses, such as drug trafficking.⁸²

If total sentence points equal or are less than 44 points, the lowest permissible sentence is any nonstate prison sanction, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.⁸³ Absent mitigation,⁸⁴ the permissible range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.⁸⁵

Design and Development of the Criminal Punishment Code Scoresheet

⁷² Supra, FN 51.

⁷³ Jordan Wilkie, *Media Hub: Holding Jails Accountable*, November 27, 2017, available at: <http://mediahub.unc.edu/housing-jails-accountable-where-data/> (last visited January 26, 2018).

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ s. 921.002, F.S.

⁷⁷ s. 921.0022, F.S.

⁷⁸ s. 921.0023, F.S., addresses ranking unlisted felony offenses. For example, an unlisted felony of the third degree is ranked within offense level 1.

⁷⁹ s. 921.0024, F.S.

⁸⁰ Id.

⁸¹ Id.

⁸² Id.

⁸³ s. 921.0024, F.S.

⁸⁴ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

⁸⁵ s. 921.0024, F.S.

FDC develops and submits the CPC scoresheet to the Florida Supreme Court each year by June 15.⁸⁶ In developing the scoresheet, FDC may consult with the Office of State Courts Administrator (OSCA), state attorneys, and public defenders.⁸⁷ Once the Supreme Court approves of the scoresheet, FDC has until September 30 of each year to produce and provide sufficient copies of the CPC scoresheet to agencies throughout the state.⁸⁸ Hard copies of the form are printed and mailed to every state attorney.⁸⁹ If state attorneys run low on the hard copy forms, FDC will deliver more.⁹⁰ There is also an electronic option for the state attorneys to log in, complete, and print the scoresheet.⁹¹

Preparation and Transmission of the Criminal Punishment Code Scoresheets

Statute requires the assistant state attorney assigned to a case to prepare a CPC scoresheet for every defendant sentenced for a felony offense.⁹² The assistant state attorney must give the CPC scoresheet to defense counsel in all cases unless the judge directs otherwise.⁹³ The sentencing judge must approve and sign the CPC scoresheet.⁹⁴

At the conclusion of a felony criminal case in which an offender was sentenced pursuant to the CPC scoresheet, the clerks of court must transmit a copy of the CPC scoresheet used in sentencing to FDC.⁹⁵

Annual Reports from Pretrial Release Programs

Pretrial release allows a defendant to stay in the community while his or her criminal case is pending. The judge determines the conditions of a defendant's pretrial release at a first appearance hearing held within 24-hours of arrest.⁹⁶ As forms of pretrial release, a judge may impose a bail bond⁹⁷, nonmonetary pretrial release conditions,⁹⁸ or any combination thereof. A judge must presume that nonmonetary conditions are sufficient for any person granted pretrial release⁹⁹ and not charged with a dangerous crime.¹⁰⁰

⁸⁶ s. 921.0024(4), F.S.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Email from Department of Corrections, January 26, 2018 (on file with Judiciary Committee staff).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² s. 921.0024(3), F.S.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ s. 921.0024(6), F.S.

⁹⁶ Fla. R. Crim. P. 3.130.

⁹⁷ Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S., and requires an arrestee to pay a set sum of money, commonly called a cash bond, to the court to be released from jail. As an alternative to posting the entire bail amount, a defendant may use a criminal surety bail bond executed by a bail bond agent licensed. A criminal surety bail bond requires a defendant to pay the bail bond agent a nonrefundable fee equal to 10 percent of the bail bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond. SS. 903.011 F.S., 903.105 F.S., and 903.045, F.S.

⁹⁸ Nonmonetary conditions include any condition that does not require the payment of a financial guarantee, such as releasing the arrestee on his or her recognizance, placement in a pretrial release program, or placing restrictions on the arrestee's travel, association, or place of abode. Fla. R. Crim. P. 3.131.

⁹⁹ S. 907.041(3)(a), F.S.

¹⁰⁰ "Dangerous crimes" include arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial

Pretrial Release Programs

In determining the conditions of pretrial release, a pretrial release program may assess the individual and make recommendations. A pretrial release program is a public or private entity that conducts investigations of pretrial inmates and makes recommendations to the court.¹⁰¹ If an offender is released, a program may also be responsible for supervising or electronically monitoring that individual.¹⁰² The program may select defendants for participation or defendants may be assigned to the program by a judge.¹⁰³ There are twenty-nine pretrial release programs in Florida, primarily funded by counties.¹⁰⁴ In evaluating and determining a defendant's suitability for release, a pretrial release program or the court may use a pretrial risk assessment tool that uses variables to objectively assess a defendant's potential for re-offense or failing to appear in court and for posing a danger to the community.¹⁰⁵

Pretrial Release and the Citizens' Right-to-Know Act

Each pretrial release program is required to submit an annual report no later than March 31 to the Office of State Courts Administrator and the clerk of the circuit court in the county where the program is located.¹⁰⁶ This report must be publicly accessible and include:

- Name, location and funding source of the pretrial release program;
- Operating and capital budget of the pretrial release program;
- Percent of the program's total budget that is publicly funded;
- Number of persons employed by each program;
- Number of defendants assessed for pretrial release;
- Number of defendants recommended for pretrial release;
- Number of defendants for whom the pretrial release program recommended against non-secured release;¹⁰⁷
- Number of defendants assessed for pretrial release who were declared indigent by the court;
- The name and case number of each person granted nonsecure release who failed to attend a scheduled court appearance, who had a warrant issued for failure to appear, or who was arrested for a new criminal offense while on release to a pretrial release program;
- Amount of fees paid by defendants to the program; and
- Any additional information deemed necessary by the governing body to assess the performance and cost efficiency of the pretrial release program.

authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of chapter 893; and attempting or conspiring to commit any such crime. S. 907.041, F.S.

¹⁰¹ S. 907.043(2)(b), F.S.

¹⁰² *Id.*

¹⁰³ Office of Program Policy Analysis and Government Accountability, *County Pretrial Release Programs*, December 2016, available at: <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1610rpt.pdf> (last visited January 28, 2018).

¹⁰⁴ *Id.*

¹⁰⁵ Pretrial Justice Institute, *Pretrial Risk Assessment*, available at: <http://www.pretrial.org/solutions/risk-assessment/> (last visited January 28, 2018), see also Deborah Brodsky, The James Madison Institute, *Reforming Florida's Pre-trial Decision Making*, available at: <https://www.jamesmadison.org/library/docLib/Journal-Spr2017-ReformingFloridasPreTrialDecisionMaking.pdf>.

¹⁰⁶ S. 907.043(4)(a), F.S.

¹⁰⁷ "Nonsecure release" means the release of a defendant from pretrial custody when no secured surety or cash bond is required as a condition of the release. S. 907.043(2)(a), F.S.

A study by the Office of Program Policy Analysis and Government Accountability, found that all twenty-nine of the pretrial release programs complied with the annual statutory reporting requirements.¹⁰⁸

FDC Annual Reporting Requirement

Section 20.315(5), F.S., requires FDC to report annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives, its activities and making recommendations for improvements to the performance of the department. The most recent annual report contained inmate statistics on:

- Number of inmates admitted during fiscal year;
- Inmate admissions by offense type;
- General characteristics of inmate population;
- General characteristics of inmate population by offense type;
- Inmate drug testing and the testing results;
- Number of elderly inmates (over the age of 50);¹⁰⁹
- Elderly inmate characteristics;
- Elderly population by offense type;
- Youthful offender population;¹¹⁰
- Death row population;
- Execution of death row inmates;
- Race and gender of death row inmates;
- Inmates released;
- Inmates released by offense type;
- Recidivism data for sexually violent predators;¹¹¹ and
- Inmate escapes.¹¹²

The annual report also discusses educational/vocational programs and substance abuse programs available to inmates.¹¹³

FDLE and Incident-Based Reporting

FDLE currently submits crime reports to the Federal Bureau of Investigation (FBI) using the Summary Reporting System (SRS).¹¹⁴ The SRS reports crime in the aggregate.¹¹⁵ If several offenses were committed in one criminal episode, the SRS reports only the highest-ranking criminal offense.¹¹⁶ Beginning on January 1, 2021, the FBI will no longer accept information submitted by states using the Summary Reporting System and will require states to utilize the National Incident Based Reporting System (NIBRS).¹¹⁷ NIBRS reports incident based data for every reportable incident in a criminal

¹⁰⁸ Supra, FN 97.

¹⁰⁹ Reporting required pursuant to s. 944.8041, F.S.

¹¹⁰ S. 958.04, F.S.

¹¹¹ Reporting required pursuant to s. 394.931, F.S.

¹¹² Florida Department of Corrections, Agency Annual Reports, available at: <http://www.dc.state.fl.us/pub/annual/index.html> (last visited January 29, 2018).

¹¹³ Id.

¹¹⁴ Email from the Florida Department of Law Enforcement, January 6, 2018 (on file with Judiciary Committee staff).

¹¹⁵ Id.

¹¹⁶ Id.

¹¹⁷ Id.

episode.¹¹⁸ NIBRS improves the overall quality of crime data collected by capturing details on each single crime incident, as well as on separate offenses within the same incident, including information on victims, known offenders, relationship between victims and offenders, arrestees, and property involved in the crimes.¹¹⁹ The chart highlights the difference between SRS and NIBRS.¹²⁰

Area	SRS (Summary)	NIBRS (Incidents)
Level of Detail	Sum total for most offense categories	Detailed, incident-based data for every reportable incident
Reporting Frequency	Semi-annual submission	Monthly submission
Data Reported	10 reportable offense types (including number of offenses, clearances, and arrests) and 29 arrest-only offense types	52 reportable offense types that include a broad range of specific incident details and 10 arrest-only offense types
Data Elements	6 per offense type and 9 per arrest type	58 per reported incident
Reporting Hierarchy	Only most severe crime reported per single incident i.e., if incident includes robbery, aggravated assault, and murder, only murder is reported	Up to 10 crimes per incident can be reported i.e., murder, robbery, and aggravated assault can all reported for one incident.
Victim & Offender Information	Limited victim/offender data collected: age, race, sex, etc.	Expanded victim/offender data collected: ex. Relationship between offender and victim, types and quantities of drugs involved, types of property damaged or stolen.
Submission Requirements	7 individual files, plus 2 optional files	1 combined file

Application Programming Interface

An application programming interface (API) is a computer software intermediary that establishes a clearly defined method of communication between various software components.¹²¹ An API is capable of running data from one software application to another and allows the two systems to communicate.¹²² API is described as a "door" or "window" between two systems to allow them to "talk" to one another.¹²³ APIs are widespread among major Internet services, making it possible for services

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ David Orenstein, Computer World, *Application Programming Interface*, available at: <https://www.computerworld.com/article/2593623/app-development/application-programming-interface.html> (last visited January 28, 2018).

¹²² Id.

¹²³ Brian Proffitt, *What APIs Are and Why They're Important*, September 2013, available at: <https://readwrite.com/2013/09/19/api-defined/> (last visited January 29, 2018).

like Google Maps or Facebook to let other sites "piggyback" on their offerings.¹²⁴ For example, Yelp may display nearby restaurants on a Google Map. Facebook APIs allow users to sign into many applications and web sites using their Facebook ID.¹²⁵ APIs expose some of the program's internal functions to the outside world in a limited fashion, which makes it possible for applications to share data and take actions without requiring developers to share all of the software code.¹²⁶

Governments are using APIs to share data internally and with citizens.¹²⁷ At the federal level, the U.S. Department of Defense used APIs to effectively interconnect all data available within the department.¹²⁸ To protect sensitive information maintained by government entities, API can include security elements.¹²⁹ At the local level, APIs allowed municipalities to interact and share data with residents.¹³⁰ For example, complaints about potholes in the road or other service related calls can be shared through API.¹³¹ Other examples include:

- The National Weather Service publishes an API that makes weather data available to developers within and outside of the organization.
- The Federal Aviation Administration provides travel websites and mobile apps with live airport status and delay information through its Airport Service API.
- The Pillbox API from the National Library of Medicine serve consumers who need to quickly identify an unknown pill.¹³²

Effect of Proposed Changes

Criminal Justice Data Collection and Transparency

Data Definitions

HB 7071 creates s. 900.05, F.S., establishing a multi-agency data collection and sharing process. The bill establishes a definition for each data element and assigns the data element to be collected and reported by certain state agencies or local offices or entities. The definition of terms will make the data consistent among the different agencies involved in criminal justice, and will result in reliable, accurate, valid, and structured data. The bill defines the following:

- "Admission date" means the date a defendant was admitted to the Department of Corrections.
- "Admission type" means the underlying reason for which defendant is admitted to the Department of Corrections, including a new conviction, probation violation, probation violation based on a new offense, parole violation, or parole violation based on a new offense.
- "Annual felony caseload" means the yearly adult criminal felony caseload of each full-time state attorney and assistant state attorney or public defender and assistant public defender. The term does not include the appellate caseload of a public defender or assistant public defender.

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ Id.

¹²⁷ Greg Sleet, Government Technology, *What's an API and Why Do You Need One?*, May 29, 2014, available at: <http://www.govtech.com/applications/whats-an-api-and-why-do-you-need-one.html> (last visited January 29, 2018).

¹²⁸ Id.

¹²⁹ Id.

¹³⁰ Id.

¹³¹ Id.

¹³² Gary Brooks, Digital Gov, *APIs in Government*, April 30, 2013, available at: <https://www.digitalgov.gov/2013/04/30/apis-in-government/> (last visited January 29, 2018).

- "Annual misdemeanor caseload" means the yearly adult criminal misdemeanor caseload of each full-time state attorney and assistant state attorney or public defender and assistant public defender. The term does not include the appellate caseload of a public defender or assistant public defender.
- "Arrest date/initial appearance" means the date a defendant first appears before a judge to enter a plea.
- "Arrest date" means the date a defendant is taken into physical custody by a law enforcement agency on a criminal charge, a defendant is issued a notice to appear, or a charging document is filed by the state attorney's office.
- "Attorney assignment date" means the date a court-appointed attorney is assigned to the case or, if privately retained, the date an attorney files a notice of appearance with the clerk of court.
- "Attorney withdrawal date" means the date the court removes court-appointed counsel from a case or, for a privately retained attorney, the date a motion to withdraw is granted by the court.
- "Bail/bond hearing date" means the date a defendant appears in court for bail/bond determination.
- "Bail/bond modification date" means the date a hearing is held to consider a defendant's bail/bond conditions and the conditions are modified.
- "Bail/bond posting date" means the date a defendant posts bail/bond.
- "Bail/bond revocation" means the date a court revokes a defendant's bail/bond.
- "Bail/bond setting date" means the date a court confirms or orders bail/bond in a criminal case.
- "Booking date and reason" means the date a defendant is booked into a jail facility for a new charge; probation violation; pursuant to a bench warrant for pretrial release violation; or pursuant to a warrant from another jurisdiction.
- "Case number" means the identification number assigned by the clerk of court to a criminal case.
- "Case status" means whether a case is open, closed, re-opened due to a probation violation, or inactive.
- "Cash bail/bond amount" means the monetary amount of bail/bond imposed by a court.
- "Cash bail/bond payment" means whether or not a defendant posted bail/bond.
- "Charge class severity" means the degree misdemeanor or felony for each charged offense.
- "Charge description" means the statement of the charge matched to the statutory section establishing the conduct as criminal.
- "Charge disposition date" means the date of final judgment, adjudication, adjudication withheld, dismissal, or nolle prosequi of each charge.
- "Charge modifier" means an aggravating circumstance of an alleged crime that enhances or modifies a charge to a more serious offense level.
- "Charge sequence number" means the unique numerical identifier for each charge in a case with multiple charges.
- "Charge statute" means the statute for each charge establishing the conduct as criminal.
- "Charge type" means whether the charge is a misdemeanor or felony.
- "Committing county" means the county from which defendant was transported to the Department of Corrections.
- "Concurrent/consecutive sentence flag" means an indication that a defendant is serving another sentence concurrently or consecutively in addition to the current sentence.
- "Court fees amount" means the amount of fees owed to the clerk of court at disposition of the case.
- "Court fees amount balance/payment to date" means the amount a defendant paid towards outstanding court fees and the remaining balance owed.

- "Current institution and institution security level" means the name of the institution where a defendant is currently incarcerated and the institution's security level.
- "Daily cost of a jail bed" means the cost per diem, based on all sources of funding and costs associated with operations, for each inmate in a jail facility.
- "Daily cost of a prison bed" means the cost per diem, based on all sources of funding and costs associated with operations, for each inmate in a state correctional institution.
- "Daily cost per probationer" means the cost per diem for each individual serving probation with the Department of Corrections.
- "Daily jail population" means the number of inmates incarcerated within a jail facility on each day.
- "Daily jail post-sentence population" means the number of inmates incarcerated within a jail facility on each day who have been sentenced and are either serving the sentence in jail or awaiting transportation to the Department of Corrections.
- "Daily jail pre-sentence population" means the number of inmates incarcerated within a jail facility on each day who entered a plea to charges or were found guilty at trial and are awaiting sentencing.
- "Daily jail pretrial population" means the number of inmates incarcerated within a jail facility on each day awaiting case disposition.
- "Daily number of correctional officers" means the number of full-time, part-time and auxiliary correctional officers who are actively providing supervision, protection, care, custody, and control of inmates working in a state correctional institution or jail facility each day.
- "Daily number of federal and state inmates held in jail" means the number of inmates who are temporarily incarcerated within a jail facility.
- "Daily prison population" means the number of inmates incarcerated in a state correctional institution on each day.
- "Date of court appearance" means each date a criminal case is considered by a court.
- "Date of failure to appear in court" means each date a criminal case was set to be heard by a court with required appearance by defendant and he or she failed to appear.
- "Defense attorney type" means whether the attorney is court-appointed to or privately retained by a defendant, or the defendant is represented pro se.
- "Deferred prosecution/pretrial diversion hearing date or agreement date" means each date a hearing is held or a contract is signed by the parties regarding a defendant's admission into a deferred prosecution or pretrial diversion program.
- "Disciplinary violation and action" means any inmate disciplinary conduct and the consequences of such conduct.
- "Discovery motion date" means the date a defendant files a notice to participate in discovery.
- "Dismissal motion date" means the date a defendant files a motion to dismiss charges.
- "Dismissal motion hearing date" means the date a court considers a defendant's motion to dismiss charges.
- "Disposition date" means the date on which all case activity is final.
- "Domestic violence flag" means an indication that the charge involves domestic violence as defined in s. 741.28.
- "Drug type for drug charge" mean the type of drug specified in each drug charge against a defendant.
- "Ethnicity" means a person's identification as Hispanic or Latino, not Hispanic or Latino, or Haitian.
- "Filing date" means the date a formal charge is filed against a defendant.
- "Fine amount" means the total fines imposed at case disposition.

- "Fine amount balance/payment to date" means the amount a defendant paid towards outstanding fines and the remaining balance owed.
- "Gang affiliation flag" means an indication that a defendant is involved in or associated with a criminal gang as defined in s. 874.03.
- "Good conduct credit earned" means time an inmate earned for good behavior in a jail facility or state correctional institution and credited toward his or her sentence.
- "Habitual offender flag" means an indication that a defendant is a habitual felony offender as defined in s. 775.084 or a habitual misdemeanor offender as defined in s. 775.0837.
- "Jail capacity" means the maximum number of inmates who can be incarcerated in a jail facility.
- "Judicial transfer date" means a date on which a defendant's case is transferred to another court or presiding judge.
- "Length of probation sentence imposed" means the duration of probation ordered by a court.
- "Length of probation sentence served" means the amount of time on probation a defendant has served to date.
- "Nonmonetary condition of release" means a condition of a defendant's pretrial release imposed by the court that is not based on payment of bail/bond.
- "Number of contract attorneys representing indigent defendants for the public defender's office" means the number of attorneys hired on a temporary basis, by contract, to represent indigent clients who were appointed a public defender.
- "Offense date" means the date that the alleged crime occurred.
- "Plea date" means the date a defendant enters a plea to a pending charge.
- "Presentence jail population at year-end" means the number of inmates incarcerated within a jail facility, at the end of the calendar year, who entered pleas or were found guilty at trial and are awaiting sentencing.
- "Pretrial release decision" means the date the court decides the issue of defendant's pretrial release from incarceration.
- "Pretrial release offender flag" means an indication that the defendant has violated the terms of his or her pretrial release.
- "Prior incarceration within the state" means any prior history of a defendant being incarcerated in a jail facility or state correctional institution.
- "Post-sentence jail population at year-end" means the number of inmates incarcerated within a jail facility, at the end of the calendar year, who have been sentenced and are either serving that sentence in the facility or awaiting transportation to the Department of Corrections.
- "Probation revocation" means any instance where a defendant's probation was revoked.
- "Projected discharge date" means the anticipated date an inmate will be released from incarceration.
- "Race" means a person's identification as American Indian or Alaskan Native, African-American or Black, Asian, Hawaiian or other Pacific Islander, White, or Other, which includes multi-racial individuals.
- "Restitution amount ordered" means the amount of money imposed by the court to compensate a victim of a defendant's criminal activity.
- "Sentence condition" means any requirement imposed by a court in addition to incarceration.
- "Sentence date" means the date a court enters a sentence against a defendant.
- "Sentence length" means the total duration of jail time, prison time, and probation a defendant is ordered to serve.
- "Sentence type" means capital punishment, incarceration, probation, or a combination thereof.
- "Sentencing scoresheet" means the digitized worksheet created under s. 921.0024 to compute the defendant's minimum sentence that may be imposed by the trial court.

- "Speedy trial motion date" means the date a defendant files a demand for speedy trial.
- "Speedy trial motion hearing date" means the date a court hears a defendant's demand for speedy trial.
- "Sexual offender flag" means an indication that a defendant is a sexual offender as defined in s. 943.0435.
- "Time served credit and length" means the amount of prior incarceration credited to an inmate's current sentence to reduce the amount of time remaining in the sentence.
- "Total jail population at year-end" means the number of inmates incarcerated within a jail facility at the end of the calendar year.
- "Trial date" means the date a defendant's case is set for trial, beginning with jury selection.

Data Collection—Departments and Agencies

The bill centralizes the majority of criminal justice data by requiring the clerks of the circuit court, state attorneys, public defenders, administrators of county detention facilities, and FDC to collect specific data elements and transmit them to FDLE on a weekly basis, beginning January 1, 2019.

Clerks of the Circuit Court

The bill requires the clerks of the circuit courts to collect and transmit 72 data elements to FDLE. The clerks currently collect most of the data elements required, with the exception of defendant's ethnicity, citizenship and immigration status and whether the defendant has a domestic violence, gang affiliation, sexual offender, or habitual offender flag.

CLERKS OF COURT (72 Data Elements)			
Any charge referred to the state attorney by law enforcement	Charge description	Defendant's primary language	Judicial transfer date
Arraignment date/initial appearance	Charge modifier	Defendant's race and ethnicity	Nonmonetary conditions of release
Arrest date	Charge sequence number	Defendant's gender	Offense date
Attorney assignment date	Charge disposition	Defendant's citizenship	Plea date
Attorney withdrawal date	Charge disposition date	Defendant's immigration status	Pretrial release decision
Bail/bond hearing date	Charge statute	Whether the defendant is indigent	Pretrial release offender flag
Bail/bond modification date	Charge type	Date defendant is released on bond or bail	Restitution amount paid
Bail/bond motion date	County where offense was committed	Discovery motion date	Restitution amount ordered
Bail/bond posting date	Court fees amount	Dismissal motion hearing date	Sentence date
Bail/bond revocation date	Court fees amount balance/payment	Dismissal motion date	Sentence type

Bond revocation due to a new offense, failure to appear or a technical violation	Date of court appearance	Disposition date	Sentence length
Bail/bond setting date	Dates defendant failed to appear at court if attendance was required	Drug type for drug charges, if known	Sentence condition
Booking date and reason	Defense attorney type	Domestic violence flag	Speedy trial motion date
Case number	Deferred prosecution/ pretrial diversion hearing date or agreement date	Filing Date	Speedy trial motion hearing date
Case status	Defendant's name	Fine Amount	Time served credit and length
Cash bail/bond amount	Defendant's date of birth	Fine amount/payment to date	Trial date
Cash bail/bond payment	Defendant's age	Gang affiliation flag	Sex offender flag
Charge class severity	Defendant's zip code of primary residence	Habitual offender flag	The number of judges who see adult criminal cases in each circuit

County Detention Facilities

The administrators of county detention facilities must collect 22 data elements. Data collection varies from county to county, so this requirement will standardize data collection for all county jails.

ADMINISTRATORS OF COUNTY DETENTION FACILITIES (22 Data Elements)		
Annual jail budget	Daily number of correctional officers	Pretrial jail population at year-end
Booking date and reason	Domestic violence flag	Pretrial release offender flag
Daily jail population	Gang affiliation flag	Revenue generated from the temporary incarceration of federal defendants or inmates
Daily jail pretrial population	Habitual offender flag	Sexual offender flag
Daily jail presentence population	Jail capacity	Total jail population at year-end
Daily jail postsentence population	Number of federal and state inmates held in jail at year-end	Weekly admission to jail for probation revocation
Daily federal and state inmates held in jail	Post-sentence jail population at year-end	
Daily cost of jail bed	Presentence jail population at year end	

State Attorneys

The state attorneys in each circuit are required to collect 11 data elements.

STATE ATTORNEY (11 Data Elements)		
Annual felony caseload	Number of cases in which no information was filed	Victim's gender
Annual misdemeanor caseload	Number of full-time assistant prosecutors	Victim's age
Charge referred to the office by law enforcement	Number of part-time assistant prosecutors	Victim's relationship to offender
Drug type for drug charge	Victim's race and ethnicity	

Public Defenders

The public defenders in each circuit are required to collect five data elements.

PUBLIC DEFENDER DATA ELEMENTS (5 Data Elements)		
Annual felony caseload	Number of contract attorneys representing indigent defendants for the public defender's office	Number of part-time assistant public defenders
Annual misdemeanor caseload	Number of full-time assistant public defenders	

Department of Corrections

FDC is required to collect 38 data elements, all of which the department currently collects.

DEPARTMENT OF CORRECTIONS (38 Data Elements)		
Inmate's name	Inmate's committing county	Daily number of correctional officers
Inmate's DOC number	Inmate's reason for admission (new conviction or violation of probation)	Daily cost of prison bed
Inmate's date of birth	Specific offense codes for admission	Probationer's name
Inmate's race and ethnicity	Concurrent/consecutive sentence flag	Probationer's date of birth
Inmate's number of children	Length of sentence/concurrent or consecutive sentences served	Probationer's race and ethnicity
Inmate's education level	Projected discharge date	Probationer's sex
Inmate's admission date	Time served, in days	Probationer's department-assigned case number
Inmate's admission type	Good conduct credit earned	Length of probation imposed and length of probation sentence served
Inmate's current institution and institution security level	Prior incarceration within the state	Probation release date or projected release date

Inmate's sex offender flag	Disciplinary violation and action	Probation revocation due to a violation
Inmate's habitual offender flag	Participation in rehabilitative or educational correctional programs	Probation revocation due to a new offense
Inmate's gang affiliation flag	Budget for each correctional institution	Daily cost per probation
Inmate's sentencing scoresheet	Daily prison population	

Department of Law Enforcement - Collection of Data and Publication

Data Publication

The bill requires FDLE to publish all datasets in its possession beginning January 1, 2019. On March 1, 2019, FDLE will begin publishing the data received from the agencies and offices, with all data from the agencies and offices published and publicly available no later than July 1, 2019.

The department must publish the data on its website in an open, electronic format that is machine-readable and readily accessible by the public. The data must be searchable by each data element, county, circuit, and unique identifier number. The unique identifier number is a number FDLE will assign to a person who is the subject of each criminal case. The unique identifier must be the same for the person in any court case and used across local and state entities for all information related to that person. The unique identifier number will allow data to track an individual's experience in the criminal justice system.

Guidelines for Data Publication

The bill creates s. 943.687, F.S., requiring FDLE to facilitate the availability of comparable and uniform criminal justice data. FDLE must:

- Collect, compile, maintain and manage the data submitted by the agencies under s. 900.05, F.S.
 - Create a unique identifier for each criminal case.
 - Create a unique identifier for each person who is subject of a criminal case.
- Promote criminal justice data sharing.
- Create and maintain an Internet-based database of criminal justice information received under s. 900.05, F.S. through the creation of and application program interface (API). The database must:
 - Be available to the public.
 - Be searchable by each data element.
 - Not require a license or charge a fee to access or receive information from the database.
- Develop written agreements with local, state, and federal agencies to facilitate criminal justice data sharing.
- Consult with local, state, and federal criminal justice agencies and other public and private users of the database on the data elements collected, the use of such data, and adding data elements to be collected.
- Develop rules to implement the provisions of the bill.
- Monitor data collection procedures and test data quality to promote the distribution of accurate, valid, reliable, and complete criminal justice data.
- Develop methods for archiving data, retrieving archived data, and data editing and verification.

Rulemaking Authority

The bill requires FDLE to adopt rules to implement the provisions of the bill, including:

- Requirements for the submission of data by the agencies;
- A data catalog defining data objects, describing data fields, and detailing the meaning of and options for each data element;
- How the collected data is compiled, processed, structured, used, or shared including the tagging of all information associated with each case number and unique identifier;
- Requirements for implementing and monitoring the interned based data; and
- How the information contained in the interned database is accessible by the public.

6th Judicial Circuit Data Fellow Pilot Project

The bill establishes a pilot project in the 6th Judicial Circuit, consisting of Pasco and Pinellas counties, to allow the clerk of court, the state attorney, the public defender, or a sheriff to enter into a Memorandum of Understanding with a national, nonpartisan, not-for-profit entity which provides data and measurement for county-level criminal justice systems to establish the duties and responsibilities of a data fellow, funded by the entity, to be embedded with the office or agency. The data fellow will assist with data extraction, validation, and quality and publish such data consistent with the terms of the memorandum. The data fellow will also assist the office or agency in compiling and reporting data required by the bill. The pilot project expires pursuant to the terms of the memorandum.

Criminal Punishment Code Sentencing Scoresheets

The bill amends s. 921.0024, F.S., to require the digitization of the CPC scoresheet. The CPC scoresheet must have entry fields for each data point capable of being input to a computer and searchable by data field or data element. The bill also requires the clerk of circuit courts to transmit electronic copies of the CPC scoresheets to FDC. The bill is silent as to the entity that will be required to complete the electronic copies of the CPC scoresheets. According to the analysis by the clerks of the circuit courts, it appears they believe the language may require the clerks to prepare the spreadsheets.¹³³

Pretrial Release Program Annual Reporting

HB 7071 amends s. 907.043, F.S., requiring pretrial release programs to include in the annual report:

- The number of defendants in which a pretrial risk assessment tool was used and the number of defendants in which the tool was not used;
- The number of defendants accepted into a pretrial release program who paid a surety or cash bond; and
- The type of criminal charges of defendants accepted into a pretrial release program to include the number of defendants charged with dangerous crimes,¹³⁴ non-violent felonies, misdemeanors only, or no prior criminal convictions.

¹³³ HB 7071 Criminal Justice Data Transparency Pilot Initiation Analysis – Sixth Judicial Circuit, p 1, provided by the Florida Clerks of Court Operations Corporation (Feb. 8, 2018).

¹³⁴ "Dangerous crimes" include arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual

Pretrial risk assessment tools can be effective in determining which defendants should be released on pretrial. By having the programs report the numbers, data will be available for policy and lawmakers to better track the success and predictive ability of pretrial risk assessment tools.

Currently, pretrial release programs are not required to report the types of offenses for defendants admitted into the programs. The information is beneficial in understanding the types of defendants afforded the opportunity to participate in a pretrial release program, and the success associated with participation.

Department of Corrections Data Reports

HB 7071 creates s. 945.041, F.S., requiring FDC to publish on its website information on inmate admissions by offense type and the recidivism rate, and update the information quarterly. When publishing information on inmate admission by offense type, FDC must include a separate category for residential burglary offenses.¹³⁵

The bill expands FDC's current definition of recidivism, which is a return to prison, as a result of either a new conviction or a violation of post-prison supervision, within three years of release from prison, to include rearrest, reconviction, or probation revocation. DOC's definition does not capture offenders who may be reconvicted but not sentenced to prison, offenders who violate probation but are reinstated on probation, or offenders who are rearrested and may receive only jail time. The expanded definition of recidivism will capture a more accurate and complete picture of recidivism in Florida.

Appropriations

The bill authorizes nine full-time equivalent positions with associated salary rate of 665,884 and appropriates \$1,750,000 of nonrecurring general revenue funds to FDLE for the purposes of implementing the provisions of the bill, and to begin the transition to incident-based crime reporting as required by the FBI.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 900.05, F.S., relating to criminal justice data collection.

Section 2: Creates s. 943.687, F.S., relating to criminal justice data transparency.

Section 3: Amends s. 921.0024, F.S., relating to Criminal Punishment Code; worksheet computations; scoresheets.

Section 4: Amends s. 907.043, F.S., relating to pretrial release; citizens' right to know.

Section 5: Creates s. 945.041, F.S., relating to Department of Corrections' reports.

Section 6: Amends s. 20.315, F.S., relating to Department of Corrections.

battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of chapter 893; and attempting or conspiring to commit any such crime. S. 907.041, F.S.

¹³⁵ Includes offenses under SS. 810.02(2) F.S. (burglary with assault or battery upon any person; burglary while armed with dangerous weapon), 810.02(3)(a) F.S. (burglary of occupied dwelling), and 810.02(3)(b), F.S. (burglary of unoccupied dwelling).

STORAGE NAME: h7071.JUA.DOCX

DATE: 2/9/2018

PAGE: 24

Section 7: Creates an unnumbered section of law establishing the Criminal Justice Data Fellow Pilot Project.

Section 8: Provides an appropriation.

Section 9: 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:

Department of Corrections

The bill will have a fiscal impact on the Department of Corrections. The requirements of reporting additional budget information will require one additional full time employee (Senior Management Analyst II) to implement at a cost of approximately \$93,000 per year.

In order to create the digitized scoresheet and provide the additional data information requested there will be significant technology impact, which will include developing new applications to create the digitized scoresheet, and completing programming changes and development to OBIS related to offender tracking and information screens. According to the FDC, these changes will cost approximate \$340,000.¹³⁶ Since an electronic version of the scoresheet already exists, it is anticipated that this could be updated at minimal cost.

State Attorneys and Public Defenders

The bill will have an indeterminate, but potentially significant, fiscal impact on the State Attorneys and the Public Defenders. It is unknown how much of the information required by the bill is currently collected by these entities. The additional data and weekly transmission requirements may require more staff for each of the twenty State Attorney and Public Defenders offices, as well as updated or new technology.

Florida Department of Law Enforcement

The bill will have a significant fiscal impact on FDLE for receiving, publishing, maintaining, and storing the data. The bill requires upkeep and maintenance of the data. FDLE may need to contract with other vendors to facilitate the publicly available website, allow users to determine their research parameters and data elements to explore, and download the data in a format of their choice.

The bill appropriates \$1,750,000 of nonrecurring general revenue funds and authorizes nine full-time equivalent positions and 665,884 of associated salary rate to FDLE to accomplish the goals of the bill and to begin the transition to incident-based reporting to the FBI. The department estimates

¹³⁶ Department of Corrections, Agency Analysis of 2018 House Bill 7071, p 8 (Feb. 8, 2018).

the transition to incident-based reporting will cost the state approximately \$30 million over the next five years. FDLE reports that the positions and the nonrecurring appropriation is not sufficient to accomplish both tasks of implementing the transition to the NIBRS system as well as implementing the public data project contemplated by this bill.¹³⁷

The department does not yet have a specific fiscal impact, but expects it to be significant. If the bill passes, the department anticipates holding a series of workshops with the clerks of the circuit court, state attorneys, public defenders, sheriffs and county detention facility administrators and the Department of Corrections. FDLE anticipates submitting a legislative budget request (LBR) to address the significant fiscal impact created by this bill.¹³⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

County Detention Facilities

The bill will have an indeterminate impact on local administrators of county detention facilities by requiring the reporting and transmission of data from the facilities to FDLE on a weekly basis. According to the Florida Sheriffs Association, the fiscal impact will be significant as each jail operates an independent jail information-management system. Not all systems currently collect the data elements required by HB 7071. Additionally, interfacing the jail management systems with FDLE may be problematic and may require additional technology upgrades to resolve.¹³⁹ Depending on the size of the facility and current data capabilities, some counties may need to hire additional positions to input and maintain the data and the requirements may involve technology upgrades or installing new systems.

Pretrial Release Programs

Counties that operate a pretrial release program may also have an indeterminate fiscal impact due to the additional data elements that must be collected and reported to FDLE.

Clerks of the Circuit Courts

The bill will have a significant fiscal impact on the clerks of the circuit courts. The clerks in the Sixth Judicial Circuit (Pinellas and Pasco Counties) indicate they will need to modify their individual case management systems (CMS) for missing data elements. The Comprehensive Case Information System (CCIS) will need to be modified to transmit information to FDLE. The clerks estimate the cost to implement the bill for the Sixth Judicial Circuit is approximately \$2 million for the first year of

¹³⁷ Ron Draa, Director of External Affairs, Department of Law Enforcement RE: HB 7071. (February 8, 2018).

¹³⁸ *Id.*

¹³⁹ Tabitha Krol, Government Affairs Coordinator, Florida Sheriffs Association RE: HB7071 Fiscal Comments. (February 8, 2018).

implementation and approximately \$600,000 of recurring funds will be needed for subsequent years.¹⁴⁰

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that pretrial release programs utilize vendors to monitor released defendants, there may be a fiscal impact to collect additional data that is not currently collected by these vendors.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires all county operated detention facilities to collect and transmit data elements to FDLE. An exemption may apply if the fiscal impact is insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides appropriate rulemaking authority to FDLE to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear how state attorneys and public defenders will report on annual misdemeanor and felony caseloads on a weekly basis.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁴⁰ HB 7071 Criminal Justice Data Transparency Pilot Initiation Analysis – Sixth Judicial Circuit, p 1, provided by the Florida Clerks of Court Operations Corporation (Feb. 8, 2018).

1 A bill to be entitled
2 An act relating to criminal justice data transparency;
3 creating s. 900.05, F.S.; providing legislative
4 intent; providing definitions; requiring specified
5 entities to collect and transmit to the Department of
6 Law Enforcement weekly specific data; requiring the
7 Department of Law Enforcement to compile, maintain,
8 and make publicly accessible the data; creating s.
9 943.687, F.S.; requiring the Department of Law
10 Enforcement to collect, compile, maintain, and manage
11 data collected pursuant to s. 900.05, F.S.; requiring
12 the department to make data comparable, transferable,
13 and readily usable; requiring an Internet-based
14 database; providing requirements for data
15 searchability and sharing; requiring monitoring of
16 data collection procedures; providing for data
17 archiving, editing, and retrieval; amending s.
18 921.0024, F.S.; requiring scoresheets prepared for all
19 criminal defendants to be digitized; requiring the
20 Department of Corrections to develop and submit
21 revised digitized scoresheets to the Supreme Court for
22 approval; requiring digitized scoresheets to include
23 individual data cells for each field on the
24 scoresheet; requiring the clerk of court to
25 electronically transmit the digitized scoresheet used

26 in each sentencing proceeding to the department;
27 amending s. 907.043, F.S.; requiring each pretrial
28 release program to include in its annual report the
29 types of criminal charges of defendants accepted into
30 a pretrial release program, the number of defendants
31 accepted into a pretrial release program who paid a
32 bail or bond, the number of defendants accepted into a
33 pretrial release program with no prior criminal
34 conviction, and the number of defendants for whom a
35 pretrial risk assessment tool was used or was not;
36 creating s. 945.041, F.S.; requiring the Department of
37 Corrections to publish quarterly on its website inmate
38 admissions based on offense type and recidivism rate;
39 amending s. 20.315, F.S.; requiring the Department of
40 Corrections to include information in its annual
41 report on inmate admission based on offense type and
42 recidivism rate; creating a pilot project in a
43 specified judicial circuit to improve criminal justice
44 data transparency and ensure data submitted under s.
45 900.05, F.S., is accurate, valid, reliable, and
46 structured; permitting a memorandum of understanding
47 with a national, nonpartisan, not-for-profit
48 foundation meeting certain criteria for the purpose of
49 embedding a data fellow in the office or agency;
50 establishing data fellow duties and responsibilities;

51 providing for the expiration of the pilot project;
 52 providing an appropriation; providing an effective
 53 date.

54

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

56

57 Section 1. Section 900.05, Florida Statutes, is created to
 58 read:

59 900.05 Criminal justice data collection.—It is the intent
 60 of the Legislature to create a model of uniform criminal justice
 61 data collection by requiring local and state criminal justice
 62 agencies to report complete, accurate, and timely data, and
 63 making such data available to the public.

64 (1) DEFINITIONS.—As used in this section, the term:

65 (a) "Admission date" means the date a defendant was
 66 admitted to the Department of Corrections.

67 (b) "Admission type" means the underlying reason for which
 68 defendant is admitted to the Department of Corrections,
 69 including a new conviction, probation violation, probation
 70 violation based on a new offense, parole violation, or parole
 71 violation based on a new offense.

72 (c) "Annual felony caseload" means the yearly adult
 73 criminal felony caseload of each full-time state attorney and
 74 assistant state attorney or public defender and assistant public
 75 defender, based on the number of felony cases reported to the

76 Supreme Court under s. 25.075. The term does not include the
 77 appellate caseload of a public defender or assistant public
 78 defender.

79 (d) "Annual misdemeanor caseload" means the yearly adult
 80 criminal misdemeanor caseload of each full-time state attorney
 81 and assistant state attorney or public defender and assistant
 82 public defender, based on the number of misdemeanor cases
 83 reported to the Supreme Court under s. 25.075. The term does not
 84 include the appellate caseload of a public defender or assistant
 85 public defender.

86 (e) "Arraignment date or initial appearance" means the
 87 date a defendant first appears before a judge to enter a plea.

88 (f) "Arrest date" means the date a defendant is taken into
 89 physical custody by a law enforcement agency on a criminal
 90 charge, a defendant is issued a notice to appear, or a charging
 91 document is filed by the state attorney's office.

92 (g) "Attorney assignment date" means the date a court-
 93 appointed attorney is assigned to the case or, if privately
 94 retained, the date an attorney files a notice of appearance with
 95 the clerk of court.

96 (h) "Attorney withdrawal date" means the date the court
 97 removes court-appointed counsel from a case or, for a privately
 98 retained attorney, the date a motion to withdraw is granted by
 99 the court.

100 (i) "Bail or bond hearing date" means the date a defendant

101 appears in court for bailor bond determination.

102 (j) "Bail or bond modification date" means the date a
 103 hearing is held to consider a defendant's bail or bond
 104 conditions and the conditions are modified.

105 (k) "Bail or bond posting date" means the date a defendant
 106 posts bail or bond.

107 (l) "Bail or bond revocation" means the date a court
 108 revokes a defendant's bail or bond.

109 (m) "Bail or bond setting date" means the date a court
 110 confirms or orders bail or bond in a criminal case.

111 (n) "Booking date and reason" means the date a defendant
 112 is booked into a jail facility for a new charge, probation
 113 violation, pursuant to a bench warrant for pretrial release
 114 violation, or pursuant to a warrant from another jurisdiction.

115 (o) "Case number" means the identification number assigned
 116 by the clerk of court to a criminal case.

117 (p) "Case status" means whether a case is open, closed,
 118 reopened due to a probation violation, or inactive.

119 (q) "Cash bail or bond amount" means the monetary amount
 120 of bail or bond imposed by a court.

121 (r) "Cash bail or bond payment" means whether or not a
 122 defendant posted bail or bond.

123 (s) "Charge class severity" means the degree misdemeanor
 124 or felony for each charged offense.

125 (t) "Charge description" means the statement of the charge

126 matched to the statutory section establishing the conduct as
 127 criminal.

128 (u) "Charge disposition date" means the date of final
 129 judgment, adjudication, adjudication withheld, dismissal, or
 130 nolle prosequi of each charge.

131 (v) "Charge modifier" means an aggravating circumstance of
 132 an alleged crime that enhances or modifies a charge to a more
 133 serious offense level.

134 (w) "Charge sequence number" means the unique numerical
 135 identifier for each charge in a case with multiple charges.

136 (x) "Charge statute" means the statute for each charge
 137 establishing the conduct as criminal.

138 (y) "Charge type" means whether the charge is a
 139 misdemeanor or felony.

140 (z) "Committing county" means the county from which
 141 defendant was transported to the Department of Corrections.

142 (aa) "Concurrent or consecutive sentence flag" means an
 143 indication that a defendant is serving another sentence
 144 concurrently or consecutively in addition to the current
 145 sentence.

146 (bb) "Court fees amount" means the amount of fees owed to
 147 the clerk of court at disposition of the case.

148 (cc) "Court fees amount balance or payment to date" means
 149 the amount a defendant paid towards outstanding court fees and
 150 the remaining balance owed.

151 (dd) "Current institution and institution security level"
 152 means the name of the institution where a defendant is currently
 153 incarcerated and the institution's security level.

154 (ee) "Daily cost of a jail bed" means the cost per diem,
 155 based on all sources of funding and costs associated with
 156 operations, for each inmate in a jail facility.

157 (ff) "Daily cost of a prison bed" means the cost per diem,
 158 based on all sources of funding and costs associated with
 159 operations, for each inmate in a state correctional institution.

160 (gg) "Daily cost per probationer" means the cost per diem
 161 for each individual serving probation with the Department of
 162 Corrections.

163 (hh) "Daily jail population" means the number of inmates
 164 incarcerated within a jail facility on each day.

165 (ii) "Daily jail postsentence population" means the number
 166 of inmates incarcerated within a jail facility on each day who
 167 have been sentenced and are either serving the sentence in jail
 168 or awaiting transportation to the Department of Corrections.

169 (jj) "Daily jail presentence population" means the number
 170 of inmates incarcerated within a jail facility on each day who
 171 entered a plea to charges or were found guilty at trial and are
 172 awaiting sentencing.

173 (kk) "Daily jail pretrial population" means the number of
 174 inmates incarcerated within a jail facility on each day awaiting
 175 case disposition.

176 (ll) "Daily number of correctional officers" means the
 177 number of full-time, part-time and auxiliary correctional
 178 officers who are actively providing supervision, protection,
 179 care, custody, and control of inmates in a state correctional
 180 institution or jail facility each day.

181 (mm) "Daily number of federal and state inmates held in
 182 jail" means the number of inmates who are temporarily
 183 incarcerated within a jail facility.

184 (nn) "Daily prison population" means the number of inmates
 185 incarcerated in a state correctional institution on each day.

186 (oo) "Date of court appearance" means each date a criminal
 187 case is considered by a court.

188 (pp) "Date of failure to appear in court" means each date
 189 a criminal case was set to be heard by a court with required
 190 appearance by defendant and he or she failed to appear.

191 (qq) "Defense attorney type" means whether the attorney is
 192 court-appointed to or privately retained by a defendant, or the
 193 defendant is represented pro se.

194 (rr) "Deferred prosecution or pretrial diversion hearing
 195 date or agreement date" means each date a hearing is held or a
 196 contract is signed by the parties regarding a defendant's
 197 admission into a deferred prosecution or pretrial diversion
 198 program.

199 (ss) "Disciplinary violation and action" means any inmate
 200 disciplinary conduct and the consequences of such conduct.

201 (tt) "Discovery motion date" means the date a defendant
 202 files a notice to participate in discovery.

203 (uu) "Dismissal motion date" means the date a defendant
 204 files a motion to dismiss charges.

205 (vv) "Dismissal motion hearing date" means the date a
 206 court considers a defendant's motion to dismiss charges.

207 (ww) "Disposition date" means the date on which all case
 208 activity is final.

209 (xx) "Domestic violence flag" means an indication that a
 210 charge involves domestic violence as defined in s. 741.28.

211 (yy) "Drug type for drug charge" mean the type of drug
 212 specified in each drug charge against a defendant.

213 (zz) "Ethnicity" means a person's identification as
 214 Hispanic or Latino, not Hispanic or Latino, or Haitian.

215 (aaa) "Filing date" means the date a formal charge is
 216 filed against a defendant.

217 (bbb) "Fine amount" means the total fines imposed at case
 218 disposition.

219 (ccc) "Fine amount balance or payment to date" means the
 220 amount a defendant paid towards outstanding fines and the
 221 remaining balance owed.

222 (ddd) "Gang affiliation flag" means an indication that a
 223 defendant is involved in or associated with a criminal gang as
 224 defined in s. 874.03.

225 (eee) "Good conduct credit earned" means time an inmate

226 earned for good behavior in a jail facility or state
 227 correctional institution and credited toward his or her
 228 sentence.

229 (fff) "Habitual offender flag" means an indication that a
 230 defendant is a habitual felony offender as defined in s. 775.084
 231 or a habitual misdemeanor offender as defined in s. 775.0837.

232 (ggg) "Jail capacity" means the maximum number of inmates
 233 who can be incarcerated in a jail facility.

234 (hhh) "Judicial transfer date" means a date on which a
 235 defendant's case is transferred to another court or presiding
 236 judge.

237 (iii) "Length of probation sentence imposed" means the
 238 duration of probation ordered by a court.

239 (jjj) "Length of probation sentence served" means the
 240 amount of time on probation a defendant has served to date.

241 (kkk) "Nonmonetary condition of release" means a condition
 242 of a defendant's pretrial release imposed by the court that is
 243 not based on payment of bail or bond.

244 (lll) "Number of contract attorneys representing indigent
 245 defendants for the public defender's office" means the number of
 246 attorneys hired on a temporary basis, by contract, to represent
 247 indigent clients who were appointed a public defender.

248 (mmm) "Offense date" means the date that the alleged crime
 249 occurred.

250 (nnn) "Plea date" means the date a defendant enters a plea

251 to a pending charge.

252 (ooo) "Presentence jail population at year-end" means the
253 number of inmates incarcerated within a jail facility, at the
254 end of the calendar year, who entered pleas or were found guilty
255 at trial and are awaiting sentencing.

256 (ppp) "Pretrial release decision" means the date the court
257 decides the issue of defendant's pretrial release from
258 incarceration.

259 (qqq) "Pretrial release offender flag" means an indication
260 that the defendant has violated the terms of his or her pretrial
261 release.

262 (rrr) "Prior incarceration within the state" means any
263 prior history of a defendant being incarcerated in a jail
264 facility or state correctional institution.

265 (sss) "Postsentence jail population at year-end" means the
266 number of inmates incarcerated within a jail facility, at the
267 end of the calendar year, who have been sentenced and are either
268 servicing that sentence in the facility or awaiting transportation
269 to the Department of Corrections.

270 (ttt) "Probation revocation" means any instance where a
271 defendant's probation was revoked.

272 (uuu) "Projected discharge date" means the anticipated
273 date an inmate will be released from incarceration.

274 (vvv) "Race" means a person's identification as American
275 Indian or Alaskan Native, African-American or Black, Asian,

276 Hawaiian or other Pacific Islander, White, or Other, which
 277 includes multi-racial individuals.
 278 (www) "Restitution amount ordered" means the amount of
 279 money imposed by the court to compensate a victim of a
 280 defendant's criminal activity.
 281 (xxx) "Sentence condition" means any requirement imposed
 282 by a court in addition to incarceration.
 283 (yyy) "Sentence date" means the date a court enters a
 284 sentence against a defendant.
 285 (zzz) "Sentence length" means the total duration of jail
 286 time, prison time, and probation a defendant is ordered to
 287 serve.
 288 (aaaa) "Sentence type" means capital punishment,
 289 incarceration, probation, or a combination thereof.
 290 (bbbb) "Sentencing scoresheet" means the digitized
 291 worksheet created under s. 921.0024 to compute the defendant's
 292 minimum sentence that may be imposed by the trial court.
 293 (cccc) "Speedy trial motion date" means the date a
 294 defendant files a demand for speedy trial.
 295 (dddd) "Speedy trial motion hearing date" means the date a
 296 court hears a defendant's demand for speedy trial.
 297 (eeee) "Sexual offender flag" means an indication that a
 298 defendant is a sexual offender as defined in s. 943.0435.
 299 (ffff) "Time served credit and length" means the amount of
 300 prior incarceration credited to an inmate's current sentence to

301 reduce the amount of time remaining in the sentence.

302 (gggg) "Total jail population at year-end" means the
 303 number of inmates incarcerated within a jail facility at the end
 304 of the calendar year.

305 (hhhh) "Trial date" means the date a defendant's case is
 306 set for trial, beginning with jury selection.

307 (2) DATA COLLECTION AND REPORTING—Beginning January 1,
 308 2019, the following entities shall collect and transmit data
 309 weekly to the Department of Law Enforcement:

310 (a) Each clerk of court shall collect the following data
 311 for each criminal case:

- 312 1. Case number.
- 313 2. Offense date.
- 314 3. County in which the offense was committed.
- 315 4. Arrest date.
- 316 5. Filing date.
- 317 6. Arraignment date or initial appearance.
- 318 7. Attorney assignment date.
- 319 8. Attorney withdrawal date.
- 320 9. Case status.
- 321 10. Disposition date.
- 322 11. For each defendant:
 - 323 a. Name.
 - 324 b. Date of birth.
 - 325 c. Age.

- 326 | d. Zip code of primary residence.
- 327 | e. Primary language.
- 328 | f. Race and ethnicity.
- 329 | g. Gender.
- 330 | h. Citizenship.
- 331 | i. Immigration status, if applicable.
- 332 | j. Whether the defendant is indigent under s. 27.52.
- 333 | 12. Any charge referred to the state attorney by law
- 334 | enforcement.
- 335 | 13. The following information on a formal charge filed
- 336 | against the defendant:
- 337 | a. Charge sequence number.
- 338 | b. Charge description.
- 339 | c. Charge statute.
- 340 | d. Charge type.
- 341 | e. Charge class severity.
- 342 | f. Charge modifier, if any.
- 343 | g. Charge disposition.
- 344 | h. Charge disposition date.
- 345 | i. Drug type for drug charge, if known.
- 346 | j. Domestic violence flag.
- 347 | k. Gang affiliation flag.
- 348 | l. Sexual offender flag.
- 349 | m. Habitual offender flag.
- 350 | 14. Plea date.

351 15. The following information on bail or bond and pretrial
 352 release:

- 353 a. Pretrial release decision.
- 354 b. Nonmonetary condition of release.
- 355 c. Cash bail or bond amount.
- 356 d. Cash bail or bond payment.
- 357 e. Booking date and reason.
- 358 f. Date defendant is released on bail, bond, or pretrial
 359 release.
- 360 g. Bail or bond revocation due to a new offense, a failure
 361 to appear, or a violation of the terms of bail or bond.

362 h. Pretrial release offender flag.

363 16. The following pretrial dates:

- 364 a. Bail or bond hearing date.
- 365 b. Bail or bond setting date.
- 366 c. Bail or bond modification date.
- 367 d. Bail or bond posting date.
- 368 e. Deferred prosecution or pretrial diversion hearing date
 369 or agreement date.

370 17. The following court dates and dates of motions and
 371 appearances:

- 372 a. Date of court appearance.
- 373 b. Date of failure to appear in court.
- 374 c. Judicial transfer date.
- 375 d. Trial date.

- 376 e. Bail or bond motion date.
- 377 f. Discovery motion date.
- 378 g. Speedy trial motion date.
- 379 h. Speedy trial motion hearing date.
- 380 i. Dismissal motion date.
- 381 j. Dismissal motion hearing date.
- 382 18. Defense attorney type.
- 383 19. The following information related to sentencing:
- 384 a. Sentence date.
- 385 b. Sentence type.
- 386 c. Sentence length.
- 387 d. Sentence condition.
- 388 e. Time served credit and length.
- 389 f. Court fees amount.
- 390 g. Court fees amount balance or payment to date.
- 391 h. Fine amount.
- 392 i. Fine amount balance or payment to date.
- 393 j. Restitution amount ordered.
- 394 k. If restitution is ordered, the amount collected by the
- 395 court and the amount paid to the victim.
- 396 19. The number of judges, magistrates, court
- 397 commissioners, or their equivalents hearing nonappellant, adult
- 398 criminal cases in the circuit.
- 399 (b) Each state attorney shall collect the following data:
- 400 1. For a human victim of a criminal offense:

- 401 a. Race and ethnicity.
- 402 b. Gender.
- 403 c. Age.
- 404 d. Relationship to the offender.
- 405 2. Number of full-time prosecutors.
- 406 3. Number of part-time prosecutors.
- 407 4. Annual felony caseload.
- 408 5. Annual misdemeanor caseload.
- 409 6. For each defendant:
- 410 a. Each charge referred to the office of the state
- 411 attorney by law enforcement.
- 412 b. Drug type for each drug charge.
- 413 7. Number of cases in which no information was filed.
- 414 (c) Each public defender shall collect the following data
- 415 for each criminal case:
- 416 1. Number of full-time public defenders.
- 417 2. Number of part-time public defenders.
- 418 3. Number of contract attorneys representing indigent
- 419 defendants for the office of the public defender.
- 420 4. Annual felony caseload.
- 421 5. Annual misdemeanor caseload.
- 422 (d) The administrator of each county detention facility
- 423 shall collect the following data:
- 424 1. Jail capacity.
- 425 2. Weekly admissions to jail for probation revocation.

- 426 | 3. Daily jail population.
- 427 | 4. Daily jail pretrial population.
- 428 | 5. Daily jail presentence population.
- 429 | 6. Daily jail postsentence population.
- 430 | 7. Daily number of federal and state inmates held in jail.
- 431 | 8. Total jail population at year-end.
- 432 | 9. Pretrial jail population at year-end.
- 433 | 10. Presentence jail population at year-end.
- 434 | 11. Postsentence jail population at year-end.
- 435 | 12. Number of federal and state inmates held in jail at
- 436 | year-end.
- 437 | 13. Daily cost of a jail bed.
- 438 | 14. Daily number of correctional officers.
- 439 | 15. Annual jail budget.
- 440 | 16. Revenue generated from the temporary incarceration of
- 441 | federal defendants or inmates.
- 442 | 17. For each inmate:
- 443 | a. Booking date and reason.
- 444 | b. Domestic violence flag.
- 445 | c. Gang affiliation flag.
- 446 | d. Habitual offender flag.
- 447 | e. Pretrial release offender flag.
- 448 | f. Sexual offender flag.
- 449 | (e) The Department of Corrections shall collect:
- 450 | 1. For each prisoner:

- 451 | a. The following data:
- 452 | (I) Name.
- 453 | (II) DOC number.
- 454 | (III) Date of birth.
- 455 | (IV) Race and ethnicity.
- 456 | (V) Number of children.
- 457 | (VI) Education level.
- 458 | (VII) Admission date.
- 459 | (VIII) Admission type.
- 460 | (IX) Current institution and institution security level.
- 461 | (X) Sexual offender flag.
- 462 | (XI) Habitual offender flag.
- 463 | (XII) Gang affiliation flag.
- 464 | (XIII) Sentencing scoresheet.
- 465 | (XIV) Committing county.
- 466 | (XV) Whether the reason for admission to the department is
- 467 | for a new conviction or a probation violation. For an admission
- 468 | for a probation violation, the department shall report whether
- 469 | the violation was technical, based on a new offense, or based on
- 470 | another term of probation.
- 471 | b. Specific offense codes, including, for an inmate
- 472 | convicted of drug trafficking under s. 893.135, the offense code
- 473 | for each specific drug trafficked.
- 474 | c. Concurrent or consecutive sentence flag.
- 475 | d. Length of sentence or concurrent or consecutive

476 sentences served.
 477 e. Projected discharge date.
 478 f. Time served, in days.
 479 g. Good conduct credit earned.
 480 h. Prior incarceration within the state.
 481 i. Disciplinary violation and action.
 482 j. Participation in rehabilitative or educational
 483 correctional programs.
 484 2. The following information about each correctional
 485 facility:
 486 a. Budget for each correctional institution.
 487 b. Daily prison population.
 488 c. Daily number of correctional officers.
 489 d. Daily cost of a prison bed.
 490 3. For probation and probationary services:
 491 a. For each probationer:
 492 (I) Name.
 493 (II) Date of birth.
 494 (III) Race and ethnicity.
 495 (IV) Sex.
 496 (V) Department-assigned case number.
 497 b. Length of probation sentence imposed and length of
 498 probation sentence served.
 499 c. Probation release date or projected release date.
 500 d. Probation revocation due to a violation.

501 e. Probation revocation due to a new offense.
 502 f. Daily cost per probationer.
 503 (3) DATA PUBLICLY AVAILABLE—Beginning January 1, 2019, the
 504 department shall publish datasets in its possession in a modern,
 505 open, electronic format that is machine-readable and readily
 506 accessible by the public on the department's website. The
 507 published data shall be searchable, at a minimum, by each data
 508 element, county, circuit, and unique identifier. Beginning March
 509 1, 2019, the department shall begin publishing the data received
 510 under subsection (2) in the same modern, open, electronic format
 511 that is machine-readable and readily accessible to the public on
 512 the department's website. The department shall publish all data
 513 received under section (2) no later than July 1, 2019.

514 Section 2. Section 943.687, Florida Statutes, is created
 515 to read:

516 943.687 Criminal justice data transparency.—In order to
 517 facilitate the availability of comparable and uniform criminal
 518 justice data, the department shall:

519 (1) Collect, compile, maintain, and manage the data
 520 submitted by local and state entities pursuant to s. 900.05 and
 521 coordinate related activities to collect and submit data. The
 522 department shall create a unique identifier for each criminal
 523 case received from the clerks of court which identifies the
 524 person who is the subject of the criminal case. The unique
 525 identifier must be the same for that person in any court case

526 and used across local and state entities for all information
 527 related to that person at any time. The unique identifier shall
 528 be randomly created and may not include any portion of the
 529 person's social security number or date of birth.

530 (2) Promote criminal justice data sharing by making such
 531 data received under s. 900.05 comparable, transferable, and
 532 readily usable.

533 (3) Create and maintain an Internet-based database of
 534 criminal justice data received under s. 900.05 in a modern,
 535 open, electronic format that is machine-readable and readily
 536 accessible through an application program interface. The
 537 database shall allow the public to search, at a minimum, by each
 538 data element, county, judicial circuit, or unique identifier.
 539 The department may not require a license or charge a fee to
 540 access or receive information from the database.

541 (4) Develop written agreements with local, state, and
 542 federal agencies to facilitate criminal justice data sharing.

543 (5) Establish by rule:

544 (a) Requirements for the entities subject to the
 545 requirements of s. 900.05 to submit data through an application
 546 program interface.

547 (b) A data catalog defining data objects, describing data
 548 fields, and detailing the meaning of and options for each data
 549 element reported pursuant to s. 900.05.

550 (c) How data collected pursuant to s. 900.05 is compiled,

551 processed, structured, used, or shared. The rule shall provide
 552 for tagging all information associated with each case number and
 553 unique identifier.

554 (d) Requirements for implementing and monitoring the
 555 Internet-based database under subsection (3).

556 (e) How information contained in the Internet-based
 557 database under subsection (3) is accessed by the public.

558 (6) Consult with local, state, and federal criminal
 559 justice agencies and other public and private users of the
 560 database under subsection (3) on the data elements collected
 561 under s. 900.05, the use of such data, and adding data elements
 562 to be collected.

563 (7) Monitor data collection procedures and test data
 564 quality to facilitate the dissemination of accurate, valid,
 565 reliable, and complete criminal justice data.

566 (8) Develop methods for archiving data, retrieving
 567 archived data, and data editing and verification.

568 Section 3. Subsections (3), (4), (5), (6), and (7) of
 569 section 921.0024, Florida Statutes, are amended to read:

570 921.0024 Criminal Punishment Code; worksheet computations;
 571 scoresheets.-

572 (3) A single digitized scoresheet shall be prepared for
 573 each defendant to determine the permissible range for the
 574 sentence that the court may impose, except that if the defendant
 575 is before the court for sentencing for more than one felony and

576 the felonies were committed under more than one version or
577 revision of the guidelines or the code, separate digitized
578 scoresheets must be prepared. The scoresheet or scoresheets must
579 cover all the defendant's offenses pending before the court for
580 sentencing. The state attorney shall prepare the digitized
581 scoresheet or scoresheets, which must be presented to the
582 defense counsel for review for accuracy in all cases unless the
583 judge directs otherwise. The defendant's scoresheet or
584 scoresheets must be approved and signed by the sentencing judge.

585 (4) The Department of Corrections, in consultation with
586 the Office of the State Courts Administrator, state attorneys,
587 and public defenders, must develop and submit the revised
588 digitized Criminal Punishment Code scoresheet to the Supreme
589 Court for approval by June 15 of each year, as necessary. The
590 digitized scoresheet shall have individual, structured data
591 cells for each data field on the scoresheet. Upon the Supreme
592 Court's approval of the revised digitized scoresheet, the
593 Department of Corrections shall produce and provide ~~sufficient~~
594 ~~copies of~~ the revised digitized scoresheets by September 30 of
595 each year, as necessary. Digitized scoresheets must include
596 individual data cells to indicate ~~item entries for the~~
597 ~~scoresheet preparer's use in indicating~~ whether any prison
598 sentence imposed includes a mandatory minimum sentence or the
599 sentence imposed was a downward departure from the lowest
600 permissible sentence under the Criminal Punishment Code.

601 (5) The Department of Corrections shall make available
 602 ~~distribute sufficient copies of the~~ digitized Criminal
 603 Punishment Code scoresheets to those persons charged with the
 604 responsibility for preparing scoresheets.

605 (6) The clerk of the circuit court shall transmit a
 606 complete, and accurate digitized, ~~and legible~~ copy of the
 607 Criminal Punishment Code scoresheet used in each sentencing
 608 proceeding to the Department of Corrections. Scoresheets must be
 609 electronically transmitted no less frequently than weekly
 610 ~~monthly~~, by the first of each month, and may be sent
 611 collectively.

612 (7) A digitized sentencing scoresheet must be prepared for
 613 every defendant who is sentenced for a felony offense. ~~A copy of~~
 614 The individual offender's digitized Criminal Punishment Code
 615 scoresheet and any attachments thereto prepared pursuant to Rule
 616 3.701, Rule 3.702, or Rule 3.703, Florida Rules of Criminal
 617 Procedure, or any other rule pertaining to the preparation and
 618 submission of felony sentencing scoresheets, must be included
 619 with ~~attached to the copy of~~ the uniform judgment and sentence
 620 form provided to the Department of Corrections.

621 Section 4. Paragraph (b) of subsection (4) of section
 622 907.043, Florida Statutes, is amended to read:

623 907.043 Pretrial release; citizens' right to know.—

624 (4)

625 (b) The annual report must contain, but need not be

626 limited to:

627 1. The name, location, and funding sources of the pretrial
628 release program, including the amount of public funds, if any,
629 received by the pretrial release program.

630 2. The operating and capital budget of each pretrial
631 release program receiving public funds.

632 3.a. The percentage of the pretrial release program's
633 total budget representing receipt of public funds.

634 b. The percentage of the total budget which is allocated
635 to assisting defendants obtain release through a nonpublicly
636 funded program.

637 c. The amount of fees paid by defendants to the pretrial
638 release program.

639 4. The number of persons employed by the pretrial release
640 program.

641 5. The number of defendants assessed and interviewed for
642 pretrial release.

643 6. The number of defendants recommended for pretrial
644 release.

645 7. The number of defendants for whom the pretrial release
646 program recommended against nonsecured release.

647 8. The number of defendants granted nonsecured release
648 after the pretrial release program recommended nonsecured
649 release.

650 9. The number of defendants assessed and interviewed for

651 pretrial release who were declared indigent by the court.

652 10. The number of defendants accepted into a pretrial
 653 release program who paid a surety or cash bail or bond.

654 11. The number of defendants for whom a risk assessment
 655 tool was used in determining whether the defendant should be
 656 released pending the disposition of the case and the number of
 657 defendants for whom a risk assessment tool was not used.

658 12. The type of each criminal charge of a defendant
 659 accepted into a pretrial release program to include, at a
 660 minimum, the number of defendants charged with:

- 661 a. Dangerous crimes as defined in s. 907.041.
- 662 b. Nonviolent felonies.
- 663 c. Misdemeanors only.

664 13. The number of defendants accepted into a pretrial
 665 release program with no prior criminal conviction.

666 ~~14.10.~~ The name and case number of each person granted
 667 nonsecured release who:

- 668 a. Failed to attend a scheduled court appearance.
- 669 b. Was issued a warrant for failing to appear.
- 670 c. Was arrested for any offense while on release through
 671 the pretrial release program.

672 ~~15.11.~~ Any additional information deemed necessary by the
 673 governing body to assess the performance and cost efficiency of
 674 the pretrial release program.

675 Section 5. Section 945.041, Florida Statutes, is created

676 to read:

677 945.041 Department of Corrections reports.—The department
 678 shall publish on its website and make available to the public
 679 the following information, updated on a quarterly basis:

680 (1) Inmate admissions by offense type. Burglary of
 681 dwelling offenses under s. 810.02(2), (3)(a), and (3)(b) shall
 682 be reported as a separate category from all other property
 683 crimes.

684 (2) The recidivism rate, defined as rearrest,
 685 reconviction, reincarceration, and probation revocation in the
 686 state within a 3-year time period following release from
 687 incarceration.

688 Section 6. Subsection (5) of section 20.315, Florida
 689 Statutes, is amended to read:

690 20.315 Department of Corrections.—There is created a
 691 Department of Corrections.

692 (5) ANNUAL REPORTING.—The department shall report annually
 693 to the Governor, the President of the Senate, and the Speaker of
 694 the House of Representatives recounting its activities and
 695 making recommendations for improvements to the performance of
 696 the department. The annual report shall include information
 697 published under s. 945.041.

698 Section 7. A pilot project is established in the Sixth
 699 Judicial Circuit for the purpose of improving criminal justice
 700 data transparency and ensuring data submitted under s. 900.05,

701 Florida Statutes, is accurate, valid, reliable, and structured.
702 The clerk of court, the state attorney, the public defender, or
703 a sheriff in the circuit may enter into a memorandum of
704 understanding with a national, nonpartisan, not-for-profit
705 entity which provides data and measurement for county-level
706 criminal justice systems to establish the duties and
707 responsibilities of a data fellow, completely funded by the
708 entity, to be embedded with the office or agency. The data
709 fellow will assist with data extraction, validation, and quality
710 and publish such data consistent with the terms of the
711 memorandum. The data fellow will assist the office or agency in
712 compiling and reporting data pursuant to s. 900.05, Florida
713 Statutes, in compliance with rules established by the Department
714 of Law Enforcement. The pilot project shall expire pursuant to
715 the terms outlined in the memorandum.

716 Section 8. For the 2018-2019 fiscal year, nine full-time
717 equivalent positions with an associated total salary rate of
718 \$665,884 are authorized, and the sum of \$1,750,000 in
719 nonrecurring funds from General Revenue is appropriated to the
720 Department of Law Enforcement for the purposes of implementing
721 ss. 900.05(3) and 943.687, Florida Statutes, transitioning to
722 incident-based crime reporting, and collecting and submitting
723 crime statistics that meet the requirements of the Federal
724 Bureau of Investigation under the National Incident-Based
725 Reporting System.

HB 7071

2018

726

Section 9. This act shall take effect July 1, 2018.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7071 (2018)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee

3 Representative Sprowls offered the following:

4
5 **Amendment**

6 Remove lines 716-719 and insert:

7 Section 8. For the 2018-2019 fiscal year, nine full-time
8 equivalent positions with associated salary rate of 476,163 are
9 authorized and the recurring sum of \$665,884 and the
10 nonrecurring sum of \$1,084,116 is appropriated from the General
11 Revenue Fund to the
12

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7071 (2018)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee

3 Representative Sprowls offered the following:

4

5 **Amendment**

6 Remove line 214 and insert:

7 Hispanic or Latino or not Hispanic or Latino.