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# Justice Appropriations Subcommittee

**Tuesday, February 6, 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**

**Richard Corcoran**  
Speaker

**Bill Hager**  
Chair

#### **AGENDA**

Tuesday, February 6, 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:**
  - **HB 733 Contraband in County Detention Facilities by Sullivan**
  - **HB 885 Arrest Warrants for State Prisoners by Plakon**
  - **HB 1143 Defrauding or Attempting to Defraud a Drug Test by White**
  - **CS/HB 1197 Diversion Programs by Criminal Justice Subcommittee and Ahern**
  - **HB 7039 Human Trafficking by Criminal Justice Subcommittee and Spano**
- IV. Closing Remarks/Adjournment**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 733 Contraband in County Detention Facilities

**SPONSOR(S):** Sullivan

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

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

### SUMMARY ANALYSIS

Florida law prohibits the introduction of contraband into state correctional institutions, county detention facilities, and juvenile detention facilities or commitment programs. Contraband is defined differently for each type of facility.

The only definition of contraband that includes cellular telephones or other portable communication devices pertains to state correctional facilities. County detention facilities may prohibit cellular telephones by internal rule, allowing officers to confiscate any phones discovered and discipline inmates on those grounds. However, law enforcement cannot criminally charge a person for having a cell phone in a county detention facility or fully investigate how cell phones enter the facility.

HB 733 adds cellular telephones and other portable communication devices to the definition of contraband in a county detention facility. The definition is similar to the definition of contraband in a state correctional institution, which prohibits any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of the facility without prior authorization or consent.

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 January 29, 2018, and determined that it would increase the prison population by an unquantifiable amount.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Contraband

Cell phones in state correctional institutions are a pervasive and documented problem, with the Department of Corrections reporting 38,179 cell phones and accessories discovered in its facilities from 2014 to November 2017.<sup>1</sup> Inmates with cell phones can make unrecorded and unmonitored calls to people outside the facility, sometimes for nefarious purposes. Prison cell phone use has been linked to threats, murder, complex criminal schemes, and escapes.<sup>2</sup> Cell phone use in county detention facilities poses similar risks. Additionally, since many inmates in county detention facilities are awaiting trial, there is a heightened risk that cell phones could be used to intimidate witnesses and obstruct justice.

Florida law prohibits introduction of contraband into state correctional institutions,<sup>3</sup> county detention facilities,<sup>4</sup> and juvenile detention facilities or commitment programs.<sup>5</sup> Introduction of contraband is either a second or third degree felony,<sup>6</sup> depending on the type of contraband introduced and the facility.<sup>7</sup> Contraband, which includes items that may pose a safety concern, is defined differently for each facility. In a state correctional institution, contraband includes:

- Any written or recorded communication or any currency or coin.
- Any article of food or clothing.
- Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.
- Any controlled substance as defined in s. 893.02(4), F.S., or any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.
- Any firearm or weapon of any kind or any explosive substance.
- Any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of any state correctional institution without prior authorization or consent from the officer in charge of such correctional institution.<sup>8</sup>

In a county detention facility, contraband includes:

- Any written or recorded communication.
- Any currency or coin.
- Any article of food or clothing.
- Any tobacco products, cigarette, or cigar.
- Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.
- Any narcotic, hypnotic, or excitative drug or drug of any kind or nature, including nasal inhalators, sleeping pills, barbiturates, and controlled substances as defined in s. 893.02(4).

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<sup>1</sup> Jason Kelly, *9 Investigates: Records show increase in confiscation of cellphones in Florida prisons*, WFTV, (November 2, 2017) available at: <http://www.wftv.com/news/9-investigates/9-investigates-records-show-increase-in-confiscation-of-cellphones-in-florida-prisons/637065013> (last viewed January 1, 2018).

<sup>2</sup> Matt Riley, *Southern Prisons Have a Cellphone Smuggling Problem*, NBC NEWS (September 30, 2017), available at: <https://www.nbcnews.com/news/corrections/southern-prisons-have-smuggled-cellphone-problem-n790251> (last viewed January 2, 2018); Crimesider Staff, *Indictment: Gang leader ordered hit on baby from jail*, CBS NEWS (May 18, 2016), available at: <https://www.cbsnews.com/news/indictment-gang-member-ordered-hit-on-baby-from-jail/> (last viewed January 2, 2018).

<sup>3</sup> S. 944.47, F.S.

<sup>4</sup> S. 951.22, F.S.

<sup>5</sup> S. 985.711, F.S.

<sup>6</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. SS. 775.082 & 775.083.

<sup>7</sup> SS. 944.47(2), 951.22(2), & 985.711(2), F.S.

<sup>8</sup> S. 944.47, F.S.

- Any firearm or any instrumentality customarily used or which is intended to be used as a dangerous weapon.
- Any instrumentality of any nature that may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.<sup>9</sup>

In a juvenile detention facility or commitment program, contraband includes:

- Any unauthorized article of food or clothing.
- Any intoxicating beverage or any beverage that causes or may cause an intoxicating effect.
- Any controlled substance, as defined in s. 893.02(3), F.S., or any prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.
- Any firearm or weapon of any kind or any explosive device.<sup>10</sup>

Cellular telephones or other portable electronic devices are only criminalized as contraband in state correctional institutions. County detention facilities may prohibit cellular telephones by internal rule, allowing officers to confiscate phones and discipline inmates on those grounds.<sup>11</sup> However, law enforcement cannot criminally charge a person for having a cell phone in a county detention facility or fully investigate how cell phones enter the facility.<sup>12</sup>

According to the Florida Department of Law Enforcement's Statistical Analysis Center, there were 2,058 arrest charges for contraband in county jails during FY 2016-17.<sup>13</sup>

### Criminal Punishment Code

The Criminal Punishment Code (Code) applies to all felony offenses, except capital felonies, committed on or after October 1, 1998.<sup>14</sup> 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 chart<sup>15</sup> or by default.<sup>16</sup> Judges must use the Criminal Punishment Code worksheet to compute a sentence score for each felony offender.<sup>17</sup>

Sentence points are assigned and accrue based on the level ranking assigned to the primary offense, additional offenses and prior offenses.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

<sup>9</sup> S. 951.22, F.S.

<sup>10</sup> S. 985.711, F.S.

<sup>11</sup> See, e.g., Florida Sheriffs Association, *Florida Model Jail Standards*, standard no. 14.1, available at: [https://www.flsheriffs.org/uploads/docs/FMJS\\_07-01-2017.pdf](https://www.flsheriffs.org/uploads/docs/FMJS_07-01-2017.pdf) (last visited December 14, 2017); Orange County Corrections Department, *Administrative Order No. IO.200 re: Inmate Discipline* (August 30, 2017) (copy on file with Criminal Justice Subcommittee Staff).

<sup>12</sup> Law enforcement may apply for a search warrant to search the contents of a cell phone when the phone constitutes evidence relevant to proving a felony has been committed. S. 933.02, F.S.; *Smallwood v. State*, 113 So.3d 724 (Fla. 2013). As possession of a cell phone in a county detention facility is not currently a felony crime, law enforcement may not obtain a warrant to inspect the contents of a cell phone discovered in a jail unless there is probable cause to connect the phone to another independent crime.

<sup>13</sup> Email from Ron Draa, External Affairs Director, Department of Law Enforcement, RE: HB 471 - Unmanned Aircraft (January 5, 2018) (copy on file with Justice Appropriations Subcommittee staff).

<sup>14</sup> s. 921.002, F.S.

<sup>15</sup> s. 921.0022, F.S.

<sup>16</sup> 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.

<sup>17</sup> s. 921.0024, F.S.

<sup>18</sup> *Id.*

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

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

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.<sup>21</sup> Absent mitigation,<sup>22</sup> 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.<sup>23</sup>

A violation of s. 951.22(1), F.S., introducing or possessing contraband upon the grounds of any county detention facility, is a third degree felony that is listed in Level 6 of the offense severity ranking chart. In FY 2016-17, there were 803 offenders sentenced pursuant to s. 951.22, F.S., with 224 sentenced to prison for an average of 27.8 months.<sup>24</sup>

### **Effect of Proposed Changes**

HB 733 adds cellular telephones and other portable communication devices to the current definition of contraband in a county detention facility. The bill makes the definition of contraband for county detention facilities similar to the definition of contraband in a state correctional institution, which prohibits any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of the facility without prior authorization or consent. The bill makes introducing a cell phone or other portable communication device into a county detention facility a third degree felony, listed in Level 6 of the Criminal Punishment Code offense severity ranking chart.

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

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

**Section 1:** Amending s. 951.22, F.S., relating to county detention facilities; contraband articles.

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

**Section 3:** Providing 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 (CJIC) considered this bill on January 29, 2018, and determined that it would increase the prison population by an unquantifiable amount. It is unknown how many persons have introduced or possessed unauthorized cell phones or other communication devices in county detention facilities; therefore, it is unknown how many more offenders may be sentenced to prison with the inclusion of cell phones into the definition of contraband.

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<sup>21</sup> s. 921.0022(2), F.S.

<sup>22</sup> 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.

<sup>23</sup> s. 921.0022(2), F.S.

<sup>24</sup> Criminal Justice Impact Conference, Office of Economic and Demographic Research, Narrative Analysis of Adopted Impacts: SB 1886 – Contraband in County Detention Facilities (Similar HB 733), January 29, 2018.

**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 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:

Not applicable. 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**



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A bill to be entitled  
 An act relating to contraband in county detention facilities; amending s. 951.22, F.S.; prohibiting introduction into or possession on the grounds of any county detention facility of any cellular telephone or other portable communication device; defining the term "portable communication device"; providing criminal penalties; amending s. 921.0022, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 951.22, Florida Statutes, is amended to read:

951.22 County detention facilities; contraband articles.—

(1) It is unlawful, except through regular channels as duly authorized by the sheriff or officer in charge, to introduce into or possess upon the grounds of any county detention facility as defined in s. 951.23 or to give to or receive from any inmate of any such facility wherever said inmate is located at the time or to take or to attempt to take or send therefrom any of the following articles which are hereby declared to be contraband:

(a) ~~for the purposes of this act, to wit:~~ Any written or

26 | recorded communication.†  
 27 |       (b) Any currency or coin.†  
 28 |       (c) Any article of food or clothing.†  
 29 |       (d) Any tobacco products as defined in s. 210.25(12).†  
 30 |       (e) Any cigarette as defined in s. 210.01(1).†  
 31 |       (f) Any cigar.†  
 32 |       (g) Any intoxicating beverage or beverage which causes or  
 33 | may cause an intoxicating effect.†  
 34 |       (h) Any narcotic, hypnotic, or excitative drug or drug of  
 35 | any kind or nature, including nasal inhalators, sleeping pills,  
 36 | barbiturates, and controlled substances as defined in s.  
 37 | 893.02(4).†  
 38 |       (i) Any firearm or any instrumentality customarily used or  
 39 | which is intended to be used as a dangerous weapon.†~~and~~  
 40 |       (j) Any instrumentality of any nature that may be or is  
 41 | intended to be used as an aid in effecting or attempting to  
 42 | effect an escape from a county facility.  
 43 |       (k) Any cellular telephone or other portable communication  
 44 | device intentionally and unlawfully introduced inside the secure  
 45 | perimeter of any county detention facility without prior  
 46 | authorization or consent from the sheriff or the officer in  
 47 | charge of such detention facility. As used in this paragraph,  
 48 | the term "portable communication device" means any device  
 49 | carried, worn, or stored which is designed or intended to  
 50 | receive or transmit verbal or written messages, access or store

51 data, or connect electronically to the Internet or any other  
 52 electronic device and which allows communications in any form.  
 53 Such devices include, but are not limited to, portable two-way  
 54 paggers, hand-held radios, cellular telephones, Blackberry-type  
 55 devices, personal digital assistants or PDA's, laptop computers,  
 56 or any components of these devices which are intended to be used  
 57 to assemble such devices. The term also includes any new  
 58 technology that is developed for similar purposes. Excluded from  
 59 this definition is any device having communication capabilities  
 60 which has been approved or issued by the sheriff or the officer  
 61 in charge for investigative or institutional security purposes  
 62 or for conducting other official business.

63 (2) Whoever violates subsection (1) commits ~~shall be~~  
 64 ~~guilty of~~ a felony of the third degree, punishable as provided  
 65 in s. 775.082, s. 775.083, or s. 775.084.

66 Section 2. Paragraph (f) of subsection (3) of section  
 67 921.0022, Florida Statutes, is amended to read:

68 921.0022 Criminal Punishment Code; offense severity  
 69 ranking chart.—

70 (3) OFFENSE SEVERITY RANKING CHART

71 (f) LEVEL 6

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Florida	Felony	
Statute	Degree	Description

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74	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
75	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
76	400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
77	499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
78	499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
79	499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
	775.0875(1)	3rd	Taking firearm from law

			enforcement officer.
80	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
81	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
82	784.041	3rd	Felony battery; domestic battery by strangulation.
83	784.048 (3)	3rd	Aggravated stalking; credible threat.
84	784.048 (5)	3rd	Aggravated stalking of person under 16.
85	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
86	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
87	784.08 (2) (b)	2nd	Aggravated assault on a person

			65 years of age or older.
88	784.081(2)	2nd	Aggravated assault on specified official or employee.
89	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
90	784.083(2)	2nd	Aggravated assault on code inspector.
91	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
92	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
93	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
94	790.164(1)	2nd	False report concerning bomb,

			explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
95	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
96	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
97	794.05(1)	2nd	Unlawful sexual activity with specified minor.
98	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
99	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.

100	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
101	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
102	810.145 (8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
103	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
104	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
105	812.015 (9) (a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
106	812.015 (9) (b)	2nd	Retail theft; property stolen



			\$3,000 or more; coordination of others.
107	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
108	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
109	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
110	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
111	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
112	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
113	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is

			valued at less than \$10,000.
114	827.03(2)(c)	3rd	Abuse of a child.
115	827.03(2)(d)	3rd	Neglect of a child.
116	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
117	836.05	2nd	Threats; extortion.
118	836.10	2nd	Written threats to kill or do bodily injury.
119	843.12	3rd	Aids or assists person to escape.
120	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
121	847.012	3rd	Knowingly using a minor in the production of materials harmful

			to minors.
122	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
123	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
124	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
125	944.40	2nd	Escapes.
126	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
127	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.

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951.22(1)

3rd

Introduction of contraband into  
county detention facility  
~~Intoxicating drug, firearm, or~~  
~~weapon introduced into county~~  
~~facility.~~

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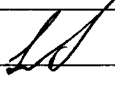

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Section 3. This act shall take effect October 1, 2018.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 885 Arrest Warrants for State Prisoners  
**SPONSOR(S):** Plakon  
**TIED BILLS:**           **IDEN./SIM. BILLS:**

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

### SUMMARY ANALYSIS

When an individual is serving probation or community control in one county, and is then arrested and incarcerated for committing a new offense in another county, the first county will likely issue an arrest warrant for a violation of probation or community control. Sheriffs have no duty or obligation to execute arrest warrants in outlying counties. Therefore, a county may issue a detainer to the county where the incarcerated individual committed the new offense. A detainer instructs the holding county to either:

- Hold the prisoner for the issuing county; or
- Inform the issuing county when the prisoner is about to be released.

The Florida Supreme Court has ruled that a detainer generally does not result in accrual of jail or prison time served for the probation violation because a detainer is not the same as an arrest warrant. Furthermore, the Second District Court of Appeal has ruled that a trial court has no duty to conduct a hearing on a warrant for a probation violation, especially when the defendant is not imprisoned in the same county as the court. As a result, a prisoner can leave prison after serving the entirety of his or her sentence for the new offense, and then be arrested for violating his or her probation in another county.

HB 885 creates a process for a state prisoner to serve out a sentence for a violation of probation or community control while in prison for another crime. If a prisoner has an unserved warrant issued by another county for a violation of probation or community control, the bill allows the prisoner to petition for a status hearing. At that hearing, a state attorney will advise the circuit court if the prisoner does in fact have an unserved warrant for a violation of probation or community control.

If the prisoner has an unserved warrant, the bill requires the court to enter an order to transport the prisoner to the issuing county's jail. The court must send the order to the issuing county's sheriff to transport the prisoner to the issuing county.

The Criminal Justice Impact Conference (CJIC) considered an identical version of this bill on March 29, 2017, and determined that it will decrease the need for prison beds by an unquantifiable amount. The bill would have an insignificant fiscal impact on local governments.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Unserved Arrest Warrants

When a defendant is sentenced to probation<sup>1</sup> or community control<sup>2</sup> at the resolution of a criminal case, a standard condition of that probation is that the defendant live without violating any law.<sup>3</sup> A situation may occur where an individual is serving probation in one county and, during that time, is arrested in another county for a new offense. The individual's arrest or imprisonment in the other county may also violate his or her probation or community control.<sup>4</sup>

When an individual's arrest in one county violates his or her probation in another county, then the county in which the person is on probation will issue an arrest warrant.<sup>5</sup> The Department of Corrections estimates that, at any given time, approximately 20 state prisoners have unserved arrest warrants for violation of probation.<sup>6</sup> The term of probation does not continue running while the warrant is outstanding.<sup>7</sup> Instead, the term of probation is "tolled."<sup>8</sup>

A sheriff has a duty and obligation to execute an arrest warrant in his or her county, but the obligation does not extend to outlying counties.<sup>9</sup> Rather than execute the issued arrest warrant by serving the individual in prison for a violation of probation, a county may issue a detainer to the county where the individual is incarcerated for a new offense. A detainer instructs the holding county to either:

- Hold the prisoner for the issuing county; or
- Notify the issuing county when the prisoner's release is imminent.<sup>10</sup>

The Florida Supreme Court has ruled that a detainer does not result in accrual of time served for the probation violation because a detainer is not the same as an arrest warrant.<sup>11</sup> "Generally, a defendant is not entitled to jail credit for time served until the arrest warrant is served."<sup>12</sup>

A prisoner is currently unable to resolve an outstanding violation of probation in another county while serving a prison sentence on an unrelated offense because a court has no ministerial duty to conduct a hearing on an affidavit alleging a violation of probation.<sup>13</sup> A probationer is entitled to be heard on a violation of probation only after his or her arrest and return to the court that granted the probation.<sup>14</sup> A prisoner will often serve the entirety of a prison sentence, and when it is time to be released, the

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<sup>1</sup> S. 948.001(8), F.S., defines "probation" as "a form of community supervision requiring specified contacts with probation officers and other terms and conditions as provided in s. 948.03."

<sup>2</sup> S. 948.001(3), F.S., defines "community control" as "a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specified sanctions are imposed and enforced."

<sup>3</sup> S. 948.03(1)(e), F.S.

<sup>4</sup> "Probation" should be read to mean "probation and/or community control" for the remainder of this analysis, as the two mechanisms are treated the same by the caselaw, the existing Florida Statutes, and this bill.

<sup>5</sup> Pursuant to Fla. R. Crim. P. 3.121.

<sup>6</sup> Email from Department of Corrections, January 9, 2018 (on file with Criminal Justice Subcommittee staff).

<sup>7</sup> *Martinez v. State*, 965 So. 2d 1244 (Fla. 2d DCA 2007).

<sup>8</sup> *Id.* citing s. 948.06(1)(d), F.S.

<sup>9</sup> S. 30.15(1)(b), F.S.

<sup>10</sup> *Bonner v. State*, 866 So. 2d 163 (Fla. 5th DCA 2004).

<sup>11</sup> *Gethers v. State*, 838 So. 2d 504 (Fla. 2003).

<sup>12</sup> *Rios v. State*, 87 So. 3d 822 (Fla. 2d DCA 2012) (citing *Gethers v. State*, 838 So. 2d 504 (Fla. 2003)).

<sup>13</sup> *Chapman v. State*, 910 So. 2d 940 (Fla. 5th DCA 2005).

<sup>14</sup> *Id.* citing *Bonner v. State*, 866 So. 2d 163 (Fla. 5th DCA 2004).

prisoner will be transported to the issuing county to then be served on the arrest warrant for violation of probation that will start the process of trying to resolve that case.

### **Effect of Proposed Changes**

HB 885 creates a process for a prisoner who has an unserved warrant for arrest due to a probation violation, but is incarcerated for an unrelated offense committed in another county. Such a prisoner may file a notice of unserved warrant in the circuit court that issued the probation warrant, and must notify the state attorney in that county. The court will then schedule a status hearing within 90 days after receipt of notice, where the state attorney informs the judge whether the prisoner has an unserved warrant for a probation violation. If there is such a warrant, the judge must enter a transport order within 30 days after the status hearing for the prisoner to be transported to the county jail of the county that issued the warrant. The transport order is sent to the sheriff of the issuing county for execution.

The procedure will allow a prisoner to possibly resolve a violation of probation or a violation of community control case concurrent to the prison sentence the prisoner is already serving on an unrelated offense. The prisoner would be able to petition the court for a hearing and be transported to the issuing county to be served with the outstanding arrest warrant. At that time, the prisoner would begin receiving jail credit for any time served, concurrent with the prison sentence, and therefore the violation of probation case may resolve with a concurrent sentence to the prison time the defendant is already serving. This would eliminate the need to transport prisoners to counties that issue the unserved warrants at the conclusion of that prisoner's sentence and may result in more efficient resolutions of violation of probation cases.

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

**Section 1:** Creates s. 948.33, F.S., relating to prosecution for violation of probation and community control arrest warrants of state prisoners.

**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 (CJIC) considered an identical version of this bill on March 29, 2017, and determined that it will decrease the need for prison beds by an unquantifiable amount.

The bill would prevent the need for state custody detainers upon release of inmates from prison, likely reducing the number of prison days for those offenders whose violations are currently disposed of after their prison terms end. The Department of Corrections expects the applicable inmates will more than likely serve a concurrent prison sentence if the unserved violations are handled while in custody. The department estimates there are approximately 20 inmates with an unserved violation of probation or community control warrant at any given time. It is unknown how many inmates will initiate the notice to state attorneys in order to begin this process, or the time it will take to handle these violations.<sup>15</sup>

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<sup>15</sup> Department of Economic and Demographic Research, PCS for HB 1091 – Arrest Warrants for State Prisoners, "Criminal Justice Impact Conference," Mar. 29, 2017, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/PCSforHB1091.pdf> (last viewed January 25, 2018)



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

1. Revenues:

None.

2. Expenditures:

The bill requires the county Sheriff to execute the transport order if an unserved violation warrant is found to exist. The increase in transportation expenses by the counties is expected to be insignificant, since the provisions of this bill would be applicable to approximately 20 inmates statewide at any given time.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

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 arrest warrants for state  
 3 prisoners; creating s. 948.33, F.S.; authorizing a  
 4 prisoner in a state prison who has an unserved  
 5 violation of probation or an unserved violation of  
 6 community control warrant to file a notice of unserved  
 7 warrant in the circuit court where the warrant was  
 8 issued; requiring the prisoner to serve notice on the  
 9 state attorney; requiring the circuit court to  
 10 schedule a status hearing within a certain time after  
 11 receiving notice; specifying procedures and  
 12 requirements for the status hearing; providing for  
 13 prosecution of the violation; requiring the court to  
 14 send the order to the county sheriff; providing an  
 15 effective date.

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

18  
 19 Section 1. Section 948.33, Florida Statutes, is created to  
 20 read:

21 948.33 Prosecution for violation of probation and  
 22 community control arrest warrants of state prisoners.—A prisoner  
 23 in a state prison in this state who has an unserved violation of  
 24 probation or an unserved violation of community control warrant  
 25 for his or her arrest may file a state prisoner's notice of

26 unserved warrant in the circuit court of the judicial circuit in  
27 which the unserved warrant was issued. The prisoner must also  
28 serve notice on the state attorney of that circuit. The circuit  
29 court shall schedule the notice for a status hearing within 90  
30 days after receipt of the notice. The state prisoner may not be  
31 transported to the status hearing. At the status hearing, the  
32 state attorney shall inform the court as to whether there is an  
33 unserved violation of probation warrant or an unserved violation  
34 of community control warrant for the arrest of the state  
35 prisoner. If a warrant for either violation exists, the court  
36 must enter an order within 30 days after the status hearing for  
37 the transport of the state prisoner to the county jail of the  
38 county that issued the warrant for prosecution of the violation,  
39 and the court shall send the order to the county sheriff for  
40 execution.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1143 Defrauding or Attempting to Defraud a Drug Test  
**SPONSOR(S):** White  
**TIED BILLS:** IDEN./SIM. BILLS: SB 886

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

### SUMMARY ANALYSIS

Urine drug tests are the most popular method to detect the presence of chemical or controlled substances in the body as collection is noninvasive and simple, allowing for a relatively wide detection window for most drugs. However, hair, saliva, and blood can also be used in certain tests.

One of the major challenges of urine drug testing is adulteration, which involves the introduction of a chemical adulterant to produce a false negative test result. Common adulterants include household chemicals such as bleach, laundry detergent, salt, and toilet bowl cleaner, as well as many commercial products available on the internet. Current law makes it a first-degree misdemeanor to defraud or attempt to defraud any lawfully administered urine test or to manufacture, advertise, sell, or distribute any substance or device which is intended to defraud or attempt to defraud any lawfully administered urine test.

HB 1143 amends s. 817.565, F.S., to include hair follicle testing as a type of drug test it is illegal to willfully defraud or attempt to defraud. The bill also adds "give away" and "transport into the state" to the list of prohibited willful actions related to a substance or device used with intent to defraud a urine or hair follicle test.

The bill defines "adulterant" to include any substance not expected to be in human urine or a substance expected to be in urine but in higher concentrations than is consistent with human urine, and includes a non-exhaustive list of adulterants.

The bill adds a presumption of intent to defraud if the following accompanies the substance or device designed to defeat a urine or hair follicle test:

- A heating element or any other device used to thwart a test; or
- Instructions that provide a method for thwarting a test.

To the extent that persons are arrested for, charged with, and convicted of, the criminal offenses created and 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 January 29, 2018, and determined that it would increase the need for prison beds by an insignificant amount.

The bill is effective October 1, 2018.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Drug Testing

Drug tests are designed to detect the presence of illicit drugs such as marijuana, cocaine, amphetamines, phencyclidine (PCP), and opioids; certain prescription drugs; and alcohol within the human body.<sup>1</sup> Drug tests vary, depending on the type of drug being tested and the type of specimen being collected.<sup>2</sup> Urine is most often the preferred test substance because of ease of collection. Concentrations of drugs and metabolites also tend to be high in urine, allowing longer detection times.<sup>3</sup> However, hair, saliva, and blood are also usable with different testing methods.<sup>4</sup>

##### *Adulteration*

One of the major challenges of urine drug testing is adulteration, which involves the introduction of a chemical adulterant to produce a false negative or otherwise disrupt test results.<sup>5</sup> Generally, adulteration can occur in three different ways, urine substitution,<sup>6</sup> in-vivo,<sup>7</sup> and in-vitro.<sup>8</sup> This problem is compounded by the number of chemicals that can effectively adulterate a urine specimen. Common adulterants include some household chemicals such as hypochlorite bleach, laundry detergent, table salt, toilet bowl cleaner, and many commercial products available on the internet, such as:<sup>9,10</sup>

- Purine, powdered urine;<sup>11</sup>
- Quick Fix and Urine Luck;<sup>12</sup>
- Klear;<sup>13</sup>
- Peepack;<sup>14</sup>
- Urinator;<sup>15</sup> and
- Whizzinator<sup>16</sup>

Adulterants can invalidate a screening test result, a confirmatory test result, or both.<sup>17</sup> To counteract urine adulteration, drug testing laboratories have developed a number of analytical methods to detect adulterants. While these methods are useful in detecting urine adulteration, they do not reveal what types of drugs are being concealed.<sup>18</sup>

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<sup>1</sup> United States Department of Health and Human Service, Substance Abuse and Mental Health Services Administration, *Drug Testing*, available at: <https://www.samhsa.gov/workplace/resources/drug-testing> (last accessed January 9, 2018).

<sup>2</sup> Id.

<sup>3</sup> Moeller K., Lee K, and Kissack J, *Urine Drug Screening: Practical Guide for Clinicians*, available at: [http://www.mayoclinicproceedings.org/article/S0025-6196\(11\)61120-8/pdf](http://www.mayoclinicproceedings.org/article/S0025-6196(11)61120-8/pdf) (last accessed January 9, 2018).

<sup>4</sup> Supra, FN 1.

<sup>5</sup> Shanlin Fu, *Advances in Clinical Chemistry, Volume 76, Adulterants in Urine Drug Testing* [abstract], 2016 Elsevier Inc., available at: <https://www.ncbi.nlm.nih.gov/pubmed/27645818> (last accessed January 9, 2018).

<sup>6</sup> Replacement of a urine specimen with drug-free urine, some non-urine liquid, or commercially available synthetic urine.

<sup>7</sup> The deliberate consumption of a copious volume of water or other fluids to dilute urine or the intentional ingestion of products to increase metabolism and excretion of drugs.

<sup>8</sup> Adding foreign chemicals into or cleaning a specimen outside of the body.

<sup>9</sup> <http://www.cleartest.com/products>; <http://www.ultrakleanurine.com/>; <http://www.testclear.com>

<sup>10</sup> Supra, FN 5.

<sup>11</sup> Testclear, PURINE, available at: <http://www.testclear.com/Powdered-Urine-Kit-P13.aspx> (last accessed January 9, 2018).

<sup>12</sup> Spectrum Labs, available at: <https://urineluck.com/> (last accessed January 9, 2018).

<sup>13</sup> Clear Co., NuKlear, available at: <https://www.nu-klear.com/> (last accessed January 9, 2018).

<sup>14</sup> PEEPACK, Medical Grade Apparatus, available at: <https://peepack.com/> (last accessed January 9, 2018).

<sup>15</sup> The Urinator, available at: <https://www.urinator.com/> (last accessed January 9, 2018).

<sup>16</sup> ALS, The Whizzinator, available at: <https://www.thewhizzinator.com/> (last accessed January 9, 2018).

<sup>17</sup> Supra, FN 5.

<sup>18</sup> Id.

## Florida Law

Current law makes it a first degree misdemeanor to “defraud or attempt to defraud any lawfully administered *urine test* designed to detect the presence of chemical substances or controlled substances.”<sup>19</sup> Additionally, it is a first degree misdemeanor “to manufacture, advertise, sell, or distribute any substance or device which is intended to defraud or attempt to defraud any lawfully administered urine test designed to detect the presence of chemical substances or controlled substances.”<sup>20</sup> The standard of intent is “willfully,” which is defined as “voluntary and intentional, but not necessarily malicious.”<sup>21</sup>

### **Effect of Proposed Language**

HB 1143 amends s. 817.565, F.S., to include hair follicle testing as a type of drug test it is illegal to defraud or attempt to defraud. Defrauding a hair follicle test will be a first-degree misdemeanor, punishable by up to one year in county jail and a \$1,000 fine.<sup>22</sup>

The bill defines “adulterant” to include any substance not expected to be in human urine or a substance expected to be in urine but in higher concentrations than is consistent with human urine, and includes a non-exhaustive list of adulterants:

- Bleach;
- Chromium;
- Creatinine;<sup>23</sup>
- Detergent;
- Glutaraldehyde;<sup>24</sup>
- Glutaraldehyde/Squalene;<sup>25</sup>
- Hydrochloric acid;
- Hydroiodic acid;<sup>26</sup>
- Iodine;
- Nitrite;
- Peroxidase;<sup>27</sup>
- Potassium dichromate;<sup>28</sup>
- Potassium nitrite;<sup>29</sup>

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<sup>19</sup> s. 817.565, F.S.

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

<sup>21</sup> Black’s Law Dictionary (10<sup>th</sup> ed. 2014), willfully.

<sup>22</sup> ss. 775.082 or 775.083, F.S.

<sup>23</sup> A waste product in the blood that is filtered by the kidneys and eliminated in urine, creatinine is released by the muscles during activity and is also a byproduct of protein in the diet. A measure of creatinine levels, with a urine or blood (serum) test, can help monitor kidney function. It is usually found in constant quantities in the urine, greater than normal intake of water will increase urine water content and lower the creatinine level. Redwood Toxicology Laboratory, *Creatinine*, available at: [https://www.redwoodtoxicology.com/resources/drug\\_info/creatinine](https://www.redwoodtoxicology.com/resources/drug_info/creatinine) (last accessed January 12, 2018).

<sup>24</sup> A colorless, oily, liquid-chemical most often used in the health care industry to disinfect equipment that cannot be heat sterilized such as dialysis instruments, surgical instruments, suction bottles, bronchoscopes, endoscopes, and ear, nose, and throat instruments. Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, *Glutaraldehyde*, available at: <https://www.cdc.gov/niosh/topics/glutaraldehyde/default.html> (last accessed January 12, 2018).

<sup>25</sup> A mixture of glualdehyde and squalene, a natural compound and metabolite in the synthesis of cholesterol. It is not susceptible to lipid peroxidation and provides skin protection. It is ubiquitously distributed in human tissues. National Institutes of Health, National Library of Medicine, *Squalene*, available at: <https://pubchem.ncbi.nlm.nih.gov/compound/squalene> (last accessed January 12, 2018).

<sup>26</sup> A colorless to yellow liquid with a pungent odor. Consists of a solution of hydrogen iodide in water. Historically used as an expectorant in the treatment of bronchitis and bronchial asthma. National Institutes of Health, National Library of Medicine, *Hydriodic Acid*, available at: <https://pubchem.ncbi.nlm.nih.gov/compound/24841> (last accessed January 12, 2018).

<sup>27</sup> Hydrogen peroxide-peroxidase is an effective oxidizing urine adulterant used to conceal marijuana-positive results. Paul BD, Jacobs A, Effects of oxidizing adulterants on detection of 11-nor-delta9-THC-9-carboxylic acid in urine [abstract], *Journal of Analytical Toxicology*, 2002 Oct;26(7):460-3, available at: <https://www.ncbi.nlm.nih.gov/pubmed/12423000> (last accessed 1/12/18).

<sup>28</sup> A compound having bright orange-red crystals used in dyeing, staining, and tanning leather, and used medically as an antiseptic. National Institutes of Health, National Library of Medicine, *Potassium Dichromate*, available at: [https://pubchem.ncbi.nlm.nih.gov/compound/potassium\\_dichromate](https://pubchem.ncbi.nlm.nih.gov/compound/potassium_dichromate) (last accessed January 12, 2018).

- Pyridinium chlorochromate,<sup>30</sup> and
- Sodium nitrite.<sup>31</sup>

The bill adds "give away" and "transport into the state" to the list of prohibited willful actions related to a substance or device used with intent to defraud a urine or hair follicle test. The bill provides that a violation of this subsection is a first-degree misdemeanor. A second or subsequent violation is a third-degree felony, punishable by up to five years imprisonment and a \$5,000 fine.<sup>32</sup>

The bill adds a presumption of intent to defraud if the following accompanies the substance or device:

- A heating element or any other device used to thwart a test; or
- Instructions that provide a method for thwarting a test.

The bill expands the title of s. 817.565, F.S., from "Urine Testing" to "Chemical and controlled substance testing" to encompass the changes made by the bill.

The bill is effective October 1, 2018.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 817.565, F.S., relating to urine testing, fraudulent practices; and penalties.

**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 (CJIC) considered this bill on January 29, 2018, and determined that it would increase the need for prison beds by an insignificant amount.

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

##### 1. Revenues:

None.

##### 2. Expenditures:

See Fiscal Comments.

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

None.

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<sup>29</sup> A yellowish white crystalline solid used to make other chemicals and in chemical analysis. National Institutes of Health, National Library of Medicine, *Potassium Nitrite*, available at: <https://pubchem.ncbi.nlm.nih.gov/compound/516910> (last accessed January 12, 2018).

<sup>30</sup> This is the active ingredient in Urine Luck adulterant. Supra, FN 5; Urine Luck is marketed as a chemical solution, which destroys drug metabolites in the urine. Supra, FN 12.

<sup>31</sup> A salt used in many industrial processes and in meat curing, coloring, and preserving. National Institutes of Health, National Library of Medicine, *Sodium Nitrite*, available at: <https://pubchem.ncbi.nlm.nih.gov/compound/23668193> (last accessed January 12, 2018).

<sup>32</sup> ss. 775.082, 775.083, or 775.084, F.S.



**D. FISCAL COMMENTS:**

To the extent that persons are arrested for, charged with, and convicted of, the criminal offenses created and 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:

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

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 defrauding or attempting to defraud  
 3           drug tests; amending s. 817.565, F.S.; defining the  
 4           term "adulterant"; prohibiting a person from  
 5           defrauding or attempting to defraud a certain hair  
 6           follicle test; prohibiting a person from giving away  
 7           or transporting into this state a substance or device  
 8           that is used with intent to defraud or in attempts to  
 9           defraud a lawfully administered hair follicle test  
 10          designed to detect the presence of chemical substances  
 11          or controlled substances; creating enhanced criminal  
 12          penalties; creating a presumption of intent to defraud  
 13          or attempt to defraud under certain circumstances;  
 14          providing an effective date.

15  
 16 Be It Enacted by the Legislature of the State of Florida:

17  
 18           Section 1. Section 817.565, Florida Statutes, is amended  
 19 to read:

20           817.565 Chemical and controlled substance ~~Urine~~ testing,  
 21 fraudulent practices; penalties; presumption.-

22           (1) As used in this section, the term "adulterant" means a  
 23 substance that is not expected to be in human urine or a  
 24 substance expected to be present in human urine but which is at  
 25 a concentration higher than that which is consistent with human

26 urine, including, but not limited to, any of the following:  
 27       (a) Bleach.  
 28       (b) Chromium.  
 29       (c) Creatinine.  
 30       (d) Detergent.  
 31       (e) Glutaraldehyde.  
 32       (f) Glutaraldehyde/squalene.  
 33       (g) Hydrochloric acid.  
 34       (h) Hydroiodic acid.  
 35       (i) Iodine.  
 36       (j) Nitrite.  
 37       (k) Peroxidase.  
 38       (l) Potassium dichromate.  
 39       (m) Potassium nitrite.  
 40       (n) Pyridinium chlorochromate.  
 41       (o) Sodium nitrite.  
 42       (2) A person may not ~~It is unlawful for any person:~~  
 43       ~~(a)~~ willfully ~~to~~ defraud or attempt to defraud a any  
 44 lawfully administered urine or hair follicle test designed to  
 45 detect the presence of chemical substances or controlled  
 46 substances. A person who violates this subsection commits a  
 47 misdemeanor of the first degree, punishable as provided in s.  
 48 775.082 or s. 775.083.  
 49       (3)~~(b)~~ A person may not willfully ~~to~~ manufacture,  
 50 advertise, sell, give away, ~~or~~ distribute, or transport into

51 this state a any substance, including an adulterant, a drug  
 52 masking product, or synthetic or human urine, or device that  
 53 ~~which~~ is used with intent intended to defraud or in attempt to  
 54 defraud a any lawfully administered urine or hair follicle test  
 55 designed to detect the presence of chemical substances or  
 56 controlled substances. A person who violates this subsection  
 57 commits a misdemeanor of the first degree, punishable as  
 58 provided in s. 775.082 or s. 775.083. A person who is convicted  
 59 under this subsection and violates this subsection a second or  
 60 subsequent time commits a felony of the third degree, punishable  
 61 as provided in s. 775.082, s. 775.083, or s. 775.084.

62 (4) Intent to defraud or attempt to defraud a lawfully  
 63 administered urine or hair follicle test under this section is  
 64 presumed if:

65 (a) A heating element or any other device used to thwart  
 66 the test accompanies the transporting into this state,  
 67 advertising, sale, giving away, or distribution of the substance  
 68 or device; or

69 (b) Instructions that provide a method for thwarting the  
 70 test accompany the transporting into this state, advertising,  
 71 sale, giving away, or distribution of the substance or device.



72 ~~(2) Any person who violates the provisions of this section~~  
 73 ~~is guilty of a misdemeanor of the first degree, punishable as~~  
 74 ~~provided in s. 775.082 or s. 775.083.~~

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



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 1197 Diversion Programs  
**SPONSOR(S):** Criminal Justice Subcommittee; Ahern  
**TIED BILLS:** HB 1199 **IDEN./SIM. BILLS:** SB 1392

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**

Generally, when a law enforcement officer has probable cause to believe that an adult has committed a misdemeanor offense in Florida, the officer may arrest the individual – with or without a warrant – or issue a notice to appear. Both an arrest and the issuance of a notice to appear refer the matter to the clerk of courts, where a criminal case is generated. The creation of that case becomes part of the person’s criminal record.

Some jurisdictions, including Pinellas, Leon, and Broward counties, have developed a civil citation or other prearrest diversion program as an alternative to referring the case to the court for disposition. These programs allow an officer to issue a citation or refer a person to the prearrest diversion program rather than make an arrest or issue a notice to appear. If the person successfully completes the requirements of the civil citation or prearrest diversion program, the offense is never referred to the court and does not appear on the individual’s criminal record.

Under current law, the Florida Department of Law Enforcement (FDLE) must expunge the nonjudicial arrest record of a minor who successfully completes a prearrest or postarrest diversion program under certain circumstances. Other types of diversion programs are not eligible. The individual prearrest or postarrest diversion program must specify that expunction is available upon successful completion, and the offense for which the juvenile is referred to diversion must be a nonviolent misdemeanor.

CS/HB 1197 establishes a model prearrest diversion program that local entities may, but are not mandated to, adopt. In implementing such a program, representatives from local law enforcement agencies, the program services provider, the public defender, the state attorney, and the clerk of the court, in consultation with other interested stakeholders, have wide latitude to develop the program, including defining eligibility criteria, program implementation and operation, and fees, if any.

The bill also expands eligibility criteria for juvenile diversion program expunction. The bill makes participants in all types of juvenile diversion programs eligible for expunction. The individual programs no longer have the discretion to specify whether expunction is available, and a minor who completes any diversion program for any misdemeanor is eligible.

The bill requires the diversion programs to submit data regarding participants and nonparticipants in diversion programs to the Department of Juvenile Justice (DJJ), which must compile and publish the data on its website.

The bill has an indeterminate fiscal impact on FDLE, DJJ and the clerks of the circuit court. The bill may have a fiscal impact on local governments that implement the civil citation program.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Creation and Disposition of a Criminal Case

Generally, when a law enforcement officer has probable cause to believe that an adult has committed a misdemeanor<sup>1</sup> offense in Florida, the officer may arrest the individual – with or without a warrant<sup>2</sup> – or issue a notice to appear.<sup>3</sup> Both an arrest and the issuance of a notice to appear refer the matter to the clerk of courts, where a criminal case is generated.

A misdemeanor case may be resolved in any of the following ways:

- The case may be dismissed, by a no action or no information,<sup>4</sup> *nolle prosequi*,<sup>5</sup> or court dismissal.<sup>6</sup>
- The defendant may participate in pretrial intervention,<sup>7</sup> pretrial diversion, drug court, veterans' court, mental health court, or other intervention program.<sup>8</sup> Successful completion of a diversion program may result in the dismissal of the case.<sup>9</sup>
- The defendant may plead guilty or no contest to the charges.<sup>10</sup>
- The case may proceed to trial, at which the defendant may be found guilty or acquitted.

If the defendant pleads to the charges or is found guilty at trial, the court may either adjudicate the defendant guilty or withhold adjudication of guilt.<sup>11</sup> Regardless of the resolution, the case remains on an adult defendant's criminal record unless the court grants a petition to seal<sup>12</sup> or expunge<sup>13</sup> the record.<sup>14</sup>

Some jurisdictions have developed a civil citation or other prearrest diversion program as an alternative to referring the case to the court for disposition. These programs allow an officer to issue a citation or refer a person to the prearrest diversion program rather than make an arrest or issue a notice to appear. If the person successfully completes the requirements of the civil citation or prearrest diversion

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<sup>1</sup> Misdemeanor offenses are classified into two degrees. A first degree misdemeanor is punishable by up to one year in the county jail and a \$1,000 fine. A second degree misdemeanor is punishable by up to sixty days in the county jail and a \$500 fine. SS. 775.082 & 775.083, F.S.

<sup>2</sup> Section 901.15, F.S., outlines the circumstances in which an officer may make a warrantless arrest, which include when a person has committed a misdemeanor in the presence of the officer and when there is probable cause that the person committed an act of domestic violence, dating violence, battery, or criminal mischief.

<sup>3</sup> A notice to appear is a written order issued by a law enforcement officer in lieu of physical arrest requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time. Officers may issue a notice to appear in misdemeanor cases under certain circumstances. R. 3.125, Fla. R. Crim. P.

<sup>4</sup> A 'no action' is a dismissal of the pending charges before an information or indictment has been filed. *Genden v. Fuller*, 648 So.2d 1183, 1183 n. 1 (Fla. 1994).

<sup>5</sup> A *nolle prosequi* is the dismissal of a pending information or indictment. *Id.*

<sup>6</sup> The court may dismiss a case under certain circumstances, including on a defense motion to dismiss under Rule 3.90(c)(4), Fla. R. Crim. P., upon expiration of the speedy trial period under Rule 3.191, Fla. R. Crim. P., or upon granting Stand Your Ground immunity under s. 776.032, F.S.

<sup>7</sup> S. 948.08, F.S.

<sup>8</sup> S. 948.16, F.S.

<sup>9</sup> SS. 948.08(7)(c) & 948.16, F.S.

<sup>10</sup> R. 3.172, Fla. R. Crim. P.

<sup>11</sup> R. 3.670, Fla. R. Crim. P.

<sup>12</sup> Sealing of a criminal history record means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein. S. 943.045(19), F.S.

<sup>13</sup> Expunction of a criminal history record means the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order, except that criminal history records in the custody of the department must be retained in all cases. S. 943.045(16), F.S.

<sup>14</sup> SS. 943.0581, 943.0585 & 943.059, F.S.

program, the offense is never referred to the court and does not appear on the individual's criminal, or delinquency for a juvenile, record.

### Juvenile Civil Citation and Prearrest Diversion Programs

Florida first adopted a civil citation program for juveniles in 1990.<sup>15</sup> The juvenile civil citation program allows each circuit, with assistance from the Department of Juvenile Justice (DJJ), to establish a civil citation or other prearrest diversion program.<sup>16</sup> Implementation of such a program is discretionary and requires consultation with and the consent of the state attorney and local law enforcement agencies.<sup>17</sup> In a participating jurisdiction, an officer making contact with an eligible child who admits to committing a misdemeanor offense may do any of the following in lieu of referring the child to DJJ:<sup>18</sup>

- Issue a warning;
- Notify the child's parent or guardian; or
- Issue a civil citation or require participation in a similar prearrest diversion program.<sup>19</sup>

Section 985.125, F.S., additionally authorizes a law enforcement agency or a school district, in cooperation with the state attorney, to establish a prearrest or postarrest diversion program.

Permissible conditions of a juvenile civil citation or other prearrest diversion program include up to fifty community service hours, family counseling, urinalysis monitoring, or substance abuse and mental health treatment services.<sup>20</sup> The program is available to a child for up to his or her first three misdemeanor offenses.<sup>21</sup> A child who refuses the citation, fails to successfully complete the required conditions, or commits a third or subsequent misdemeanor is referred to DJJ for the original offense.<sup>22</sup>

In fiscal year 2016-2017, DJJ reported a 55% utilization rate of the civil citation and prearrest diversion programs for eligible children. Dade and Pinellas counties reported utilization rates of 96% and 92%, respectively.<sup>23</sup> Nine counties did not offer any eligible child the civil citation program.<sup>24</sup>

### Adult Civil Citation and Prearrest Diversion

#### *Pinellas County Adult Pre-Arrest Diversion*

In October 2016, Pinellas County launched its Adult Pre-Arrest Diversion program.<sup>25</sup> Eligible misdemeanor offenses for this program include:

- Assault;
- Battery;
- Criminal mischief;
- Disorderly conduct;
- Littering;

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<sup>15</sup> Ch. 90-209, Laws of Fla.

<sup>16</sup> S. 985.12(1), F.S.

<sup>17</sup> Id.

<sup>18</sup> Every youth under the age of 18 charged with a crime in Florida is referred to the Department of Juvenile Justice. A referral is similar to an arrest in the adult criminal justice system. The Department provides a recommendation to the State Attorney and the Court regarding appropriate sanctions and services for the youth. See Department of Juvenile Justice, *Probation and Community Intervention*, available at: <http://www.djj.state.fl.us/services/probation> (last viewed January 11, 2018).

<sup>19</sup> S. 985.12(1), F.S.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> S. 985.12(5), F.S.

<sup>23</sup> Department of Juvenile Justice, *Civil Citation & Other Similar Diversion Program Dashboard*, available at: <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/civil-citation-dashboard/cc-dashboard> (last viewed January 11, 2018).

<sup>24</sup> Counties that did not utilize the juvenile civil citation program in FY 16-17 include Hardee, Dixie, Holmes, Bradford, Madison, Taylor, Gulf, Calhoun, and Washington. Id.

<sup>25</sup> Mark Puente, *Pinellas Sheriff Bob Gualtieri: New diversion program for minor offenses is working*, TAMPA BAY TIMES (April 12, 2017), available at: <http://www.tampabay.com/news/publicsafety/crime/pinellas-sheriff-bob-gualtieri-new-diversion-program-for-minor-offenses-is/2319960> (last viewed January 11, 2018).



- Petit theft;
- Possession of alcohol by a person less than 21 years old;
- Possession of marijuana;
- Possession of marijuana paraphernalia;
- Retail theft; and
- Trespassing.<sup>26</sup>

A person who commits an eligible offense in Pinellas county may participate in the program if he or she does not have a prior misdemeanor conviction within the past two years or a felony conviction within the past five years.<sup>27</sup> The program does not charge participants any fees or costs.<sup>28</sup> Since October 2016, 1,851 people have been accepted into the adult pre-arrest diversion program in Pinellas.<sup>29</sup> The top three offenses referred to the program were marijuana possession, retail theft, and battery.<sup>30</sup> Participants have completed approximately 24,874 community service hours and paid \$17,553 in restitution to victims.<sup>31</sup>

#### *Leon County Adult Civil Citation*

Leon County adopted its adult civil citation program in 2013.<sup>32</sup> As with juvenile civil citations, the adult civil citation program in Leon County provides an alternative to arrest for eligible offenders, and law enforcement officers have sole discretion over whether to offer the program.<sup>33</sup> To be eligible for the program, an offender must:

- Be at least 18 years old;
- Reside within the Second Judicial Circuit of Florida;
- Be a first-time offender, with no prior arrests as an adult and no prior civil citations;
- Have committed an eligible offense; and
- Admit to the offense.<sup>34</sup>

Leon County stakeholders identified the following as eligible offenses:

- Non-domestic battery and assault;
- Petit theft with restitution less than \$50;
- Criminal mischief with restitution less than \$50;
- Possession of alcohol by a person less than 21 years old;
- Trespass;
- Misdemeanor possession of marijuana;
- Disorderly conduct;
- Allowing an open house party where drugs or alcohol are consumed by minors; and
- Selling or giving a minor alcoholic beverage.<sup>35</sup>

The following offenses are ineligible for the adult civil citation program in Leon County:

- Traffic offenses;
- Domestic violence offenses;
- Stalking;

<sup>26</sup> Laura Morel, *Pinellas Sheriff calls pre-arrest diversion program a success amid challenges by St. Petersburg lawyer*, Tampa Bay Times (January 12, 2018), available at: [http://www.tampabay.com/news/courts/criminal/Pinellas-Sheriff-calls-pre-arrest-diversion-program-a-success-amid-challenges-by-St-Petersburg-lawyer\\_164377717](http://www.tampabay.com/news/courts/criminal/Pinellas-Sheriff-calls-pre-arrest-diversion-program-a-success-amid-challenges-by-St-Petersburg-lawyer_164377717) (last viewed January 16, 2018).

<sup>27</sup> Supra FN 25.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Supra FN 26.

<sup>31</sup> Id.

<sup>32</sup> Civil Citation Network, *Implementation Guide*, (August 2013), available at: <http://www.civilcitationnetwork.com/docs/Implementation-Guide.pdf> (last viewed January 11, 2018).

<sup>33</sup> Id. at 4.

<sup>34</sup> Id. at 2.

<sup>35</sup> Id. at 3.

- Exhibition of sexual organs;
- Loitering and prowling; and
- Theft or criminal mischief with more than \$50 in restitution.<sup>36</sup>

An offender must contact the program provider within seven days of receiving the citation.<sup>37</sup> He or she must sign a participation agreement, outlining the conditions assigned and additional program requirements.<sup>38</sup> At a minimum, the program must include a condition of twenty-five community service hours.<sup>39</sup> If the offender fails to successfully complete the program, law enforcement may either issue a notice to appear or request an arrest warrant for the case to proceed to a court disposition.<sup>40</sup> The program is entirely funded by the participants, who are assessed fees that must be paid or waived in order to successfully complete the program.<sup>41</sup>

### *Broward County Adult Civil Citation*

Broward County passed an ordinance in 2015 allowing an officer to issue an adult civil citation in lieu of arrest for possession of twenty grams or less of marijuana.<sup>42</sup> A person is eligible for the program for up to a third violation,<sup>43</sup> unless:

- The person was also charged with a felony, driving under the influence, a violent crime, or an incident of domestic violence; or
- The person has previously failed to complete the requirements of the adult civil citation program.<sup>44</sup>

As part of the program, participants must choose one of the following sanctions:

- Pay a fine;
- Perform community service; or
- Complete an educational program or drug treatment.<sup>45</sup>

### Expunction for Minors Who Complete Diversion

The Florida Department of Law Enforcement (FDLE) must expunge the nonjudicial arrest record of a minor who successfully completes a prearrest or post arrest diversion program if that minor:

- Submits an application for prearrest or postarrest diversion expunction;
- Participated in a prearrest or postarrest diversion program based on the commission of a nonviolent misdemeanor that would not qualify as a crime of domestic violence;
- Has not committed any other criminal offense or comparable ordinance violation;
- Participated in a program that expressly allows for such expunction; and
- Submits certification from the state attorney that the minor meets the qualifications for the expunction.<sup>46</sup>

The term expunction in the prearrest or postarrest diversion setting has the same meaning and effect as expunction of criminal history records under s. 943.0585, F.S., except that:

- FDLE may make available an expunged juvenile diversion criminal record to:

<sup>36</sup> Id.

<sup>37</sup> Id. at 2.

<sup>38</sup> Id. at 11.

<sup>39</sup> Id. at 2.

<sup>40</sup> Id. at 12.

<sup>41</sup> Id.

<sup>42</sup> S. 21-6, Code of Broward County; Ord. No. 2015-45 § 1, available at:

[https://library.municode.com/fl/broward\\_county/codes/code\\_of\\_ordinances?nodetd=PTIICOOR\\_CH21MIOFPR\\_ARTIINGE\\_S21-6POTW20GRLECA](https://library.municode.com/fl/broward_county/codes/code_of_ordinances?nodetd=PTIICOOR_CH21MIOFPR_ARTIINGE_S21-6POTW20GRLECA) (last viewed January 11, 2018).

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id.; Broward County, *Adult Cannabis Citation Program: A New Option for Misdemeanor Marijuana Possession*, available at: <http://www.broward.org/HumanServices/JusticeServices/Documents/AdultCannibusBroch.pdf> (last viewed January 11, 2018).

<sup>46</sup> S. 943.0582(3), F.S.

- Criminal justice agencies for the purpose of determining eligibility for prearrest, postarrest, or teen court diversion programs;
- When the record is sought as part of a criminal investigation; or
- When the subject of the record is a candidate for employment with a criminal justice agency;<sup>47</sup> and
- Records maintained by local criminal justice agencies in the county in which the arrest occurred must be sealed instead of destroyed.<sup>48</sup>

Section 943.0582, F.S., authorizes FDLE to adopt rules allowing for the expunction of any nonjudicial record of arrest of a minor who has successfully completed a prearrest or postarrest diversion program as authorized by s. 985.125, F.S.<sup>49</sup> FDLE established the procedures for such expunction in Rule 11C-7.009, F.A.C. FDLE is also authorized to charge a \$75 processing fee for each request received for juvenile diversion program expunction.<sup>50</sup>

## **Effect of Proposed Changes**

### Adult Prearrest Diversion

CS/HB 1197 establishes a model prearrest diversion program that local entities may, but are not mandated to, adopt. The model program incorporates several components of the juvenile civil citation program and existing adult prearrest diversion programs, including law enforcement officers' sole discretion to offer an eligible offender the program and a requirement that the offender admit to the offense. Representatives from local law enforcement agencies, the program services provider, the public defender, the state attorney, and the clerk of the court, in consultation with other interested stakeholders, have wide latitude to develop the program, including defining eligibility criteria, program implementation and operation, and fees, if any.

Participants in a prearrest diversion program must be provided appropriate assessment, intervention, education, and behavioral health care services. The program must also require the participant to perform community service hours and pay restitution to the victim. If the participant does not successfully complete the program's requirements, the law enforcement officer will determine whether there is good cause to arrest the individual for the original offense and, if so, refer the case to the state attorney.

The bill explicitly does not preempt local governments from enacting noncriminal sanctions for ordinance or other violations, nor does it preempt local entities from using a different model to establish an adult prearrest diversion program.

The bill requires a program operator to submit a participant's personal identifying information to the clerk of the circuit court, who must maintain the information in a statewide database. The personal identifying information of a program participant is confidential. If the local representatives assess a fee as part of the program, a reasonable portion of that fee must be paid to the clerk of the circuit court for maintaining the information.

### Expunction for Minors Who Complete Diversion

The bill changes the requirements for diversion program expunction by allowing juveniles who have successfully completed a diversion program for any misdemeanor offense to have their nonjudicial arrest records expunged. The bill defines eligible diversion programs as the juvenile civil citation program,<sup>51</sup> prearrest and postarrest diversion programs,<sup>52</sup> a neighborhood restorative justice program,<sup>53</sup>

<sup>47</sup> S. 943.0582(2)(a)1., F.S.

<sup>48</sup> S. 943.0582(2)(a)2., F.S.

<sup>49</sup> Section 985.125, F.S., authorizes a law enforcement agency or school district to establish a prearrest or postarrest diversion program, in cooperation with the state attorney.

<sup>50</sup> S. 943.0582(4), F.S.

<sup>51</sup> S. 985.12, F.S.

a community arbitration program,<sup>54</sup> or a program to which a referral is made by a state attorney under s. 985.15, F.S. The bill's definition expands the current statute's applicability to include all juvenile diversion programs, rather than only prearrest and postarrest diversion programs under s. 985.125, F.S.

The bill amends the exceptions for when FDLE may make an expunged juvenile diversion record available. FDLE may no longer disclose the record when the subject of the record is a candidate for employment with a criminal justice agency. The bill adds an exception that FDLE may disclose the record when the record is needed by the state attorney to make a filing decision under s. 985.15, F.S.

The bill amends the eligibility requirements to the following:

- The minor must not have previously received an expunction under this section;
- DJJ must submit a certification for expunction; and
- FDLE must determine that the minor has not been, before the expunction of the record, charged by a state attorney with or found to have committed any subsequent criminal offense or ordinance violation.

The bill further deletes the provision that gives the individual agency establishing a prearrest or postarrest diversion program the discretion to make expunction available to participants or not.<sup>55</sup> This change ensures that a one-time expunction is available under the section. Under current law, the availability of such expunction depends on whether the agency that established the prearrest or postarrest diversion program authorized expunction.<sup>56</sup> The bill also repeals FDLE's authority to charge a child a \$75 processing fee for diversion program expunction.

The bill requires all juvenile diversion programs to submit a certification for expunction of a child's nonjudicial arrest record to FDLE when the child successfully completes the program for a first-time misdemeanor offense and has not otherwise been charged by the state attorney with, or been found to have committed, a criminal offense or comparable ordinance violation. The programs must also provide data to DJJ for each participant, including:

- The race, ethnicity, gender, and age of the child;
- The offense committed with citation to the specific law establishing the offense; and
- The judicial circuit and county in which the offense was committed and the law enforcement agency that had contact with the child for the offense.

In addition to data on diversion program participants, each diversion program must submit data on children who are eligible for the diversion program, but who, instead, are referred to DJJ, given a notice to appear, or arrested. The data regarding children who did not participate must contain all of the information required for those children who did participate and information on whether the child was offered an opportunity to participate in a diversion program. If the child was not given an opportunity to participate in a diversion program, the program must provide the reason an offer was not made. If the child was offered the opportunity, the program must indicate whether the child or his or her parent or guardian declined to participate in the program.

DJJ is required to compile the data and publish it on its website in a sortable format based on judicial circuit, county, law enforcement agency, race or ethnicity, gender, age, and offense committed.

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

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<sup>52</sup> S. 985.125, F.S.

<sup>53</sup> The state attorney may establish a neighborhood restorative justice center for the purposes of operating a deferred prosecution program for first-time, nonviolent juvenile offenders. S. 985.155, F.S.

<sup>54</sup> Under a community arbitration program, a juvenile faces an arbitrator or arbitration panel instead of being prosecuted in juvenile court. S. 985.16, F.S.

<sup>55</sup> S. 985.125(3), F.S.

<sup>56</sup> SS. 943.0582 & 985.125(6), F.S.

**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 901.41, F.S., relating to prearrest diversion programs.

**Section 2:** Amends s. 943.0582, relating to prearrest, postarrest, or teen court diversion program expunction.

**Section 3:** Amends s. 985.125, F.S., relating to prearrest or postarrest diversion programs.

**Section 4:** Creates s. 985.126, relating to diversion programs; data collection; denial of participation or expunged record.

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

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

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

**1. Revenues:**

The bill repeals FDLE's current statutory authority to charge a \$75 processing fee for the expunction of a juvenile's arrest record if the juvenile has participated in a prearrest or postarrest diversion program. FDLE reports that it has waived the fee since July 1, 2016.<sup>57</sup> As such, removing the authorization to assess the fee will have no impact on state revenues.

**2. Expenditures:**

The impact to FDLE is indeterminate, but it is anticipated that FDLE will absorb any additional expenditures within existing resources.

The bill's reporting requirements may increase DJJ's expenses; however, such impact is expected to be absorbed within existing resources.

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

**1. Revenues:**

The bill allows local communities to determine whether to charge a fee to participants in the prearrest diversion program. Those local communities that charge a fee will see an increase in revenues. If a local community does charge a fee for participation in the prearrest program, a "reasonable portion" of that fee must go to the clerk of the circuit court in order to cover some of the expenses incurred by the clerk.<sup>58</sup>

**2. Expenditures:**

The clerk of the circuit court may incur costs related to programming for the Comprehensive Case Information System, as well as developing policies and procedures for the program. Additionally, the clerk will be expected to maintain the case files. This requirement includes ensuring the files remain confidential until completion of the diversionary period as well as acting as an eligibility clearinghouse to ensure an individual does not receive multiple diversions across jurisdictions.<sup>59</sup>

Creation of a prearrest diversion program for adults could result in cost savings (reduced booking/arrest-processing costs) depending on the number of eligible offenses, other eligibility criteria established, the pool of eligible adults, the number of participating law enforcement agencies, the use of the prearrest diversion program, and any impact the program may have in reducing arrests.

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

<sup>57</sup> Email from FDLE staff, *Re: Question on HB 1197*, (January 9, 2018) (on file with Criminal Justice Subcommittee staff).

<sup>58</sup> Florida Clerks of Court Operation Corporation, *Agency Analysis of 2018 Senate Bill 1392*, p. 3 (January 30, 2018).

<sup>59</sup> *Id.*

The bill encourages local governments to establish prearrest diversion programs, which may result in new contracts with private providers to operate those programs.

**D. FISCAL COMMENTS:**

Since the bill provides a model framework for a prearrest diversion program and does not mandate that local governments or public or private educational institutions create a prearrest diversion program for adults, the overall fiscal impact is indeterminate for local governments. For example, the Leon County model is self-sustaining, but the Pinellas County model funds its program with county funds.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

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

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill requires FDLE to adopt rules for the expunction of a nonjudicial record of arrest of a minor who has successfully completed a diversion program for a misdemeanor offense.

The bill requires DJJ to adopt rules to implement the section relating to the diversion programs. This section includes data that DJJ must collect from the diversion programs for the purpose of expunction of a nonjudicial arrest record and the reasons an eligible youth was not provided the opportunity to participate in a diversion program. This information must be published on the department's website in a specific format.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 16, 2018, the Criminal Justice Subcommittee considered one amendment and reported the bill favorably as a committee substitute. The amendment corrected a technical error in drafting.

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 diversion programs; creating s.  
 3            901.41, F.S.; providing legislative intent;  
 4            encouraging local communities and public or private  
 5            educational institutions to implement prearrest  
 6            diversion programs for certain offenders; encouraging  
 7            prearrest diversion programs to share information with  
 8            other prearrest diversion programs; authorizing law  
 9            enforcement officers, at their sole discretion, to  
 10          issue a civil citation or similar prearrest diversion  
 11          program notice under specified circumstances to adults  
 12          who commit certain misdemeanor offenses; requiring an  
 13          adult who receives a civil citation or similar  
 14          prearrest diversion program notice to report for  
 15          intake as required by the prearrest diversion program;  
 16          requiring that the prearrest diversion program provide  
 17          specified services to adults who participate, as  
 18          appropriate; requiring that an adult who is issued a  
 19          civil citation or similar prearrest diversion program  
 20          notice fulfill a community service requirement;  
 21          requiring the adult to pay restitution to a victim;  
 22          requiring law enforcement officers to determine  
 23          whether there is good cause to arrest participants who  
 24          do not successfully complete a prearrest diversion  
 25          program and, if so, to refer the case to the state

26 attorney, or, in the absence of good cause, to allow  
 27 the participant to continue in the program; requiring  
 28 representatives of specified entities to create the  
 29 prearrest diversion program; requiring the entities to  
 30 develop policies and procedures for the development  
 31 and operation of the program, including designation of  
 32 the misdemeanor offenses that qualify persons for  
 33 participation, and to solicit input from other  
 34 interested stakeholders; authorizing specified  
 35 entities to operate programs; requiring prearrest  
 36 diversion program operators to electronically provide  
 37 participants' personal identifying information to the  
 38 clerk of the circuit court; specifying requirements  
 39 for the clerks' handling and maintenance of certain  
 40 information; requiring that a portion of any  
 41 participation fee go to the appropriate clerk of the  
 42 circuit court; requiring fees received by the clerks  
 43 of the circuit court to be deposited in a certain  
 44 fund; providing applicability; amending s. 943.0582,  
 45 F.S.; requiring, rather than authorizing, the  
 46 Department of Law Enforcement to adopt rules for the  
 47 expunction of certain nonjudicial records of the  
 48 arrest of a minor upon successful completion by the  
 49 minor of certain diversion programs; creating and  
 50 revising definitions; authorizing such expunctions for



51 certain first-time misdemeanor offenses; revising the  
 52 circumstances under which the department must expunge  
 53 certain nonjudicial arrest records; deleting the  
 54 department's authority to charge a processing fee for  
 55 the expunction; amending s. 985.125, F.S.; conforming  
 56 a provision to changes made by the act; creating s.  
 57 985.126, F.S.; defining the term "diversion program";  
 58 requiring the Department of Juvenile Justice to submit  
 59 to the Department of Law Enforcement a certification  
 60 for expunction of the nonjudicial arrest record of a  
 61 minor under specified circumstances; requiring a  
 62 diversion program to submit to the department  
 63 specified data relating to diversion programs;  
 64 requiring a law enforcement agency to submit to the  
 65 department specified data about diversion programs;  
 66 requiring the department to compile and publish the  
 67 data in a specified manner; authorizing a minor under  
 68 certain circumstances to deny or fail to acknowledge  
 69 his or her expunction of a certain nonjudicial arrest  
 70 record unless an exception applies; requiring the  
 71 department to adopt rules; providing an effective  
 72 date.

73  
 74 Be It Enacted by the Legislature of the State of Florida:  
 75

76 Section 1. Section 901.41, Florida Statutes, is created to  
 77 read:

78 901.41 Prearrest diversion programs.—

79 (1) LEGISLATIVE INTENT.—The Legislature encourages local  
 80 communities and public or private educational institutions to  
 81 implement prearrest diversion programs that afford certain  
 82 adults who fulfill specified intervention and community service  
 83 obligations the opportunity to avoid an arrest record. The  
 84 Legislature does not mandate that a particular prearrest  
 85 diversion program for adults be adopted, but finds that the  
 86 adoption of the model program provided in this section would  
 87 allow certain adults to avoid an arrest record while ensuring  
 88 that they receive appropriate services and fulfill their  
 89 community service obligations. If a prearrest diversion program  
 90 is implemented, the program is encouraged to share information  
 91 with other prearrest diversion programs.

92 (2) MODEL PREARREST DIVERSION PROGRAM.—Local communities  
 93 and public or private educational institutions may adopt a  
 94 prearrest diversion program in which:

95 (a) Law enforcement officers, at their sole discretion,  
 96 may issue a civil citation or similar prearrest diversion  
 97 program notice to certain adults who commit a qualifying  
 98 misdemeanor offense, as determined by the representatives that  
 99 develop the program under subsection (3). A civil citation or  
 100 similar prearrest diversion program notice may be issued if the

101 adult who commits the offense:

102 1. Admits that he or she committed the offense or does not  
 103 contest the offense; and

104 2. Has not previously been arrested and has not received  
 105 an adult civil citation or similar prearrest diversion program  
 106 notice, unless the terms of the local adult prearrest diversion  
 107 program allow otherwise.

108 (b) An adult who receives a civil citation or similar  
 109 prearrest diversion program notice shall report for intake as  
 110 required by the local prearrest diversion program and must be  
 111 provided appropriate assessment, intervention, education, and  
 112 behavioral health care services by the program. While in the  
 113 local prearrest diversion program, the adult shall perform  
 114 community service hours as specified by the program. The adult  
 115 shall pay restitution due to the victim as a program  
 116 requirement. If the adult does not successfully complete the  
 117 prearrest diversion program, the law enforcement officer must  
 118 determine if there is good cause to arrest the adult for the  
 119 original misdemeanor offense and, if so, refer the case to the  
 120 state attorney to determine whether prosecution is appropriate  
 121 or, in the absence of a finding of good cause, allow the adult  
 122 to continue in the program.

123 (3) PROGRAM DEVELOPMENT; IMPLEMENTATION; OPERATION.—

124 (a) Representatives of participating law enforcement  
 125 agencies, a representative of the program services provider, the

126 public defender, the state attorney, and the clerk of the  
 127 circuit court shall create the prearrest diversion program and  
 128 develop its policies and procedures, including, but not limited  
 129 to, eligibility criteria, program implementation and operation,  
 130 and the determination of the fee, if any, to be paid by adults  
 131 participating in the program. In developing the program's  
 132 policies and procedures, which must include the designation of  
 133 the misdemeanor offenses that qualify adults for participation  
 134 in the program, the representatives must solicit input from  
 135 other interested stakeholders. The program may be operated by an  
 136 entity such as a law enforcement agency or a county or  
 137 municipality, or other entity selected by the county or  
 138 municipality.

139 (b) Upon intake of an adult participating in the prearrest  
 140 diversion program, the program operator shall electronically  
 141 provide the participant's personal identifying information to  
 142 the clerk of the circuit court for the county in which the  
 143 program provides services. Such information is not a court  
 144 record, and the clerk of the circuit court shall maintain the  
 145 confidentiality of the participant's personal identifying  
 146 information as provided in subsection (5). The clerk of the  
 147 circuit court shall maintain such information in a statewide  
 148 database, which must provide a single point of access for all  
 149 such statewide information. If the program imposes a  
 150 participation fee, the clerk of the circuit court must receive a

151 reasonable portion, to be determined by the stakeholders  
 152 creating the program, for receipt and maintenance of the  
 153 required information. The fee shall be deposited by the clerk of  
 154 the circuit court into the fine and forfeiture fund established  
 155 under s. 142.01.

156 (4) APPLICABILITY.—This section does not preempt a county  
 157 or municipality from enacting noncriminal sanctions for a  
 158 violation of an ordinance or other violation, and it does not  
 159 preempt a county, a municipality, or a public or private  
 160 educational institution from creating its own model for a  
 161 prearrest diversion program for adults.

162 Section 2. Section 943.0582, Florida Statutes, is amended  
 163 to read:

164 943.0582 ~~Prearrest, postarrest, or teen court~~ Diversion  
 165 program expunction.—

166 (1) Notwithstanding any law dealing generally with the  
 167 preservation and destruction of public records, the department  
 168 shall adopt rules to ~~may provide, by rule adopted pursuant to~~  
 169 ~~chapter 120,~~ for the expunction of a ~~any~~ nonjudicial record of  
 170 the arrest of a minor who has successfully completed a ~~prearrest~~  
 171 ~~or postarrest~~ diversion program for a misdemeanor offense ~~minors~~  
 172 ~~as authorized by s. 985.125.~~

173 (2) ~~(a)~~ As used in this section, the term:

174 (a) "Diversion program" means a program under s. 985.12,  
 175 s. 985.125, s. 985.155, or s. 985.16 or a program to which a

176 referral is made by a state attorney under s. 985.15.

177 (b) "Expunction" has the same meaning ascribed in and  
 178 effect as s. 943.0585, except that:

179 1. The provisions of s. 943.0585(4)(a) do not apply,  
 180 except that the criminal history record of a person whose record  
 181 is expunged pursuant to this section shall be made available  
 182 only to criminal justice agencies for the purpose of:

183 a. Determining eligibility for ~~prearrest, postarrest, or~~  
 184 ~~teen court~~ diversion programs;

185 b. ~~when the record is sought as part of~~ A criminal  
 186 investigation; or

187 c. Making a prosecutorial decision under s. 985.15 ~~when~~  
 188 ~~the subject of the record is a candidate for employment with a~~  
 189 ~~criminal justice agency. For all other purposes, a person whose~~  
 190 ~~record is expunged under this section may lawfully deny or fail~~  
 191 ~~to acknowledge the arrest and the charge covered by the expunged~~  
 192 ~~record.~~

193 2. Records maintained by local criminal justice agencies  
 194 in the county in which the arrest occurred that are eligible for  
 195 expunction pursuant to this section shall be sealed as the term  
 196 is used in s. 943.059.

197 ~~(b) As used in this section, the term "nonviolent~~  
 198 ~~misdemeanor" includes simple assault or battery when prearrest~~  
 199 ~~or postarrest diversion expunction is approved in writing by the~~  
 200 ~~state attorney for the county in which the arrest occurred.~~

201 (3) The department shall expunge the nonjudicial arrest  
 202 record of a minor ~~who has successfully completed a prearrest or~~  
 203 ~~postarrest diversion program~~ if the minor has not previously  
 204 received an expunction under this section, the Department of  
 205 Juvenile Justice submits a certification for expunction, and the  
 206 department determines the minor has not been, before the  
 207 expunction of the record, charged by a state attorney with or  
 208 found to have committed any subsequent criminal offense or  
 209 ordinance violation. that minor:

210 (a) ~~Submits an application for prearrest or postarrest~~  
 211 ~~diversion expunction, on a form prescribed by the department,~~  
 212 ~~signed by the minor's parent or legal guardian, or by the minor~~  
 213 ~~if he or she has reached the age of majority at the time of~~  
 214 ~~applying.~~

215 (b) ~~Submits to the department, with the application, an~~  
 216 ~~official written statement from the state attorney for the~~  
 217 ~~county in which the arrest occurred certifying that he or she~~  
 218 ~~has successfully completed that county's prearrest or postarrest~~  
 219 ~~diversion program, that his or her participation in the program~~  
 220 ~~was based on an arrest for a nonviolent misdemeanor, and~~  
 221 ~~that he or she has not otherwise been charged by the state~~  
 222 ~~attorney with, or found to have committed, any criminal offense~~  
 223 ~~or comparable ordinance violation.~~

224 (c) ~~Participated in a prearrest or postarrest diversion~~  
 225 ~~program that expressly authorizes or permits such expunction.~~

226 ~~(d) Participated in a prearrest or postarrest diversion~~  
 227 ~~program based on an arrest for a nonviolent misdemeanor that~~  
 228 ~~would not qualify as an act of domestic violence as that term is~~  
 229 ~~defined in s. 741.28.~~

230 ~~(e) Has never been, before filing the application for~~  
 231 ~~expunction, charged by the state attorney with, or found to have~~  
 232 ~~committed, any criminal offense or comparable ordinance~~  
 233 ~~violation.~~

234 ~~(4) The department is authorized to charge a \$75~~  
 235 ~~processing fee for each request received for prearrest or~~  
 236 ~~postarrest diversion program expunction, for placement in the~~  
 237 ~~Department of Law Enforcement Operating Trust Fund, unless such~~  
 238 ~~fee is waived by the executive director.~~

239 (4) ~~(5)~~ Expunction or sealing granted under this section  
 240 does not prevent the minor who receives such relief from  
 241 petitioning for the expunction or sealing of a later criminal  
 242 history record as provided for in ss. 943.0583, 943.0585, and  
 243 943.059, if the minor is otherwise eligible under those  
 244 sections.

245 Section 3. Subsection (3) of section 985.125, Florida  
 246 Statutes, is amended to read:

247 985.125 Prearrest or postarrest diversion programs.—

248 ~~(3) The prearrest or postarrest diversion program may,~~  
 249 ~~upon agreement of the agencies that establish the program,~~  
 250 ~~provide for the expunction of the nonjudicial arrest record of a~~



251 ~~minor who successfully completes such a program pursuant to s.~~  
 252 ~~943.0582.~~

253 Section 4. Section 985.126, Florida Statutes, is created  
 254 to read:

255 985.126 Diversion programs; data collection; denial of  
 256 participation or expunged record.-

257 (1) As used in this section, the term "diversion program"  
 258 has the same meaning as provided in s. 943.0582.

259 (2) Upon issuance of documentation requiring a minor to  
 260 participate in a diversion program, before or without an arrest,  
 261 the issuing law enforcement officer shall send a copy of such  
 262 documentation to the entity designated to operate the diversion  
 263 program and to the department, which shall enter such  
 264 information into the Juvenile Justice Information System  
 265 Prevention Web.

266 (3) After a minor completes a diversion program, the  
 267 entity operating the program shall report to the department the  
 268 outcome of the minor's participation in the diversion program.  
 269 Upon confirming the minor's successful completion of the  
 270 diversion program, including a nolle prosequi or no information  
 271 of the charges, if applicable, the department shall  
 272 electronically submit to the Department of Law Enforcement a  
 273 certification for expunction of the minor's nonjudicial arrest  
 274 record under s. 943.0582. Such certification must include the  
 275 minor's name, date of birth, and offender-based transaction

276 system number.

277 (a) Upon receipt of the certification for expunction from  
 278 the department, the Department of Law Enforcement shall confirm  
 279 the minor has not otherwise been charged by a state attorney  
 280 with or been found to have committed a criminal offense or  
 281 ordinance violation. Upon confirmation, the Department of Law  
 282 Enforcement must expunge the minor's nonjudicial arrest record  
 283 within 3 days. If the minor is found to have been charged by a  
 284 state attorney with or been found to have committed a criminal  
 285 offense or ordinance violation before the record expunction, the  
 286 certification for expunction shall be denied and returned to the  
 287 department, citing the reason for denial.

288 (b) Beginning October 1, 2018, each diversion program  
 289 shall submit data to the department which identifies for each  
 290 minor participating in the diversion program:

291 1. The race, ethnicity, gender, and age of that minor.

292 2. The offense committed, including the specific law  
 293 establishing the offense.

294 3. The judicial circuit and county in which the offense  
 295 was committed and the law enforcement agency that had contact  
 296 with the minor for the offense.

297 (c) Beginning October 1, 2018, each law enforcement agency  
 298 shall submit to the department data that identifies for each  
 299 minor who was eligible for a diversion program, but was instead  
 300 referred to the department, provided a notice to appear, or

301 arrested:

302 1. The data required pursuant to paragraph (b).

303 2. Whether the minor was offered the opportunity to

304 participate in a diversion program. If the minor was:

305 a. Not offered such opportunity, the reason such offer was

306 not made.

307 b. Offered such opportunity, whether the minor or his or

308 her parent or legal guardian declined to participate in the

309 diversion program.

310 (d) The data required pursuant to paragraphs (b) and (c)

311 shall be submitted to the department quarterly.

312 (4) Beginning January 1, 2019, the department shall

313 compile and semiannually publish the data required by subsection

314 (3) on the department's website in a format that is, at a

315 minimum, sortable by judicial circuit, county, law enforcement

316 agency, race, ethnicity, gender, age, and offense committed.

317 (5) A minor who successfully completes a diversion program

318 for a first-time misdemeanor offense may lawfully deny or fail

319 to acknowledge his or her participation in the program and an

320 expunction of a nonjudicial arrest record under s. 943.0582,

321 unless the inquiry is made by a criminal justice agency, as

322 defined in s. 943.045, for a purpose described in s.

323 943.0582(2)(b)1.

324 (6) The department shall adopt rules to implement this

325 section.

CS/HB 1197

2018

326

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7039      PCB CRJ 18-03      Human Trafficking  
**SPONSOR(S):** Criminal Justice Subcommittee, Spano  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 1502

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	10 Y, 0 N	MacNamara	Sumner
1) Justice Appropriations Subcommittee		Gusky <i>KAC</i>	Gusky <i>KAC</i>
2) Judiciary Committee			

### SUMMARY ANALYSIS

Human trafficking is the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploiting that person. Victims of human trafficking are often arrested and charged with crimes committed at the direction of their trafficker.

Any person who knowingly, or in reckless disregard of the facts, engages in or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking commits a felony offense. Current penalties for human trafficking offenses vary based on:

- The age of the victim,
- The type of exploitation (labor or services or commercial sexual activity),
- Whether the victim is an unauthorized alien,
- Whether the victim was transferred or transported from outside of the state into Florida, and
- Whether the victim is mentally defective or mentally incapacitated.

HB 7039 amends s. 787.06(3), F.S., to provide a mandatory minimum term of imprisonment of 10 years for each of the 11 human trafficking offenses enumerated in that section.

The bill amends the definition of "adult theater" as used in Chapter 87, F.S., related to Obscenity, to include "any business that features a person who engages in specific sexual activities for the observation by a patron, and which restricts or purports to restrict admission to adults only." This language would specifically include "strip clubs" and similar establishments within the scope of the Department of Business and Professional Regulation's verification and inspection authority.

Additionally, the bill amends s. 943.0583, F.S. related to human trafficking victim expunction fees, to prohibit clerks of the circuit courts from assessing a filing or copy fee when victims seek expungement of a criminal record for crimes committed while a victim of human trafficking.

The Criminal Justice Impact Conference considered this bill on January 29, 2018, and determined that the bill will increase the need for prison beds in the five year forecast period. It is expected that this impact can be absorbed during the forecast period within the resources currently appropriated to the Department of Corrections. See Fiscal Comments.

The bill has an indeterminate fiscal impact to the Department of Business and Professional Regulation and the clerks of circuit courts.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Human Trafficking

###### Background

The Florida Legislature found in 2006 that human trafficking is a form of modern-day slavery.<sup>1</sup> Human trafficking is defined in s. 787.06(2)(d), F.S. as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploiting that person.<sup>2</sup>

"Human trafficking is a public health issue that impacts individuals, families, and communities. Traffickers disproportionately target at-risk populations including individuals who have experienced or been exposed to other forms of violence (child abuse and maltreatment, interpersonal violence and sexual assault, and community and gang violence) and individuals disconnected from stable support networks (runaway and homeless youth, unaccompanied minors, and persons displaced during natural disasters.)"<sup>3</sup> It is estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.<sup>4</sup> The International Labor Organization, the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that as many as 27 million adults and children worldwide are in forced labor, bonded labor, and commercial sexual servitude at any given time.<sup>5</sup>

Sex trafficking, one type of human trafficking, can occur in many different settings. For example, sex trafficking victims are often forced into prostitution or into work at a "strip club" or "gentleman's club."<sup>6</sup> In Florida, 429 arrests were made for human trafficking from 2014 through 2017.<sup>7</sup>

Survivors of human trafficking often face both criminalization and stigmatization. Trafficked persons are not always recognized or treated as victims by law enforcement and prosecutors. Despite being victims, individuals who are trafficked are often arrested and convicted of various crimes. For sex trafficking victims these crimes are frequently prostitution charges, but also include other charges such as weapons, drugs, financial crimes, and identity theft.<sup>8</sup> Labor traffickers, like sex traffickers, also benefit from forcing a victim to commit illegal acts such as selling or cultivating drugs or, commonly at the U.S. border, forcing individuals to be drug mules or bring people into the country illegally.<sup>9</sup> Minors who are trafficked are often charged with offenses such as truancy and running away.<sup>10</sup>

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<sup>1</sup> s. 787.06(1)(a), F.S.

<sup>2</sup> s. 787.06(2)(d), F.S.

<sup>3</sup> Administration for Children & Families, *Fact Sheet: Human Trafficking*, available at: [https://www.acf.hhs.gov/sites/default/files/otip/fact\\_sheet\\_human\\_trafficking\\_fy18.pdf](https://www.acf.hhs.gov/sites/default/files/otip/fact_sheet_human_trafficking_fy18.pdf) (last accessed January 10, 2018).

<sup>4</sup> *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, available at: [http://ojp.gov/newsroom/factsheets/ojpfs\\_humantrafficking.html](http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html).

<sup>5</sup> U.S. Department of State, *The 2013 Trafficking in Persons (TIP) Report*, June 2013. <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>

<sup>6</sup> American Bar Association, *Trafficking FAQs.*, available at: [https://www.americanbar.org/groups/human\\_rights/projects/task\\_force\\_human\\_trafficking/faqs.html](https://www.americanbar.org/groups/human_rights/projects/task_force_human_trafficking/faqs.html)

<sup>7</sup> Email from Ronald Draa, Florida Department of Law Enforcement. (December 8, 2017) (on file with the Criminal Justice Subcommittee).

<sup>8</sup> American Bar Association, *Post-Conviction Advocacy for Survivors of Human Trafficking: A Guide for Attorneys*, p. 4-5, available at: [https://www.americanbar.org/content/dam/aba/administrative/domestic\\_violence1/SRP/practice-guide\\_authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/SRP/practice-guide_authcheckdam.pdf) (last accessed January 10, 2018).

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

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

Criminal charges create high barriers for victims of human trafficking in terms of finding employment and establishing stability and independence. In 2016, the National Survivor Network published a survey of their members showing that 90% of respondents had criminal convictions.<sup>11</sup>

### *Criminal Punishment Code*

The Criminal Punishment Code (Code) applies to all felony offenses, except capital felonies committed on or after October 1, 1998.<sup>12</sup> 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 chart<sup>13</sup> or by default.<sup>14</sup> Judges must use the Criminal Punishment Code worksheet to compute a sentence score for each felony offender.<sup>15</sup>

Sentence points are assigned and accrue based on the level ranking assigned to the primary offense, additional offenses and prior offenses.<sup>16</sup> Sentence points increase as the offense severity level increases from Level 1 (least severe) to Level 10 (most severe). Sentence points are also added for victim injury, and increase based on the type of injury and severity,<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> Absent mitigation,<sup>20</sup> the permissible sentencing 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.

### *Current Penalties for Human Trafficking Offenses*

Any person who knowingly, or in reckless disregard of the facts, engages in or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking;

- For labor or services of any child under the age of 18<sup>21</sup> (first degree felony ranked in Level 8)
- For labor or services of an adult<sup>22</sup> (first degree felony ranked in Level 7)
- Using coercion for commercial sexual activity of an adult<sup>23</sup> (first degree felony ranked in Level 8)
- For labor or services of any child under the age of 18 who is an unauthorized alien<sup>24</sup> (first degree felony ranked in Level 9)
- Using coercion for labor or services of an adult who is an unauthorized alien<sup>25</sup> (first degree felony ranked in Level 8)
- Using coercion for commercial sexual activity of an adult who is an unauthorized alien<sup>26</sup> (first degree felony ranked in Level 9)

<sup>11</sup> National Survivors Network Member Survey On the Impact of Criminal Arrest and Detention on Survivors of Human Trafficking (January 2016), available at: <http://nationalsurvivornetwork.org>.

<sup>12</sup> s. 921.002, F.S.

<sup>13</sup> s. 921.0022, F.S.

<sup>14</sup> s. 921.0023, F.S.

<sup>15</sup> s. 921.0024, F.S.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> s. 921.0022(2), F.S.

<sup>20</sup> 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.

<sup>21</sup> s. 787.06(3)(a)1., F.S.

<sup>22</sup> s. 787.06(3)(a)2., F.S.

<sup>23</sup> s. 787.06(3)(b), F.S.

<sup>24</sup> s. 787.06(3)(c)1., F.S.

<sup>25</sup> s. 787.06(3)(c)2., F.S.



- For labor or services by transferring or transporting any child from outside of the state into Florida<sup>27</sup> (first degree felony ranked in Level 8)
- For labor or services by transferring or transporting an adult from outside of the state into Florida<sup>28</sup> (first degree felony ranked in Level 7)
- For commercial sexual activity by transferring or transporting any child under the age of 18 from outside of the state into Florida<sup>29</sup> (first degree felony punishable by imprisonment for life ranked in Level 9)
- Using coercion for commercial sexual activity by transferring or transporting an adult from outside of the state into Florida<sup>30</sup>
- For commercial sexual activity involving any child under the age of 18 or any person who is mentally defective or mentally incapacitated<sup>31</sup>, as those term are defined<sup>32</sup> (life felony ranked in Level 10).

Absent mitigation, all human trafficking offenses would require a prison sentence under the Criminal Punishment Code. In Fiscal Year 2016-2017, 23 offenders were sentenced for a human trafficking offense and 22 of those received a state prison sentence. The average sentence length was 105.3 months (8.8 years).

### *Mandatory Minimum Sentences*

Mandatory minimum terms of imprisonment limit judicial discretion in sentencing under the Criminal Punishment Code: "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence."<sup>33</sup> As previously noted, the sentencing range under the Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to an including the statutory maximum penalty.

### Effect of the Bill

HB 7039 amends s. 787.06(3), F.S., to provide a mandatory minimum term of imprisonment of 10 years for each of the 11 human trafficking offenses enumerated in that section.

## **Department of Business and Professional Regulation's Inspection Authority**

### Background

The Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating certain businesses and professions under current law. Under s. 450.045, F.S., DBPR and law enforcement agencies are required to obtain, and verify, proof of age and identification for employees or independent contractors of "adult theaters" as defined in s. 847.001(2)(b), F.S. Furthermore, DBPR and its agents have the authority to enter an adult theater during operating hours, unannounced and without prior notice, to inspect and have access to age verification documents and other records kept on file by the adult theater.

<sup>26</sup> s. 787.06(3)(d), F.S.

<sup>27</sup> s. 787.06(3)(e)1., F.S.

<sup>28</sup> s. 787.06(3)(e)2., F.S.

<sup>29</sup> s. 787.06(3)(f)1., F.S.

<sup>30</sup> s. 787.06(3)(f)2., F.S.

<sup>31</sup> s. 787.06(3)(g), F.S.

<sup>32</sup> s. 794.011(1), F.S., provides definition for those terms.

<sup>33</sup> Fla. R. Crim. P. 3.704(d)(26).

### Effect of the Bill

The bill amends the definition of “adult theater” as used in Chapter 87, F.S., related to Obscenity, to include “any business that features a person who engages in specific sexual activities for the observation by a patron, and which restricts or purports to restrict admission to adults only.” This language would specifically include “strip clubs” and similar establishments within the scope of the Department of Business and Professional Regulation’s verification and inspection authority.

## **Human Trafficking Victim Criminal Record Expunction**

### Background

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for the expunction of a criminal history record relating to an offense committed while he or she was a victim of human trafficking. A “victim of human trafficking” is defined as a person subjected to coercion for the purpose of being used in human trafficking, a child under 18 years of age who is a victim of human trafficking, or an individual subject to human trafficking as defined by federal law.<sup>34</sup>

To receive the expunction, a victim of human trafficking must petition the court of original jurisdiction over the crime sought to be expunged.<sup>35</sup> A petition must be initiated with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking.<sup>36</sup> The petition must include:

- the petitioner’s sworn statement attesting that the petitioner is eligible for expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or seal pending before any other court; and
- Official documentation of the petitioner’s status as a victim of human trafficking, if any exists.<sup>37</sup>

A determination of a petitioner’s status as a human trafficking victim without official documentation must be made by a showing of clear and convincing evidence.<sup>38</sup> If a court grants an expunction, criminal justice agencies with custody of the expunged record, except FDLE, must physically destroy the record.<sup>39</sup> Persons who have had their human trafficking criminal history records expunged may lawfully deny or fail to acknowledge the arrests that were expunged, unless they are a candidate for employment with a criminal justice agency or is a defendant in a criminal prosecution.<sup>40</sup>

### Effect of the Bill

HB 7039 prohibits a clerk from assessing a filing fee or copy fee under s. 28.24, F.S., or as otherwise provided for under law, for victims of human trafficking seeking criminal record expungement under s. 943.0583, F.S.

## **Reenactments**

Lastly, the bill reenacts ss. 402.82, 450.021, 450.045, 943.0582, 943.0585, 943.059, and 961.06, F.S., to give effect to the changes made in the bill.

## **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 787.06, F.S., relating to human trafficking.

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<sup>34</sup> s. 943.0583(1)(c), F.S.

<sup>35</sup> s. 943.0583(2), F.S.

<sup>36</sup> s. 943.0583(4), F.S.

<sup>37</sup> s. 943.0583(6), F.S.

<sup>38</sup> s. 943.0583(5), F.S.

<sup>39</sup> s. 943.0583(8)(a), F.S. Records retained by FDLE are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the state Constitution, except that the record must be made available to criminal justice agencies for their respective criminal justice purposes. S. 943.0583(10)(a), F.S.

<sup>40</sup> s. 943.0583(8)(b), F.S.

**Section 2:** Amends s. 847.001, F.S., relating to definitions.

**Section 3:** Amends s. 943.0583, F.S., relating to human trafficking victim expunction.

**Section 4:** Reenacts s. 402.82, F.S., relating to electronic benefits transfer program.

**Section 5:** Reenacts s. 450.021, F.S., relating to minimum age; general.

**Section 6:** Reenacts s. 450.045, F.S., relating to proof of identity and age; posting of notices.

**Section 7:** Reenacts s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

**Section 8:** Reenacts s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

**Section 9:** Reenacts s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

**Section 10:** Reenacts s. 961.06, F.S., relating to compensation for wrongful incarceration.

**Section 11:** 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:

See Fiscal Comments. Additionally, the Department of Business and Professional Regulation may see an increase in workload to inspect "strip clubs" and other establishments now specifically included in the definition of "adult theater."

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill may have an indeterminate, but expected to be insignificant, impact on local government revenues. Court clerks are prohibited from assessing filing and copy fees when expunging the criminal record of a human trafficking victim.

#### 2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

In Fiscal Year 2016-2017, 23 offenders were sentenced for a human trafficking offense and 22 of those received a state prison sentence. The average sentence length was 105.3 months (8.8 years).

The Criminal Justice Impact Conference considered this bill on January 29, 2018, and determined that the bill will increase the need for prison beds in the five year forecast period, as follows:

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	Annual Operating Costs
2018-2019	1	1	\$2,886
2019-2020	2	1	\$8,657
2020-2021	4	2	\$17,313
2021-2022	8	4	\$34,626
2022-2023	13	5	\$60,596
Total	13	13	\$124,077

It is expected that this impact can be absorbed during the forecast period within the resources currently appropriated to the Department of Corrections.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

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 human trafficking; amending s.  
3           787.06, F.S.; providing a mandatory minimum sentence  
4           for certain human trafficking offenses; amending s.  
5           847.001, F.S.; expanding the definition of the term  
6           "adult theater"; amending s. 943.0583, F.S.;  
7           prohibiting the assessment of certain fees and costs  
8           to victims of human trafficking seeking criminal  
9           records expungement; reenacting ss. 402.82(4)(b),  
10          450.021(5), and 450.045(3)(a), F.S., relating to  
11          electronic benefits transfer program; minimum age,  
12          general; and proof of identity and age, posting of  
13          notices; respectively, to incorporate the amendments  
14          made by the act; reenacting ss. 943.0582(5),  
15          943.0585(4)(a), 943.059(4)(a), and 961.06(1), F.S.,  
16          relating to prearrest, postarrest, or teen court  
17          diversion program expunction; court-ordered expunction  
18          of criminal history records; court-ordered sealing of  
19          criminal history records; and compensation for  
20          wrongful incarceration; respectively, to incorporate  
21          the amendments made by the act; providing an effective  
22          date.

23  
24   Be It Enacted by the Legislature of the State of Florida:  
25

26 Section 1. Subsection (3) of section 787.06, Florida  
 27 Statutes, is amended to read:

28 787.06 Human trafficking.—

29 (3) Any person who knowingly, or in reckless disregard of  
 30 the facts, engages in human trafficking, or attempts to engage  
 31 in human trafficking, or benefits financially by receiving  
 32 anything of value from participation in a venture that has  
 33 subjected a person to human trafficking:

34 (a)1. For labor or services of any child under the age of  
 35 18 commits a felony of the first degree, punishable as provided  
 36 in s. 775.082, s. 775.083, or s. 775.084 with a minimum  
 37 mandatory term of imprisonment of 10 years.

38 2. Using coercion for labor or services of an adult  
 39 commits a felony of the first degree, punishable as provided in  
 40 s. 775.082, s. 775.083, or s. 775.084 with a minimum mandatory  
 41 term of imprisonment of 10 years.

42 (b) Using coercion for commercial sexual activity of an  
 43 adult commits a felony of the first degree, punishable as  
 44 provided in s. 775.082, s. 775.083, or s. 775.084 with a minimum  
 45 mandatory term of imprisonment of 10 years.

46 (c)1. For labor or services of any child under the age of  
 47 18 who is an unauthorized alien commits a felony of the first  
 48 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 49 775.084 with a minimum mandatory term of imprisonment of 10  
 50 years.

51           2. Using coercion for labor or services of an adult who is  
 52 an unauthorized alien commits a felony of the first degree,  
 53 punishable as provided in s. 775.082, s. 775.083, or s. 775.084  
 54 with a minimum mandatory term of imprisonment of 10 years.

55           (d) Using coercion for commercial sexual activity of an  
 56 adult who is an unauthorized alien commits a felony of the first  
 57 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 58 775.084 with a minimum term of imprisonment of 10 years.

59           (e)1. For labor or services who does so by the transfer or  
 60 transport of any child under the age of 18 from outside this  
 61 state to within the state commits a felony of the first degree,  
 62 punishable as provided in s. 775.082, s. 775.083, or s. 775.084  
 63 with a minimum term of imprisonment of 10 years.

64           2. Using coercion for labor or services who does so by the  
 65 transfer or transport of an adult from outside this state to  
 66 within the state commits a felony of the first degree,  
 67 punishable as provided in s. 775.082, s. 775.083, or s. 775.084  
 68 with a minimum term of imprisonment of 10 years.

69           (f)1. For commercial sexual activity who does so by the  
 70 transfer or transport of any child under the age of 18 from  
 71 outside this state to within the state commits a felony of the  
 72 first degree, punishable by imprisonment for a term of years not  
 73 exceeding life, or as provided in s. 775.082, s. 775.083, or s.  
 74 775.084 with a minimum term of imprisonment of 10 years.

75           2. Using coercion for commercial sexual activity who does

76 so by the transfer or transport of an adult from outside this  
 77 state to within the state commits a felony of the first degree,  
 78 punishable as provided in s. 775.082, s. 775.083, or s. 775.084  
 79 with a minimum term of imprisonment of 10 years.

80 (g) For commercial sexual activity in which any child  
 81 under the age of 18, or in which any person who is mentally  
 82 defective or mentally incapacitated as those terms are defined  
 83 in s. 794.011(1), is involved commits a life felony, punishable  
 84 as provided in s. 775.082(3)(a)6., s. 775.083, or s. 775.084  
 85 with a minimum mandatory term of imprisonment of 10 years.

86  
 87 For each instance of human trafficking of any individual under  
 88 this subsection, a separate crime is committed and a separate  
 89 punishment is authorized.

90 Section 2. Paragraph (b) of subsection (2) of section  
 91 847.001, Florida Statutes, is amended to read:

92 847.001 Definitions.—As used in this chapter, the term:

93 (2) "Adult entertainment establishment" means the  
 94 following terms as defined:

95 (b) "Adult theater" means an enclosed building or an  
 96 enclosed space within a building used for presenting either  
 97 films, live plays, dances, or other performances that are  
 98 distinguished or characterized by an emphasis on matter  
 99 depicting, describing, or relating to specific sexual activities  
 100 for observation by patrons, and which restricts or purports to



101 restrict admission only to adults, or any business that features  
 102 a person who engages in specific sexual activities for  
 103 observation by a patron, and which restricts or purports to  
 104 restrict admission to only adults.

105 Section 3. Subsection (3) of section 943.0583, Florida  
 106 Statutes, is amended to read:

107 943.0583 Human trafficking victim expunction.—

108 (3) A person who is a victim of human trafficking may  
 109 petition for the expunction of a criminal history record  
 110 resulting from the arrest or filing of charges for an offense  
 111 committed or reported to have been committed while the person  
 112 was a victim of human trafficking, which offense was committed  
 113 or reported to have been committed as a part of the human  
 114 trafficking scheme of which the person was a victim or at the  
 115 direction of an operator of the scheme, including, but not  
 116 limited to, violations under chapters 796 and 847, without  
 117 regard to the disposition of the arrest or of any charges.  
 118 However, this section does not apply to any offense listed in s.  
 119 775.084(1)(b)1. Determination of the petition under this section  
 120 should be by a preponderance of the evidence. A conviction  
 121 expunged under this section is deemed to have been vacated due  
 122 to a substantive defect in the underlying criminal proceedings.  
 123 If a person is adjudicated not guilty by reason of insanity or  
 124 is found to be incompetent to stand trial for any such charge,  
 125 the expunction of the criminal history record may not prevent

126 the entry of the judgment or finding in state and national  
 127 databases for use in determining eligibility to purchase or  
 128 possess a firearm or to carry a concealed firearm, as authorized  
 129 in s. 790.065(2)(a)4.c. and 18 U.S.C. s. 922(t), nor shall it  
 130 prevent any governmental agency that is authorized by state or  
 131 federal law to determine eligibility to purchase or possess a  
 132 firearm or to carry a concealed firearm from accessing or using  
 133 the record of the judgment or finding in the course of such  
 134 agency's official duties. A victim seeking expungement may not  
 135 be assessed a filing or copy fee under s. 28.24 or as otherwise  
 136 provided for under law.

137 Section 4. For the purpose of incorporating the amendment  
 138 made by this act to section 847.001, Florida Statutes, in a  
 139 reference thereto, paragraph (b) of subsection (4) of section  
 140 402.82, Florida Statutes, is reenacted to read:

141 402.82 Electronic benefits transfer program.—

142 (4) Use or acceptance of an electronic benefits transfer  
 143 card is prohibited at the following locations or for the  
 144 following activities:

145 (b) An adult entertainment establishment as defined in s.  
 146 847.001.

147 Section 5. For the purpose of incorporating the amendment  
 148 made by this act to section 847.001, Florida Statutes, in a  
 149 reference thereto, subsection (5) of section 450.021, Florida  
 150 Statutes, is reenacted to read:

151 450.021 Minimum age; general.—

152 (5) In order to better ensure the elimination of minors  
 153 being exploited and becoming victims of human trafficking, a  
 154 person under the age of 18, whether or not such person's  
 155 disabilities of nonage have been removed by marriage or  
 156 otherwise, may not be employed, permitted, or suffered to work  
 157 in an adult theater, as defined in s. 847.001(2)(b).

158 Section 6. For the purpose of incorporating the amendment  
 159 made by this act to section 847.001, Florida Statutes, in a  
 160 reference thereto, paragraph (a) of subsection (3) of section  
 161 450.045, Florida Statutes, is reenacted to read:

162 450.045 Proof of identity and age; posting of notices.—

163 (3)(a) In order to provide the department and law  
 164 enforcement agencies the means to more effectively identify,  
 165 investigate, and arrest persons engaging in human trafficking,  
 166 an adult theater, as defined in s. 847.001(2)(b), shall obtain  
 167 proof of the identity and age of each of its employees or  
 168 independent contractors, and shall verify the validity of the  
 169 identification and age verification document with the issuer,  
 170 before his or her employment or provision of services as an  
 171 independent contractor.

172 Section 7. For the purpose of incorporating the amendment  
 173 made by this act to section 943.0583, Florida Statutes, in a  
 174 reference thereto, subsection (5) of section 943.0582, Florida  
 175 Statutes, is reenacted to read:

176 943.0582 Prearrest, postarrest, or teen court diversion  
 177 program expunction.—

178 (5) Expunction or sealing granted under this section does  
 179 not prevent the minor who receives such relief from petitioning  
 180 for the expunction or sealing of a later criminal history record  
 181 as provided for in ss. 943.0583, 943.0585, and 943.059, if the  
 182 minor is otherwise eligible under those sections.

183 Section 8. For the purpose of incorporating the amendment  
 184 made by this act to section 943.0583, Florida Statutes, in a  
 185 reference thereto, paragraph (a) of subsection (4) of section  
 186 943.0585, Florida Statutes, is reenacted to read:

187 943.0585 Court-ordered expunction of criminal history  
 188 records.—The courts of this state have jurisdiction over their  
 189 own procedures, including the maintenance, expunction, and  
 190 correction of judicial records containing criminal history  
 191 information to the extent such procedures are not inconsistent  
 192 with the conditions, responsibilities, and duties established by  
 193 this section. Any court of competent jurisdiction may order a  
 194 criminal justice agency to expunge the criminal history record  
 195 of a minor or an adult who complies with the requirements of  
 196 this section. The court shall not order a criminal justice  
 197 agency to expunge a criminal history record until the person  
 198 seeking to expunge a criminal history record has applied for and  
 199 received a certificate of eligibility for expunction pursuant to  
 200 subsection (2) or subsection (5). A criminal history record that

201 | relates to a violation of s. 393.135, s. 394.4593, s. 787.025,  
 202 | chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,  
 203 | s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,  
 204 | s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in  
 205 | s. 907.041, or any violation specified as a predicate offense  
 206 | for registration as a sexual predator pursuant to s. 775.21,  
 207 | without regard to whether that offense alone is sufficient to  
 208 | require such registration, or for registration as a sexual  
 209 | offender pursuant to s. 943.0435, may not be expunged, without  
 210 | regard to whether adjudication was withheld, if the defendant  
 211 | was found guilty of or pled guilty or nolo contendere to the  
 212 | offense, or if the defendant, as a minor, was found to have  
 213 | committed, or pled guilty or nolo contendere to committing, the  
 214 | offense as a delinquent act. The court may only order expunction  
 215 | of a criminal history record pertaining to one arrest or one  
 216 | incident of alleged criminal activity, except as provided in  
 217 | this section. The court may, at its sole discretion, order the  
 218 | expunction of a criminal history record pertaining to more than  
 219 | one arrest if the additional arrests directly relate to the  
 220 | original arrest. If the court intends to order the expunction of  
 221 | records pertaining to such additional arrests, such intent must  
 222 | be specified in the order. A criminal justice agency may not  
 223 | expunge any record pertaining to such additional arrests if the  
 224 | order to expunge does not articulate the intention of the court  
 225 | to expunge a record pertaining to more than one arrest. This

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

229 Notwithstanding any law to the contrary, a criminal justice  
 230 agency may comply with laws, court orders, and official requests  
 231 of other jurisdictions relating to expunction, correction, or  
 232 confidential handling of criminal history records or information  
 233 derived therefrom. This section does not confer any right to the  
 234 expunction of any criminal history record, and any request for  
 235 expunction of a criminal history record may be denied at the  
 236 sole discretion of the court.

237 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any  
 238 criminal history record of a minor or an adult which is ordered  
 239 expunged by a court of competent jurisdiction pursuant to this  
 240 section must be physically destroyed or obliterated by any  
 241 criminal justice agency having custody of such record; except  
 242 that any criminal history record in the custody of the  
 243 department must be retained in all cases. A criminal history  
 244 record ordered expunged that is retained by the department is  
 245 confidential and exempt from the provisions of s. 119.07(1) and  
 246 s. 24(a), Art. I of the State Constitution and not available to  
 247 any person or entity except upon order of a court of competent  
 248 jurisdiction. A criminal justice agency may retain a notation  
 249 indicating compliance with an order to expunge.

250 (a) The person who is the subject of a criminal history

251 record that is expunged under this section or under other  
 252 provisions of law, including former s. 893.14, former s. 901.33,  
 253 and former s. 943.058, may lawfully deny or fail to acknowledge  
 254 the arrests covered by the expunged record, except when the  
 255 subject of the record:

- 256 1. Is a candidate for employment with a criminal justice  
 257 agency;
- 258 2. Is a defendant in a criminal prosecution;
- 259 3. Concurrently or subsequently petitions for relief under  
 260 this section, s. 943.0583, or s. 943.059;
- 261 4. Is a candidate for admission to The Florida Bar;
- 262 5. Is seeking to be employed or licensed by or to contract  
 263 with the Department of Children and Families, the Division of  
 264 Vocational Rehabilitation within the Department of Education,  
 265 the Agency for Health Care Administration, the Agency for  
 266 Persons with Disabilities, the Department of Health, the  
 267 Department of Elderly Affairs, or the Department of Juvenile  
 268 Justice or to be employed or used by such contractor or licensee  
 269 in a sensitive position having direct contact with children, the  
 270 disabled, or the elderly;
- 271 6. Is seeking to be employed or licensed by the Department  
 272 of Education, any district school board, any university  
 273 laboratory school, any charter school, any private or parochial  
 274 school, or any local governmental entity that licenses child  
 275 care facilities;

276           7. Is seeking to be licensed by the Division of Insurance  
 277 Agent and Agency Services within the Department of Financial  
 278 Services; or

279           8. Is seeking to be appointed as a guardian pursuant to s.  
 280 744.3125.

281           Section 9. For the purpose of incorporating the amendment  
 282 made by this act to section 943.0583, Florida Statutes, in a  
 283 reference thereto, paragraph (a) of subsection (4) of section  
 284 943.059, Florida Statutes, is reenacted to read:

285           943.059 Court-ordered sealing of criminal history  
 286 records.—The courts of this state shall continue to have  
 287 jurisdiction over their own procedures, including the  
 288 maintenance, sealing, and correction of judicial records  
 289 containing criminal history information to the extent such  
 290 procedures are not inconsistent with the conditions,  
 291 responsibilities, and duties established by this section. Any  
 292 court of competent jurisdiction may order a criminal justice  
 293 agency to seal the criminal history record of a minor or an  
 294 adult who complies with the requirements of this section. The  
 295 court shall not order a criminal justice agency to seal a  
 296 criminal history record until the person seeking to seal a  
 297 criminal history record has applied for and received a  
 298 certificate of eligibility for sealing pursuant to subsection  
 299 (2). A criminal history record that relates to a violation of s.  
 300 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,



301 | s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,  
 302 | chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,  
 303 | s. 916.1075, a violation enumerated in s. 907.041, or any  
 304 | violation specified as a predicate offense for registration as a  
 305 | sexual predator pursuant to s. 775.21, without regard to whether  
 306 | that offense alone is sufficient to require such registration,  
 307 | or for registration as a sexual offender pursuant to s.  
 308 | 943.0435, may not be sealed, without regard to whether  
 309 | adjudication was withheld, if the defendant was found guilty of  
 310 | or pled guilty or nolo contendere to the offense, or if the  
 311 | defendant, as a minor, was found to have committed or pled  
 312 | guilty or nolo contendere to committing the offense as a  
 313 | delinquent act. The court may only order sealing of a criminal  
 314 | history record pertaining to one arrest or one incident of  
 315 | alleged criminal activity, except as provided in this section.  
 316 | The court may, at its sole discretion, order the sealing of a  
 317 | criminal history record pertaining to more than one arrest if  
 318 | the additional arrests directly relate to the original arrest.  
 319 | If the court intends to order the sealing of records pertaining  
 320 | to such additional arrests, such intent must be specified in the  
 321 | order. A criminal justice agency may not seal any record  
 322 | pertaining to such additional arrests if the order to seal does  
 323 | not articulate the intention of the court to seal records  
 324 | pertaining to more than one arrest. This section does not  
 325 | prevent the court from ordering the sealing of only a portion of

326 a criminal history record pertaining to one arrest or one  
 327 incident of alleged criminal activity. Notwithstanding any law  
 328 to the contrary, a criminal justice agency may comply with laws,  
 329 court orders, and official requests of other jurisdictions  
 330 relating to sealing, correction, or confidential handling of  
 331 criminal history records or information derived therefrom. This  
 332 section does not confer any right to the sealing of any criminal  
 333 history record, and any request for sealing a criminal history  
 334 record may be denied at the sole discretion of the court.

335 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal  
 336 history record of a minor or an adult which is ordered sealed by  
 337 a court pursuant to this section is confidential and exempt from  
 338 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
 339 Constitution and is available only to the person who is the  
 340 subject of the record, to the subject's attorney, to criminal  
 341 justice agencies for their respective criminal justice purposes,  
 342 which include conducting a criminal history background check for  
 343 approval of firearms purchases or transfers as authorized by  
 344 state or federal law, to judges in the state courts system for  
 345 the purpose of assisting them in their case-related  
 346 decisionmaking responsibilities, as set forth in s. 943.053(5),  
 347 or to those entities set forth in subparagraphs (a)1., 4., 5.,  
 348 6., 8., 9., and 10. for their respective licensing, access  
 349 authorization, and employment purposes.

350 (a) The subject of a criminal history record sealed under

351 this section or under other provisions of law, including former  
 352 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
 353 deny or fail to acknowledge the arrests covered by the sealed  
 354 record, except when the subject of the record:

- 355 1. Is a candidate for employment with a criminal justice  
 356 agency;
- 357 2. Is a defendant in a criminal prosecution;
- 358 3. Concurrently or subsequently petitions for relief under  
 359 this section, s. 943.0583, or s. 943.0585;
- 360 4. Is a candidate for admission to The Florida Bar;
- 361 5. Is seeking to be employed or licensed by or to contract  
 362 with the Department of Children and Families, the Division of  
 363 Vocational Rehabilitation within the Department of Education,  
 364 the Agency for Health Care Administration, the Agency for  
 365 Persons with Disabilities, the Department of Health, the  
 366 Department of Elderly Affairs, or the Department of Juvenile  
 367 Justice or to be employed or used by such contractor or licensee  
 368 in a sensitive position having direct contact with children, the  
 369 disabled, or the elderly;
- 370 6. Is seeking to be employed or licensed by the Department  
 371 of Education, a district school board, a university laboratory  
 372 school, a charter school, a private or parochial school, or a  
 373 local governmental entity that licenses child care facilities;
- 374 7. Is attempting to purchase a firearm from a licensed  
 375 importer, licensed manufacturer, or licensed dealer and is

376 subject to a criminal history check under state or federal law;

377 8. Is seeking to be licensed by the Division of Insurance  
 378 Agent and Agency Services within the Department of Financial  
 379 Services;

380 9. Is seeking to be appointed as a guardian pursuant to s.  
 381 744.3125; or

382 10. Is seeking to be licensed by the Bureau of License  
 383 Issuance of the Division of Licensing within the Department of  
 384 Agriculture and Consumer Services to carry a concealed weapon or  
 385 concealed firearm. This subparagraph applies only in the  
 386 determination of an applicant's eligibility under s. 790.06.

387 Section 10. For the purpose of incorporating the amendment  
 388 made by this act to section 943.0583, Florida Statutes, in a  
 389 reference thereto, subsection (1) of section 961.06, Florida  
 390 Statutes, is reenacted to read:

391 961.06 Compensation for wrongful incarceration.—

392 (1) Except as otherwise provided in this act and subject  
 393 to the limitations and procedures prescribed in this section, a  
 394 person who is found to be entitled to compensation under the  
 395 provisions of this act is entitled to:

396 (a) Monetary compensation for wrongful incarceration,  
 397 which shall be calculated at a rate of \$50,000 for each year of  
 398 wrongful incarceration, prorated as necessary to account for a  
 399 portion of a year. For persons found to be wrongfully  
 400 incarcerated after December 31, 2008, the Chief Financial

401 Officer may adjust the annual rate of compensation for inflation  
 402 using the change in the December-to-December "Consumer Price  
 403 Index for All Urban Consumers" of the Bureau of Labor Statistics  
 404 of the Department of Labor;

405 (b) A waiver of tuition and fees for up to 120 hours of  
 406 instruction at any career center established under s. 1001.44,  
 407 any Florida College System institution as defined in s.  
 408 1000.21(3), or any state university as defined in s. 1000.21(6),  
 409 if the wrongfully incarcerated person meets and maintains the  
 410 regular admission requirements of such career center, Florida  
 411 College System institution, or state university; remains  
 412 registered at such educational institution; and makes  
 413 satisfactory academic progress as defined by the educational  
 414 institution in which the claimant is enrolled;

415 (c) The amount of any fine, penalty, or court costs  
 416 imposed and paid by the wrongfully incarcerated person;

417 (d) The amount of any reasonable attorney's fees and  
 418 expenses incurred and paid by the wrongfully incarcerated person  
 419 in connection with all criminal proceedings and appeals  
 420 regarding the wrongful conviction, to be calculated by the  
 421 department based upon the supporting documentation submitted as  
 422 specified in s. 961.05; and

423 (e) Notwithstanding any provision to the contrary in s.  
 424 943.0583 or s. 943.0585, immediate administrative expunction of  
 425 the person's criminal record resulting from his or her wrongful

426 | arrest, wrongful conviction, and wrongful incarceration. The  
427 | Department of Legal Affairs and the Department of Law  
428 | Enforcement shall, upon a determination that a claimant is  
429 | entitled to compensation, immediately take all action necessary  
430 | to administratively expunge the claimant's criminal record  
431 | arising from his or her wrongful arrest, wrongful conviction,  
432 | and wrongful incarceration. All fees for this process shall be  
433 | waived.

434

435 | The total compensation awarded under paragraphs (a), (c), and  
436 | (d) may not exceed \$2 million. No further award for attorney's  
437 | fees, lobbying fees, costs, or other similar expenses shall be  
438 | made by the state.

439 | Section 11. This act shall take effect July 1, 2018.