

Judiciary Committee

Tuesday, February 27, 2018

1:30 – 4:00 PM

404 HOB

Meeting Packet

Richard Corcoran
Speaker

Chris Spowls
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Tuesday, February 27, 2018 01:30 pm
End Date and Time: Tuesday, February 27, 2018 04:00 pm
Location: Sumner Hall (404 HOB)
Duration: 2.50 hrs

Consideration of the following bill(s):

CS/CS/CS/HB 469 Salvage of Pleasure Vessels by Government Accountability Committee, Careers & Competition Subcommittee, Natural Resources & Public Lands Subcommittee, Harrison
HB 885 Arrest Warrants for State Prisoners by Plakon
PCS for CS/CS/HB 1041 -- Professional Regulation
CS/HB 1065 Expunction of Criminal History Records by Criminal Justice Subcommittee, Eagle, Jones
CS/HB 1249 Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-Enabled Household Devices by Criminal Justice Subcommittee, Grant, J.
CS/HB 1301 Sexual Offenders and Predators by Justice Appropriations Subcommittee, Fitzenhagen
CS/HB 1361 Unclaimed Funds Held by the Clerks of Court by Civil Justice & Claims Subcommittee, Clemons
CS/HB 1391 Student Safety by Education Committee, Rodrigues
CS/HB 1401 Judgments in Criminal Cases by Criminal Justice Subcommittee, Altman
HB 7039 Human Trafficking by Criminal Justice Subcommittee, Spano

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Monday, February 26, 2018.

By request of the Chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, February 26, 2018.


NOTICE FINALIZED on 02/26/2018 4:28PM by Ellerkamp.Donna

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 469 Salvage of Pleasure Vessels

SPONSOR(S): Government Accountability Committee; Careers & Competition Subcommittee; Natural Resources & Public Lands Subcommittee and Harrison

TIED BILLS: IDEN./SIM. **BILLS:** CS/CS/SB 664

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	13 Y, 0 N, As CS	Moore	Shugar
2) Careers & Competition Subcommittee	9 Y, 2 N, As CS	Willson	Anstead
3) Government Accountability Committee	21 Y, 2 N, As CS	Moore	Williamson
4) Judiciary Committee		MM MacNamara	Poche 

SUMMARY ANALYSIS

Salvage is the voluntary assistance to a ship at sea or its cargo, from impending sea peril or the recovery of such property from actual peril or loss. In determining a salvage award, several factors are considered resulting in awards ranging from a few hundred dollars to thousands of dollars. Currently, state law does not require salvors of pleasure vessels to notify customers of the potential costs prior to salvage.

CS/CS/CS/HB 469 applies to salvors operating within waters of this state, with certain exceptions. The bill defines terms and provides that if the customer is present on the pleasure vessel, before a salvor may engage in the salvage operation, the salvor must provide the customer with written notice that the service offered is not covered by any towing contract. The bill specifies that a salvor is not required to provide the written notice if there is an imminent threat of injury or death to any person on board the pleasure vessel, but must provide the written notice when the threat subsides.

The bill requires that the written notice to be signed by the customer and include certain specific language, in capital letters of at least 12-point type, including, but not limited to:

- The service offered is considered salvage work and is not covered by any towing service contract;
- The salvor may present the customer or the customer's insurance company with the bill at a later date;
- Salvage charges must be calculated according to federal law, which may exceed a charge based on a time and materials calculation, and may amount to the entire value of the vessel, including its gear and equipment;
- If the customer agrees to allow the salvor to perform the work without an agreement for a fixed charge, the only recourse for challenging the bill is by a lawsuit in federal court or binding arbitration;
- The customer may agree to a fixed charge before work begins, and that agreed charge must be documented on the U.S. Open Form Salvage Agreement or other such salvage contract; and
- The customer has the right to reject the salvor's offer of services if the salvor will not agree to a fixed charge before beginning work.

If a written notice is not provided before a salvage operation, the owner of a pleasure vessel may bring an action in an appropriate court of competent jurisdiction. An owner who prevails is entitled to damages equal to one and one-half times the amount paid or awarded to the salvor, plus court costs and reasonable attorney fees, and any other remedy provided by law.

The bill does not appear to have a fiscal impact on the state or local government.

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

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

STORAGE NAME: h0469f.JDC.DOCX

DATE: 2/26/2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Salvage

Generally, only a vessel of the United States or a numbered motorboat owned by a citizen may engage in any salvage operation in territorial waters of the United States.¹ Salvage is the voluntary assistance to a ship at sea or its cargo, from impending sea peril or the recovery of such property from actual peril or loss (e.g., shipwreck, dereliction, recapture).²

Public policy favors liberally rewarding a person for salvage services, because of the humanitarian and commercial importance of aiding persons and ships in distress and maintaining navigable waterways. Accordingly, salvage awards are viewed as a reward for providing dangerous services, voluntarily rendered, and as an inducement to embark on these life and property saving undertakings.³

Jurisdiction

Salvage claims fall within the admiralty jurisdiction of the federal courts⁴ and are governed by the Supplemental Rules for Certain Admiralty and Maritime Claims (Supplemental Rules) and the Federal Rules of Civil Procedure to the extent they are inconsistent with the Supplemental Rules.⁵ Jurisdiction extends to all waters that are navigable for trade and commerce, and includes:

- Claims against proceeds of salvaged property;
- Claims where the owner of the vessel or cargo has made himself or herself personally liable to pay for salvage services;
- Contracts relating to salvage service;
- Disputes between would-be salvors who submit themselves to the court's jurisdiction;
- Requests by current salvors for exclusive possession and salvage of certain property or wrecks;
- Claims arising out of salvage operations at sea beyond the territorial limits of the United States;
- Claims as to recoveries of salvaged property from state waters, excluding determinations of the state's ownership of any artifacts recovered in state waters;
- Salvage claims for services rendered by one warship to another warship; and
- Liens for salvage services.⁶

While federal courts have exclusive jurisdiction over salvage actions directly against property (e.g., where a vessel or thing is itself treated as the offender and made the defendant by name or description), state courts have concurrent jurisdiction in actions against a person.⁷ State courts, under concurrent jurisdiction, must apply federal maritime law. Generally, state courts may apply state law to maritime actions so long as there is no conflict with federal law.⁸ State courts applying state statutes

¹ 19 C.F.R. § 4.97(a) (1969).

² 67B Am. Jur. 2d *Salvage* § 1 (2017); *see also* 33 CFR § 155.4025, defining salvage to mean any act undertaken to assist a vessel in potential or actual danger, to prevent loss of life, damage or destruction of the vessel and release of its contents into the marine environment.

³ 67B Am. Jur. 2d *Salvage* § 1 (2017).

⁴ 28 U.S.C. § 1333.

⁵ 67B Am. Jur. 2d *Salvage* § 58 (2017).

⁶ 67B Am. Jur. 2d *Salvage* § 61 (2017).

⁷ 28 U.S.C. § 1333; U.S. Const. art. III, § 2.

⁸ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.2, 3-4 (5th ed., The Florida Bar 2017).

authorizing the payment of a reasonable salvage may look to federal maritime law for the elements or definition of salvage in interpreting state salvage laws.⁹

Actions for common-law remedies can also be brought in state court. For instance, if parties have entered into a contract, which provides a means for measurement of a salvage award, the action can proceed as a contract claim in state court.¹⁰ State courts have also heard salvage claims based on an oral contract for salvage services, however, damages in these cases must be made on contract principles rather than on salvage principles or on state laws pertaining to the payment of salvage.¹¹

Salvage Claim

To have a valid salvage claim, the maritime property must be in peril. It is not necessary that the danger be actual or imminent. It is sufficient if there is a state of difficulty and reasonable apprehension of danger. Some courts add that the peril must be such that, without the salvor's assistance, the property would have been lost.¹²

A defense routinely used against a salvage claim is that the services rendered were for towing, not salvage. Towing services are rendered to expedite a vessel's voyage without reference to any circumstances of danger. Whether the service is one of towage or salvage, and when a towage operation becomes a salvage service, are questions of fact. When the elements of salvage are present, courts will treat the services rendered as salvage regardless of whether a contract is characterized as a towage contract or whether one of the parties refers to it as a towage service; the converse is also true.¹³

Salvage Award

Computation of salvage awards have traditionally considered the following factors:

- Labor and material costs expended by the salvor in rendering the salvage service;
- Promptitude, skill, and energy displayed by the salvor in rendering services and saving the property;
- Value of the property employed by the salvor in rendering the service, and the danger to which the property was exposed;
- Risk incurred by the salvor in securing the property from the impending peril;
- Post-casualty value of the property saved; and
- Degree of danger from which the property was rescued.¹⁴

In weighing these factors, a salvage award can vary greatly from a few hundred dollars to thousands of dollars. Salvage awards have also exceeded the value of the vessel. Additional factors created by the International Convention on Salvage, 1989, to which the United States is a party,¹⁵ include consideration for prevention or minimization of environmental damage and life salvage.¹⁶

⁹ 67B Am. Jur. 2d *Salvage* § 58 (2017).

¹⁰ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.2, 3-4 (5th ed., The Florida Bar 2017).

¹¹ 67B Am. Jur. 2d *Salvage* § 62 (2017).

¹² 67B Am. Jur. 2d *Salvage* § 6 (2017).

¹³ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.10, 10 (5th ed., The Florida Bar 2017); 67B Am. Jur. 2d *Salvage* § 4 (2017).

¹⁴ *The Blackwall*, 77 US. 1 (1869); John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.18, 17 (5th ed., The Florida Bar 2017).

¹⁵ United Nations, *International Convention on Salvage*, <https://treaties.un.org/doc/Publication/UNTS/Volume%201953/v1953.pdf>, (last visited Feb. 22, 2018).

¹⁶ *International Convention on Salvage, 1989*, <http://treaties.fco.gov.uk/docs/pdf/1996/TS0093.pdf> (last visited Feb. 22, 2018); International Maritime Organization, *International Convention on Salvage*.

<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Salvage.aspx>, (last visited Feb. 22, 2018).

The court will adjust a salvage award so that the salvor is fairly compensated without undue hardship to the vessel owner. Courts recognize that a generous award should be allowed when the salvaged property value justifies a high award; this is used to compensate salvors for services that are frequently performed when the property is so small that an adequate award cannot be given without hardship to the owner. The value of the salvaged property is usually determined by the fair market value. If the salvaged property is sold in a commercially reasonable manner, then the selling price is the fair market value. If the court determines that the proceeds of the sale would be inadequate to pay the salvor its full reward, the court may award the salvor title to the property, thereby saving the costs of sale.¹⁷

In addition, as in other maritime cases, the award of attorney fees is discretionary and may be awarded by the court or arbitrator for acts of bad faith, either in the salvage action itself or in litigation or arbitration of the dispute.¹⁸

Pure Salvage

Without an express contract defining the rights and duties of the parties, a pure salvage claim arises. The elements of a valid pure salvage claim include a maritime peril; a voluntary act by a salvor, who is under no preexisting official or contractual duty to the owner; and success in saving, or in helping to save, at least part of the property at risk. Some admiralty courts have also required the peril be such that the ship would not have been rescued without the salvor's assistance.¹⁹

Salvage Contracts

General contract law principles govern salvage contracts. A formal agreement of the parties will not prevent a court from reaching the merits of the transaction, but salvage contracts for a definite amount of compensation are generally enforced, absent a finding of fraud or duress.²⁰ A salvage contract may regulate the compensation paid to the salvor or require arbitration for determining salvage claims. The contract must be clear, definite, and explicit as to the amount of compensation.²¹

When the existence of a salvage contract is raised as a defense to a pure salvage claim, the burden is on the party attempting to escape the pure salvage law to prove that a contract exists.²²

Arbitration

The Federal Arbitration Act²³ and the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards²⁴ primarily govern arbitration under maritime law. Many salvage contracts include binding arbitration²⁵ as a means for resolving disputes as to a salvor's compensation. When there is an arbitration clause in a signed contract, the parties have presumptively agreed to arbitrate any disputes arising from the contract, including those disputes about the validity of the contract.²⁶

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 67B Am. Jur. 2d *Salvage* § 5 (2017); see, *Klein v. Unidentified Wrecked and abandoned Sailing Vessel*, 758 F.2d 1511 (11th Cir. 1985).

²⁰ 67B Am. Jur. 2d *Salvage* § 15 (2017).

²¹ 67B Am. Jur. 2d *Salvage* § 14 (2017).

²² 67B Am. Jur. 2d *Salvage* § 17 (2017).

²³ 9 U.S.C. §§ 1-16

²⁴ 21 U.S.T. 2517; 330 U.N.T.S. 38.

²⁵ See, The Society of Maritime Arbitrators, *U.S. Open Form Salvage Agreement*, <http://www.smany.org/salvage-rules-agreement-form.html>; Lloyd's Open Form, *Form*, <https://www.lloyds.com/the-market/tools-and-resources/lloyds-agency-department/salvage-arbitration-branch/lloyds-open-form-lof> (last visited Feb. 22, 2018).

²⁶ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.24, 25 (5th ed., The Florida Bar 2017).

Notice of Salvage Services

When a vessel is exposed to marine peril and no one is on board a salvor is not required to attempt to locate the owner or obtain permission before undertaking salvage services. On the other hand, a salvor must obtain permission before beginning salvage services when there are people on board the vessel and salvage services can be refused.²⁷ Currently, neither federal nor state law require salvors to notify customers of the potential costs involved in the salvage of their vessel.

Effect of Proposed Changes

CS/CS/CS/HB 469 creates s. 559.9602, F.S., relating to the salvage of pleasure vessels. The bill requires a salvor to provide written notice to a customer of the potential costs of salvage work before engaging in a salvage operation.

The bill applies to all salvors operating within waters of this state, as defined in s. 327.02(47), F.S., but excludes a person who:

- Performs salvage work while employed by a municipal, county, state, or federal government when carrying out the functions of that government;
- Engages solely in salvage work for pleasure vessels that are owned, maintained, and operated exclusively by such person and for that person's own use or for-hire pleasure vessels that are rented for periods of 30 days or less;
- Owns or operates a marina or shore-based repair facility and is in the business of repairing pleasure vessels, where the salvage work takes place exclusively at that person's facility;
- Is in the business of repairing pleasure vessels who performs the repair work at a landside or shore side location designated by the customer; or
- Is in the business of recovering, storing, or selling pleasure vessels on behalf of insurance companies that insure the vessels.

The bill defines:

- "Customer" to mean the owner of a pleasure vessel or the person who has been given the authority by the owner to authorize salvage work of the pleasure vessel.
- "Employee" to mean an individual who is employed full-time or part-time by a salvor and performs salvage work.
- "Pleasure vessel" to mean any watercraft no more than 60 feet in length that is used solely for personal pleasure, family use, or the transportation of executives, persons under the employment, and guests of the owner.
- "Salvage work" to mean any assistance, services, repairs, or other efforts rendered by a salvor relating to saving, preserving, or rescuing a pleasure vessel or its passengers and crew, which are in marine peril. Salvage work does not include towing a pleasure vessel.
- "Salvor" to mean a person in the business of voluntarily providing assistance, services, repairs, or other efforts relating to saving, preserving, or rescuing a pleasure vessel or the vessel's passengers and crew, which are in marine peril, in exchange for compensation.

The bill requires that if the customer is present on the pleasure vessel, before a salvor may engage in the salvage operation of a pleasure vessel, the salvor must provide the customer with written notice that the service offered is not covered by any towing contract. The bill requires that the written notice include the following statement, in capital letters of at least 12-point type, and be signed by the customer:

**THE SERVICE OFFERED BY THE SALVOR IS CONSIDERED SALVAGE
WORK AND IS NOT COVERED BY ANY TOWING SERVICE CONTRACT.
SALVAGE WORK ALLOWS THE SALVOR TO PRESENT YOU, OR YOUR**

²⁷ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.19, 19 (5th ed., The Florida Bar 2017).

INSURANCE COMPANY, WITH A BILL FOR THE CHARGES AT A LATER DATE. THE SALVOR SHALL CALCULATE THE CHARGES ACCORDING TO FEDERAL SALVAGE LAW AND SUCH CHARGES MAY EXCEED A CHARGE BASED ON A TIME AND MATERIALS CALCULATION. THE CHARGES COULD AMOUNT TO AS MUCH AS THE ENTIRE VALUE OF YOUR VESSEL, INCLUDING ITS GEAR AND EQUIPMENT.

IF YOU AGREE TO ALLOW THE SALVOR TO PERFORM THE OFFERED WORK WITHOUT AN AGREEMENT FOR A FIXED CHARGE FOR THE SALVAGE, YOUR ONLY RECOURSE TO CHALLENGE THE ASSESSED CHARGES IS BY A LAWSUIT IN FEDERAL COURT OR, IF YOU AND THE SALVOR AGREE IN WRITING, BY BINDING ARBITRATION.

YOU MAY AGREE TO A FIXED CHARGE FOR THE SALVAGE WITH THE SALVOR BEFORE WORK BEGINS, AND THE AGREED CHARGE SHALL BE DOCUMENTED ON THE U.S. OPEN FORM SALVAGE AGREEMENT OR OTHER SUCH SALVAGE CONTRACT SIGNED BY YOU AND THE SALVOR. YOU HAVE A RIGHT TO REJECT THE SALVOR'S OFFER OF SERVICES IF THE SALVOR WILL NOT AGREE TO A FIXED CHARGE BEFORE BEGINNING WORK.

CUSTOMER SIGNATURE:.....

DATE:.....

TIME:.....

The bill specifies that a salvor is not required to provide the written notice if there is an imminent threat of injury or death to any person on board the pleasure vessel. However, the bill does require the salvor to provide written notice when the threat subsides.

If a written notice is not provided before a salvage operation, the owner of a pleasure vessel may bring an action in the appropriate court of competent jurisdiction. An owner who prevails is entitled to damages equal to one and one-half times the amount paid or awarded to the salvor, plus court costs and reasonable attorney fees. The bill provides that these remedies are in addition to any other remedy provided by law.

B. SECTION DIRECTORY:

- Section 1.** Creates s. 559.9602, F.S., relating to the salvage of pleasure vessels.
- 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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on the private sector. The required notice may result in a positive fiscal impact to customers and salvors who agree upon an amount for salvage services, resulting in a reduction in legal disputes over the amount paid for services rendered. The bill may have a negative fiscal impact on salvors if providing the notice results in a reduction of customers seeking salvage services. The bill may have a positive fiscal impact on customers if by providing the required notice they choose other alternatives to cure their vessel situation.

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:

While federal courts have exclusive jurisdiction over salvage actions directly against property, state courts have concurrent jurisdiction in actions against a person.²⁸ State courts under concurrent jurisdiction must apply federal maritime law. Generally, state courts may apply state law to maritime actions so long as there is no conflict with federal law.²⁹ State courts applying state statutes authorizing the payment of a reasonable salvage may look to federal maritime law for the elements or definition of salvage in interpreting state salvage laws.³⁰

Actions for common-law remedies can also be brought in state court. For instance, if parties have entered into a contract, which provides a means for measurement of a salvage award, the action can proceed as a contract claim in state court.³¹ State courts have also heard salvage claims based on an oral contract for salvage services; however, damages in these cases must be made on contract principles rather than on salvage principles or on state laws pertaining to the payment of salvage.³²

A handful of courts have addressed the issue of state statutes awarding attorney's fees and punitive or treble damages in admiralty cases. With respect to attorney's fees, admiralty law follows the "American Rule" and generally does not permit an award of attorney's fees, unless authorized by contract or in the court's discretion where one party refuses to pay, in bad faith.³³ Similarly, federal

²⁸ 28 U.S.C. § 1333; U.S. Const. art. III, § 2.

²⁹ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.2, 3-4 (5th ed., The Florida Bar 2017).

³⁰ 67B Am. Jur. 2d *Salvage* § 58 (2017).

³¹ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.2, 3-4 (5th ed., The Florida Bar 2017).

³² 67B Am. Jur. 2d *Salvage* § 62 (2017).

³³ *Garan, Inc. v. M/V Aivik*, 907 F.Supp. 397, 400 (S.D. Fla. 1995) ("The Florida statute conflicts with the American Rule set forth in federal common law, as the Florida substantive rule impermissibly imposes an additional obligation on the parties in direct conflict with long-standing federal maritime law."); See also *Reliable Salvage and Towing, Inc. v. 35' Sea Ray*, 2011 WL 1058863 (M.D. Fla. 2011).

admiralty law preempts state statutes awarding treble or punitive damages where awarding such damages is inconsistent with substantive admiralty law principles.³⁴

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2017, the Natural Resources & Public Lands Subcommittee adopted two amendments and reported the bill favorable with committee substitute. The amendments:

- Directed the Division of Law Revision and Information to change the title of part XII of ch. 559, F.S., from "Miscellaneous Provisions" to "Internet Sales," and to create a new part XIII of ch. 559, F.S., consisting of ss. 559.9601-559.9608, F.S., to be entitled "Salvage of Pleasure Vessels;"
- Exempted any person who is in the business of recovering, storing, or selling pleasure vessels on behalf of insurance companies that insure the vessels from the Act;
- Clarified the definition of "pleasure vessel;" and
- Required a salvor to present a written disclosure statement to the customer if the salvage work exceeds \$500, the customer is present on the vessel, and there is no imminent threat of injury or death to any person.

On January 16, 2018, the Careers and Competition Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment makes the following changes:

- Redefined "customer" to mean the person to whom a salvor offers salvage work;
- Revised the disclosure provision to only require that, before a salvor may engage in the salvage operation of a pleasure vessel, the salvor shall provide the customer with verbal and written notice that the service offered is not covered by any towing contract;
- Substantially revised the content of the written notice;
- Removed all provisions relating to the salvage work estimate;
- Removed all provisions relating to the notification of charges in excess of the salvage estimate and to unlawful charges;
- Removed provisions relating to required signs posted on salvor vessels informing customers of the right to an estimate for services;
- Removed all provisions relating to unlawful acts and practices;
- Removed the provision directing the Division of Law Revision and Information to re-designate statutes; and
- Reduced the damages multiplier in the remedies provision, from "three times that" to "1.5 times that" charged by the salvor.

On February 13, 2018, the Government Accountability Committee adopted a strike-all amendment and reported the bill favorably with a committee substitute. The strike-all amendment:

- Provided that the bill applies to all salvors operating within waters of the state as defined in s. 327.02(47), F.S.;
- Defined "customer" to mean the owner of the pleasure vessel or the person who has been given the authority by the owner to authorize salvage work of the pleasure vessel;

2011) (Restating application of American Rule in admiralty cases, but permitting attorney's fees in admiralty dispute when one party's persistent refusal to pay was frivolous and in bad faith.).

³⁴ *Gefman v. Boat Owners Ass'n of the U.S.*, 2003 WL 2333312 (D.S.C. 2003) (South Carolina statute awarding treble damages and attorney fee's in admiralty action were inconsistent with federal maritime law.).

- Removed the requirement for the salvor to give verbal notice to a customer;
- Clarified that the written notice requirement of the bill applies when the customer is present on the pleasure vessel;
- Clarified the written notice by providing:
 - That if the customer agrees to allow the salvor to perform salvage work without an agreement for a fixed charge of the salvage, then the only recourse to challenge the charges is through a federal court action or, if agreed to in writing, to binding arbitration;
 - That if the customer and salvor agree to a fixed charge for the salvage before work begins, then the agreed upon charge must be documented on the U.S. Open Form Salvage Agreement or other such salvage contract and signed by the customer and salvor; and
 - A signature block for the customer;
- Required the salvor, when previously exempted from providing the written notice, to provide the written notice when there is no longer a threat of injury or death to any person on board the pleasure vessel;
- Clarified that a civil cause of action may be brought by an owner who has not received the required written notice from the salvor;
- Clarified that a prevailing owner is entitled to damages equal to 1.5 times the amount paid or awarded to the salvor; and
- Removed provisions relating to an award of actual damages and injunctive relief to a customer.

This analysis is drafted to the committee substitute as adopted by the Government Accountability Committee.

1 A bill to be entitled
 2 An act relating to the salvage of pleasure vessels;
 3 creating s. 559.9602, F.S.; providing scope and
 4 applicability; providing definitions; requiring
 5 salvors of pleasure vessels to provide specified
 6 written notice; providing an exception; providing
 7 remedies; specifying that such remedies are in
 8 addition to others provided by law; providing an
 9 effective date.

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

12
 13 Section 1. Section 559.9602, Florida Statutes, is created
 14 to read:

15 559.9602 Salvage of pleasure vessels.-

16 (1) This section applies to all salvors operating within
 17 the waters of this state, as defined in s. 327.02(47), except:

18 (a) Any person who performs salvage work while employed by
 19 a municipal, county, state, or federal government when carrying
 20 out the functions of that government.

21 (b) Any person who engages solely in salvage work for:

22 1. Pleasure vessels that are owned, maintained, and
 23 operated exclusively by such person and for that person's own
 24 use; or

25 2. For-hire pleasure vessels that are rented for periods
 26 of 30 days or less.

27 (c) Any person who owns or operates a marina or shore-
 28 based repair facility and is in the business of repairing
 29 pleasure vessels, where the salvage work takes place exclusively
 30 at that person's facility.

31 (d) Any person who is in the business of repairing
 32 pleasure vessels who performs the repair work at a landside or
 33 shoreside location designated by the customer.

34 (e) Any person who is in the business of recovering,
 35 storing, or selling pleasure vessels on behalf of insurance
 36 companies that insure the vessels.

37 (2) As used in this section, the term:

38 (a) "Customer" means the owner of the pleasure vessel or
 39 the person who has been given the authority by the owner to
 40 authorize salvage work of the pleasure vessel.

41 (b) "Employee" means an individual who is employed full
 42 time or part time by a salvor and performs salvage work.

43 (c) "Pleasure vessel" means any watercraft no more than 60
 44 feet in length which is used solely for personal pleasure,
 45 family use, or the transportation of executives, persons under
 46 the employment, and guests of the owner.

47 (d) "Salvage work" means any assistance, services,
 48 repairs, or other efforts rendered by a salvor relating to
 49 saving, preserving, or rescuing a pleasure vessel or its

50 passengers and crew which are in marine peril. Salvage work does
 51 not include towing a pleasure vessel.

52 (e) "Salvor" means a person in the business of voluntarily
 53 providing assistance, services, repairs, or other efforts
 54 relating to saving, preserving, or rescuing a pleasure vessel or
 55 the vessel's passengers and crew which are in marine peril, in
 56 exchange for compensation.

57 (3)(a) If the customer is present on the pleasure vessel,
 58 before a salvor may engage in the salvage operation of a
 59 pleasure vessel, the salvor shall provide the customer with
 60 written notice that the service offered is not covered by any
 61 towing contract. The written notice must include the following
 62 statement, in capital letters of at least 12-point type, and
 63 must be signed by the customer:

64
 65 THE SERVICE OFFERED BY THE SALVOR IS CONSIDERED SALVAGE
 66 WORK AND IS NOT COVERED BY ANY TOWING SERVICE CONTRACT. SALVAGE
 67 WORK ALLOWS THE SALVOR TO PRESENT YOU, OR YOUR INSURANCE
 68 COMPANY, WITH A BILL FOR THE CHARGES AT A LATER DATE. THE SALVOR
 69 SHALL CALCULATE THE CHARGES ACCORDING TO FEDERAL SALVAGE LAW AND
 70 SUCH CHARGES MAY EXCEED A CHARGE BASED ON A TIME AND MATERIALS
 71 CALCULATION. THE CHARGES COULD AMOUNT TO AS MUCH AS THE ENTIRE
 72 VALUE OF YOUR VESSEL, INCLUDING ITS GEAR AND EQUIPMENT.

73 IF YOU AGREE TO ALLOW THE SALVOR TO PERFORM THE OFFERED
 74 WORK WITHOUT AN AGREEMENT FOR A FIXED CHARGE FOR THE SALVAGE,

75 YOUR ONLY RECOURSE TO CHALLENGE THE ASSESSED CHARGES IS BY A
76 LAWSUIT IN FEDERAL COURT OR, IF YOU AND THE SALVOR AGREE IN
77 WRITING, BY BINDING ARBITRATION.

78 YOU MAY AGREE TO A FIXED CHARGE FOR THE SALVAGE WITH THE
79 SALVOR BEFORE WORK BEGINS, AND THE AGREED CHARGE SHALL BE
80 DOCUMENTED ON THE U.S. OPEN FORM SALVAGE AGREEMENT OR OTHER SUCH
81 SALVAGE CONTRACT SIGNED BY YOU AND THE SALVOR. YOU HAVE A RIGHT
82 TO REJECT THE SALVOR'S OFFER OF SERVICES IF THE SALVOR WILL NOT
83 AGREE TO A FIXED CHARGE BEFORE BEGINNING WORK.

84
85 CUSTOMER SIGNATURE:.....

86
87 DATE.....TIME:.....

88
89 (b) The salvor is relieved of providing the written notice
90 required by this subsection if there is an imminent threat of
91 injury or death to any person on board the pleasure vessel. The
92 salvor must provide the written notice required by this
93 subsection when there is no longer a threat of injury or death
94 to any person on board the pleasure vessel.

95 (4) (a) If a written notice is not provided before a
96 salvage operation as required by this section, the owner of a
97 pleasure vessel may bring an action in the appropriate court of
98 competent jurisdiction. An owner who prevails in such an action
99 is entitled to damages equal to 1.5 times the amount paid or

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

100 awarded to the salvor, plus court costs and reasonable attorney
101 fees.

102 (b) The remedies provided for in this subsection shall be
103 in addition to any other remedy provided by law.

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



Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

3
4 **Amendment**
5 Remove lines 41-42
6



Amendment No.2

COMMITTEE/SUBCOMMITTEE ACTION

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

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

3



4 **Amendment**

5 Remove line 93 and insert:

6 subsection when there is no longer an imminent threat of injury
 7 or death

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	10 Y, 0 N	Smith	Gusky
3) Judiciary Committee		Painter 	Poche 

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 in order to resolve the violation of probation.

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

Unserviced Arrest Warrants

When a defendant is sentenced to probation¹ or community control² at the resolution of a criminal case, a standard condition of probation is that the defendant live without violating any law.³ 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.⁴

Upon the filing of an affidavit alleging a violation of probation (VOP) and following the issuance of a warrant for such violation, a warrantless arrest, or a notice to appear, the period of supervision is tolled until the court enters a ruling on the VOP.⁵ The probation officer is permitted to continue to supervise any offender who remains available to the officer for supervision until the supervision expires or until the court revokes or terminates the supervision, whichever comes first.⁶

When an offender's VOP stems from the commission of a new violation of law, two criminal proceedings commence. The first is the proceeding involving the new offense that was committed, which is initiated in the county where the new law violation occurred. The second is the VOP proceeding, which is initiated in the county where a VOP arrest warrant is issued.⁷ A situation may occur in which a probationer has committed and been convicted of a new offense and sentenced to state prison, during which time, the VOP proceeding is still pending. The Department of Corrections estimates that, at any given time, approximately 20 state prisoners have unserved arrest warrants for VOP.⁸

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.⁹ 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.¹⁰

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.¹¹ "Generally, a defendant is not entitled to jail credit for time served until the arrest warrant is served."¹²

¹ 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."

² 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."

³ S. 948.03(1)(e), F.S.

⁴ "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.

⁵ S. 948.06(1)(f), F.S.

⁶ Id.

⁷ Pursuant to Fla. R. Crim. P. 3.121.

⁸ Email from Department of Corrections, January 9, 2018 (on file with Judiciary Committee).

⁹ S. 30.15(1)(b), F.S.

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

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

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

A prisoner is currently unable to resolve an outstanding VOP 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 VOP.¹³ A probationer is entitled to be heard on a VOP only after his or her arrest and return to the court that granted the probation.¹⁴ A prisoner will often serve the entirety of a prison sentence, and when it is time to be released, the prisoner will be transported to the issuing county to then be served on the arrest warrant for VOP that will start the process of trying to resolve that case.

Effect of Proposed Changes

HB 885 creates a process to resolve a prisoner's unserved arrest warrant for a probation violation while incarcerated for an unrelated offense committed in another county. 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 VOP 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 VOP 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 VOP cases. Resolution of the open warrant may also allow an inmate to participate in transitional and reintegration programs that may otherwise be unavailable to him or her due to the open warrant.¹⁵

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

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.

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

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

¹⁵ Department of Corrections, Agency analysis, pg. 2, February 6, 2018.

The bill would prevent the need for state custody detainees 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 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 VOP 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.¹⁶

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 exists. The increase in transportation expenses incurred 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

¹⁶ 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 February 20, 2018).

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

HB 885

2018

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.

PCS for
CS/CS/HB 1041

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/CS/HB 1041 Professional Regulation
SPONSOR(S): Judiciary Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Jones <i>(WJT)</i>	Poche <i>(M)</i>

SUMMARY ANALYSIS

PCS for CS/CS/HB 1041 amends current law relating to certain professions and business organizations regulated by the Department of Business and Professional Regulation (DBPR) by:

- Removing the requirement that yacht and ship brokers obtain a separate license for each branch office;
- Removing labor organizations and business agents from DBPR regulation, but generally retaining the standards of operation, as well as civil and criminal causes of action;
- Requiring DBPR and the Department of Health (DOH) to compile a list of crimes that have been used to deny licensure and a list of crimes that do not bar licensure and requires these departments to keep the lists on their websites;
- Eliminating the requirement that asbestos abatement contractors and consultants, architects, interior designers, landscape architects, and geologists obtain a separate certificate of authorization for their business entities;
- Transferring the duties and responsibilities of the Florida Engineers Management Corporation to DBPR;
- Clarifying the definition of and scope of practice for restricted barbers, nail specialists, facial specialists, full specialists, and hair braiders;
- Reducing the hours of training required to obtain barber, restricted barber, nail specialty, facial specialty, and full specialty licenses;
- Removing hair braiders, hair wrappers, body wrappers, nail polishers, makeup applicators, boxing announcers, and boxing timekeepers from DBPR regulation; and
- Revising current application procedures for certain professions, including barber, cosmetology, and certain construction contracting licenses under DBPR; and for certified nursing assistant and septic tank contractor licenses under DOH by:
 - Expressly permitting a person to apply for a license while under incarceration or supervision;
 - Generally limiting the period during which the agency may consider criminal history as an impairment to licensure; and
 - Requiring the licensing agency and the Department of Corrections to make accommodations for applicants incarcerated or under supervision to appear by telecommunication at a licensing hearing.

The PCS will have a significant fiscal impact on DBPR due to a reduction of license fee revenues. On March 15, 2017, DBPR estimated CS/CS/HB 1041 would reduce revenues of \$1,025,771 in FY 2017-18, \$1,600,317 in FY 2018-19, and \$1,025,684 in FY 2019-20. DOH and DOC have indicated that any increase in workload or expenditures as a result of provisions in CS/CS/HB 1041 could be absorbed within existing resources. The PCS does not appear to have a fiscal impact on local governments.

The PCS provides an effective date of July 1, 2018, except for certain sections which provide an effective date of October 1, 2018, or July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Business and Professional Regulation (DBPR)

DBPR, through various divisions, regulates and licenses businesses and professionals in Florida. The divisions established under DBPR include:

- The Division of Administration;
- The Division of Alcoholic Beverages and Tobacco;
- The Division of Certified Public Accounting;
- The Division of Drugs, Devices, and Cosmetics;
- The Division of Florida Condominiums, Timeshares, and Mobile Homes;
- The Division of Hotels and Restaurants;
- The Division of Pari-mutuel Wagering;
- The Division of Professions;
- The Division of Real Estate;
- The Division of Regulation;
- The Division of Technology; and
- The Division of Service Operations.¹

The Division of Professions (Professions) licenses and regulates more than 434,000 professionals through the following professional boards and programs:

- Board of Architecture and Interior Design,
- Asbestos Licensing Unit,
- Athlete Agents,
- Board of Auctioneers,
- Barbers' Board,
- Building Code Administrators and Inspectors Board,
- Regulatory Council of Community Association Managers,
- Construction Industry Licensing Board,
- Board of Cosmetology,
- Electrical Contractors' Licensing Board,
- Board of Employee Leasing Companies,
- Home Inspectors,
- Board of Landscape Architecture,
- Mold-Related Services,
- Board of Pilot Commissioners,
- Board of Professional Geologists.
- Talent Agencies,
- Board of Veterinary Medicine, and
- Florida Board of Professional Engineers.²

The Division of Regulation (Regulations) is the enforcement authority for Labor Organizations and Business Agents, the Florida State Boxing Commission, Farm Labor Program, Child Labor Program, and any professional boards and programs housed within Professions.³ To ensure compliance with

¹ S. 20.165, F.S.

² Florida Department of Business and Professional Regulation, *Division of Professions*, <http://www.myfloridalicense.com/dbpr/pro/index.html> (last visited Feb. 20, 2017).

³ Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers. Florida Department of Business and Professional Regulation, *Division of Regulation*, <http://www.myfloridalicense.com/dbpr/reg/index.html> (last visited Feb. 20, 2017).

applicable laws and rules by those professions and related businesses, Regulations investigates complaints, utilizes compliance mechanisms, and performs inspections.⁴

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.⁵ FCTMH has limited regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (jurisdiction limited to arbitration of election and recall disputes).⁶

DBPR imposes a \$5 unlicensed activity fee in addition to any initial license fee or renewal fee.⁷

Yacht and Ship Broker Branch Offices

Background

Chapter 326, F.S., governs the licensing and regulation of yacht and ship brokers, salespersons, and related business organizations. The Yacht and Ship Broker's Section, a unit of FCTMH, processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the yacht brokerage industry.

Each yacht and ship broker must maintain a principal place of business in this state and may establish branch offices. Each branch office must maintain a separate license.

Applicants for a branch office license or a biennial renewal pay a \$100 fee.⁸ There are no requirements of the branch office other than to obtain licensure and there are no inspection requirements.

As of October 2015, there were 73 yacht and ship broker branch office licenses in active status and on average 13 new initial licenses issued annually during the 2012- 2015 fiscal years. There were no disciplinary cases brought against any yacht or ship broker branch office licenses during the 2012-2015 fiscal years.⁹

Effect of Proposed Changes

The PCS amends s. 326.004(13), F.S., by removing the requirement for yacht and ship brokers to obtain a branch office license for each branch office. The PCS does not remove the requirement for a broker to be licensed or to maintain a principal place of business in Florida.

⁴ Florida Department of Business and Professional Regulation, *Division of Regulation*, <http://www.myfloridalicense.com/dbpr/reg/index.html> (last visited Feb. 20, 2017).

⁵ Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, <http://www.myfloridalicense.com/dbpr/lsc/index.html>, (last visited January 8, 2017).

⁶ Id.

⁷ S. 455.2281, F.S.

⁸ Rule 61B-60.002, F.A.C.

⁹ Department of Business and Professional Regulation, *Eliminating Duplicative and Excessive Regulation* (October, 2015) (on file with the Business & Professionals Subcommittee).

Labor Organizations

Background

Part I of ch. 447, F.S., governs the licensing and regulation of labor organizations, and related business agents in the state.¹⁰ The Labor Organizations Program is a program located under Regulations, which processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the labor organization industry.

A labor organization is defined as “[a]ny organization of employees or local or subdivision thereof, having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions, or grievances of any kind relating to employment and recognized as a unit of bargaining by one or more employers doing business in this state.”¹¹ Current law requires all labor organizations to register with DBPR and all business agents of labor organizations must obtain a license.

Business agents are defined as “[a]ny person, without regard to title, who shall, for a pecuniary or financial consideration, act or attempt to act for any labor organization in:

- the issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization; and
- soliciting or receiving from any employer any right or privilege for employees.”¹²

Applicants for a business agent license must pay a \$25 licensure fee. Labor organization applicants must pay an annual fee of \$1.

The National Labor Relations Board (NLRB) provides the same type of union oversight as DBPR and is active in Florida, maintaining offices in Tampa and Miami. The United States Department of Labor, Office of Labor Management Standards also registers unions at the federal level.¹³

As of October 2015, there were 309 labor organizations registered and on average 15 new initial registrations issued annually during the 2012- 2015 fiscal years. Additionally, there were 469 business agents licensed and on average 48 new initial licenses issued annually during the 2012- 2015 fiscal years. There were no disciplinary cases brought against any labor organizations or business agents during 2012- 2015 fiscal years.¹⁴

Effect of Proposed Changes

The PCS repeals certain provisions which require labor organizations and business agents to be licensed and regulated by DBPR. Specifically, the PCS repeals:

- S. 447.04, F.S., relating to licensure of business agents;
- S. 447.041, F.S., relating to hearings provided to licensees pursuant to ch. 120, F.S.;
- S. 447.045, F.S., relating to confidential information obtained by DBPR during an investigation;
- S. 447.06, F.S., relating to registration of labor organizations;
- S. 447.12, F.S., relating to fees for registration;
- S. 447.16, F.S., relating to renewal of business agent’s license renewal requirements.

Additionally, s. 447.02, F.S., removes the definition of “department,” and s. 447.09, F.S. removes disciplinary actions against a business agent regarding licensure.

¹⁰ This does not include certain public employee organizations, which are regulated by the Public Employees Relations Commission, an independent, quasi-judicial agency described in pt. II of ch. 447, F.S.

¹¹ S. 447.02(1), F.S.

¹² S. 447.02(2), F.S.

¹³ DBPR, Agency Analysis of 2017 Senate Bill 802, p. 4 (March 2, 2017)

¹⁴ Eliminating Duplicative and Excessive Regulation, supra note 9.

Asbestos Abatement Business Organization

Background

Chapter 469, F.S., governs the licensing and regulation of asbestos abatement. The Asbestos Licensing Unit is a program located under Professions. The program processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the asbestos abatement industry.

An asbestos consultant's license may be issued only to an applicant who holds a current, valid, active license as an architect, professional engineer, professional geologist, is a diplomat of the American Board of Industrial Hygiene, or has been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.

A person must be a licensed asbestos consultant in order to:

- conduct an asbestos survey;
- develop an operation and maintenance plan;
- monitor and evaluate asbestos abatement; and
- prepare asbestos abatement specifications.¹⁵

A person must be a licensed asbestos contractor in order to conduct asbestos abatement work.¹⁶

If an applicant for licensure as an asbestos abatement consultant or contractor seeks to engage in consulting or contracting as a business organization, the business organization must be licensed as an asbestos abatement business. Each licensed business organization must have a qualifying agent that is licensed under ch. 469, F.S. If the qualifying agent terminates his or her affiliation with the business organization and is the only qualifying agent for the business organization, another qualifying agent must qualify the business organization within 60 days after the termination, and may not engage in the practice of asbestos abatement until it is qualified.¹⁷

Applicants for an asbestos abatement business license pay an application fee of \$300, an initial licensure fee of \$250, and a biennial renewal fee of \$250 and there are no inspection requirements.¹⁸

As of October 2015, there were 239 asbestos abatement business licenses in active status and on average 12 new initial licenses issued annually during the 2012- 2015 fiscal years. There were no disciplinary cases brought against any asbestos business licenses during 2012- 2015 fiscal years.¹⁹

Effect of Proposed Changes

The PCS removes the requirement for asbestos abatement licensees to obtain a separate license for an asbestos abatement business organization. Instead, if an applicant wants to practice under a firm offering asbestos abatement services, the qualifying agent must apply and have the license issued in his or her name and the business organization name must be noted on the license. The qualifying agent must still be a licensee pursuant to ch. 469, F.S., and must prove he or she is qualified to supervise and financially responsible.

The PCS does not amend the responsibilities of licensees under ch. 469, F.S., or otherwise effect the obligations of asbestos abatement consultants or contractors.

¹⁵ S. 469.003, F.S.

¹⁶ S. 469.003(3), F.S.

¹⁷ S. 469.006, F.S.

¹⁸ Rule 61E1-3.001, F.A.C.

¹⁹ Eliminating Duplicative and Excessive Regulation, supra note 9.

Professional Engineers

Background

Chapter 471, F.S., governs the licensing and regulation of professional engineers. Professional engineering means:

[A]ny service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services.²⁰

The practice of engineering is regulated by the Florida Board of Professional Engineers (FBPE) under Professions.²¹ Unlike most DBPR professions, the administrative, investigative, and prosecutorial services for FBPE are not provided by DBPR.²² Per s. 471.038, F.S., DBPR contracts with Florida Engineers Management Corporation (FEMC), a non-profit corporation, to provide such services.²³

Some of the specific services FEMC performs on behalf of FBPE include:

- processing license applications, examinations, and renewals and collecting related fees;
- maintaining records and responding to public records requests;
- providing support staff services;
- scheduling, noticing, and planning FBPE meetings;
- receiving and investigating license complaints;
- preparing cases for presentation to a FBPE probable cause panel;
- drafting administrative complaints, citations, and notices of noncompliance and filing such documents with DBPR's agency clerk; and
- prosecuting complaints at disciplinary hearings and appellate cases.²⁴

FEMC does not determine probable cause, take final action on license applications or disciplinary cases, adopt administrative rules, perform lobbying activities, or issue emergency suspension or restriction orders; these activities are reserved for DBPR and FBPE.²⁵

Funding for FEMC services is provided through an appropriation allocated to the regulation of professional engineers from the Professional Regulation Trust Fund.²⁶ This appropriation for Fiscal Year 2016-2017 was \$2,170,875.00.²⁷ FEMC must reimburse DBPR for the costs of representation by

²⁰ S. 471.005(7), F.S.

²¹ S. 20.165(4)(a)11., F.S.

²² S. 471.038(3), F.S.

²³ Id.

²⁴ DBPR and FEMC, *Contract No.: 13-00008, Renewal Number 1 to Contract Between DBPR and FEMC*, pp. 2-5 (July 1, 2017), available at file:///C:/Users/Wright.Kelly/Downloads/Contract_2013-2018_DBPR-FEMC.pdf.

²⁵ Id. at 5-6; s. 471.038(4), F.S.

²⁶ S. 471.038(3)(j)3., F.S.

²⁷ Supra note 5, at 20.

board counsel, fees incurred for the Division of Administrative Hearings, and fees associated with the DBPR contract monitor.²⁸

FBPE and DBPR must certify annually that FEMC is complying with the terms of the contract in a manner consistent with the goals and purposes of FBPE and in the best interest of the state. This certification must be reported in the FBPE's meeting minutes. The contract must also provide for methods and mechanisms to resolve any situation in which the certification process determines noncompliance.²⁹

FEMC records are public records available for public inspection and copying, subject to the certain exceptions.³⁰ Other DBPR professions are subject to the same requirements and exceptions.³¹

The FEMC's board of directors is comprised of seven members. Five of the members are professional engineers appointed by FBPE, and two of the members are laypersons appointed by the Secretary of DBPR.³² The members select a president who also acts as the executive director for FBPE.³³ Members and employees for FEMC are not public employees.³⁴ FEMC must carry liability insurance to defend, indemnify, and hold harmless FEMC members, employees, DBPR, and DBPR employees against all claims arising from federal or state law.³⁵

FEMC must prepare an annual budget and a report on the status of the corporation.³⁶ The report on the status of the corporation must outline statistics concerning licensing and prosecution rates.³⁷ FEMC must also provide for an annual financial audit by an independent certified public accountant which must be submitted to FBPE, DBPR, and the Auditor General for review.³⁸

If FEMC is no longer approved to operate for FBPE, or if FBPE ceases to exist, moneys, records, data, and property held in trust by FEMC for the benefit of FBPE, revert to FBPE, or the state if FBPE ceases to exist. All records and data in a computerized database will be returned to DBPR in a form that is compatible with DBPR's computerized database.³⁹

In Fiscal Year 2016-2017, FEMC reported 148 licensure complaints, 121 of which were legally sufficient, and 29 of which had a finding of probable cause to proceed with prosecution.⁴⁰ There are currently 60,409 licensed professional engineers.⁴¹

Effect of Proposed Changes

The PCS repeals s. 471.038, F.S., on July 1, 2020. The administrative, investigative, and prosecutorial duties for FBPE would revert from FEMC to DBPR through a type two transfer.⁴² Moneys, records, data, and property held in trust by FEMC will revert to FBPE.

²⁸ S. 471.038(3)(j)6.-8., F.S.

²⁹ S. 471.038(3)(j)2., F.S.

³⁰ S. 471.038(7), F.S.; see also ss. 119.07(1), and 119.071, F.S.

³¹ See ss. 119.07(1), and 119.071, F.S.

³² S. 471.038(3)(f), F.S.

³³ S. 471.038(3)(h), F.S.

³⁴ S. 471.038(3), F.S.

³⁵ S. 471.038(3)(j)5., F.S.

³⁶ S. 471.038(3)(j)1., and (m), F.S.

³⁷ S. 471.038(m), F.S.

³⁸ S. 471.038(3)(k), F.S.

³⁹ S. 471.038(3)(j)4., F.S.

⁴⁰ FEMC, *2017 Annual Report*, p. 4 (Sept. 20, 2017), available at <https://fbpe.org/wp-content/uploads/2017/09/2016-17-FEMC-Annual-Report-FINAL.pdf>.

⁴¹ DBPR, *Annual Report 2016-2017 Fiscal Year*, p. 21 (2017), available at

<http://www.myfloridalicense.com/dbpr/os/documents/DivisionAnnualReport.pdf?x40199>

⁴² A type two transfer occurs where either an existing agency or department, program, activity, or function is merged into another agency or department; or identifiable units are removed from the existing agency or department or abolished, and the remaining part of the existing entity is merged into another agency or department. S. 20.06(2), F.S.

The PCS requires FEMC to develop a detailed plan for its termination and the return of all regulatory functions to DBPR. The plan must detail the process for, effect of, and financial impact of such transfer. The plan must be provided to the President of the Senate and the Speaker of the House on or before January 1, 2019.

Barbering

Background

Chapter 476, F.S., governs the licensing and regulation of barbers, restricted barbers, and barbershops in the state. The Barbers' Board is located under Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the barbering industry.

'Barbering' means any of the following practices when done for remuneration and for the public, but not when done for the treatment of disease or physical or mental ailments: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances."⁴³

A 'restricted barber' is a person who has a restricted license to practice barbering. The restricted license limits the licensee's practice to those specific areas in which the applicant has demonstrated competence pursuant to rules adopted by the board. An applicant may obtain a restricted license if he or she:

- has successfully completed an approved restricted barber course; or
- holds or has within the previous 5 years held an active valid license to practice barbering in another jurisdiction or has held a Florida barbering license which has been declared null and void for failure to renew the license, and the applicant fulfilled the requirements for initial licensure; and has not been disciplined relating to the practice of barbering in the previous 5 years; and
- passes a written examination on the laws and rules governing the practice of barbering in Florida.

Barbers and restricted barbers must complete 1,200⁴⁴ hours of training to be eligible for licensure, in addition to passing the applicable exam and paying a \$223.50 fee.⁴⁵

Effect of Proposed Changes

The PCS reduces and restricts the amount of training for barbers and restricted barbers from 1,200 to 600 for barbers and from 1,200 to 325 for restricted barbers. The type of training prescribed is limited to sanitation, safety, and laws and rules.

The PCS also clarifies the definition of 'restricted barber' as performing the following services for remuneration:

- hair cutting and styling, including the application of hair tonics and hair spray, but not including the application of other chemical preparations or solutions to the hair;
- full facial shaves;
- mustache and beard trimming; and
- shampooing hair, including the application of shampoos and conditioners and blow drying the hair.

⁴³ S. 476.034(2), F.S.

⁴⁴ Under certain circumstances, an applicant may take the exam after completing 1,000 hours of training. If he or she passes the exam, no more training is required. S. 476.114(c)2., F.S.

⁴⁵ Rule 61-35.006, F.A.C.

Cosmetology

Background

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair wrappers, hair braiders, nail specialists, facial specialists, full specialists, body wrappers, and related salons in the state. The Board of Cosmetology is under Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the cosmetology industry.

The term 'cosmetology' is defined as "the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services."⁴⁶ Becoming licensed as a cosmetologist requires 1,200 hours of training, which typically costs between \$5,000 and \$20,000.⁴⁷

Specialty Registrations

A 'specialist' is defined as any person holding a specialty registration in one or more of the cosmetology specialties. The term 'specialty' is defined as "the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive;
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet; and
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services."⁴⁸

A nail specialist may complete manicures and pedicures. A facial specialist may complete facials. A full specialist may complete manicures, pedicures, and facials.

To qualify for a specialist registration, the applicant must:

- be at least 16 years old;
- obtain a certificate of completion from an approved specialty education program, consisting of:
 - 240 hours of training for a nail specialty,
 - 260 hours of training for a facial specialty, and
 - 500 hours of training for a full specialty;⁴⁹ and
- submit an application for registration with DBPR with a \$63.50 registration fee.⁵⁰

Currently, a person who applies polish or paint to fingernails and toenails or makeup⁵¹ for compensation needs a cosmetology or specialty license. Texas currently allows makeup application for compensation without a license.⁵²

⁴⁶ S. 477.013, F.S.

⁴⁷ BeautySchools.com, *The Cost of Beauty School*, <https://beautyschools.com/the-cost-of-beauty-school/> (last visited March 3, 2017).

⁴⁸ S. 477.013, F.S.

⁴⁹ Ch. 61G5-22, F.A.C.

⁵⁰ S. 477.0201, F.S.

⁵¹ "Makeup" is generally defined as the application of certain cosmetic products such as lipstick, mascara, and foundation to color the face or body. It does not include the application of permanent makeup, which is considered cosmetic tattooing and requires licensure as a tattoo artist from the Florida Department of Health. Merriam-Webster, Inc., *Makeup*, <https://www.merriam-webster.com/dictionary/makeup> (last visited April 20, 2017); Rule 64E-28.002(20), F.A.C.

⁵² Tex. Occ. Code Ann § 1602.003(b)(3) (West 2015).

Hair Braiding, Hair Wrapping or Body Wrapping Registrations

Hair braiding, hair wrapping, and body wrapping are limited scope cosmetology registrations.⁵³

'Hair braiding' means the weaving or interweaving of natural human hair for compensation without cutting, coloring, permanent waving, relaxing, removing, or chemical treatment and does not include the use of hair extensions or wefts."

Persons whose occupation or practice is confined solely to hair braiding must:

- register with DBPR,
- pay the applicable \$25 registration fee, and
- take a two-day board-approved 16-hour course, consisting of 5 hours of HIV/AIDS and other communicable diseases, 5 hours of sanitation and sterilization, 4 hours of disorders and diseases of the scalp, and 2 hours of studies regarding laws affecting hair braiding.⁵⁴

'Hair wrapping' means the wrapping of manufactured materials around a strand or strands of human hair, for compensation, without cutting, coloring, permanent waving, relaxing, removing, weaving, chemically treating, braiding, using hair extensions, or performing any other service defined as cosmetology.

Persons whose occupation or practice is confined solely to hair wrapping must:

- register with DBPR,
- pay the applicable \$25 registration fee, and
- take a one-day board-approved 6-hour course, consisting of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the scalp, and studies regarding laws affecting hair wrapping.

'Body wrapping' means a treatment program that uses herbal wraps for the purposes of cleansing and beautifying the skin of the body, but does not include the application of oils, lotions, or other fluids to the body, except fluids contained in presoaked materials used in the wraps, or manipulation of the body's superficial tissue, other than that arising from compression emanating from the wrap materials.

A person whose occupation or practice is body wrapping must:

- register with DBPR,
- pay the applicable \$25 registration fee, and
- take a two-day board-approved 12-hour course, consisting of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the skin, and studies regarding laws affecting body wrapping.

Hair braiding, hair wrapping, and body wrapping are not required to be practiced in a cosmetology salon or specialty salon.

Continuing education is not required of hair braiders, hair wrappers, and body wrappers.⁵⁵

The Board of Cosmetology issued 28 disciplinary orders against licensed hair braiders, hair wrappers, and body wrappers during the 2012- 2015 fiscal years. These actions generally did not involve consumer injury, but were technical scope of practice violations (e.g. practicing with an expired license

⁵³ Described in ss. 477.013 and 477.0132, F.S.

⁵⁴ Courses for hair braiding, hair wrapping, and body wrapping generally cost between \$75 and \$250. Examples include: 1STOPCEU.com, *Home*, <http://www.floridahairbraider.com/> (last visited March 4, 2017); and JT's Beauty Shop, Inc., *Florida State Certified Courses (Theory)*, http://www.jtbeautysalon.com/certified_classes.html (last visited March 4, 2017).

⁵⁵ S. 477.019(7)(b), F.S.

or failing to timely renew the license). This constitutes a little over one percent of the 2,690 disciplinary orders issued by the Board of Cosmetology during these fiscal years.⁵⁶

Effect of Proposed Changes

The PCS clarifies which services can be performed by specialty registration holders, which are outlined as follows:

- Nail specialists can perform: manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive, pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet;
- Facial specialists can perform: facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services; and
- Full specialists can perform: manicuring, pedicuring, and facial services, including all services within the definition of nail specialty and facial specialty.

The PCS reduces the amount of training hours required for specialty registrations, which must focus primarily on sanitation and safety, from:

- 240 hours to 150 hours for nail specialists,
- 260 hours to 165 hours for facial specialists, and
- 500 hours to 300 hours for full specialists.

The PCS adds weaving or interweaving commercial hair, including the use of extensions or wefts, to the scope of 'hair braiding.'

The PCS removes all licensure and regulatory requirements for hair braiders, hair wrappers, body wrappers, nail polishers, and makeup applicators and makes conforming changes to cross-references.

Architecture and Interior Design Business Organizations

Present Situation

Chapter 481, pt. I, F.S., governs the licensing and regulation of architects, interior designers, and related business organizations. The Board of Architecture and Interior Design is a board located under Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the architecture and interior design industries.

An architecture business corporation, limited liability company, or partnership, which is offering architecture service to the public, must obtain a certificate of authorization prior to practicing.⁵⁷ One or more of the principal officers of the corporation or limited liability company, or one or more partners of the partnership, must be a licensed architect. Applicants for an architecture business certificate of authorization must pay an application fee of \$100, an unlicensed activity fee of \$5, and a biennial renewal fee of \$125.⁵⁸ There is no requirement on the business entity other than to obtain licensure and there are no inspection requirements.

Interior design businesses must also obtain a certificate of authorization. At least one principal officer or partner and all personnel who act on the business entity's behalf in the state must be registered interior designers. The initial license fee for a certificate of authorization is \$100 and the biennial renewal fee is \$125.⁵⁹

⁵⁶ Agency Analysis of 2017 Senate Bill 802, supra note 13, at 4-5.

⁵⁷ S. 481.219(2)-(3), F.S.

⁵⁸ Rules 61G1-17.001 and 61G1-17.002, F.A.C.

⁵⁹ Rule 61G1-17.002, F.A.C.

As of October 2015, there were 2,747 architecture business licenses and 1,047 interior design business licenses in active status and on average 203 new initial architecture business licenses and 98 interior design business licenses issued annually during the 2012- 2015 fiscal years.

There were 17 disciplinary cases brought against architecture business licenses during the 2012- 2015 fiscal years.⁶⁰ Typically, the disciplinary actions taken were for operating without a supervising architect and for failing to use a license number in advertisements. During the 2012-2015 fiscal years, the Board of Architecture and Interior Design disciplined licensed interior design business licenses only 4 times without also taking disciplinary action against the qualifying interior designer. In 3 of the 4 disciplinary cases, the business license was retained by the business after the qualifying interior designer had left the firm.⁶¹

Effect of Proposed Changes

The PCS removes the requirement that architects and interior designers obtain a separate business license (certificate of authorization) in addition to an individual license. The PCS provides that architects and interior designers qualify their business organizations with their individual licenses. The PCS provides that architects and interior designers must inform DBPR of any change in their relationship with the qualified business, and the business has 60 days to obtain a replacement qualifying architect or interior designer. The executive director or chair of the Board of Architecture and Interior Design may authorize another registered architect or interior designer employed by the business organization to temporarily service as its qualifying agent for no more than 60 days.

The PCS amends s. 481.219(2)(b), F.S., to provide that the Board of Architecture and Interior Design may deny an application to qualify a business organization if the applicant (or others identified in the application as partners, officers, directors, or stockholders who are also officers or directors) "has been involved in past disciplinary actions or on any grounds for which an individual registration or certification may be denied."

The PCS requires the qualifying agent to provide notice to DBPR when he or she begins to conduct business in his or her own name or with another business organization following the previous termination. The qualifying agent or the new business organization must submit the required application information.

The qualifying agent must ensure responsible supervising control of all projects of the business organization and upon termination of his or her employment with a business organization for which he or she qualifies, the agent must notify DBPR of the termination within 30 days.

Landscape Architecture Business Organization

Background

Chapter 481, pt. II, F.S., governs the licensing and regulation of landscape architects and related business organizations in the state. The Board of Landscape Architecture is a board located under the Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the landscape architecture industry.

A corporation or partnership is permitted to apply for a certificate of authorization if:

- One or more of the principles of the corporation, or partners in the partnership, is a licensed landscape architect;
- One or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect;

⁶⁰ Eliminating Duplicative and Excessive Regulation, supra note 9.

⁶¹ Agency Analysis of 2017 Senate Bill 802, supra note 13, at 5.

- The corporation or partnership has been issued a certificate of authorization by the board.⁶²

Applicants for a landscape architecture business certificate of authorization must pay an application fee and initial licensure fee of \$450.00 and a biennial renewal fee of \$337.50.⁶³ There is no requirement on the business entity other than to obtain licensure and there are no inspection requirements.

As of October 2015, there were 347 landscape architecture business licenses in active status and on average 31 new initial licenses issued annually during the 2012- 2015 fiscal years. There were no disciplinary cases brought against any landscape architecture business licenses during the 2012-2015 fiscal years.⁶⁴

Effect of Proposed Changes

The PCS repeals all provisions which require licensees to obtain a certificate of authorization to practice landscape architecture through a business organization. Instead, a licensed landscape architect must apply to qualify the business organization as a qualifying agent if he or she proposes to engage in the practice of landscape architecture as a business organization.

The PCS repeals DBPR's authority to issue a certificate of authorization to an applicant wishing to practice as a corporation, limited liability company, or partnership offering landscape architectural services. Furthermore, the PCS repeals the board's ability to grant a temporary certificate of authorization for a business organization that is seeking to work on one project in Florida for a period not to exceed a year to an out-of-state corporation, partnership, or firm.

The PCS provides that a corporation or partnership is permitted to offer landscape architectural services to the public if:

- one or more of the principles of the corporation, or partners in the partnership, is a licensed landscape architect; or
- one or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect.

The qualifying agent must provide notice to DBPR within one month of any change in the information contained in the license application.

The PCS removes disciplinary actions against certificates of authorization for business organizations. The PCS does not modify the liability of a landscape architect for his or her professional acts.

Geology Business Organization

Background

Chapter 492, F.S., governs the licensing and regulation of geologists and related business organizations. The Board of Professional Geologists is a board located under Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the geology industry.

⁶² S. 481.319(1), F.S.

⁶³ Rule 61G10-12.002, F.A.C.

⁶⁴ Eliminating Duplicative and Excessive Regulation, supra note 9.

An individual may not practice geology through a firm, corporation, or partnership offering geological services to the public unless the firm, corporation, or partnership has been issued a certificate of authorization.⁶⁵ A firm, corporation, or partnership is permitted to offer geological services to the public if:

- at all times, the entity has on file with DBPR the name and license number of one or more licensed geologists serving as a geologist with the entity;
- the entity has been issued a certification of authorization by DBPR;
- all final geological documents prepared or approved for the use of the entity shall be dated and signed and sealed by the licensed geologist;
- the entity is not relieved of personal liability due to the fact that a licensed geologist practices at the entity; and
- the entity files an application with DBPR.⁶⁶

Any change in the business operating relationship between the business organization and the qualifying geologist must be reported to DBPR within 30 days.

Applicants for a geology business certificate of authorization must pay an application fee of \$350.00 and a biennial renewal fee of \$350.⁶⁷ There is no requirement on the business entity other than to obtain licensure and there are no inspection requirements.

As of October 2015, there were 373 geology business licenses in active status and on average 27 new initial licenses issued annually during the 2012- 2015 fiscal years. There were no disciplinary cases brought against any geology business licenses during the 2012-2015 fiscal years.⁶⁸

Effect of Proposed Changes

The PCS repeals all provisions which require a certificate of authorization to practice geology through a business organization. Instead, a licensed geologist must apply to qualify the business organization as a qualifying agent if he or she proposes to engage in the practice of geology as a firm, corporation, or partnership.

The qualifying agent is required to update DBPR of any changes in the relationship between himself or herself and the business organization within 30 days.

The PCS repeals DBPR's authority to issue a certificate of authorization to an applicant wishing to practice as a firm, corporation, or partnership offering geological services.

Pugilistic Timekeepers and Announcers

Background

Chapter 548, F.S., governs the Florida State Boxing Commission, which is under Regulations. The function of the Commission is to license and regulate professional boxing, kickboxing, and mixed martial arts. The Commission ensures that all matches are conducted in accordance with provisions of state laws and rules. It also makes certain that health and safety requirements are met and that matches are competitive and physically safe for participants. The Commission designates employees to attend the matches, appoints match officials, and ensures the matches are held in a safe and fair manner.

A 'timekeeper' is an individual who is assigned the duties to maintain the time for each round during a pugilistic event.⁶⁹

⁶⁵ S. 492.111(2), F.S.

⁶⁶ S. 481.319(1), F.S.

⁶⁷ Rule 61G10-12.002, F.A.C.

⁶⁸ Eliminating Duplicative and Excessive Regulation, supra note 9.

An 'announcer' is an individual who has the authority to make all announcements, including the result of the event, during a pugilistic event.⁷⁰

In order to obtain a license, a timekeeper or announcer applicant must:

- be at least 18 years of age, and
- pay an application fee of \$50.

Currently, there are 5 licensed timekeepers and 2 licensed announcers.⁷¹

Effect of Proposed Changes

The PCS deletes all licensure and regulatory requirements for boxing announcers and boxing timekeepers and makes conforming changes to cross-references.

Licensing Applications, Procedures and Criminal History

Background

Section 112.011, F.S., outlines guidelines for considering criminal convictions during licensure determinations. Generally, a person may be denied a professional license, permit, or certification for prior conviction for a crime if the crime was a felony or first-degree misdemeanor that is directly related to the standards determined by the regulatory authority to be necessary and reasonably related to the protection of the public health, safety, and welfare for the specific occupation, trade, vocation, profession, or business for which the license, permit, or certificate is sought.⁷² Notwithstanding any law to the contrary, a state agency may not deny an application for a license, permit, certificate, or employment based solely on the applicant's lack of civil rights.⁷³

Specifically, for DBPR license applicants, DBPR or an applicable board may deny a license application for any person having been "convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession"⁷⁴ or for other reasons in the applicable practice act. There are no statutory provisions or rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of supervised release, nor are such individuals charged any additional fees.⁷⁵

Specifically, for Department of Health (DOH) licensed applicants, DOH or an applicable board may deny a license application for any person having been "convicted of or pled guilty or nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession regulated by this state"⁷⁶ or related to certain types of fraud,⁷⁷ or for other reasons in the applicable practice act. There are no statutory provisions or rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of supervised release.⁷⁸

⁶⁹ Rule 61K1-3.0001(19), F.A.C.

⁷⁰ Rule 61K1-3.0001(1), F.A.C.

⁷¹ Email from Andrew Forst, Legislative Coordinator, Florida Department of Business and Professional Regulation, RE: Timekeeper and Announcer license counts (March 3, 2017).

⁷² S. 112.011(1)(b), F.S.

⁷³ S. 112.011(1)(c), F.S.

⁷⁴ S. 455.227(1)(c), F.S.

⁷⁵ Florida Department of Business and Professional Regulation, Agency Analysis of 2018 Senate Bill 1114, p. 2 (Jan. 8, 2018).

⁷⁶ SS. 456.024(3)(c); 456.072(1)(c), (x), (ii), (II); and 456.072(2)(a), F.S.

⁷⁷ S. 456.0635, F.S.

⁷⁸ Florida Department of Health, Agency Analysis of 2018 House Bill 1041, p. 2 (Jan. 24, 2018).

Barbers

The practice act for barbers does not provide a specific basis for denial of a license application based on a person's criminal background. However, a person may be denied a license application as a barber for any violation of s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a licensee's profession.⁷⁹ Fingerprints are not required to be submitted to DBPR for a formal background check for barber license applicants.

For Fiscal Years 2011-12 through 2014-15, 18 out of 8,691 applicants for a barbering license were disqualified based on criminal history.⁸⁰

Cosmetologists and Specialists

The practice act for cosmetologists does not provide a specific basis for denial of a license application based on a person's criminal background. However, the board may deny a license or application for any violation of s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a licensee's profession.⁸¹ Fingerprints are not required to be submitted to DBPR for a formal background check for cosmetology license applicants.

For Fiscal Years 2011-12 through 2014-15, 18 out of 95,715 applicants for a cosmetology license were disqualified based on criminal history.⁸²

Construction Contracting Professionals

CILB and ECLB

The Construction Industry Licensing Board (CILB) within the DBPR is responsible for licensing and regulating the construction industry under pt. I of ch. 489, F.S.⁸³ The CILB is divided into two divisions with separate jurisdictions:

- Division I is comprised of the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II is comprised of the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.

A specialty contractor is one whose scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB. Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.⁸⁴

⁷⁹ See s. 455.227(1)(c), F.S.

⁸⁰ Department of Business and Professional Regulation, *Response to Senate Bill 146 Ex-Offender Report*, p. 40 (2015), (on file with the Careers and Competition Subcommittee).

⁸¹ See s. 477.029(1)(h), F.S.

⁸² DBPR, *supra* note 80, at 50.

⁸³ See s. 489.107, F.S.

⁸⁴ For example, specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tub, and decorative or interactive water displays. See Rule 61G4-15.032 (2016), F.A.C.

The Electrical Contractors' Licensing Board (ECLB) within the DBPR is responsible for licensing and regulating electrical contractors and alarm system contractors in this state under pt. II of Ch. 489, F.S.⁸⁵

The CILB and ECLB may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession's practice act.⁸⁶ Specifically, the CILB may deny a license application for any person having been convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of, or the ability to practice, a licensee's profession.⁸⁷

CILB and ECLB contractors must be of good moral character. In considering good moral character, DBPR may consider any matter, including criminal background, that has a substantial connection between the good moral character of the applicant and the professional responsibilities of such a contractor by clear and convincing evidence.⁸⁸

For Fiscal Years 2011-12 through 2014-15, 6 out of 7,575 applicants for an ECLB license, and 29 out of 22,934 applicants for a CILB license, were denied based on criminal history.⁸⁹

Septic Tank Contracting

Septic tank contracting is the practice of working with onsite sewage treatment and disposal systems.⁹⁰ Master septic tank contractors and septic tank contractors are regulated by the DOH under pt. III of ch. 489, F.S. Septic tank contractors must pass an examination and register with the DOH.⁹¹ A master septic tank contractor⁹² must have at least 3 years' experience as a registered septic tank contractor or a plumbing contractor certified under part I of ch. 489, F.S., who has provided septic tank contracting services for at least 3 years.

To be eligible for registration by the DOH, master septic tank contractors and septic tank contractors must be of good moral character. In considering good moral character, the DOH may consider any matter, including criminal background, that has a substantial connection between the good moral character of the applicant and the professional responsibilities of a registered contractor.⁹² This includes crimes which affect the profession of septic tank contracting.⁹³

Lookback Considerations for CILB, ECLB, and Septic Tank Contractors

The CILB must consider length of time since the commission of a crime and the rehabilitation of the applicant in denying or approving licensure.⁹⁴ The CILB may not deny licensure to an applicant based solely upon a felony conviction or the applicant's failure to provide proof of restoration of civil rights.⁹⁵ For licensing electrical or septic tank contractors, the ECLB or DOH, respectively, are not specifically required to consider the passage of time between the disqualifying criminal offense and the time of application before denying or granting a license or registration.

⁸⁵ S. 489.507, F.S.

⁸⁶ S. 455.227(2), F.S.

⁸⁷ SS. 489.129(1)(b) and 489.553(1)(d), F.S., providing the disciplinary grounds for construction contractors and electrical contractors, respectively.

⁸⁸ SS. 489.111(2)(b), (3)(a) and 489.513(1)(b), (c), F.S.

⁸⁹ DBPR, supra note 80, at 55. The numbers for CILB licenses include Div. I contractors who are not the subject of this bill, but the numbers in the report are inextricable.

⁹⁰ S. 489.551(4), F.S.

⁹¹ SS. 489.552 and 489.553, F.S.

⁹² S. 489.553(4)(a), F.S.

⁹³ Id.

⁹⁴ S. 489.115(6), F.S.

⁹⁵ Id.

DOH Certified Nursing Assistants

The Board of Nursing within DOH is responsible for licensing and regulating certified nursing assistants under pt. II of ch. 464, F.S.⁹⁶ In Fiscal Year 2015-2016, there were 146,495 active certified nursing assistants.⁹⁷

The “practice of a certified nursing assistant” means:

[P]roviding care and assisting persons with tasks relating to the activities of daily living. Such tasks are those associated with personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, residents’ or patients’ rights, documentation of nursing-assistant services, and other tasks that a certified nurse assistant may perform after training beyond that required for initial certification and upon validation of competence in that skill by a registered nurse.⁹⁸

To be certified, a person must have a high school diploma, or its equivalent; or be at least 18 years of age; and pass a nursing assistant competency examination. Alternatively, a person may be certified if they have been licensed in another state and not have been found to have committed abuse, neglect, or exploitation in that state.⁹⁹

Although the practice act for certified nursing assistants does not specifically reference a person’s criminal background, applicants for certification may be disqualified based on crimes related to the practice of certified nurse assisting.¹⁰⁰ Additionally, as with all health practitioner licenses, pursuant to s. 456.0635, F.S., CNA applicants will automatically be disqualified for felonies related to health care fraud or violent crimes under chs. 409, 817, and 893, F.S., or similar offenses in other jurisdictions, and certain federal offenses, until the sentence and any subsequent probation has ended and for a certain time frame afterward, ranging from 5 to 15 years.¹⁰¹

The applicant also must successfully pass a required background screening,¹⁰² either pursuant to s. 400.215, F.S., which requires the personnel of nursing homes and related healthcare facilities to pass a level 2 background screening, or pursuant to s. 408.809, F.S., which requires level 2 background screening for specified persons, including employees of medical facilities.¹⁰³ The background screening must be completed every five years following licensure, employment, or entering into contract in a capacity that requires background screening.¹⁰⁴ Both of these background screenings include checking for crimes related to various types of fraud, in addition to violent crimes.¹⁰⁵

Section 435.04, F.S., prohibits the licensure of any person based on 52 prohibited offenses listed in s. 435.04(2), F.S., which include violent crimes, property crimes, and sexual offenses.¹⁰⁶ A level 2 background screening is meant to ensure a person subject to the screening has not been arrested for, is not awaiting final disposition of, has not been found guilty of (regardless of adjudication), not entered

⁹⁶ See s. 489.107, F.S.

⁹⁷ See Florida Department of Health, Division of Medical Quality Assurance, *Annual Report & Long-range Plan, Fiscal Year 2016-2017*, at <http://mqawebteam.com/annualreports/1617/#1/z> (last visited February 12, 2018) at page 13.

⁹⁸ S. 464.201(5), F.S.

⁹⁹ S. 464.203, F.S.

¹⁰⁰ *Supra* note 76, and s. 464.204(1)(b), F.S.

¹⁰¹ S. 456.0635(2)(a), F.S.

¹⁰² S. 464.203(1), F.S.

¹⁰³ S. 408.809(1), F.S.

¹⁰⁴ S. 408.809(2), F.S.

¹⁰⁵ SS. 400.215 and 408.809(4)(a), F.S.

¹⁰⁶ See s. 435.04(2), F.S.

a plea of nolo contendere or guilty to, has not been adjudicated delinquent, and has not had a sealed or expunged record for, any of the listed offenses. Both CNA background screening procedures use ch. 435, F.S., as a guide.

A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies. Once the background screening is completed, and FDLE receives the information from the FBI, the criminal history information is transmitted to DOH. DOH then determines if the screening contains any disqualifying information for employment.¹⁰⁷

If a person is disqualified from employment due to failing the required background screening, the DOH may grant an exemption from disqualification for:

1. Felonies for which at least three years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
2. Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
3. Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
4. Findings of delinquency.¹⁰⁸

However, if the delinquency would be a felony if committed by an adult and the record has not been sealed or expunged, the exemption may not be granted until at least three years have elapsed since completion or lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying offense.¹⁰⁹

To be granted an exemption, a person must have paid any court-ordered amount for any fee, fine, fund, lien, civil judgment, application, costs of prosecution, trust, or restitution as part of the judgment and sentence for the disqualifying crime.¹¹⁰

However, DOH may not grant an exemption to an individual who is found guilty of, or who has entered a plea of nolo contendere or guilty to, regardless of adjudication, any felony covered by s. 435.03 or s. 435.04, F.S., solely by reason of any pardon, executive clemency, or restoration of civil rights.¹¹¹

An exemption may also not be granted to anyone who is a sexual predator, career offender, or sexual offender (unless not required to register as such).¹¹² The agency may not grant an exemption from disqualification to persons with a criminal history that includes other violent felonies, crimes against children, and sex-related crimes, such as felony domestic violence, luring or enticing a child, sexual battery, child pornography, and child abuse.¹¹³

¹⁰⁷ S. 435.04, F.S.

¹⁰⁸ S. 435.07(1)(a), F.S.

¹⁰⁹ Id.

¹¹⁰ S. 435.07(1)(b), F.S.

¹¹¹ S. 435.07(4)(a), F.S.

¹¹² S. 435.07(4)(b), F.S.

¹¹³ S. 435.07(4)(c), F.S.

Effect of Proposed Language - Licensing Applications, Procedures and Criminal History

The PCS requires the Barbers' Board, Board of Cosmetology, ECLB, and CILB (collectively "boards") to list on DBPR's website the crimes that if committed by an applicant, do not impair a person's qualifications for licensure and update it annually. Beginning October 1, 2018, the boards must compile a list of crimes that although reported by an applicant for licensure, were not used as a basis for denial in the past 2 years. The list must identify the crime reported and the date of conviction, plea, adjudication or the date of sentencing for each such license application.

The PCS requires DBPR to identify the crimes that do impair a person's qualifications for licensure. Starting October 1, 2018, and updated quarterly thereafter, the boards must compile a list of crimes that have been used as a basis for denial of a license in the past 2 years, which shall be made available on DBPR's website. For each crime listed, the board must identify the date of conviction, plea, adjudication, or date of sentencing. Such denials must be available to the public upon request.

The PCS also requires the Board of Nursing and DOH to perform the above procedures for CNAs and septic tank contractors.

The PCS revises current application procedures for specified professions or occupations regulated by DBPR and DOH. The PCS amends s. 455.213, F.S., dealing with the general licensing provisions of DBPR, s. 464.203, F.S., dealing with the certification requirements for CNAs, and s. 489.553, F.S., dealing with certification requirements for septic tank contractors.

The license application provisions in the PCS apply to the following professions and occupations:

- CNAs.
- Barbers.
- Cosmetologists and cosmetology specialists.
- Construction Professionals:
 - Electrical Contractors;
 - Alarm System Contractors;
 - Septic Tank Contractors;
 - Swimming pool and spa contractors;
 - Sheet metal contractors;
 - Roofing contractors;
 - Air-conditioning contractors;
 - Mechanical contractors;
 - Plumbing contractors;
 - Underground utility and excavation contractors;
 - Solar contractors;
 - Pollutant storage systems contractor; and
 - Other specialty contractors whose scope of work and responsibility is limited to a particular phase of construction, e.g. drywall, glazing, swimming pool excavation, etc.

The PCS:

- Expressly permits a person to apply for a license while under criminal confinement, incarceration or supervision.
- Limits the period during which the agency may consider criminal history as an impairment to licensure to a criminal conviction less than 5 years prior to application for barbers, cosmetologists, and certain contractors, or less than 7 years prior to application for CNAs but does not change license qualifications based on the applicant's moral character for CILB or ECLB applicants.
- Allows DOH to continue to consider an applicant's criminal history related to violent felonies, crimes against children, or sexual offenses identified in s. 435.04, F.S., or health care fraud-related crimes pursuant to s. 456.0635, F.S., even if the application is longer than 7 years from the date of the crime.

- Allows DBPR to continue to consider an applicant's criminal history related to certain violent felonies, crimes against children, burglary, or sexual offenses, listed in ss. 435.04 or 775.21(4)(a)1., F.S., even if the application is longer than 5 years from the date of the crime.
- Allows DBPR to continue to review applicants for contracting licenses for good moral character as provided in ss. 489.111((2)(b) and 489.511(1)(b)1., F.S.
- Requires the licensing agency to permit applicants who are incarcerated or under supervision to appear by teleconference or video conference at a meeting of a board or the agency for a hearing concerning the person's license application.
- Requires the Department of Corrections (DOC) to cooperate and coordinate with the board or department, as applicable, to facilitate the appearance of the license applicant at the hearing in person, by teleconference, or by video conference, as appropriate.

The PCS provides an effective date of July 1, 2018, except for bill sections 11, 12, 13, and 38, which provide an effective date of October 1, 2018.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 326.004, F.S., deleting requirement for yacht broker branch office licenses.
- Section 2:** Amends s. 447.02, F.S., conforming provisions.
- Section 3:** Repeals s. 447.04, F.S., relating to licensure requirements for business agents.
- Section 4:** Repeals s. 447.041, F.S., relating to hearings for labor organizations or business agents denied licensure.
- Section 5:** Repeals s. 447.045, F.S., relating to confidential application information.
- Section 6:** Repeals s. 447.06, F.S., relating to required registration of labor organizations.
- Section 7:** Amends s. 447.09, F.S., deleting certain actions relating to right of franchise of a member of a labor organization.
- Section 8:** Repeals s. 447.12, F.S., relating to fees.
- Section 9:** Repeals s. 447.16, F.S., relating to applicability.
- Section 10:** Amends s. 447.305, F.S., deleting provision requiring notification to DBPR.
- Section 11:** Amends s. 455.213, F.S., providing specific standards for certain DBPR professional licenses regarding an applicant's criminal background.
- Section 12:** Amends s. 464.203, F.S., providing specific standards for certified nursing assistant licenses regarding an applicant's criminal background.
- Section 13:** Amends s. 400.211, F.S., making a conforming change.
- Section 14:** Amends s. 469.006, F.S., revising licensure requirements for asbestos abatement business entities.
- Section 15:** Amends s. 469.009, F.S., conforming provisions.
- Section 16:** Creates an unnumbered section of Florida Statutes requiring the Florida Engineering Management Corporation to develop a plan for the repeal of s. 471.038, F.S.
- Section 17:** Amends s. 471.0035, F.S., relating to instructors in postsecondary educational institutions.
- Section 18:** Amends s. 471.005, F.S., relating to definitions.
- Section 19:** Amends s. 471.005, F.S., relating to definitions.
- Section 20:** Amends s. 471.011, F.S., relating to fees.
- Section 21:** Amends s. 471.015, F.S., relating to licensure.
- Section 22:** Amends s. 471.017, F.S., relating to renewal of license.
- Section 23:** Amends s. 471.021, F.S., relating to engineers and firms of other states.
- Section 24:** Amends s. 471.023, F.S., relating to certification of business organizations.
- Section 25:** Amends s. 471.033, F.S., relating to disciplinary proceedings.
- Section 26:** Repeals s. 471.038, F.S., relating to the Florida Engineers Management Corporation.
- Section 27:** Repeals s. 471.0385, F.S., relating to court action and effect.
- Section 28:** Creates an unnumbered section of Florida Statutes transferring all duties and responsibilities of the Florida Engineering Management Corporation to the Department of Business and Professional Regulation.
- Section 29:** Amends s. 476.034, F.S., defining 'restricted barber' and 'restricted barbering.'

- Section 30:** Amends s. 476.114, F.S., revising barber training requirements.
- Section 31:** Amends s. 476.144, F.S., requiring DBPR to license qualified restricted barbers.
- Section 32:** Amends s. 477.013, F.S., revising and providing definitions.
- Section 33:** Repeals s. 477.0132, F.S., relating to the registration of hair braiding, hair wrapping, and body wrapping.
- Section 34:** Amends s. 477.0135, F.S., exempting hair braiders, hair wrappers, body wrappers, nail polishers, and makeup applicators from licensure.
- Section 35:** Amends s. 477.019, F.S., conforming provisions.
- Section 36:** Amends s. 477.0201, F.S., providing requirements for specialty licenses.
- Section 37:** Amends s. 477.026, F.S., conforming provisions.
- Section 38:** Amends s. 477.0265, F.S., conforming provisions.
- Section 39:** Amends s. 477.029, F.S., conforming provisions.
- Section 40:** Amends s. 481.203, F.S., revising definitions for 'certificate of authorization' and 'business organization.'
- Section 41:** Amends s. 481.219, F.S., relating to provision relating to regulation of businesses related to interior design.
- Section 42:** Amends s. 481.221, F.S., conforming provisions.
- Section 43:** Amends s. 481.229, F.S., conforming provisions.
- Section 44:** Amends s. 481.303, F.S., deleting the definition of 'certificate of authorization.'
- Section 45:** Amends s. 481.311, F.S., conforming provisions.
- Section 46:** Amends s. 481.317, F.S., conforming provisions.
- Section 47:** Amends s. 481.319, F.S., deleting the requirement for a certificate of authorization and authorizing practice through a corporation or partnership.
- Section 48:** Amends s. 481.321, F.S., revising requirements for the display of a certificate number.
- Section 49:** Amends s. 481.329, F.S., conforming a cross-reference.
- Section 50:** Amends s. 287.055, F.S., conforming a provision.
- Section 51:** Amends s. 489.553, F.S., providing specific standards for septic tank contracting licenses regarding an applicant's criminal background.
- Section 52:** Amends s. 492.104, F.S., making conforming and technical changes.
- Section 53:** Amends s. 492.111, F.S., deleting the requirements for a certificate of authorization for a professional geologist.
- Section 54:** Amends s. 492.113, F.S., conforming provisions.
- Section 55:** Amends s. 492.115, F.S., conforming provisions.
- Section 56:** Amends s. 548.003, F.S., deleting the requirement for the Florida State Boxing Commission to adopt rules relating to a timekeeper.
- Section 57:** Amends s. 548.017, F.S., deleting the licensure requirement for timekeepers and announcers.
- Section 58:** Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Related to reduced licensure fees, DBPR's revenue is anticipated to be reduced by \$824,780 in Fiscal Year 2018-19, \$575,305 in Fiscal Year 2019-20 and \$937,855 in Fiscal Year 2020-21.¹¹⁴

2. Expenditures:

Related to reduced licensure fees for DBPR, the 8% service charge to general revenue is anticipated to be reduced by \$65,982 in Fiscal Year 2018-19, \$46,024 in Fiscal Year 2019-20 and \$75,028 in Fiscal Year 2020-21.¹¹⁵

¹¹⁴ DBPR Agency Analysis of 2018 House Bill 15, p. 6 (Oct. 10, 2018).

¹¹⁵ *Id.*

There is an insignificant negative fiscal impact on the DBPR, DOH, and DOC related to costs associated with providing new teleconferencing methods for licensure hearings. Additionally, DBPR and DOH will see a slight increase in workload and technology expenditures related to displaying the new crime listing requirements established in the PCS to their respective websites. DBPR, DOH, and DOC have indicated that any increase in workload and expenditures associated with rulemaking or technology modifications can be absorbed within existing resources.¹¹⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Labor organizations, pugilistic announcers, pugilistic timekeepers, hair braiders, hair wrappers, body wrappers, nail painters, and makeup artists will no longer need to pay costs associated with professional licensure.

Nail specialists, facial specialists, full specialists, barbers, and restricted barber applicants will require less training to obtain licensure, which may lead to a reduced training cost.

Asbestos abatement consultants and contractors, landscape architects, geologists, interior designers, and architects will no longer need to pay costs associated with retaining certificates of authorization for business organizations.

There may be an increase in applicants for barber, cosmetology, contracting, and CNA licenses with a criminal background who will be able to practice their chosen profession.

D. FISCAL COMMENTS:

As of June 30, 2016, the fund balance for the Board of Professional Geologists was negative.

The proposed elimination of the license fees for boards that have a deficit balance will result in the fund accounts closing with a negative balance. Funds with negative balances have borrowed from the other Board Funds during the years they have operated to address the negative balances.¹¹⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

¹¹⁶ DBPR, Agency Analysis of 2018 Senate Bill 1114, p. 6 (Jan. 8, 2018); DOH, Agency Analysis of 2018 House Bill 1041, p. 4 (Jan. 24, 2018); and, DOC, Agency Analysis of 2018 Senate Bill 1114, p. 5 (Jan. 30, 2018).

¹¹⁷ Supra note 13, at 9, 10.

B. RULE-MAKING AUTHORITY:

Application, forms, rules, and rule chapters will need to be updated related to the following licensure programs:

- Condominiums (Yacht and Ship Brokers) – Rules 61B-60.001, 61B-60.002, 61B-60.003, 61B-60.005, F.A.C.;
- Asbestos – Rule 61E1, F.A.C.;
- Barbers – Rule 61G3-16 and 15, F.A.C.;
- Cosmetology Specialties – Rules 61G5-31, 61-35.011, F.A.C.;
- Architecture and Interior Design – Rule 61G1, F.A.C.;
- Landscape Architects – Rules 61G10, 61-35.017, F.A.C.;
- Professional Geologists – Rule 61G16, F.A.C.;
- Labor Organizations – Rule 61E1-4.001; and
- Boxing Announcers and Timekeepers – Rules 61K1-3.002, 61K1-3.009, and 61K1-3.010, F.A.C.

DBPR and DOH will need to promulgate rules to reflect changes in how the criminal background of an applicant is considered.

Current rulemaking authority is sufficient.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2018, the Commerce Committee considered a proposed committee substitute, adopted one amendment to the proposed committee substitute, and reported the bill favorably as a committee substitute. The committee substitute:

- deregulated certain DBPR professions;
- removed the requirement that certain DBPR professionals have additional business licenses;
- reduced the hours of training required for certain DBPR licenses; and
- clarified which crimes that DBPR or DOH may consider without a time limitation during licensure for barbers, cosmetologists, certain construction contractors, and CNAs.

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

26 applicant's eligibility for certain licenses;
 27 prohibiting the conviction of a crime before a
 28 specified date from being grounds for the denial of
 29 certain licenses; defining the term "conviction";
 30 authorizing a person to apply for a license before his
 31 or her lawful release from confinement or supervision;
 32 prohibiting additional fees for an applicant confined
 33 or under supervision; prohibiting the board from
 34 basing a denial of a license application solely on the
 35 applicant's current confinement or supervision;
 36 authorizing the board to stay the issuance of an
 37 approved license under certain circumstances;
 38 requiring the board to verify an applicant's release
 39 with the Department of Corrections; providing
 40 requirements for the appearance of certain applicants
 41 at certain meetings; requiring the board to provide a
 42 list on its website specifying how certain crimes
 43 affect an applicant's eligibility for licensure;
 44 amending s. 464.203, F.S.; prohibiting the conviction
 45 of a crime before a specified date from being grounds
 46 for the denial of a certification under certain
 47 circumstances; prohibiting the conviction of a crime
 48 before a specified date from being grounds for the
 49 failure of a background screening; defining the term
 50 "conviction"; authorizing a person to apply for

51 certification before his or her lawful release from
 52 confinement or supervision; prohibiting additional
 53 fees for an applicant confined or under supervision;
 54 prohibiting the board from basing the denial of a
 55 certification solely on the applicant's current
 56 confinement or supervision; authorizing the board to
 57 stay the issuance of an approved certificate under
 58 certain circumstances; requiring the board to verify
 59 an applicant's release with the Department of
 60 Corrections; providing requirements for the appearance
 61 of certain applicants at certain meetings; requiring
 62 the board provide a list on its website specifying how
 63 certain crimes may affect an applicant's eligibility
 64 for certification; amending s. 400.211, F.S.;
 65 conforming a cross-reference; amending s. 469.006,
 66 F.S.; revising licensure requirements for asbestos
 67 abatement consulting or contracting as a partnership,
 68 corporation, business trust, or other legal entity;
 69 amending s. 469.009, F.S.; conforming provisions;
 70 requiring the Florida Engineering Management
 71 Corporation to develop a plan by a date certain for
 72 returning regulatory authority over engineers to the
 73 Department of Business and Professional Regulation;
 74 amending s. 471.0035, F.S.; conforming a cross-
 75 reference; amending s. 471.005, F.S.; repealing

76 definitions; conforming to other changes made by this
 77 act; amending ss. 471.011, 471.015, 471.017, 471.021,
 78 471.023, and 471.033, F.S.; conforming to other
 79 changes made by this act; repealing s. 471.038, F.S.;
 80 repealing the Florida Engineers Management Corporation
 81 Act; repealing s. 471.0385, F.S.; repealing statute
 82 detailing the effect of a court action finding the
 83 Florida Engineering Management Corporation
 84 unconstitutional or in violation of antitrust laws;
 85 providing for a type two transfer of the regulation of
 86 engineers from the Florida Engineers Management
 87 Corporation to the Department of Business and
 88 Professional Regulation; amending s. 476.034, F.S.;
 89 defining the terms "restricted barber" and "restricted
 90 barbering"; amending s. 476.114, F.S.; revising
 91 training requirements for licensure as a barber;
 92 providing requirements for licensure by examination as
 93 a restricted barber; amending s. 476.144, F.S.;
 94 requiring the department to license an applicant who
 95 the board certifies is qualified to practice
 96 restricted barbering; amending s. 477.013, F.S.;
 97 revising and providing definitions; repealing s.
 98 477.0132, F.S., relating to registration for hair
 99 braiding, hair wrapping, and body wrapping; amending
 100 s. 477.0135, F.S.; providing that licensure or

101 registration is not required for persons whose
 102 occupation or practice is confined solely to hair
 103 braiding, hair wrapping, body wrapping, nail
 104 polishing, and makeup application; amending s.
 105 477.019, F.S.; conforming provisions; amending s.
 106 477.0201, F.S.; providing requirements for
 107 registration as a nail specialist, facial specialist,
 108 or full specialist; amending ss. 477.026, 477.0265,
 109 and 477.029, F.S.; conforming provisions; amending s.
 110 481.203, F.S.; revising definitions; amending s.
 111 481.219, F.S.; revising the process by which a
 112 business organization obtains the requisite license to
 113 perform architectural services or interior design;
 114 requiring that a licensee or an applicant apply to
 115 qualify a business organization to practice
 116 architecture or interior design; providing application
 117 requirements; authorizing the Board of Architecture
 118 and Interior Design to deny an application under
 119 certain circumstances; providing notice requirements;
 120 prohibiting a business organization from engaging in
 121 certain practices until it is qualified by a
 122 qualifying agent; authorizing the executive director
 123 or the chair of the board to authorize a temporary
 124 qualifying agent for a specified timeframe under
 125 certain circumstances; requiring the board to allow an

126 applicant to qualify one or more business
 127 organizations or to operate using a fictitious name
 128 under certain circumstances; deleting a requirement
 129 for the administration of disciplinary action against
 130 a corporation, limited liability company, or
 131 partnership conforming provisions to changes made by
 132 the act; amending s. 481.221, F.S.; requiring a
 133 business organization to include the license number of
 134 a certain registered architect or interior designer in
 135 any advertising; providing an exception; conforming
 136 provisions to changes made by the act; amending s.
 137 481.229, F.S.; conforming provisions to changes made
 138 by the act; amending s. 481.303, F.S.; revising
 139 definitions; amending ss. 481.311 and 481.317, F.S.;
 140 conforming provisions; amending s. 481.319, F.S.;
 141 deleting the requirement for a certificate of
 142 authorization; authorizing landscape architects to
 143 practice through a corporation or partnership;
 144 amending s. 481.321, F.S.; revising requirements
 145 related to the display of a certificate number;
 146 amending s. 481.329, F.S.; conforming a cross-
 147 reference; amending s. 287.055, F.S.; conforming a
 148 provision; amending s. 489.553, F.S.; requiring the
 149 board to use a specified process for the review of an
 150 applicant's criminal record to determine the

151 applicant's eligibility for certain licenses;
 152 prohibiting the conviction of a crime before a
 153 specified date from being grounds for the denial of
 154 certain licenses; defining the term "conviction";
 155 authorizing a person to apply for a license before his
 156 or her lawful release from confinement or supervision;
 157 prohibiting additional fees for an applicant confined
 158 or under supervision; prohibiting the board from
 159 basing a denial of a license application solely on the
 160 applicant's current confinement or supervision;
 161 authorizing the board to stay the issuance of an
 162 approved license under certain circumstances;
 163 requiring the board to verify an applicant's release
 164 with the Department of Corrections; providing
 165 requirements for the appearance of certain applicants
 166 at certain meetings; requiring the board to provide a
 167 list on its website specifying how certain crimes
 168 affect an applicant's eligibility for licensure;
 169 amending s. 492.104, F.S.; making conforming and
 170 technical changes; amending s. 492.111, F.S.; deleting
 171 the requirements for a certificate of authorization
 172 for a professional geologist; amending ss. 492.113 and
 173 492.115, F.S.; conforming provisions; amending s.
 174 548.003, F.S.; deleting the requirement that the
 175 Florida State Boxing Commission adopt rules relating

176 to a knockdown timekeeper; amending s. 548.017, F.S.;

177 deleting the licensure requirement for a timekeeper or

178 announcer; providing effective dates.

179

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

181

182 Section 1. Subsection (13) of section 326.004, Florida

183 Statutes, is amended to read:

184 326.004 Licensing.—

185 (13) Each broker must maintain a principal place of

186 business in this state and may establish branch offices in the

187 state. ~~A separate license must be maintained for each branch~~

188 ~~office. The division shall establish by rule a fee not to exceed~~

189 ~~\$100 for each branch office license.~~

190 Section 2. Subsection (3) of section 447.02, Florida

191 Statutes, is amended to read:

192 447.02 Definitions.—The following terms, when used in this

193 chapter, shall have the meanings ascribed to them in this

194 section:

195 ~~(3) The term "department" means the Department of Business~~

196 ~~and Professional Regulation.~~

197 Section 3. Section 447.04, Florida Statutes, is repealed.

198 Section 4. Section 447.041, Florida Statutes, is repealed.

199 Section 5. Section 447.045, Florida Statutes, is repealed.

200 Section 6. Section 447.06, Florida Statutes, is repealed.

201 Section 7. Subsections (6) and (8) of section 447.09,
 202 Florida Statutes, are amended to read:

203 447.09 Right of franchise preserved; penalties.—It shall
 204 be unlawful for any person:

205 ~~(6) To act as a business agent without having obtained and~~
 206 ~~possessing a valid and subsisting license or permit.~~

207 ~~(8) To make any false statement in an application for a~~
 208 ~~license.~~

209 Section 8. Section 447.12, Florida Statutes, is repealed.

210 Section 9. Section 447.16, Florida Statutes, is repealed.

211 Section 10. Subsection (4) of section 447.305, Florida
 212 Statutes, is amended to read:

213 447.305 Registration of employee organization.—

214 ~~(4) Notification of registrations and renewals of~~
 215 ~~registration shall be furnished at regular intervals by the~~
 216 ~~commission to the Department of Business and Professional~~
 217 ~~Regulation.~~

218 Section 11. Effective October 1, 2018, subsections (3)
 219 through (12) of section 455.213, Florida Statutes, are
 220 renumbered as subsections (4) through (13), respectively,
 221 subsection (2) of that section is amended, and a new subsection
 222 (3) is added to that section, to read:

223 455.213 General licensing provisions.—

224 (2) Before the issuance of any license, the department may
 225 charge an initial license fee as determined by rule of the

226 applicable board or, if no such board exists, by rule of the
 227 department. Upon receipt of the appropriate license fee, except
 228 as provided in subsection (4) ~~(3)~~, the department shall issue a
 229 license to any person certified by the appropriate board, or its
 230 designee, or the department when there is no board, as having
 231 met the applicable requirements imposed by law or rule. However,
 232 an applicant who is not otherwise qualified for licensure is not
 233 entitled to licensure solely based on a passing score on a
 234 required examination. Upon a determination by the department
 235 that it erroneously issued a license, or upon the revocation of
 236 a license by the applicable board, or by the department when
 237 there is no board, the licensee must surrender his or her
 238 license to the department.

239 (3) (a) The applicable board shall use the process in this
 240 subsection for review of an applicant's criminal record to
 241 determine his or her eligibility for licensure as a:

- 242 1. Barber or restricted barber under chapter 476;
- 243 2. Cosmetologist or cosmetology specialist under chapter
 244 477; or
- 245 3. Any of the following construction professions under
 246 chapter 489:
 - 247 a. Air-conditioning contractor.
 - 248 b. Alarm system contractor.
 - 249 c. Electrical contractor.
 - 250 d. Mechanical contractor.

251 e. Plumbing contractor.
 252 f. Pollutant storage systems contractor.
 253 g. Roofing contractor.
 254 h. Sheet metal contractor.
 255 i. Solar contractor.
 256 j. Swimming pool and spa contractor.
 257 k. Underground utility and excavation contractor.
 258 l. Other specialty contractors.
 259 (b)1. The criminal history of an applicant for a license
 260 specified in paragraph (a) may not be used as grounds for denial
 261 of a license if the date of conviction, plea, or adjudication,
 262 or the date of sentencing, occurred more than 5 years before the
 263 date of application. This paragraph does not limit a board's
 264 ability to consider an applicant's criminal history that
 265 includes crimes listed in s. 435.04 or s. 775.21(4)(a)1.
 266 2. The applicable board may consider the complete criminal
 267 history of an applicant for a license under subparagraph (a)3.
 268 if such history relates to s. 489.111(2)(b) or s.
 269 489.511(1)(b)1.
 270 (c)1. A person may apply for a license before his or her
 271 lawful release from confinement or supervision. The department
 272 may not charge an applicant an additional fee for being confined
 273 or under supervision. The applicable board may not deny an
 274 application for a license solely on the basis of the applicant's
 275 current confinement or supervision.

276 2. After a license application is approved, the board may
 277 stay the issuance of a license until the applicant is lawfully
 278 released from confinement or supervision and the applicant
 279 notifies the board of such release. The applicable board must
 280 verify the applicant's release with the Department of
 281 Corrections before it issues a license.

282 3. If an applicant is unable to appear in person due to
 283 his or her confinement or supervision, the applicable board must
 284 permit the applicant to appear by teleconference or video
 285 conference, as appropriate, at any meeting of the board or other
 286 hearing by the department concerning his or her application.

287 4. If an applicant is confined or under supervision, the
 288 Department of Corrections and the applicable board shall
 289 cooperate and coordinate to facilitate the appearance of the
 290 applicant at a board meeting or department hearing in person, by
 291 teleconference, or by video conference, as appropriate.

292 (d) Each applicable board shall compile a list of crimes
 293 that, if committed and regardless of adjudication, do not relate
 294 to the practice of the profession or the ability to practice the
 295 profession and do not constitute grounds for denial of a
 296 license. This list shall be made available on the department's
 297 website and be updated annually. Beginning October 1, 2018, and
 298 updated quarterly thereafter, each applicable board shall add to
 299 this list such crimes that although reported by an applicant for
 300 licensure, were not used as a basis for denial in the past 2

301 years. The list must identify the crime reported and the date of
 302 conviction, plea, adjudication, or sentencing for each such
 303 license application.

304 (e) Each applicable board shall compile a list of crimes
 305 that have been used as a basis for denial of a license in the
 306 past 2 years, which shall be made available on the department's
 307 website. Beginning October 1, 2018, and updated quarterly
 308 thereafter, the applicable board shall add to this list each
 309 crime used as a basis for denial. For each crime listed, the
 310 board must identify the date of conviction, plea, adjudication,
 311 or sentencing. Such denials shall be available to the public
 312 upon request.

313 Section 12. Effective October 1, 2018, subsections (2)
 314 through (8) of section 464.203, Florida Statutes, are renumbered
 315 as subsections (3) through (9), respectively, and a new
 316 subsection (2) is added to that section, to read:

317 464.203 Certified nursing assistants; certification
 318 requirement.—

319 (2)(a)1. Except as provided in s. 435.04 and s. 456.0635,
 320 the criminal history of an applicant may not be used as grounds
 321 for denial of a certificate to practice as a certified nursing
 322 assistant if the date of conviction, plea, adjudication, or
 323 sentencing, is more than 7 years before the date of the
 324 application.

325 2. Except as provided in s. 435.04 and s. 456.0635, the

326 criminal history of an applicant may not be used as grounds for
 327 failure of a required background screening if the date of
 328 conviction, plea, adjudication, or sentencing, is more than 7
 329 years before the date of the application.

330 (b)1. A person may apply for a certificate to practice as
 331 a certified nursing assistant before his or her lawful release
 332 from confinement or supervision. The department may not charge
 333 an applicant an additional fee for being confined or for being
 334 under supervision. The board may not deny an application for a
 335 certificate solely on the basis of the person's current
 336 confinement or supervision.

337 2. After a certification application is approved, the
 338 board may stay the issuance of a certificate until the applicant
 339 notifies the board of his or her lawful release from confinement
 340 or supervision. The board must verify the applicant's release
 341 with the Department of Corrections before it issues a
 342 certificate.

343 3. If an applicant is unable to appear in person due to
 344 his or her confinement or supervision, the board must permit the
 345 applicant to appear by teleconference or video conference, as
 346 appropriate, at any meeting of the board or other hearing by the
 347 department concerning his or her application.

348 4. If an applicant is confined or under supervision, the
 349 Department of Corrections and the board shall cooperate and
 350 coordinate to facilitate the appearance of the applicant at a

351 board meeting or department hearing in person, by
 352 teleconference, or by video conference, as appropriate.

353 (c) The board shall compile a list of crimes that, if
 354 committed and regardless of adjudication, do not relate to the
 355 practice of the profession or the ability to practice the
 356 profession and do not constitute grounds for denial of a
 357 certificate. This list shall be made available on the
 358 department's website and be updated annually. Beginning October
 359 1, 2018, and updated quarterly thereafter, the board shall add
 360 to this list such crimes that although reported by an applicant
 361 for certification were not used as a basis for denial in the
 362 past 2 years. The list must identify the crime reported and the
 363 date of conviction, plea, adjudication or sentencing for each
 364 such certificate application.

365 (d) The board shall compile a list of crimes that have
 366 been used as a basis for denial of a certificate in the past 2
 367 years, which shall be made available on the department's
 368 website. Beginning October 1, 2018, and updated quarterly
 369 thereafter, the board shall add to this list each crime used as
 370 a basis for denial. For each crime listed the board must
 371 identify the date of conviction, plea, adjudication, or
 372 sentencing. Such denials shall be available to the public upon
 373 request.

374 Section 13. Effective October 1, 2018, subsection (4) of
 375 section 400.211, Florida Statutes, is amended to read:

376 400.211 Persons employed as nursing assistants;
 377 certification requirement.—

378 (4) When employed by a nursing home facility for a 12-
 379 month period or longer, a nursing assistant, to maintain
 380 certification, shall submit to a performance review every 12
 381 months and must receive regular inservice education based on the
 382 outcome of such reviews. The inservice training must meet all of
 383 the following requirements:

384 (a) Be sufficient to ensure the continuing competence of
 385 nursing assistants and must meet the standard specified in s.
 386 464.203(8). ~~s. 464.203(7);~~

387 (b) Include, at a minimum:

388 1. Techniques for assisting with eating and proper
 389 feeding;

390 2. Principles of adequate nutrition and hydration;

391 3. Techniques for assisting and responding to the
 392 cognitively impaired resident or the resident with difficult
 393 behaviors;

394 4. Techniques for caring for the resident at the end-of-
 395 life; and

396 5. Recognizing changes that place a resident at risk for
 397 pressure ulcers and falls. ~~;~~ ~~and~~

398 (c) Address areas of weakness as determined in nursing
 399 assistant performance reviews and may address the special needs
 400 of residents as determined by the nursing home facility staff.

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Costs associated with this training may not be reimbursed from additional Medicaid funding through interim rate adjustments.

Section 14. Paragraphs (a) and (e) of subsection (2), subsection (3), paragraph (b) of subsection (4), and subsection (6) of section 469.006, Florida Statutes, are amended to read:

469.006 Licensure of business organizations; qualifying agents.—

(2)(a) If the applicant proposes to engage in consulting or contracting as a partnership, corporation, business trust, or other legal entity, or in any name other than the applicant's legal name, ~~the legal entity must apply for licensure through a qualifying agent or the~~ individual applicant must apply for licensure under the ~~fictitious~~ name of the business organization.

(e) ~~A~~ The license, ~~when issued upon application of a business organization,~~ must be in the name of the qualifying agent business organization, and the name of the business organization ~~qualifying agent~~ must be noted on the license ~~thereon.~~ If there is a change in any information that is required to be stated on the application, the qualifying agent business organization shall, within 45 days after such change occurs, mail the correct information to the department.

(3) The qualifying agent must ~~shall~~ be licensed under this chapter in order for the business organization to be qualified

426 ~~licensed~~ in the category of the business conducted for which the
 427 qualifying agent is licensed. If any qualifying agent ceases to
 428 be affiliated with such business organization, the agent shall
 429 so inform the department. In addition, if such qualifying agent
 430 is the only licensed individual affiliated with the business
 431 organization, the business organization shall notify the
 432 department of the termination of the qualifying agent and has
 433 ~~shall have~~ 60 days after ~~from~~ the date of termination of the
 434 qualifying agent's affiliation with the business organization ~~in~~
 435 ~~which~~ to employ another qualifying agent. The business
 436 organization may not engage in consulting or contracting until a
 437 qualifying agent is employed, unless the department has granted
 438 a temporary nonrenewable license to the financially responsible
 439 officer, the president, the sole proprietor, a partner, or, in
 440 the case of a limited partnership, the general partner, who
 441 assumes all responsibilities of a primary qualifying agent for
 442 the entity. This temporary license only allows ~~shall only allow~~
 443 the entity to proceed with incomplete contracts.

444 (4)

445 (b) Upon a favorable determination by the department,
 446 after investigation of the financial responsibility, credit, and
 447 business reputation of the qualifying agent and the new business
 448 organization, the department shall issue, without any
 449 examination, a new license in the qualifying agent's business
 450 ~~organization's~~ name, and the name of the business organization

451 ~~qualifying agent~~ shall be noted thereon.

452 (6) Each qualifying agent shall pay the department an

453 amount equal to the original fee for licensure ~~of a new business~~

454 ~~organization~~, if the qualifying agent for a business

455 organization desires to qualify additional business

456 organizations. 7 The department shall require the agent to

457 present evidence of supervisory ability and financial

458 responsibility of each such organization. Allowing a licensee to

459 qualify more than one business organization must ~~shall~~ be

460 conditioned upon the licensee showing that the licensee has both

461 the capacity and intent to adequately supervise each business

462 organization. The department may ~~shall~~ not limit the number of

463 business organizations that ~~which~~ the licensee may qualify

464 except upon the licensee's failure to provide such information

465 as is required under this subsection or upon a finding that the

466 ~~such~~ information or evidence ~~as is~~ supplied is incomplete or

467 unpersuasive in showing the licensee's capacity and intent to

468 comply with the requirements of this subsection. A qualification

469 for an additional business organization may be revoked or

470 suspended upon a finding by the department that the licensee has

471 failed in the licensee's responsibility to adequately supervise

472 the operations of the business organization. Failure to

473 adequately supervise the operations of a business organization

474 is ~~shall be~~ grounds for denial to qualify additional business

475 organizations.

476 Section 15. Subsection (1) of section 469.009, Florida
 477 Statutes, is amended to read:

478 469.009 License revocation, suspension, and denial of
 479 issuance or renewal.-

480 (1) The department may revoke, suspend, or deny the
 481 issuance or renewal of a license; reprimand, censure, or place
 482 on probation any contractor, consultant, or financially
 483 responsible officer, ~~or business organization~~; require financial
 484 restitution to a consumer; impose an administrative fine not to
 485 exceed \$5,000 per violation; require continuing education; or
 486 assess costs associated with any investigation and prosecution
 487 if the contractor or consultant, or business organization or
 488 officer or agent thereof, is found guilty of any of the
 489 following acts:

490 (a) Willfully or deliberately disregarding or violating
 491 the health and safety standards of the Occupational Safety and
 492 Health Act of 1970, the Construction Safety Act, the National
 493 Emission Standards for Asbestos, the Environmental Protection
 494 Agency Asbestos Abatement Projects Worker Protection Rule, the
 495 Florida Statutes or rules promulgated thereunder, or any
 496 ordinance enacted by a political subdivision of this state.

497 (b) Violating any provision of chapter 455.

498 (c) Failing in any material respect to comply with the
 499 provisions of this chapter or any rule promulgated hereunder.

500 (d) Acting in the capacity of an asbestos contractor or

501 asbestos consultant under any license issued under this chapter
 502 except in the name of the licensee as set forth on the issued
 503 license.

504 (e) Proceeding on any job without obtaining all applicable
 505 approvals, authorizations, permits, and inspections.

506 (f) Obtaining a license by fraud or misrepresentation.

507 (g) Being convicted or found guilty of, or entering a plea
 508 of nolo contendere to, regardless of adjudication, a crime in
 509 any jurisdiction which directly relates to the practice of
 510 asbestos consulting or contracting or the ability to practice
 511 asbestos consulting or contracting.

512 (h) Knowingly violating any building code, lifesafety
 513 code, or county or municipal ordinance relating to the practice
 514 of asbestos consulting or contracting.

515 (i) Performing any act which assists a person or entity in
 516 engaging in the prohibited unlicensed practice of asbestos
 517 consulting or contracting, if the licensee knows or has
 518 reasonable grounds to know that the person or entity was
 519 unlicensed.

520 (j) Committing mismanagement or misconduct in the practice
 521 of contracting that causes financial harm to a customer.

522 Financial mismanagement or misconduct occurs when:

- 523 1. Valid liens have been recorded against the property of
 524 a contractor's customer for supplies or services ordered by the
 525 contractor for the customer's job; the contractor has received

526 funds from the customer to pay for the supplies or services; and
 527 the contractor has not had the liens removed from the property,
 528 by payment or by bond, within 75 days after the date of such
 529 liens;

530 2. The contractor has abandoned a customer's job and the
 531 percentage of completion is less than the percentage of the
 532 total contract price paid to the contractor as of the time of
 533 abandonment, unless the contractor is entitled to retain such
 534 funds under the terms of the contract or refunds the excess
 535 funds within 30 days after the date the job is abandoned; or

536 3. The contractor's job has been completed, and it is
 537 shown that the customer has had to pay more for the contracted
 538 job than the original contract price, as adjusted for subsequent
 539 change orders, unless such increase in cost was the result of
 540 circumstances beyond the control of the contractor, was the
 541 result of circumstances caused by the customer, or was otherwise
 542 permitted by the terms of the contract between the contractor
 543 and the customer.

544 (k) Being disciplined by any municipality or county for an
 545 act or violation of this chapter.

546 (l) Failing in any material respect to comply with the
 547 provisions of this chapter, or violating a rule or lawful order
 548 of the department.

549 (m) Abandoning an asbestos abatement project in which the
 550 asbestos contractor is engaged or under contract as a

551 contractor. A project may be presumed abandoned after 20 days if
 552 the contractor terminates the project without just cause and
 553 without proper notification to the owner, including the reason
 554 for termination; if the contractor fails to reasonably secure
 555 the project to safeguard the public while work is stopped; or if
 556 the contractor fails to perform work without just cause for 20
 557 days.

558 (n) Signing a statement with respect to a project or
 559 contract falsely indicating that the work is bonded; falsely
 560 indicating that payment has been made for all subcontracted
 561 work, labor, and materials which results in a financial loss to
 562 the owner, purchaser, or contractor; or falsely indicating that
 563 workers' compensation and public liability insurance are
 564 provided.

565 (o) Committing fraud or deceit in the practice of asbestos
 566 consulting or contracting.

567 (p) Committing incompetency or misconduct in the practice
 568 of asbestos consulting or contracting.

569 (q) Committing gross negligence, repeated negligence, or
 570 negligence resulting in a significant danger to life or property
 571 in the practice of asbestos consulting or contracting.

572 (r) Intimidating, threatening, coercing, or otherwise
 573 discouraging the service of a notice to owner under part I of
 574 chapter 713 or a notice to contractor under chapter 255 or part
 575 I of chapter 713.

576 (s) Failing to satisfy, within a reasonable time, the
 577 terms of a civil judgment obtained against the licensee, or the
 578 business organization qualified by the licensee, relating to the
 579 practice of the licensee's profession.

580

581 For the purposes of this subsection, construction is considered
 582 to be commenced when the contract is executed and the contractor
 583 has accepted funds from the customer or lender.

584 Section 16. The Florida Engineering Management Corporation
 585 shall develop a detailed plan for the repeal of s. 471.038,
 586 F.S., the termination of the Florida Engineering Management
 587 Corporation, and the return of all regulatory functions to the
 588 Department of Business and Professional Regulation. The plan
 589 shall address the specific process for and effect of
 590 transferring the administrative, investigative, and
 591 prosecutorial services for the Board of Professional Engineers
 592 from the Florida Engineering Management Corporation to the
 593 Department of Business and Professional Regulation, including an
 594 outline of the financial impact of such transfer. The plan shall
 595 be submitted to the President of the Senate and the Speaker of
 596 the House on or before January 1, 2019.

597 Section 17. Effective July 1, 2020, section 471.0035,
 598 Florida Statutes, is amended to read:

599 471.0035 Instructors in postsecondary educational
 600 institutions; exemption from licensure requirement.—For the sole

601 purpose of teaching the principles and methods of engineering
 602 design, notwithstanding the provisions of s. 471.005(6)
 603 ~~471.005(7)~~, a person employed by a public postsecondary
 604 educational institution, or by an independent postsecondary
 605 educational institution licensed or exempt from licensure
 606 pursuant to the provisions of chapter 1005, is not required to
 607 be licensed under the provisions of this chapter as a
 608 professional engineer.

609 Section 18. Effective July 1, 2020, subsections (2) and
 610 (9) of section 471.005, Florida Statutes, are repealed.

611 Section 19. Effective July 1, 2020, subsection (3) of
 612 section 471.005, Florida Statutes, is amended to read:

613 471.005 Definitions.—As used in this chapter, the term:

614 (3) "Certificate of authorization" means a license to
 615 practice engineering issued by the board ~~management corporation~~
 616 to a corporation or partnership.

617 Section 20. Effective July 1, 2020, subsection (2) of
 618 section 471.011, Florida Statutes, is amended to read:

619 471.011 Fees.—

620 (2) The initial application and examination fee shall not
 621 exceed \$125 plus the actual per applicant cost to the department
 622 ~~management corporation~~ to purchase the examination from the
 623 National Council of Examiners for Engineering and Surveying or a
 624 similar national organization. The examination fee shall be in
 625 an amount which covers the cost of obtaining and administering

626 the examination and shall be refunded if the applicant is found
 627 ineligible to sit for the examination. The application fee shall
 628 be nonrefundable.

629 Section 21. Effective July 1, 2020, subsections (1) and
 630 (4) of section 471.015, Florida Statutes, are amended to read:

631 471.015 Licensure.—

632 (1) The board ~~management corporation~~ shall issue a license
 633 to any applicant who the board certifies is qualified to
 634 practice engineering and who has passed the fundamentals
 635 examination and the principles and practice examination.

636 (4) The board ~~management corporation~~ shall not issue a
 637 license by endorsement to any applicant who is under
 638 investigation in another state for any act that would constitute
 639 a violation of this chapter or of chapter 455 until such time as
 640 the investigation is complete and disciplinary proceedings have
 641 been terminated.

642 Section 22. Effective July 1, 2020, subsection (1) of
 643 section 471.017, Florida Statutes, is amended to read:

644 471.017 Renewal of license.—

645 (1) The board ~~management corporation~~ shall renew a license
 646 upon receipt of the renewal application and fee.

647 Section 23. Effective July 1, 2020, subsections (1) and
 648 (2) of section 471.021, Florida Statutes, are amended to read:

649 471.021 Engineers and firms of other states; temporary
 650 certificates to practice in Florida.—

651 (1) Upon approval of the board and payment of the fee set
 652 in s. 471.011, the board ~~management corporation~~ shall issue a
 653 temporary license for work on one specified project in this
 654 state for a period not to exceed 1 year to an engineer holding a
 655 certificate to practice in another state, provided Florida
 656 licensees are similarly permitted to engage in work in such
 657 state and provided that the engineer be qualified for licensure
 658 by endorsement.

659 (2) Upon approval by the board and payment of the fee set
 660 in s. 471.011, the board ~~management corporation~~ shall issue a
 661 temporary certificate of authorization for work on one specified
 662 project in this state for a period not to exceed 1 year to an
 663 out-of-state corporation, partnership, or firm, provided one of
 664 the principal officers of the corporation, one of the partners
 665 of the partnership, or one of the principals in the fictitiously
 666 named firm has obtained a temporary license in accordance with
 667 subsection (1).

668 Section 24. Effective July 1, 2020, subsection (1) of
 669 section 471.023, Florida Statutes, is amended to read:

670 471.023 Certification of business organizations.—

671 (1) The practice of, or the offer to practice, engineering
 672 by licensees or offering engineering services to the public
 673 through a business organization, including a partnership,
 674 corporation, business trust, or other legal entity or by a
 675 business organization, including a corporation, partnership,

676 business trust, or other legal entity offering such services to
 677 the public through licensees under this chapter as agents,
 678 employees, officers, or partners is permitted only if the
 679 business organization possesses a certification issued by the
 680 board ~~management corporation~~ pursuant to qualification by the
 681 board, subject to the provisions of this chapter. One or more of
 682 the principal officers of the business organization or one or
 683 more partners of the partnership and all personnel of the
 684 business organization who act in its behalf as engineers in this
 685 state shall be licensed as provided by this chapter. All final
 686 drawings, specifications, plans, reports, or documents involving
 687 practices licensed under this chapter which are prepared or
 688 approved for the use of the business organization or for public
 689 record within the state shall be dated and shall bear the
 690 signature and seal of the licensee who prepared or approved
 691 them. Nothing in this section shall be construed to mean that a
 692 license to practice engineering shall be held by a business
 693 organization. Nothing herein prohibits business organizations
 694 from joining together to offer engineering services to the
 695 public, if each business organization otherwise meets the
 696 requirements of this section. No business organization shall be
 697 relieved of responsibility for the conduct or acts of its
 698 agents, employees, or officers by reason of its compliance with
 699 this section, nor shall any individual practicing engineering be
 700 relieved of responsibility for professional services performed

701 by reason of his or her employment or relationship with a
 702 business organization.

703 Section 25. Effective July 1, 2020, subsection (4) of
 704 section 471.033, Florida Statutes, is amended to read:

705 471.033 Disciplinary proceedings.—

706 (4) The management corporation shall reissue the license
 707 of a disciplined engineer or business upon certification by the
 708 board that the disciplined person has complied with all of the
 709 terms and conditions set forth in the final order.

710 Section 26. Effective July 1, 2020, section 471.038,
 711 Florida Statutes, is repealed.

712 Section 27. Effective July 1, 2020, section 471.0385,
 713 Florida Statutes, is repealed.

714 Section 28. Effective July 1, 2020, all duties, functions,
 715 records, pending issues, existing contracts, administrative
 716 authority, administrative rules, and unexpended balances of
 717 appropriations, allocations, and other public funds relating to
 718 the Florida Engineering Management Corporation are transferred
 719 by a type two transfer to the Department of Business and
 720 Professional Regulation.

721 Section 29. Subsections (2) and (3) of section 476.034,
 722 Florida Statutes, are amended, and subsections (6) and (7) are
 723 added to that section, to read:

724 476.034 Definitions.—As used in this act:

725 (2) "Barbering" means any of the following practices when

726 done for remuneration and for the public, but not when done for
 727 the treatment of disease or physical or mental ailments:
 728 shaving, cutting, trimming, coloring, shampooing, arranging,
 729 dressing, curling, or waving the hair or beard or applying oils,
 730 creams, lotions, or other preparations to the face, scalp, or
 731 neck, either by hand or by mechanical appliances, and includes
 732 any services defined as restricted barbering.

733 (3) "Barbershop" means any place of business wherein the
 734 practice of barbering or restricted barbering is carried on.

735 (6) "Restricted barber" means a person who is licensed to
 736 engage in the practice of restricted barbering in this state
 737 under the authority of this chapter and is subject to the same
 738 requirements and restrictions as a barber, except as
 739 specifically provided in s. 476.114.

740 (7) "Restricted barbering" means any of the following
 741 practices when done for remuneration and for the public, but not
 742 when done for the treatment of disease or physical or mental
 743 ailments:

744 (a) Hair cutting and styling, including the application of
 745 hair tonics and hair spray, but not including the application of
 746 other chemical preparations or solutions to the hair;

747 (b) Full facial shaves;

748 (c) Mustache and beard trimming; and

749 (d) Shampooing hair, including the application of shampoos
 750 and conditioners and blow drying the hair.

751 Section 30. Section 476.114, Florida Statutes, is amended
 752 to read:

753 476.114 Examination; prerequisites.—

754 (1) A person desiring to be licensed as a barber shall
 755 apply to the department for licensure and—

756 ~~(2) An applicant~~ shall be eligible for licensure by
 757 examination to practice barbering if the applicant:

758 (a) Is at least 16 years of age;

759 (b) Pays the required application fee; and

760 (c)1. Holds an active valid license to practice barbering
 761 in another state, has held the license for at least 1 year, and
 762 does not qualify for licensure by endorsement as provided for in
 763 s. 476.144(5); or

764 2. Has received a minimum of 600 ~~1,200~~ hours of training
 765 in sanitation, safety, and laws and rules, as established by the
 766 board, which shall include, but shall not be limited to, the
 767 equivalent of completion of services directly related to the
 768 practice of barbering at one of the following:

769 a. A school of barbering licensed pursuant to chapter
 770 1005;

771 b. A barbering program within the public school system; or

772 c. A government-operated barbering program in this state.

773

774 ~~The board shall establish by rule procedures whereby the school~~
 775 ~~or program may certify that a person is qualified to take the~~

776 ~~required examination after the completion of a minimum of 1,000~~
 777 ~~actual school hours. If the person passes the examination, she~~
 778 ~~or he shall have satisfied this requirement; but if the person~~
 779 ~~fails the examination, she or he shall not be qualified to take~~
 780 ~~the examination again until the completion of the full~~
 781 ~~requirements provided by this section.~~

782 (2) A person desiring to be licensed as a restricted
 783 barber shall apply to the department for licensure and shall be
 784 eligible for licensure by examination to practice restricted
 785 barbering if the applicant:

786 (a) Is at least 16 years of age;

787 (b) Pays the required application fee; and

788 (c)1. Holds an active valid license to practice barbering
 789 in another state, has held the license for at least 1 year, and
 790 does not qualify for licensure by endorsement as provided for in
 791 s. 476.144(5); or

792 2. Has received a minimum of 325 hours of training in
 793 sanitation, safety, and laws and rules, as established by the
 794 board, which shall include, but not be limited to, the
 795 equivalent of completion of services directly related to the
 796 practice of restricted barbering at one of the following:

797 a. A school of barbering licensed pursuant to chapter
 798 1005;

799 b. A barbering program within the public school system; or

800 c. A government-operated barbering program in this state.

801 (3) An applicant who meets the requirements set forth in
 802 paragraph (1)(c)1. and 2. ~~subparagraphs (2)(c)1. and 2.~~ who
 803 fails to pass the examination may take subsequent examinations
 804 as many times as necessary to pass, except that the board may
 805 specify by rule reasonable timeframes for rescheduling the
 806 examination and additional training requirements for applicants
 807 who, after the third attempt, fail to pass the examination.
 808 Prior to reexamination, the applicant must file the appropriate
 809 form and pay the reexamination fee as required by rule.

810 Section 31. Subsections (1) and (6) of section 476.144,
 811 Florida Statutes, are amended to read:

812 476.144 Licensure.—

813 (1) The department shall license any applicant who the
 814 board certifies is qualified to practice barbering or restricted
 815 barbering in this state.

816 (6) A person may apply for a restricted license to
 817 practice barbering. The board shall adopt rules specifying
 818 procedures for an applicant to obtain a restricted license if
 819 the applicant:

820 (a)1. Has successfully completed a restricted barber
 821 course, as established by rule of the board, at a school of
 822 barbering licensed pursuant to chapter 1005, a barbering program
 823 within the public school system, or a government-operated
 824 barbering program in this state; or

825 2.a. Holds or has within the previous 5 years held an

826 active valid license to practice barbering in another state or
 827 country or has held a Florida barbering license which has been
 828 declared null and void for failure to renew the license, and the
 829 applicant fulfilled the requirements of s. 476.114(2)(c)2. for
 830 initial licensure; and

831 b. Has not been disciplined relating to the practice of
 832 barbering in the previous 5 years; and

833 (b) Passes a written examination on the laws and rules
 834 governing the practice of barbering in Florida, as established
 835 by the board.

836

837 ~~The restricted license shall limit the licensee's practice to~~
 838 ~~those specific areas in which the applicant has demonstrated~~
 839 ~~competence pursuant to rules adopted by the board.~~

840 Section 32. Subsections (6) and (9) of section 477.013,
 841 Florida Statutes, are amended to read:

842 477.013 Definitions.—As used in this chapter:

843 (6) "Specialty" means the practice of one or more of the
 844 following:

845 (a) "Nail specialty" means manicuring, or the cutting,
 846 polishing, tinting, coloring, cleansing, adding, or extending of
 847 the nails, and massaging of the hands. This term includes any
 848 procedure or process for the affixing of artificial nails,
 849 except those nails which may be applied solely by use of a
 850 simple adhesive; and—

851 ~~(b)~~ pedicuring, or the shaping, polishing, tinting, or
 852 cleansing of the nails of the feet, and massaging or beautifying
 853 of the feet.

854 ~~(b)(e)~~ "Facial specialty" means facials, or the massaging
 855 or treating of the face or scalp with oils, creams, lotions, or
 856 other preparations, and skin care services.

857 (c) "Full specialty" means all services within the
 858 definition of nail specialty and facial specialty, including
 859 manicuring, pedicuring, and facial services.

860 (9) "Hair braiding" means the weaving or interweaving of
 861 natural human hair or commercial hair, including the use of hair
 862 extensions or wefts, for compensation without cutting, coloring,
 863 permanent waving, relaxing, removing, or chemical treatment ~~and~~
 864 ~~does not include the use of hair extensions or wefts.~~

865 Section 33. Section 477.0132, Florida Statutes, is
 866 repealed.

867 Section 34. Subsections (7), (8), (9), (10), and (11) are
 868 added to section 477.0135, Florida Statutes, to read:

869 477.0135 Exemptions.—

870 (7) A license or registration is not required for a person
 871 whose occupation or practice is confined solely to hair braiding
 872 as defined in s. 477.013(9).

873 (8) A license or registration is not required for a person
 874 whose occupation or practice is confined solely to hair wrapping
 875 as defined in s. 477.013(10).

876 (9) A license or registration is not required for a person
 877 whose occupation or practice is confined solely to body wrapping
 878 as defined in s. 477.013(12).

879 (10) A license or registration is not required for a
 880 person whose occupation or practice is confined solely to
 881 applying polish to fingernails and toenails.

882 (11) A license or registration is not required for a
 883 person whose occupation or practice is confined solely to makeup
 884 application.

885 Section 35. Paragraph (b) of subsection (7) of section
 886 477.019, Florida Statutes, is amended to read:

887 477.019 Cosmetologists; qualifications; licensure;
 888 supervised practice; license renewal; endorsement; continuing
 889 education.-

890 (7)

891 ~~(b) Any person whose occupation or practice is confined~~
 892 ~~solely to hair braiding, hair wrapping, or body wrapping is~~
 893 ~~exempt from the continuing education requirements of this~~
 894 ~~subsection.~~

895 Section 36. Subsections (2) through (6) of section
 896 477.0201, Florida Statutes, are renumbered as subsections (4)
 897 through (8), respectively, subsection (1) is amended, and new
 898 subsections (2) and (3) are added to that section, to read:

899 477.0201 Specialty registration; qualifications;
 900 registration renewal; endorsement.-

901 (1) Any person is qualified for registration as a
 902 specialist in a nail ~~any one or more of the specialty practice~~
 903 ~~practices~~ within the practice of cosmetology under this chapter
 904 who:

905 (a) Is at least 16 years of age or has received a high
 906 school diploma.

907 (b) Has received at least 150 hours of training as
 908 established by the board, which shall focus primarily on
 909 sanitation and safety and shall include, but not be limited to,
 910 the equivalent of completion of services directly related to the
 911 practice of a nail ~~a certificate of completion in a specialty~~
 912 pursuant to s. 477.013(6)(a) ~~s. 477.013(6)~~ from one of the
 913 following:

- 914 1. A school licensed pursuant to s. 477.023.
- 915 2. A school licensed pursuant to chapter 1005 or the
 916 equivalent licensing authority of another state.
- 917 3. A specialty program within the public school system.
- 918 4. A specialty division within the Cosmetology Division of
 919 the Florida School for the Deaf and the Blind, provided the
 920 training programs comply with minimum curriculum requirements
 921 established by the board.

922 (2) Any person is qualified for registration as a
 923 specialist in a facial specialty practice within the practice of
 924 cosmetology under this chapter who:

925 (a) Is at least 16 years of age or has received a high

926 school diploma.

927 (b) Has received at least 165 hours of training as
 928 established by the board, which shall focus on sanitation and
 929 safety and shall include, but not be limited to, the equivalent
 930 of completion of services directly related to the practice of
 931 facial specialty pursuant to s. 477.013(6)(b) from one of the
 932 following:

- 933 1. A school licensed pursuant to s. 477.023.
- 934 2. A school licensed pursuant to chapter 1005 or the
 935 equivalent licensing authority of another state.
- 936 3. A specialty program within the public school system.
- 937 4. A specialty division within the Cosmetology Division of
 938 the Florida School for the Deaf and the Blind, provided the
 939 training programs comply with minimum curriculum requirements
 940 established by the board.

941 (3) Any person is qualified for registration as a
 942 specialist in a full specialty practice within the practice of
 943 cosmetology under this chapter who:

944 (a) Is at least 16 years of age or has received a high
 945 school diploma.

946 (b) Has received at least 300 hours of training as
 947 established by the board, which shall focus primarily on
 948 sanitation and safety and shall include, but not be limited to,
 949 the equivalent of completion of services directly related to the
 950 practice of full specialty pursuant to s. 477.013(6)(c) from one

951 of the following:

- 952 1. A school licensed pursuant to s. 477.023.
- 953 2. A school licensed pursuant to chapter 1005 or the
- 954 equivalent licensing authority of another state.
- 955 3. A specialty program within the public school system.
- 956 4. A specialty division within the Cosmetology Division of
- 957 the Florida School for the Deaf and the Blind, provided the
- 958 training programs comply with minimum curriculum requirements
- 959 established by the board.

960 Section 37. Paragraph (f) of subsection (1) of section
 961 477.026, Florida Statutes, is amended to read:

962 477.026 Fees; disposition.—

963 (1) The board shall set fees according to the following
 964 schedule:

965 ~~(f) For hair braiders, hair wrappers, and body wrappers,~~
 966 ~~fees for registration shall not exceed \$25.~~

967 Section 38. Paragraph (f) of subsection (1) of section
 968 477.0265, Florida Statutes, is amended to read:

969 477.0265 Prohibited acts.—

970 (1) It is unlawful for any person to:

971 (f) Advertise or imply that skin care services ~~or body~~
 972 ~~wrapping~~, as performed under this chapter, have any relationship
 973 to the practice of massage therapy as defined in s. 480.033(3),
 974 except those practices or activities defined in s. 477.013.

975 Section 39. Paragraph (a) of subsection (1) of section

976 477.029, Florida Statutes, is amended to read:

977 477.029 Penalty.—

978 (1) It is unlawful for any person to:

979 (a) Hold himself or herself out as a cosmetologist or
 980 specialist, ~~hair wrapper, hair braider, or body wrapper~~ unless
 981 duly licensed or registered, or otherwise authorized, as
 982 provided in this chapter.

983 Section 40. Subsection (5) of section 481.203, Florida
 984 Statutes, is amended to read:

985 481.203 Definitions.—As used in this part:

986 (5) "Business organization" means a partnership, a limited
 987 liability company, a corporation, or an individual operating
 988 under a fictitious name ~~"Certificate of authorization" means a~~
 989 ~~certificate issued by the department to a corporation or~~
 990 ~~partnership to practice architecture or interior design.~~

991 Section 41. Section 481.219, Florida Statutes, is amended
 992 to read:

993 481.219 Business organization; qualifying agents
 994 ~~Certification of partnerships, limited liability companies, and~~
 995 ~~corporations.—~~

996 (1) A licensee may ~~The practice of or the offer to~~
 997 practice architecture or interior design ~~by licensees~~ through a
 998 business organization that offers ~~corporation, limited liability~~
 999 ~~company, or partnership offering~~ architectural or interior
 1000 design services to the public, or through ~~by~~ a business

1001 ~~organization that offers corporation, limited liability company,~~
 1002 ~~or partnership offering architectural or interior design~~
 1003 ~~services to the public through such licensees under this part as~~
 1004 ~~agents, employees, officers, or partners, is permitted, subject~~
 1005 ~~to the provisions of this section.~~

1006 (2) If a licensee or an applicant proposes to engage in
 1007 the practice of architecture or interior design as a business
 1008 organization, the licensee or applicant must apply to qualify
 1009 the business organization ~~For the purposes of this section, a~~
 1010 ~~certificate of authorization shall be required for a~~
 1011 ~~corporation, limited liability company, partnership, or person~~
 1012 ~~practicing under a fictitious name, offering architectural~~
 1013 ~~services to the public jointly or separately. However, when an~~
 1014 ~~individual is practicing architecture in her or his own name,~~
 1015 ~~she or he shall not be required to be certified under this~~
 1016 ~~section. Certification under this subsection to offer~~
 1017 ~~architectural services shall include all the rights and~~
 1018 ~~privileges of certification under subsection (3) to offer~~
 1019 ~~interior design services.~~

1020 (a) An application to qualify a business organization
 1021 must:

1022 1. If the business is a partnership, state the names of
 1023 the partnership and its partners.

1024 2. If the business is a corporation, state the names of
 1025 the corporation and its officers and directors and the name of

1026 each of its stockholders who is also an officer or a director.

1027 3. If the business is operating under a fictitious name,
 1028 state the fictitious name under which it is doing business.

1029 4. If the business is not a partnership, a corporation, or
 1030 operating under a fictitious name, state the name of such other
 1031 legal entity and its members.

1032 (b) The board may deny an application to qualify a
 1033 business organization if the applicant or any person required to
 1034 be named pursuant to paragraph (a) has been involved in past
 1035 disciplinary actions or on any grounds for which an individual
 1036 registration may be denied.

1037 (3)(a) A business organization may not engage in the
 1038 practice of architecture unless its qualifying agent is a
 1039 registered architect under this part. A business organization
 1040 may not engage in the practice of interior design unless its
 1041 qualifying agent is a registered architect or a registered
 1042 interior designer under this part. A qualifying agent who
 1043 terminates her or his affiliation with a business organization
 1044 shall immediately notify the department of such termination. If
 1045 the qualifying agent who terminates her or his affiliation is
 1046 the only qualifying agent for a business organization, the
 1047 business organization must be qualified by another qualifying
 1048 agent within 60 days after the termination. Except as provided
 1049 in paragraph (b), the business organization may not engage in
 1050 the practice of architecture or interior design until it is

1051 qualified by a qualifying agent.

1052 (b) In the event a qualifying architect or interior
 1053 designer ceases employment with the business organization, the
 1054 executive director or the chair of the board may authorize
 1055 another registered architect or interior designer employed by
 1056 the business organization to temporarily serve as its qualifying
 1057 agent for a period of no more than 60 days. The business
 1058 organization is not authorized to operate beyond such period
 1059 under this chapter absent replacement of the qualifying
 1060 architect or interior designer who has ceased employment.

1061 (c) A qualifying agent shall notify the department in
 1062 writing before engaging in the practice of architecture or
 1063 interior design in her or his own name or in affiliation with a
 1064 different business organization, and she or he or such business
 1065 organization shall supply the same information to the department
 1066 as required of applicants under this part ~~For the purposes of~~
 1067 ~~this section, a certificate of authorization shall be required~~
 1068 ~~for a corporation, limited liability company, partnership, or~~
 1069 ~~person operating under a fictitious name, offering interior~~
 1070 ~~design services to the public jointly or separately. However,~~
 1071 ~~when an individual is practicing interior design in her or his~~
 1072 ~~own name, she or he shall not be required to be certified under~~
 1073 ~~this section.~~

1074 (4) All final construction documents and instruments of
 1075 service which include drawings, specifications, plans, reports,

1076 or other papers or documents that involve ~~involving~~ the practice
 1077 of architecture which are prepared or approved for the use of
 1078 the business organization ~~corporation, limited liability~~
 1079 ~~company, or partnership~~ and filed for public record within the
 1080 state must ~~shall~~ bear the signature and seal of the licensee who
 1081 prepared or approved them and the date on which they were
 1082 sealed.

1083 (5) All drawings, specifications, plans, reports, or other
 1084 papers or documents prepared or approved for the use of the
 1085 business organization ~~corporation, limited liability company, or~~
 1086 ~~partnership~~ by an interior designer in her or his professional
 1087 capacity and filed for public record within the state must ~~shall~~
 1088 bear the signature and seal of the licensee who prepared or
 1089 approved them and the date on which they were sealed.

1090 ~~(6) The department shall issue a certificate of~~
 1091 ~~authorization to any applicant who the board certifies as~~
 1092 ~~qualified for a certificate of authorization and who has paid~~
 1093 ~~the fee set in s. 481.207.~~

1094 ~~(6)(7)~~ The board shall allow ~~certify~~ an applicant to
 1095 qualify one or more business organizations ~~as qualified for a~~
 1096 ~~certificate of authorization~~ to offer architectural or interior
 1097 design services, or to use a fictitious name to offer such
 1098 services, if provided that:

1099 (a) One or more of the principal officers of the
 1100 corporation or limited liability company, or one or more

1101 partners of the partnership, and all personnel of the
 1102 corporation, limited liability company, or partnership who act
 1103 in its behalf in this state as architects, are registered as
 1104 provided by this part; or

1105 (b) One or more of the principal officers of the
 1106 corporation or one or more partners of the partnership, and all
 1107 personnel of the corporation, limited liability company, or
 1108 partnership who act in its behalf in this state as interior
 1109 designers, are registered as provided by this part.

1110 ~~(8) The department shall adopt rules establishing a~~
 1111 ~~procedure for the biennial renewal of certificates of~~
 1112 ~~authorization.~~

1113 ~~(9) The department shall renew a certificate of~~
 1114 ~~authorization upon receipt of the renewal application and~~
 1115 ~~biennial renewal fee.~~

1116 (7)(10) Each qualifying agent approved to qualify a
 1117 business organization partnership, limited liability company,
 1118 ~~and corporation certified~~ under this section shall notify the
 1119 department within 30 days after ~~of~~ any change in the information
 1120 contained in the application upon which the qualification
 1121 ~~certification~~ is based. Any registered architect or interior
 1122 designer who qualifies the business organization shall ensure
 1123 ~~corporation, limited liability company, or partnership as~~
 1124 ~~provided in subsection (7) shall be responsible for ensuring~~
 1125 responsible supervising control of projects of the business

1126 organization ~~entity~~ and shall notify the department of the ~~upon~~
 1127 ~~termination of her or his employment with a~~ business
 1128 organization qualified ~~partnership, limited liability company,~~
 1129 ~~or corporation certified under this section shall notify the~~
 1130 ~~department of the termination~~ within 30 days after such
 1131 termination.

1132 ~~(8)(11)~~ A business organization is not ~~No corporation,~~
 1133 ~~limited liability company, or partnership shall be~~ relieved of
 1134 responsibility for the conduct or acts of its agents, employees,
 1135 or officers by reason of its compliance with this section.
 1136 However, except as provided in s. 558.0035, the architect who
 1137 signs and seals the construction documents and instruments of
 1138 service is ~~shall be~~ liable for the professional services
 1139 performed, and the interior designer who signs and seals the
 1140 interior design drawings, plans, or specifications is ~~shall be~~
 1141 liable for the professional services performed.

1142 ~~(12)~~ ~~Disciplinary action against a corporation, limited~~
 1143 ~~liability company, or partnership shall be administered in the~~
 1144 ~~same manner and on the same grounds as disciplinary action~~
 1145 ~~against a registered architect or interior designer,~~
 1146 ~~respectively.~~

1147 ~~(9)(13)~~ Nothing in This section may not ~~shall~~ be construed
 1148 to mean that a certificate of registration to practice
 1149 architecture or interior design must ~~shall~~ be held by a business
 1150 organization ~~corporation, limited liability company, or~~

1151 ~~partnership. Nothing in This section does not prohibit a~~
 1152 ~~business organization from offering prohibits corporations,~~
 1153 ~~limited liability companies, and partnerships from joining~~
 1154 ~~together to offer architectural, engineering, interior design,~~
 1155 ~~surveying and mapping, and landscape architectural services, or~~
 1156 ~~any combination of such services, to the public if the business~~
 1157 ~~organization, provided that each corporation, limited liability~~
 1158 ~~company, or partnership otherwise meets the requirements of law.~~

1159 (10) (14) A business organization that is qualified by a
 1160 registered architect may Corporations, limited liability
 1161 companies, or partnerships holding a valid certificate of
 1162 authorization to practice architecture shall be permitted to use
 1163 in their title the term "interior designer" or "registered
 1164 interior designer" in its title. designer."

1165 Section 42. Subsection (10) of section 481.221, Florida
 1166 Statutes, is amended to read:

1167 481.221 Seals; display of certificate number.-

1168 (10) Each registered architect or interior designer must,
 1169 ~~and each corporation, limited liability company, or partnership~~
 1170 ~~holding a certificate of authorization, shall include her or his~~
 1171 license its certificate number in any newspaper, telephone
 1172 directory, or other advertising medium used by the registered
 1173 licensee architect, interior designer, corporation, limited
 1174 liability company, or partnership. Each business organization
 1175 must include the license number of the registered architect or

1176 interior designer who serves as the qualifying agent for that
 1177 business organization in any newspaper, telephone directory, or
 1178 other advertising medium used by the business organization, but
 1179 is not required to display the license numbers of other
 1180 registered architects or interior designers employed by the
 1181 business organization ~~A corporation, limited liability company,~~
 1182 ~~or partnership is not required to display the certificate number~~
 1183 ~~of individual registered architects or interior designers~~
 1184 ~~employed by or working within the corporation, limited liability~~
 1185 ~~company, or partnership.~~

1186 Section 43. Paragraphs (a) and (c) of subsection (5) of
 1187 section 481.229, Florida Statutes, are amended to read:

1188 481.229 Exceptions; exemptions from licensure.-

1189 (5) (a) ~~Nothing contained in~~ This part does not prohibit
 1190 ~~shall prevent~~ a registered architect or a qualified business
 1191 organization ~~partnership, limited liability company, or~~
 1192 ~~corporation holding a valid certificate of authorization to~~
 1193 ~~provide architectural services~~ from performing any interior
 1194 design service or from using the title "interior designer" or
 1195 "registered interior designer."

1196 (c) Notwithstanding any other provision of this part, a
 1197 registered architect or business organization qualified any
 1198 ~~corporation, partnership, or person operating under a fictitious~~
 1199 ~~name which holds a certificate of authorization to provide~~
 1200 architectural services must ~~shall~~ be qualified, without fee, ~~for~~

1201 ~~a certificate of authorization to provide interior design~~
 1202 ~~services upon submission of a completed application for~~
 1203 ~~qualification therefor. For corporations, partnerships, and~~
 1204 ~~persons operating under a fictitious name which hold a~~
 1205 ~~certificate of authorization to provide interior design~~
 1206 ~~services, satisfaction of the requirements for renewal of the~~
 1207 ~~certificate of authorization to provide architectural services~~
 1208 ~~under s. 481.219 shall be deemed to satisfy the requirements for~~
 1209 ~~renewal of the certificate of authorization to provide interior~~
 1210 ~~design services under that section.~~

1211 Section 44. Section 481.303, Florida Statutes, is amended
 1212 to read:

1213 481.303 Definitions.—As used in this part chapter, the
 1214 term:

1215 (1) "Board" means the Board of Landscape Architecture.

1216 (2) "Business organization" means any partnership, limited
 1217 liability company, corporation, or individual operating under a
 1218 fictitious name.

1219 ~~(3)(4)~~ "Certificate of registration" means a license
 1220 issued by the department to a natural person to engage in the
 1221 practice of landscape architecture.

1222 ~~(4)(2)~~ "Department" means the Department of Business and
 1223 Professional Regulation.

1224 ~~(5)~~ ~~"Certificate of authorization" means a license issued~~
 1225 ~~by the department to a corporation or partnership to engage in~~

1226 ~~the practice of landscape architecture.~~

1227 (5)~~(6)~~ "Landscape architecture" means professional
 1228 services, including, but not limited to, the following:

1229 (a) Consultation, investigation, research, planning,
 1230 design, preparation of drawings, specifications, contract
 1231 documents and reports, responsible construction supervision, or
 1232 landscape management in connection with the planning and
 1233 development of land and incidental water areas, including the
 1234 use of Florida-friendly landscaping as defined in s. 373.185,
 1235 where, and to the extent that, the dominant purpose of such
 1236 services or creative works is the preservation, conservation,
 1237 enhancement, or determination of proper land uses, natural land
 1238 features, ground cover and plantings, or naturalistic and
 1239 aesthetic values;

1240 (b) The determination of settings, grounds, and approaches
 1241 for and the siting of buildings and structures, outdoor areas,
 1242 or other improvements;

1243 (c) The setting of grades, shaping and contouring of land
 1244 and water forms, determination of drainage, and provision for
 1245 storm drainage and irrigation systems where such systems are
 1246 necessary to the purposes outlined herein; and

1247 (d) The design of such tangible objects and features as
 1248 are necessary to the purpose outlined herein.

1249 (6)~~(7)~~ "Landscape design" means consultation for and
 1250 preparation of planting plans drawn for compensation, including

1251 specifications and installation details for plant materials,
 1252 soil amendments, mulches, edging, gravel, and other similar
 1253 materials. Such plans may include only recommendations for the
 1254 conceptual placement of tangible objects for landscape design
 1255 projects. Construction documents, details, and specifications
 1256 for tangible objects and irrigation systems shall be designed or
 1257 approved by licensed professionals as required by law.

1258 (7) "Qualifying agent" means an owner, officer, or
 1259 director of the corporation, or partner of the partnership, who
 1260 is responsible for the supervision, direction, and management of
 1261 projects of the business organization with which she or he is
 1262 affiliated and for ensuring that responsible supervising control
 1263 is being exercised.

1264 ~~(8)(3)~~ "Registered landscape architect" means a person who
 1265 holds a license to practice landscape architecture in this state
 1266 under the authority of this act.

1267 Section 45. Subsection (4) of section 481.311, Florida
 1268 Statutes, is amended to read:

1269 481.311 Licensure.—

1270 ~~(4) The board shall certify as qualified for a certificate~~
 1271 ~~of authorization any applicant corporation or partnership who~~
 1272 ~~satisfies the requirements of s. 481.319.~~

1273 Section 46. Subsection (2) of section 481.317, Florida
 1274 Statutes, is amended to read:

1275 481.317 Temporary certificates.—

1276 ~~(2) Upon approval by the board and payment of the fee set~~
 1277 ~~in s. 481.307, the department shall grant a temporary~~
 1278 ~~certificate of authorization for work on one specified project~~
 1279 ~~in this state for a period not to exceed 1 year to an out-of-~~
 1280 ~~state corporation, partnership, or firm, provided one of the~~
 1281 ~~principal officers of the corporation, one of the partners of~~
 1282 ~~the partnership, or one of the principals in the fictitiously~~
 1283 ~~named firm has obtained a temporary certificate of registration~~
 1284 ~~in accordance with subsection (1).~~

1285 Section 47. Section 481.319, Florida Statutes, is amended
 1286 to read:

1287 481.319 Corporate and partnership practice of landscape
 1288 architecture; ~~certificate of authorization.-~~

1289 (1) The practice of or offer to practice landscape
 1290 architecture by registered landscape architects registered under
 1291 this part through a corporation or partnership offering
 1292 landscape architectural services to the public, or through a
 1293 corporation or partnership offering landscape architectural
 1294 services to the public through individual registered landscape
 1295 architects as agents, employees, officers, or partners, is
 1296 permitted, subject to the provisions of this section, if:

1297 (a) One or more of the principal officers of the
 1298 corporation, or partners of the partnership, and all personnel
 1299 of the corporation or partnership who act in its behalf as
 1300 landscape architects in this state are registered landscape

1301 architects; and

1302 (b) One or more of the officers, one or more of the
 1303 directors, one or more of the owners of the corporation, or one
 1304 or more of the partners of the partnership is a registered
 1305 landscape architect and has applied to be the qualifying agent
 1306 for the business organization; ~~and~~

1307 ~~(c) The corporation or partnership has been issued a~~
 1308 ~~certificate of authorization by the board as provided herein.~~

1309 (2) All documents involving the practice of landscape
 1310 architecture which are prepared for the use of the corporation
 1311 or partnership shall bear the signature and seal of a registered
 1312 landscape architect.

1313 (3) A landscape architect applying to practice in the name
 1314 of a ~~An applicant~~ corporation must ~~shall~~ file with the
 1315 department the names and addresses of all officers and board
 1316 members of the corporation, including the principal officer or
 1317 officers, duly registered to practice landscape architecture in
 1318 this state and, also, of all individuals duly registered to
 1319 practice landscape architecture in this state who shall be in
 1320 responsible charge of the practice of landscape architecture by
 1321 the corporation in this state. A landscape architect applying to
 1322 practice in the name of a ~~An applicant~~ partnership must ~~shall~~
 1323 file with the department the names and addresses of all partners
 1324 of the partnership, including the partner or partners duly
 1325 registered to practice landscape architecture in this state and,

1326 also, of an individual or individuals duly registered to
 1327 practice landscape architecture in this state who shall be in
 1328 responsible charge of the practice of landscape architecture by
 1329 said partnership in this state.

1330 (4) Each landscape architect qualifying a partnership or
 1331 ~~and~~ corporation ~~licensed~~ under this part must ~~shall~~ notify the
 1332 department within 1 month after ~~of~~ any change in the information
 1333 contained in the application upon which the license is based.
 1334 Any landscape architect who terminates her or his ~~or her~~
 1335 employment with a partnership or corporation licensed under this
 1336 part shall notify the department of the termination within 1
 1337 month after such termination.

1338 ~~(5) Disciplinary action against a corporation or~~
 1339 ~~partnership shall be administered in the same manner and on the~~
 1340 ~~same grounds as disciplinary action against a registered~~
 1341 ~~landscape architect.~~

1342 ~~(5)(6)~~ Except as provided in s. 558.0035, the fact that a
 1343 registered landscape architect practices landscape architecture
 1344 through a corporation or partnership as provided in this section
 1345 does not relieve the landscape architect from personal liability
 1346 for her or his ~~or her~~ professional acts.

1347 Section 48. Subsection (5) of section 481.321, Florida
 1348 Statutes, is amended to read:

1349 481.321 Seals; display of certificate number.—

1350 (5) Each registered landscape architect must ~~and each~~

1351 ~~corporation or partnership holding a certificate of~~
 1352 ~~authorization shall include her or his~~ its certificate number in
 1353 any newspaper, telephone directory, or other advertising medium
 1354 used by the registered landscape architect, corporation, or
 1355 partnership. A corporation or partnership must ~~is not required~~
 1356 ~~to~~ display the certificate number ~~numbers~~ of at least one
 1357 officer, director, owner, or partner who is a individual
 1358 registered landscape architect ~~architects~~ employed by or
 1359 practicing with the corporation or partnership.

1360 Section 49. Subsection (5) of section 481.329, Florida
 1361 Statutes, is amended to read:

1362 481.329 Exceptions; exemptions from licensure.-

1363 (5) This part does not prohibit any person from engaging
 1364 in the practice of landscape design, as defined in s. 481.303(6)
 1365 ~~s. 481.303(7)~~, or from submitting for approval to a governmental
 1366 agency planting plans that are independent of, or a component
 1367 of, construction documents that are prepared by a Florida-
 1368 registered professional. Persons providing landscape design
 1369 services shall not use the title, term, or designation
 1370 "landscape architect," "landscape architectural," "landscape
 1371 architecture," "L.A.," "landscape engineering," or any
 1372 description tending to convey the impression that she or he is a
 1373 landscape architect unless she or he is registered as provided
 1374 in this part.

1375 Section 50. Paragraph (h) of subsection (2) of section

1376 287.055, Florida Statutes, is amended to read:

1377 287.055 Acquisition of professional architectural,
1378 engineering, landscape architectural, or surveying and mapping
1379 services; definitions; procedures; contingent fees prohibited;
1380 penalties.—

1381 (2) DEFINITIONS.—For purposes of this section:

1382 (h) A "design-build firm" means a partnership,
1383 corporation, or other legal entity that:

1384 1. Is certified under s. 489.119 to engage in contracting
1385 through a certified or registered general contractor or a
1386 certified or registered building contractor as the qualifying
1387 agent; or

1388 2. Is certified under s. 471.023 to practice or to offer
1389 to practice engineering; qualified ~~certified~~ under s. 481.219 to
1390 practice or to offer to practice architecture; or qualified
1391 ~~certified~~ under s. 481.319 to practice or to offer to practice
1392 landscape architecture.

1393 Section 51. Effective October 1, 2018, Paragraph (a) of
1394 subsection (4) of section 489.553, Florida Statutes, is amended,
1395 and new subsections (7) through (10) are added to that section,
1396 to read:

1397 489.553 Administration of part; registration
1398 qualifications; examination.—

1399 (4) To be eligible for registration by the department as a
1400 septic tank contractor, the applicant must:

1401 (a) Be of good moral character. In considering good moral
 1402 character, the department may consider matters ~~any matter~~ that
 1403 have ~~has~~ a substantial connection between the good moral
 1404 character of the applicant and the professional responsibilities
 1405 of a registered contractor, including, but not limited to: the
 1406 applicant being convicted or found guilty of, or entering a plea
 1407 of nolo contendere to, regardless of adjudication, a crime in
 1408 any jurisdiction which directly relates to the practice of
 1409 contracting or the ability to practice contracting; and previous
 1410 disciplinary action involving septic tank contracting, where all
 1411 judicial reviews have been completed.

1412 (7) The criminal history of an applicant may not be used
 1413 as grounds for denial of a license if the date of conviction,
 1414 plea, adjudication, or sentencing, is more than 5 years before
 1415 the date of the application. This paragraph does not limit the
 1416 department's ability to consider an applicant's criminal history
 1417 that relates to paragraph (4)(a) or that includes crimes listed
 1418 in s. 435.07(4)(c)1.-3. or s. 775.21(4)(a)1.

1419 (8)(a) A person may apply for a license before his or her
 1420 lawful release from confinement or supervision. The department
 1421 may not charge an applicant an additional fee for being confined
 1422 or under supervision. The department may not deny an application
 1423 for a license solely on the basis of the applicant's current
 1424 confinement or supervision.

1425 (b) After a license application is approved, the

1426 department may stay the issuance of a license until the
 1427 applicant is lawfully released from confinement or supervision
 1428 and the applicant notifies the board of such release. The
 1429 department must verify the applicant's release with the
 1430 Department of Corrections before it issues a license.

1431 (c) If an applicant is unable to appear in person due to
 1432 his or her confinement or supervision, the department must
 1433 permit the applicant to appear by teleconference or video
 1434 conference, as appropriate, at any meeting or hearing by the
 1435 department concerning his or her application.

1436 (d) If an applicant is confined or under supervision, the
 1437 Department of Corrections and the department shall cooperate and
 1438 coordinate to facilitate the appearance of the applicant at a
 1439 meeting or hearing in person, by teleconference, or by video
 1440 conference, as appropriate.

1441 (9) The department shall compile a list of crimes that, if
 1442 committed and regardless of adjudication, do not relate to the
 1443 practice of the profession or the ability to practice the
 1444 profession and do not constitute grounds for denial of a
 1445 license. This list shall be made available on the department's
 1446 website and be updated annually. Beginning October 1, 2018, and
 1447 updated quarterly thereafter, the department shall add to this
 1448 list such crimes that although reported by an applicant for
 1449 licensure, were not used as a basis for denial in the past 2
 1450 years. The list must identify the crime reported and the date of

1451 conviction, plea, adjudication, or sentencing for each such
 1452 license application.

1453 (10) The department shall compile a list of crimes that
 1454 have been used as a basis for denial of a license in the past 2
 1455 years, which shall be made available on the department's
 1456 website. Beginning October 1, 2018, and updated quarterly
 1457 thereafter, the department shall add to this list each crime
 1458 used as a basis for denial. For each crime listed, the
 1459 department must identify the date of conviction, plea,
 1460 adjudication, or sentencing. Such denials shall be available to
 1461 the public upon request.

1462 Section 52. Section 492.104, Florida Statutes, is amended
 1463 to read:

1464 492.104 Rulemaking authority.—The Board of Professional
 1465 Geologists may ~~has authority to~~ adopt rules pursuant to ss.
 1466 120.536(1) and 120.54 to implement this chapter. Every licensee
 1467 shall be governed and controlled by this chapter and the rules
 1468 adopted by the board. The board may establish ~~is authorized to~~
 1469 ~~set,~~ by rule, fees for application, examination, ~~certificate of~~
 1470 ~~authorization,~~ late renewal, initial licensure, and license
 1471 renewal. These fees may ~~should~~ not exceed the cost of
 1472 implementing the application, examination, initial licensure,
 1473 and license renewal or other administrative process and are
 1474 ~~shall be~~ established as follows:

1475 (1) The application fee may ~~shall~~ not exceed \$150 and is

1476 ~~shall be~~ nonrefundable.

1477 (2) The examination fee may ~~shall~~ not exceed \$250, and the
 1478 fee may be apportioned to each part of a multipart examination.
 1479 The examination fee shall be refundable in whole or part if the
 1480 applicant is found to be ineligible to take any portion of the
 1481 licensure examination.

1482 (3) The initial license fee may ~~shall~~ not exceed \$100.

1483 (4) The biennial renewal fee may ~~shall~~ not exceed \$150.

1484 ~~(5) The fee for a certificate of authorization shall not~~
 1485 ~~exceed \$350 and the fee for renewal of the certificate shall not~~
 1486 ~~exceed \$350.~~

1487 ~~(5)(6)~~ The fee for reactivation of an inactive license may
 1488 ~~shall~~ not exceed \$50.

1489 ~~(6)(7)~~ The fee for a provisional license may ~~shall~~ not
 1490 exceed \$400.

1491 ~~(7)(8)~~ The fee for application, examination, and licensure
 1492 for a license by endorsement is ~~shall be~~ as provided in this
 1493 section for licenses in general.

1494 Section 53. Section 492.111, Florida Statutes, is amended
 1495 to read:

1496 492.111 Practice of professional geology by a firm,
 1497 corporation, or partnership; ~~certificate of authorization.~~—The
 1498 practice of, or offer to practice, professional geology by
 1499 individual professional geologists licensed under the provisions
 1500 of this chapter through a firm, corporation, or partnership

1501 offering geological services to the public through individually
 1502 licensed professional geologists as agents, employees, officers,
 1503 or partners thereof is permitted subject to the provisions of
 1504 this chapter, if provided that:

1505 (1) At all times that it offers geological services to the
 1506 public, the firm, corporation, or partnership is qualified by
 1507 ~~has on file with the department the name and license number of~~
 1508 one or more individuals who hold a current, active license as a
 1509 professional geologist in the state and are serving as a
 1510 geologist of record for the firm, corporation, or partnership. A
 1511 geologist of record may be any principal officer or employee of
 1512 such firm or corporation, or any partner or employee of such
 1513 partnership, who holds a current, active license as a
 1514 professional geologist in this state, or any other Florida-
 1515 licensed professional geologist with whom the firm, corporation,
 1516 or partnership has entered into a long-term, ongoing
 1517 relationship, as defined by rule of the board, to serve as one
 1518 of its geologists of record. ~~It shall be the responsibility of~~
 1519 ~~the firm, corporation, or partnership and~~ The geologist of
 1520 record shall ~~to~~ notify the department of any changes in the
 1521 relationship or identity of that geologist of record within 30
 1522 days after such change.

1523 ~~(2) The firm, corporation, or partnership has been issued~~
 1524 ~~a certificate of authorization by the department as provided in~~
 1525 ~~this chapter. For purposes of this section, a certificate of~~

1526 ~~authorization shall be required of any firm, corporation,~~
 1527 ~~partnership, association, or person practicing under a~~
 1528 ~~fictitious name and offering geological services to the public;~~
 1529 ~~except that, when an individual is practicing professional~~
 1530 ~~geology in her or his own name, she or he shall not be required~~
 1531 ~~to obtain a certificate of authorization under this section.~~
 1532 ~~Such certificate of authorization shall be renewed every 2~~
 1533 ~~years.~~

1534 (2)~~(3)~~ All final geological papers or documents involving
 1535 the practice of the profession of geology which have been
 1536 prepared or approved for the use of such firm, corporation, or
 1537 partnership, for delivery to any person for public record with
 1538 the state, shall be dated and bear the signature and seal of the
 1539 professional geologist or professional geologists who prepared
 1540 or approved them.

1541 (3)~~(4)~~ Except as provided in s. 558.0035, the fact that a
 1542 licensed professional geologist practices through a corporation
 1543 or partnership does not relieve the registrant from personal
 1544 liability for negligence, misconduct, or wrongful acts committed
 1545 by her or him. The partnership and all partners are jointly and
 1546 severally liable for the negligence, misconduct, or wrongful
 1547 acts committed by their agents, employees, or partners while
 1548 acting in a professional capacity. Any officer, agent, or
 1549 employee of a corporation is personally liable and accountable
 1550 only for negligent acts, wrongful acts, or misconduct committed

1551 by her or him or committed by any person under her or his direct
 1552 supervision and control, while rendering professional services
 1553 on behalf of the corporation. The personal liability of a
 1554 shareholder of a corporation, in her or his capacity as
 1555 shareholder, may be no greater than that of a shareholder-
 1556 employee of a corporation incorporated under chapter 607. The
 1557 corporation is liable up to the full value of its property for
 1558 any negligent acts, wrongful acts, or misconduct committed by
 1559 any of its officers, agents, or employees while they are engaged
 1560 on behalf of the corporation in the rendering of professional
 1561 services.

1562 ~~(5) The firm, corporation, or partnership desiring a~~
 1563 ~~certificate of authorization shall file with the department an~~
 1564 ~~application therefor, upon a form to be prescribed by the~~
 1565 ~~department, accompanied by the required application fee.~~

1566 ~~(6) The department may refuse to issue a certificate of~~
 1567 ~~authorization if any facts exist which would entitle the~~
 1568 ~~department to suspend or revoke an existing certificate of~~
 1569 ~~authorization or if the department, after giving persons~~
 1570 ~~involved a full and fair hearing, determines that any of the~~
 1571 ~~officers or directors of said firm or corporation, or partners~~
 1572 ~~of said partnership, have violated the provisions of s. 492.113.~~

1573 Section 54. Subsection (4) of section 492.113, Florida
 1574 Statutes, is amended to read:

1575 492.113 Disciplinary proceedings.-

1576 (4) The department shall reissue the license of a
 1577 disciplined professional geologist ~~or business~~ upon
 1578 certification by the board that the disciplined person has
 1579 complied with ~~all of~~ the terms and conditions set forth in the
 1580 final order.

1581 Section 55. Section 492.115, Florida Statutes, is amended
 1582 to read:

1583 492.115 Roster of licensed professional geologists.—A
 1584 roster showing the names and places of business or residence of
 1585 all licensed professional geologists and all properly qualified
 1586 firms, corporations, or partnerships practicing holding
 1587 ~~certificates of authorization to practice~~ professional geology
 1588 in the state shall be prepared annually by the department. A
 1589 copy of this roster must be made available to ~~shall be~~
 1590 ~~obtainable by~~ each licensed professional geologist and each
 1591 firm, corporation, or partnership qualified by a professional
 1592 geologist holding a certificate of authorization, and copies
 1593 thereof shall be placed on file with the department.

1594 Section 56. Paragraphs (j) and (k) of subsection (2) of
 1595 section 548.003, Florida Statutes, are redesignated as
 1596 paragraphs (i) and (j), respectively, and paragraph (i) of that
 1597 subsection is amended to read:

1598 548.003 Florida State Boxing Commission.—

1599 (2) The Florida State Boxing Commission, as created by
 1600 subsection (1), shall administer the provisions of this chapter.

1601 The commission has authority to adopt rules pursuant to ss.
 1602 120.536(1) and 120.54 to implement the provisions of this
 1603 chapter and to implement each of the duties and responsibilities
 1604 conferred upon the commission, including, but not limited to:

1605 ~~(i) Designation and duties of a knockdown timekeeper.~~

1606 Section 57. Subsection (1) of section 548.017, Florida
 1607 Statutes, is amended to read:

1608 548.017 Participants, managers, and other persons required
 1609 to have licenses.—

1610 (1) A participant, manager, trainer, second, ~~timekeeper,~~
 1611 referee, judge, ~~announcer,~~ physician, matchmaker, or promoter
 1612 must be licensed before directly or indirectly acting in such
 1613 capacity in connection with any match involving a participant. A
 1614 physician approved by the commission must be licensed pursuant
 1615 to chapter 458 or chapter 459, must maintain an unencumbered
 1616 license in good standing, and must demonstrate satisfactory
 1617 medical training or experience in boxing, or a combination of
 1618 both, to the executive director before working as the ringside
 1619 physician.

1620 Section 58. Except as otherwise expressly provided in this
 1621 act, this act shall take effect July 1, 2018.

1622

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N, As CS	Bruno	Sumner
2) Justice Appropriations Subcommittee	11 Y, 0 N	Welty	Gusky
3) Judiciary Committee		Bruno <i>EBB</i>	Poche <i>M</i>

SUMMARY ANALYSIS

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

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

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

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

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

The bill has a negative fiscal impact on FDLE, which can be absorbed within existing resources, and has no impact on local government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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

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

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

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

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

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

² S. 943.045(6), F.S.

³ S. 943.045(5), F.S.

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

⁵ S. 943.045(16), F.S.

⁶ *Id.*

⁷ S. 943.0585(4), F.S.

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

⁹ S. 943.0585(1), F.S.

¹⁰ S. 943.0585(2), F.S.

¹¹ *Id.*

¹² *Id.*

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

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

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

¹⁶ S. 943.0585(2)(a)3., F.S.

¹⁷ S. 943.0585(2)(a)2., F.S.

The statute prohibits expunction if the person was acquitted at trial, whether by a judge or the jury, unless the person first has the record sealed for ten years.¹⁸ A person may be acquitted either by a judgment of acquittal or a not-guilty verdict. A judgment of acquittal results when, at the close of evidence in the case, a court is of the opinion that the evidence is insufficient to warrant a conviction.¹⁹ A not guilty verdict results when the factfinder, whether judge or jury, determines that the prosecution did not prove the person's guilt beyond a reasonable doubt.²⁰

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

According to FDLE's Statistical Analysis Center, there are currently 48,991 criminal history records that have an acquittal with no conviction.²¹

Effect of Proposed Changes

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

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

B. SECTION DIRECTORY:

Section 1: Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.
Section 2: Provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Current law allows FDLE to collect a \$75 processing fee to complete the certificate of eligibility for expunction.²² According to FDLE's Statistical Analysis Center, there are currently 48,991 criminal history records that have an acquittal with no conviction. The department assumes ten percent of those eligible would apply for a certificate of eligibility for an expunction of their criminal history record, resulting in 4,899 new applications and \$367,425 in projected processing fee revenue.

2. Expenditures:

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

According to FDLE's Statistical Analysis Center, there are currently 48,991 criminal history records that have an acquittal with no conviction. The department assumes ten percent of those eligible would apply for a certificate of eligibility for an expunction of their criminal history record. The department indicates an additional 4,899 applications would require one additional FTE with a first-

¹⁸ S. 943.0585(2)(h), F.S.

¹⁹ Rule 3.380, Fla. R. Crim. P.

²⁰ Fla. Std. Crim. Jury Instr. 3.7 (Plea of not guilty; reasonable doubt; and burden of proof).

²¹ Florida Department of Law Enforcement, Agency Analysis of 2018 House Bill 1065, p. 2 (Jan. 18, 2018).

²² S. 943.0585(2)(b), F.S.

year cost of \$62,441 and a recurring cost of \$58,686.²³ However, these costs are offset by the projected processing fee revenue and the workload can be absorbed within existing resources of the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

²³ Supra, FN 21 at pg. 3.
STORAGE NAME: h1065d.JDC.DOCX
DATE: 2/26/2018

1 A bill to be entitled
 2 An act relating to expunction of criminal history
 3 records; amending s. 943.0585, F.S.; providing that a
 4 person receiving a judgment of acquittal or not guilty
 5 verdict is eligible to have his or her criminal record
 6 expunged; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraphs (a) and (h) of subsection (2) of
 11 section 943.0585, Florida Statutes, are amended to read:

12 943.0585 Court-ordered expunction of criminal history
 13 records.—The courts of this state have jurisdiction over their
 14 own procedures, including the maintenance, expunction, and
 15 correction of judicial records containing criminal history
 16 information to the extent such procedures are not inconsistent
 17 with the conditions, responsibilities, and duties established by
 18 this section. Any court of competent jurisdiction may order a
 19 criminal justice agency to expunge the criminal history record
 20 of a minor or an adult who complies with the requirements of
 21 this section. The court shall not order a criminal justice
 22 agency to expunge a criminal history record until the person
 23 seeking to expunge a criminal history record has applied for and
 24 received a certificate of eligibility for expunction pursuant to
 25 subsection (2) or subsection (5). A criminal history record that

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

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

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

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

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

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

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): Criminal Justice Subcommittee; Grant

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N, As CS	Bruno	Sumner
2) Justice Appropriations Subcommittee	11 Y, 0 N	Welty	Gusky
3) Judiciary Committee		Bruno <i>JB</i>	Poche <i>MM</i>

SUMMARY ANALYSIS

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

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

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

The bill requires a court to find probable cause and issue a warrant in order to authorize the use of any mobile location tracking device. The officer must install the device within 10 days of the warrant's issuance. Additionally, the bill places time constraints on how long such a device may be used; the timeframe in which the device is used must be specified in the warrant and may not exceed 45 days from when the warrant was issued. Upon a showing of good cause the court, may grant one or more extensions, each of which may not exceed 45 days.

The bill imposes notice requirements for law enforcement use of a location tracking device. Within 10 days after the surveillance timeframe specified in the warrant, the officer executing the warrant must serve a copy on the person whom, or whose property, law enforcement tracked. The court may grant an extension of the notice requirement for up to 90 days upon law enforcement request.

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Fourth Amendment, Generally

The Fourth Amendment of the United States Constitution guarantees:

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

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

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

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

Searches of Cell Phones

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

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

¹ U.S. CONST. AMEND. IV.

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

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

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

⁵ Fla. Const. Art. 1, s. 12.

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

⁷ 134 S.Ct. 2473 (2014).

⁸ *Id.* at 2484.

⁹ *Id.* at 2489.

Wiretapping and Stored Communications

By Law Enforcement

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

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

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

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

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

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

¹² S. 934.09, F.S.

¹³ *Id.*

¹⁴ S. 934.07, F.S.

¹⁵ S. 934.03(2)(a)3., F.S.

By the General Public

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

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

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

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

Stored Communications

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

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

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

¹⁶ S. 934.03, F.S.

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

¹⁸ S. 934.03(1), F.S.

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

²⁰ S. 934.03(4), F.S.

²¹ S. 934.21(1), F.S.

²² S. 934.21(2)(a), F.S.

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

New Technologies

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

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

Pen Registers and Trap and Trace Devices

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

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

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

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

²³ S. 934.21(2)(b), F.S.

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

²⁵ *Id.*

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

²⁷ *Supra*, FN 24.

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

²⁹ *Supra*, FN 26.

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

³¹ S. 934.02(20), F.S.

³² S. 934.02(21), F.S.

³³ 18 USC § 3127.

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

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

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

Case Law

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

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

Mobile Tracking Devices

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

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

³⁵ S. 934.32(2), F.S.

³⁶ 442 U.S. 735 (1979).

³⁷ Id. at 742-44.

³⁸ 152 So.3d 504 (Fla. 2014).

³⁹ Id. at 507-508.

⁴⁰ S. 934.42, F.S.

⁴¹ S. 934.42(2)(b), F.S.

⁴² 565 U.S. 400 (2012).

⁴³ Id.

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

Historical Cell Site Data

Cell phones connect to cell sites or base towers in order to make calls, send text messages, use data, and perform other functions.⁴⁵ These cell sites are located at fixed geographic locations. The phone connects to the cell site with the strongest available signal and may connect to different cell sites as it moves through a coverage area.⁴⁶ The phone company keeps a record of the cell sites that a phone connects to for certain actions.⁴⁷ This data can approximate a person's location, although it is possible for a cell site to have a coverage area of approximately 2,700 miles⁴⁸ and for a phone to connect to a tower other than the one closest to it.⁴⁹

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

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

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

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

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

⁴⁵ Center for the Advancement of Public Integrity, *Does Seeking Cell Site Location Information Require a Warrant? The Current State of Law in a Rapidly Changing Field* (August 1, 2016), available at: http://www.law.columbia.edu/sites/default/files/microsites/public-integrity/files/does_seeking_cell_site_location_information_require_a_search_warrant_-_wesley_cheng_-_august_2016_update_0.pdf (last visited February 22, 2018).

⁴⁶ *Id.*

⁴⁷ *Id.*

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

⁴⁹ *Supra*, FN 45.

⁵⁰ S. 934.23(4)(a)2., F.S.

⁵¹ S. 934.23(5), F.S.

⁵² 110 So.3d 954 (Fla. 4th DCA 2013).

⁵³ *Id.* at 958.

⁵⁴ 152 So.3d 504 (Fla. 2014).

⁵⁵ *Id.* at 516.

⁵⁶ 819 F.3d 880 (6th Cir. 2016).

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

⁵⁸ *Carpenter*, 819 F.3d at 886.

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

Cell-Site Simulators

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

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

Criminal Punishment Code

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

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

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

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

⁶¹ *Id.* at 2

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 3.

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

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

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

⁶⁸ S. 921.002, F.S.

⁶⁹ S. 921.0022, F.S.

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

⁷¹ S. 921.0024, F.S.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ S. 921.0022(2), F.S.

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

Effect of Proposed Changes

Wiretapping and Stored Communications

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

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

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

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

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

Location Tracking

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

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

The bill does not specify whether cell-site location data refers to historical cell-site location data, real-time cell-site location data, or both.

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

⁷⁷ s. 921.0022(2), F.S.

The bill requires the court to find probable cause and issue a warrant in order to authorize the use of any location tracking device. The officer must install the device within 10 days of the warrant's issuance. Additionally, the bill places time constraints on how long such a device may be used; the timeframe in which the device is used must be specified in the warrant and may not exceed 45 days from when the warrant was issued. Upon a showing of good cause the court may grant one or more extensions. The extensions must also not exceed 45 days.

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

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

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

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

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

B. SECTION DIRECTORY:

Section 1: Amends s. 934.01, F.S., relating to legislative findings.

Section 2: Amends s. 934.02, F.S., relating to definitions.

Section 3: Amends s. 934.21, F.S., relating to unlawful access to stored communications; penalties.

Section 4: Amends s. 934.42, F.S., relating to mobile tracking device authorization.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

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

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

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

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

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

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

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

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

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

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

90 934.02 Definitions.—As used in this chapter:

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

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

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

101 indirectly, or to another connected device;

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

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

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

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

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

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

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

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

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

123

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

234 1. An emergency exists which:

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

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

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

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

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

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

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

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



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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Grant, J. offered the following:

3
4 **Amendment (with title amendment)**

5 Remove lines 117-228 and insert:

6 (1) Except as provided in subsection (3), whoever:

7 (a) Intentionally accesses without authorization a
8 facility through which an electronic communication service is
9 provided, or

10 (b) Intentionally exceeds an authorization to access such
11 facility,

12
13 and thereby obtains, alters, or prevents authorized access to a
14 wire or electronic communication while it is in electronic
15 storage in such system shall be punished as provided in
16 subsection (2).



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17 (2) The punishment for an offense under subsection (1) is
18 as follows:

19 (a) If the offense is committed for purposes of commercial
20 advantage, malicious destruction or damage, or private
21 commercial gain, the person ~~is~~:

22 1. In the case of a first offense under this subsection,
23 commits guilty of a misdemeanor of the first degree, punishable
24 as provided in s. 775.082, s. 775.083, or s. 934.41.

25 2. In the case of any subsequent offense under this
26 subsection, commits guilty of a felony of the third degree,
27 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
28 s. 934.41.

29 (b) In any other case, the person commits ~~is guilty of~~ a
30 misdemeanor of the second degree, punishable as provided in s.
31 775.082 or s. 775.083.

32 (3) Subsection (1) does not apply with respect to conduct
33 authorized:

34 (a) By the person or entity providing a wire, oral, or
35 electronic communications service, including through cellular
36 phones, portable electronic communication devices, or
37 microphone-enabled household devices;

38 (b) By a user of a wire, oral, or electronic
39 communications service, including through cellular phones,
40 portable electronic communication devices, or microphone-enabled



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41 household devices, with respect to a communication of or
42 intended for that user; ~~or~~
43 (c) In s. 934.09, s. 934.23, or s. 934.24;
44 (d) In chapter 933; or
45 (e) For accessing for a legitimate business purpose
46 information that is not personally identifiable or that has been
47 collected in a way that prevents identification of the user of
48 the device.

49 Section 4. Section 934.42, Florida Statutes, is amended to
50 read:

51 934.42 Mobile tracking device and location tracking
52 authorization.—

53 (1) An investigative or law enforcement officer may make
54 application to a judge of competent jurisdiction for a warrant
55 ~~an order~~ authorizing or approving the installation and use of a
56 mobile tracking device.

57 (2) An application under subsection (1) ~~of this section~~
58 must include:

59 (a) A statement of the identity of the applicant and the
60 identity of the law enforcement agency conducting the
61 investigation.

62 (b) A statement setting forth a reasonable period of time
63 that the tracking device may be used or the location data may be
64 obtained in real-time, not to exceed 45 days from the date the
65 warrant is issued. The court may, for good cause, grant one or



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66 more extensions for a reasonable period of time, not to exceed
67 45 days each ~~certification by the applicant that the information~~
68 ~~likely to be obtained is relevant to an ongoing criminal~~
69 ~~investigation being conducted by the investigating agency.~~

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

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

75 (3) Upon application made as provided under subsection
76 (2), the court, if it finds probable cause, ~~that the~~
77 ~~certification~~ and finds that the statements required by
78 subsection (2) have been made in the application, shall grant a
79 warrant ~~enter an~~ ex parte ~~order~~ authorizing the installation and
80 use of a mobile tracking device. Such warrant ~~order~~ may
81 authorize the use of the device within the jurisdiction of the
82 court and outside that jurisdiction but within the State of
83 Florida if the device is installed within the jurisdiction of
84 the court. The warrant must command the officer to complete any
85 installation authorized by the warrant within a specified period
86 of time not to exceed 10 calendar days.

87 (4) A court may not require greater specificity or
88 additional information beyond that which is required by law and
89 this section as a requisite for issuing a warrant ~~an order~~.



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90 (5) Within 10 days after the time period specified in
91 paragraph (2)(b) has ended, the officer executing a warrant must
92 return the warrant to the issuing judge. When the warrant is
93 authorizing historical global positioning satellite location
94 data, the officer executing the warrant must return the warrant
95 to the issuing judge within 10 days after receipt of the
96 records. The officer may do so by reliable electronic means.

97 (6) Within 10 days after the time period specified in
98 paragraph (2)(b) has ended, the officer executing a warrant must
99 serve a copy of the warrant on the person who, or whose
100 property, was tracked. Service may be accomplished by delivering
101 a copy to the person who, or whose property, was tracked or by
102 leaving a copy at the person's residence or usual place of abode
103 with an individual of suitable age and discretion who resides at
104 that location and by mailing a copy to the person's last known
105 address. Upon a showing of good cause to a court of competent
106 jurisdiction, the court may grant one or more postponements of
107 this notice for a period of 90 days each.

108 (7)~~(5)~~ The standards established by Florida courts and the
109 United States Supreme Court for the installation, use, or ~~and~~
110 monitoring of mobile tracking devices shall apply to the
111 installation, use, or monitoring ~~and use~~ of any device as
112 authorized by this section.

113 (8)~~(6)~~ As used in this section, the term "mobile tracking
114 device" or a "tracking device" means an electronic or mechanical



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115 | device that allows ~~which permits~~ the tracking of the movement of
116 | a person or object, including a cellular phone or a portable
117 | electronic communication device, and may be used to obtain real-
118 | time cellular-site location data, precise global positioning
119 | satellite location data, or historical global positioning
120 | satellite location data.

121

122

123

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

124

Remove lines 9-10 and insert:

125

the act; prohibiting unlawful access to communications

126

stored in specified devices; providing penalties;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1301 Sexual Offenders and Predators
SPONSOR(S): Justice Appropriations Subcommittee, Fitzenhagen
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1226

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

SUMMARY ANALYSIS

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

Current law requires all sexual offenders and sexual predators to comply with a number of statutory registration requirements, including registration of all residences. Residence is defined for purposes of the registration as follows:

- "Permanent residence" means a place where the person abides, lodges, or resides for 5 or more consecutive days.
- "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destination in or out of this state for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address. For a person whose permanent residence is not in this state, it means a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.
- "Transient residence" means a county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

CS/HB 1301 reduces the number of days used to determine residency from 5 to 3 for sexual predators or sexual offenders to register. Penalties for failure to register after July 1, 2018, carry a mandatory minimum sentence as follows:

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

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

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

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

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Sexual Offenders and Sexual Predators: Designation Criteria

Sexual Offenders

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

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

Qualifying convictions for sexual offender designation include:

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

¹ S. 943.0435(1)(h)1.a.(II), F.S.

² S. 934.0435(1)(h)1.b., F.S.

³ S. 934.0435(1)(h)1.c., F.S.

⁴ S. 934.0435(1)(h)1.d., F.S.

⁵ S. 393.135(2), F.S.

⁶ S. 394.4593(2), F.S.

⁷ SS. 787.01 & 787.02, F.S.

⁸ S. 787.025(2), F.S.

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

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

¹¹ S. 794.05, F.S.

¹² S. 800.04, F.S.

¹³ S. 810.145(8), F.S.

¹⁴ S. 825.1025, F.S.

¹⁵ S. 827.071, F.S.

¹⁶ S. 847.0133, F.S.

¹⁷ S. 847.0135(2), F.S.

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

Qualifying delinquency adjudications for sexual offender designation include:

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

Sexual Predators

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

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

Qualifying convictions for sexual predator designation include:

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

¹⁸ S. 847.0135(3), F.S.

¹⁹ S. 847.0135(4), F.S.

²⁰ S. 847.0135(5), F.S.

²¹ S. 847.0137, F.S.

²² S. 847.0138, F.S.

²³ S. 847.0145, F.S.

²⁴ S. 895.03, F.S.

²⁵ S. 916.1075(2), F.S.

²⁶ S. 985.701(1), F.S.

²⁷ S. 794.011, F.S.

²⁸ S. 800.04(4)(a)2., F.S.

²⁹ S. 800.04(5)(c)1., F.S.

³⁰ S. 800.04(5)(d), F.S.

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

³² *Supra*, FN 27.

³³ S. 800.04, F.S.

³⁴ *Supra*, FN 23.

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

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

Registration Requirements for Sexual Offenders and Sexual Predators

Initial Registration

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

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

A sexual predator must register:

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

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

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

Information Required for Registration

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

- Name;

³⁵ S. 775.21(4)(a)1.b., F.S.

³⁶ S. 775.21(4), F.S.

³⁷ SS. 775.21(4)(c) & 775.21(5), F.S.

³⁸ S. 943.0435(2)(a)1., F.S.

³⁹ S. 775.21(6)(b), F.S.

⁴⁰ Id.

⁴¹ S. 775.21(6)(c), F.S.

⁴² S. 775.21(6)(e)a., F.S.

⁴³ S. 775.21(6)(2)b., F.S.

⁴⁴ S. 775.21(6)(f)1., F.S.

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

Residence

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

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

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

⁴⁶ S. 775.21, F.S.

Continuing Reporting Requirements

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

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

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

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

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

Criminal Sentencing

Types of Sentences

Felony sentencing options available to a court include:

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

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

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

⁴⁸ S. 943.0435(14), F.S.

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

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

⁵¹ SS. 775.082 & 775.083, F.S.

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

⁵³ S. 948.001(8), F.S.

⁵⁴ S. 948.001(3), F.S.

⁵⁵ S. 948.012, F.S.

Criminal Punishment Code

Felony offenses subject to the Criminal Punishment Code⁵⁶ are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe (1) to most severe (10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute.⁵⁷ A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense.⁵⁸ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers.⁵⁹ The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.⁶⁰

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

Downward Departure

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

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

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

⁵⁷ S. 921.0022, F.S.

⁵⁸ SS. 921.0022 & 921.0024, F.S.

⁵⁹ S. 921.0024(2), F.S.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ S. 921.0026, F.S.

⁶⁴ Id.

Failure to Register Offenses under the Criminal Punishment Code

Failure to register as a sexual offender or sexual predator scores a level 7 under the Criminal Punishment Code.⁶⁵ A person convicted of a level 7 offense automatically scores a minimum prison sentence of 21 months, without taking into account any other current offenses, prior history, or other factors that may contribute additional points.⁶⁶ Because a person must have been convicted of a sexual offense in order to qualify as a sexual offender or predator, a person usually has significant criminal history points, leading to an even higher minimum permissible sentence.

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

Mandatory Minimum Sentences

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

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

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

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

Effect of Proposed Changes

CS/HB 1301 reduces the aggregate and consecutive number of days to determine residency from 5 to 3 for sexual predator or sexual offender registration purposes.

The bill also requires a court to impose a mandatory minimum sentence of community control if the court does not sentence the offender to prison, as follows:

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

⁶⁵ S. 921.0022(3)(g), F.S.

⁶⁶ S. 921.0024, F.S.

⁶⁷ S. 775.087, F.S.

⁶⁸ S. 893.135(1)(b)a., F.S.

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

⁷⁰ S. 741.281, F.S.

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

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

⁷³ S. 948.012(5), F.S.

As failure to register as a sexual predator or sexual offender automatically scores a minimum permissible sentence of prison under the Criminal Punishment Code, the community control mandatory minimums only apply if the court downward departs from the sentencing guidelines to impose a nonprison sanction. The court may not waive or depart from the mandatory minimum.

The bill excludes mandatory community control for an offense relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.⁷⁴

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

B. SECTION DIRECTORY:

Section 1: Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

Section 2: Amends s. 943.0435, F.S., relating to sexual offenders required to register with department; penalty.

Section 3: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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

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

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

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

FDLE states that the proposed changes in the bill will require updating sexual offender and sexual predator registration forms and e-forms, the Florida Sexual Offender/Predator Public Registry

⁷⁴ ss. 775.21(10)(g) and 943.0435(13), F.S.

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

⁷⁶ *Id.*

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

⁷⁸ *Id.*

website, the CJNet website, and training materials. FDLE has determined the implementation costs can be absorbed within existing resources.⁷⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 12, 2018, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified that the mandatory minimum provisions only apply if the court does not impose a prison sentence for a felony sexual offender and sexual predator registration violation.

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

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

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

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

- 21 775.21 The Florida Sexual Predators Act.—
 22 (2) DEFINITIONS.—As used in this section, the term:
 23 (k) "Permanent residence" means a place where the person
 24 abides, lodges, or resides for 3 ~~5~~ or more consecutive days.
 25 (n) "Temporary residence" means a place where the person

26 abides, lodges, or resides, including, but not limited to,
 27 vacation, business, or personal travel destinations in or out of
 28 this state, for a period of 3 ~~5~~ or more days in the aggregate
 29 during any calendar year and which is not the person's permanent
 30 address or, for a person whose permanent residence is not in
 31 this state, a place where the person is employed, practices a
 32 vocation, or is enrolled as a student for any period of time in
 33 this state.

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

40 (10) PENALTIES.—

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

51 information; who fails to make a required report in connection
 52 with vacating a permanent residence; who fails to reregister as
 53 required; who fails to respond to any address verification
 54 correspondence from the department within 3 weeks of the date of
 55 the correspondence; who knowingly provides false registration
 56 information by act or omission; or who otherwise fails, by act
 57 or omission, to comply with the requirements of this section
 58 commits a felony of the third degree, punishable as provided in
 59 s. 775.082, s. 775.083, or s. 775.084.

60 (b) A sexual predator who has been convicted of or found
 61 to have committed, or has pled nolo contendere or guilty to,
 62 regardless of adjudication, any violation, or attempted
 63 violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 64 the victim is a minor; s. 794.011, excluding s. 794.011(10); s.
 65 794.05; former s. 796.03; former s. 796.035; s. 800.04; s.
 66 827.071; s. 847.0133; s. 847.0135(5); s. 847.0145; or s.
 67 985.701(1); or a violation of a similar law of another
 68 jurisdiction when the victim of the offense was a minor, and who
 69 works, whether for compensation or as a volunteer, at any
 70 business, school, child care facility, park, playground, or
 71 other place where children regularly congregate, commits a
 72 felony of the third degree, punishable as provided in s.
 73 775.082, s. 775.083, or s. 775.084.

74 (c) For a felony violation of this section, excluding
 75 paragraph (g), committed on or after July 1, 2018, if the court

76 does not impose a prison sentence, the court shall impose as
 77 part of the sentence a term of community control, as defined in
 78 s. 948.001, as follows:

79 1. For a first offense, a mandatory minimum term of 6
 80 months with electronic monitoring.

81 2. For a second offense, a mandatory minimum term of 1
 82 year with electronic monitoring.

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

85 (d)(e) Any person who misuses public records information
 86 relating to a sexual predator, as defined in this section, or a
 87 sexual offender, as defined in s. 943.0435 or s. 944.607, to
 88 secure a payment from such a predator or offender; who knowingly
 89 distributes or publishes false information relating to such a
 90 predator or offender which the person misrepresents as being
 91 public records information; or who materially alters public
 92 records information with the intent to misrepresent the
 93 information, including documents, summaries of public records
 94 information provided by law enforcement agencies, or public
 95 records information displayed by law enforcement agencies on
 96 websites or provided through other means of communication,
 97 commits a misdemeanor of the first degree, punishable as
 98 provided in s. 775.082 or s. 775.083.

99 (e)(d) A sexual predator who commits any act or omission
 100 in violation of this section may be prosecuted for the act or

101 omission in the county in which the act or omission was
 102 committed, in the county of the last registered address of the
 103 sexual predator, in the county in which the conviction occurred
 104 for the offense or offenses that meet the criteria for
 105 designating a person as a sexual predator, in the county where
 106 the sexual predator was released from incarceration, or in the
 107 county of the intended address of the sexual predator as
 108 reported by the predator prior to his or her release from
 109 incarceration. In addition, a sexual predator may be prosecuted
 110 for any such act or omission in the county in which he or she
 111 was designated a sexual predator.

112 (f)~~(e)~~ An arrest on charges of failure to register, the
 113 service of an information or a complaint for a violation of this
 114 section, or an arraignment on charges for a violation of this
 115 section constitutes actual notice of the duty to register when
 116 the predator has been provided and advised of his or her
 117 statutory obligation to register under subsection (6). A sexual
 118 predator's failure to immediately register as required by this
 119 section following such arrest, service, or arraignment
 120 constitutes grounds for a subsequent charge of failure to
 121 register. A sexual predator charged with the crime of failure to
 122 register who asserts, or intends to assert, a lack of notice of
 123 the duty to register as a defense to a charge of failure to
 124 register shall immediately register as required by this section.
 125 A sexual predator who is charged with a subsequent failure to

126 register may not assert the defense of a lack of notice of the
 127 duty to register.

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

131 (g) Any person who has reason to believe that a sexual
 132 predator is not complying, or has not complied, with the
 133 requirements of this section and who, with the intent to assist
 134 the sexual predator in eluding a law enforcement agency that is
 135 seeking to find the sexual predator to question the sexual
 136 predator about, or to arrest the sexual predator for, his or her
 137 noncompliance with the requirements of this section:

138 1. Withholds information from, or does not notify, the law
 139 enforcement agency about the sexual predator's noncompliance
 140 with the requirements of this section, and, if known, the
 141 whereabouts of the sexual predator;

142 2. Harbors, or attempts to harbor, or assists another
 143 person in harboring or attempting to harbor, the sexual
 144 predator;

145 3. Conceals or attempts to conceal, or assists another
 146 person in concealing or attempting to conceal, the sexual
 147 predator; or

148 4. Provides information to the law enforcement agency
 149 regarding the sexual predator which the person knows to be false
 150 information,

151
 152 commits a felony of the third degree, punishable as provided in
 153 s. 775.082, s. 775.083, or s. 775.084. This paragraph does not
 154 apply if the sexual predator is incarcerated in or is in the
 155 custody of a state correctional facility, a private correctional
 156 facility, a local jail, or a federal correctional facility.

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

159 943.0435 Sexual offenders required to register with the
 160 department; penalty.-

161 (9) (a) A sexual offender who does not comply with the
 162 requirements of this section commits a felony of the third
 163 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 164 775.084.

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

170 1. For a first offense, a mandatory minimum term of 6
 171 months with electronic monitoring.

172 2. For a second offense, a mandatory minimum term of 1
 173 year with electronic monitoring.

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

176 (c) ~~(b)~~ A sexual offender who commits any act or omission
177 in violation of this section may be prosecuted for the act or
178 omission in the county in which the act or omission was
179 committed, in the county of the last registered address of the
180 sexual offender, in the county in which the conviction occurred
181 for the offense or offenses that meet the criteria for
182 designating a person as a sexual offender, in the county where
183 the sexual offender was released from incarceration, or in the
184 county of the intended address of the sexual offender as
185 reported by the offender prior to his or her release from
186 incarceration.

187 (d) ~~(e)~~ An arrest on charges of failure to register when
188 the offender has been provided and advised of his or her
189 statutory obligations to register under subsection (2), the
190 service of an information or a complaint for a violation of this
191 section, or an arraignment on charges for a violation of this
192 section constitutes actual notice of the duty to register. A
193 sexual offender's failure to immediately register as required by
194 this section following such arrest, service, or arraignment
195 constitutes grounds for a subsequent charge of failure to
196 register. A sexual offender charged with the crime of failure to
197 register who asserts, or intends to assert, a lack of notice of
198 the duty to register as a defense to a charge of failure to
199 register shall immediately register as required by this section.
200 A sexual offender who is charged with a subsequent failure to

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201 | register may not assert the defense of a lack of notice of the
202 | duty to register.

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1361 Unclaimed Funds Held by the Clerks of Court
SPONSOR(S): Civil Justice & Claims Subcommittee and Clemons
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 918

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	15 Y, 0 N, As CS	Bond	Bond
2) Appropriations Committee	27 Y, 0 N	Gusky	Leznoff
3) Judiciary Committee		Bond <i>nb</i>	Poche <i>M</i>

SUMMARY ANALYSIS

The Florida Disposition of Unclaimed Property Act provides that property held for the benefit of another must be turned over to the state if unclaimed for the statutory length of time. The Department of Financial Services (DFS) administers the program. DFS is responsible for receiving the property, attempting to locate the owner, and returning the property to the owner. Holders of unclaimed property file an annual report and transmit the unclaimed property from the previous year by May 1st.

The process differs for unclaimed surplus funds that remain after a foreclosure. Upon the conclusion of a foreclosure, the clerk disburses funds according to the final judgment. If any funds remain undisbursed for 60 days without a legal claim, the clerk must appoint a "surplus trustee," a private entity who earns a commission if he or she locates the owner and assists in claiming the foreclosure surplus. The appointment lasts for one year, after which the surplus is turned over to DFS. The 60-day time period starting at the date of the foreclosure sale is the only time during which subordinate lienholders may file a claim seeking monies owed from the surplus.

CS/HB 1361 amends procedures for surplus funds disbursement after a foreclosure, treating unclaimed foreclosure surpluses similar to any other unclaimed property. The bill repeals the statutory authorization for surplus trustees. The bill extends the claim period for subordinate lienholders, allowing any party claiming entitlement to the surplus to file a claim with the court at any time up to the point where the clerk transmits the funds to DFS. Once transmitted to DFS, only the owner of record may claim the surplus.

Current law contains conflicting statutes regarding unclaimed funds generally held by the clerk of court. One statute presumes funds held by a clerk of court are unclaimed after 5 years, requires turnover to DFS after such 5-year period, and requires a court order for DFS to pay the unclaimed monies to the owner. The Act presumes funds are unclaimed after 1 year and provides for claims and payment through DFS without court order. The bill repeals the 5-year provision and the court order requirement.

The bill has an indeterminate, but likely insignificant, fiscal impact on DFS and the clerks of the court.

The effective date of the bill is July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Unclaimed Property, In General

In 1987, the state enacted the Florida Disposition of Unclaimed Property Act (the Act). The Act is based on the Uniform Unclaimed Property Act adopted by the Uniform Law Commission, and protects the interests of missing owners of property while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever.

Under the Act, the Bureau of Unclaimed Property, a division within the Department of Financial Services (DFS), is responsible for receiving abandoned property, attempting to locate the rightful owner, and returning the property or proceeds to the owner. There is no statute of limitations in the Act; the owner may claim his or her property at any time and at no cost.

Current law establishes varying time periods which trigger the presumption that property is unclaimed:

- 5 years if held by a person or entity in the private sector.¹
- 5 years if held by a clerk of court in the court registry.²
- 3 years if the property is the unclaimed equity of debt of a business association,³ except that the period is 6 months if the business is in the course of dissolution.⁴
- 2 years if held by a person in a fiduciary capacity for the benefit of another person under a trust instrument.⁵
- 2 years if resulting from the demutualization, rehabilitation, or reorganization of an insurance company.⁶
- 1 year if held by any public agency, including a clerk of court.⁷
- 1 year if a utility deposit.⁸
- 1 year if a court-ordered refund held by a business.⁹
- 1 year if owed as wages.¹⁰

Holders of unclaimed property are required to file an annual report with DFS, and must transmit the unclaimed property with the report, between January 1 and May 1 of each year. The report and transmittal must include all property considered unclaimed in the previous calendar year. In the report, the holder of property must note the apparent owner of the property.¹¹

Upon the payment or delivery of unclaimed property to DFS, the state assumes custody and responsibility for the property.¹² The original property owner retains the right to recover the property, and any person claiming an interest in the property delivered to DFS may file a claim for the property, subject to certain requirements.¹³ Claims for recovery of unclaimed property may be filed by or on

¹ S. 717.102(1), F.S.

² S. 43.19, F.S. This section conflicts with the 1 year provision in s. 717.113, F.S., see further discussion below.

³ S. 717.1101, F.S.

⁴ S. 717.111, F.S.

⁵ S. 717.1125, F.S.

⁶ S. 717.1071, F.S.

⁷ S. 717.113, F.S. This section conflicts with the 5 year provision in S. 43.19, F.S., see further discussion below.

⁸ S. 717.108, F.S.

⁹ S. 717.109, F.S.

¹⁰ S. 717.115, F.S.

¹¹ S. 717.117, F.S.

¹² S. 717.1201, F.S.

¹³ SS. 717.117 and 717.124, F.S.

behalf of any person with an interest in the property.¹⁴ While the Act provides the opportunity for the owner to recover the full value of their property at no cost, claimants may designate someone to submit the claim for them by executing a power of attorney agreement. The claimant may also sell the right to the property to certain individuals who are registered with DFS.¹⁵ In either case, the transaction is subject to a fee limitation, unless a disclosure statement is provided to the claimant, in the form and with the content specified in the Act.¹⁶

DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, DFS must deliver or pay over to the claimant the property or the amount DFS actually received or the proceeds, if it has been sold by DFS.¹⁷ All proceeds from unclaimed property are deposited by DFS into the Unclaimed Property Trust Fund.¹⁸ DFS may retain up to \$15 million to make prompt payment on verified claims and to cover costs incurred by DFS in administering and enforcing the Act. All remaining funds must be deposited into the State School Fund to be used for public education.¹⁹

Unclaimed Property Laws Related to the Clerks of Court

There are conflicting and overlapping laws regarding unclaimed property held by a clerk of court:

- Section 43.19, F.S., provides for the disposition of unclaimed money paid into the court registry. If such unclaimed funds remain in the registry for 5 years or more, the court must direct that the money be deposited with the Chief Financial Officer to the credit of the State School Fund. A person, firm or corporation entitled to any of the money may obtain an order directing the payment of the money to the claimant by petitioning the court and providing written notice to the state attorney and proof of entitlement to the money.²⁰ Thus, while most unclaimed funds are distributed to the owner upon application approved by DFS, unclaimed funds from the clerks may only be distributed upon court order.
- Section 717.113, F.S., a part of the Act, presumes property held by the clerk unclaimed after 1 year must be paid to DFS after the 1-year period. Disposition is governed by the Act.
- Property held by the clerk as a result of a foreclosure sale is subject to the surplus trustee process at ss. 45.032 - .035, F.S. See description below.

Sections 43.19 and 717.113, F.S., conflict with one another. A recent appellate decision attempted to reconcile the two, calling the interaction between the statutes "confusing" and "unclear."²¹

¹⁴ S. 717.124, F.S.

¹⁵ S. 717.1351, F.S. A person desiring to acquire ownership of or entitlement to property reported to DFS must be an attorney licensed to practice law in this state, a licensed Florida-certified public accountant, a licensed private investigator, or an employer of a licensed private investigator.

¹⁶ All contracts to acquire ownership of or entitlement to unclaimed property must have a purchase price that discounts the value of the unclaimed property at the time the agreement is executed by the seller at no greater than 20 percent per account held by DFS. The amount paid to the seller for an unclaimed property account must not be discounted in excess of \$1,000 unless full disclosure is provided to the owner of the unclaimed property. S. 717.1351(2), F.S.

¹⁷ Supra, FN 14.

¹⁸ S. 717.123, F.S.

¹⁹ Id.

²⁰ S. 43.19(3), F.S.

²¹ *Crescenzo v. Atwater (In re Payment of \$13,857.69)*, 136 So.3d 1248 (Fla. 2nd DCA 2014).

Judicial Sales of Real Property and Surplus Trustees

Foreclosure is the legal process for enforcement of a security interest in real property. Where the parties do not settle or resolve the foreclosure, the property is sold at auction. There are three possible results of a foreclosure sale:

- Where the foreclosing lender is the winning bidder with a bid of the final judgment or some lesser amount, no monies are paid to the clerk for distribution.
- Where the winning bidder is a third party who bid less than the amount of the final judgment, the full amount of the bid minus clerk's fees is distributed to the foreclosing lender.
- Where the winning bidder is any party who bid more than the amount of the final judgment, the foreclosing lender is paid the full amount of the final judgment or has the amount of the judgment credited against its bid, and the remaining funds are processed according to the statutory procedures for a foreclosure surplus.

At common law, the owner of the real property immediately prior to the sale is entitled to any surplus, subject to claims by inferior creditors whose interests were foreclosed.²² In foreclosure, the plaintiff files a lis pendens in the public records, usually on the day the foreclosure action is filed. Current statutory law presumes that the owner of the real property on the day of the filing of the lis pendens is entitled to the surplus,²³ and junior lienholders have a 60-day time limit from the date of the foreclosure sale to file a claim against the surplus.²⁴

Prior to sale, there are two documents that include notice to all parties regarding a potential surplus. First is the final judgment of foreclosure, which gives notice of the 60-day period.²⁵ Second is the notice of sale, which must be published twice in a newspaper of general circulation and warns junior lienholders of the 60-day period.²⁶ After the sale, the clerk must prepare a certificate of disbursements, a copy of which must be furnished to every party to the case.²⁷ The certificate again informs junior lienholders that they have 60 days from the date of the sale in which to file a claim against the surplus. The certificate of disbursements also lists the surplus amount.

The statute provides a form for the prior owner of the property to claim the surplus, and provides that a junior lienholder may seek a court order for disbursement of the surplus to satisfy its claim. This 60-day limit has been upheld by the courts.²⁸ If no legal claim is made for the surplus within the 60-day period, claims of junior lienholders are barred and the clerk is required to appoint a surplus trustee to locate the owner. As part of the process, the clerk is authorized to deduct certain fees from the surplus funds.²⁹

A surplus trustee is an entity that holds and administers surplus proceeds from a foreclosure. The primary duty of a surplus trustee is to locate the owner of record within 1 year after appointment. Surplus trustees are certified by DFS.³⁰ The clerks assign the surplus trustees to cases using a rotational system developed by DFS.³¹

A surplus trustee is entitled to service charges and fees which are disbursed by the clerk and payable from the surplus. A surplus trustee receives a cost advance of 2 percent of the surplus and upon obtaining a court order disbursing the surplus to the owner of record, the surplus trustee then receives

²² *Jelic v. Sears Mortgage Corp.*, 614 So. 2d 1149 (Fla. 4th DCA 1993)("It appears to be settled beyond all question that one claiming a surplus or the right to share in a surplus resulting from a sale under foreclosure must either own the equity of redemption at the time of the sale or must be one then holding a lien or vested right in the property.")

²³ S. 45.032(1)(a), F.S.

²⁴ S. 45.032, F.S.

²⁵ S. 45.031(1)(a), F.S.

²⁶ S. 45.031(2)(f), F.S.

²⁷ S. 45.031(7), F.S.

²⁸ *Saulnier v. Bank of Am., N.A.*, 187 So. 3d 854 (Fla. 4th DCA 2015).

²⁹ S. 45.035, F.S.

³⁰ S. 45.034(4), F.S.

³¹ SS. 45.034 and 45.035, F.S.

an additional 10 percent.³² Upon locating the owner of record, the surplus trustee files a petition with the court on behalf of the owner of record seeking disbursement of the surplus funds. If the surplus trustee is unable to locate the owner of record within 1 year of appointment, the clerk notifies the surplus trustee that the appointment is terminated. The clerk then treats the remaining funds as unclaimed property to be deposited with DFS under ch. 717, F.S.

According to DFS, there are currently 83 surplus trustee entities.³³ From inception of the program in 2006 through January 13, 2017, surplus trustees were appointed in 10,033 cases.³⁴ The total value of those cases is \$85,032,758.³⁵

Effect of Proposed Changes

CS/HB 1361 repeals s. 43.19, F.S., the statute that requires a clerk of court to retain unclaimed funds for 5 years and that requires a court order for payment of an unclaimed fund. As a result, s. 717.113, F.S. will apply to all funds in the court registry. Funds in the court registry after 1 year are presumed unclaimed and will be turned over to DFS pursuant to the Act. The 1-year time period does not start until the court adjudicates who is entitled to the monies being held by the clerk. This resolves the conflict between statutes noted above.

The bill amends procedures relating to the disbursement of surplus funds after a foreclosure. The bill repeals statutory provisions regarding surplus trustees. No surplus trustees will be appointed in foreclosure cases. The bill also repeals related clerk's fees for trustee appointment.

The bill provides that a claim by the owner of record, a subordinate lienholder, an assignee by involuntary transfer, or a voluntary assignee against the surplus may be made at any time prior to when the clerk reports the unclaimed surplus to DFS. The bill amends statutory notices in the foreclosure final judgment, the notice of sale, and the certificate of disbursements to conform.

If the owner of record, a subordinate lienholder, an assignee by involuntary transfer, or a voluntary assignee files a claim for the remaining surplus before the clerk remits the surplus to DFS, the funds are not unclaimed and the clerk will hold the funds pending court order. Otherwise, a surplus will be considered unclaimed and subject to transmittal to DFS one year after the foreclosure sale. Because of the timing of the report, a foreclosure surplus under this bill may remain with the clerk and be subject to claims for approximately 13 to 27 months from the foreclosure sale, depending upon the sale date and the timing of the clerk's annual transmittal.³⁶

The bill provides that, once the surplus is transmitted to DFS, only the owner of record reported by the clerk, or the estate or beneficiary of a deceased owner of record, is entitled to the surplus. Any surplus of less than \$10 escheats to the clerk.

B. SECTION DIRECTORY:

Section 1: Repeals s. 43.19, F.S., relating to money paid into court; unclaimed funds.

Section 2: Amends s. 45.031, F.S., relating to judicial sales procedure.

Section 3: Amends s. 45.032, F.S., relating to disbursement of surplus funds after judicial sale.

³² S. 45.034(7), F.S.

³³ Florida Department of Financial Services, Agency Bill Analysis for HB 1361 (2018), dated January 16, 2018, at page 2. A list of the surplus trustees can be found online at: <https://www.myfloridacfo.com/division/documents/SurplusTrusteeEntitiesB2017-2018.pdf> (last accessed Feb. 22, 2018).

³⁴ Florida Department of Financial Services, Agency Bill Analysis for HB 681 (2017), dated February 20, 2017, at page 5.

³⁵ Id. 6,970 cases involved a surplus of less than \$5,000 and 3,063 cases involved a surplus greater than \$5,000.

³⁶ For instance, if a foreclosure sale in early January 2018 results in a surplus, it would not be unclaimed until January 2019, with a deadline for the clerk to report and transmit the funds to DFS of May 1, 2020 (which may be just shy of 28 months from sale to transmittal). On other hand, a late December 2017 sale would be unclaimed December 2018 and the clerk could file the report and transmittal in January 2019 (which may be just over 12 months later). This variation in timing is typical in all unclaimed property laws because of the requirement of a single annual report.

- Section 4:** Amends s. 45.033, F.S., relating to sale or assignment of rights to surplus funds in a property subject to foreclosure.
- Section 5:** Repeals s. 45.034, F.S., relating to qualifications and appointment of a surplus trustee in foreclosure actions.
- Section 6:** Amends s. 45.035, F.S., relating to clerk's fees.
- Section 7:** Amends s. 717.113, F.S., relating to property held by courts and public agencies.
- Section 8:** Amends s. 717.124, F.S., relating to unclaimed property claims.
- Section 9:** Amends s. 717.138, F.S., relating to rulemaking authority.
- Section 10:** Amends s. 717.1401, F.S., relating to repeal.
- Section 11:** Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Since inception of the surplus trustee program, DFS has received \$10,525 in application fees.³⁷ Future collection of these fees is eliminated by this bill.

2. Expenditures:

DFS estimates the total cost to administer the surplus trustee program for the last 10 years has been approximately \$235,000. The bill will require DFS to administer the surplus property directly through the Bureau of Unclaimed Property. This change will result in a negligible workload impact for DFS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill eliminates two clerk's fees in s. 45.035, F.S.: a \$15 fee for notifying the surplus trustee and a \$15 fee for appointing a surplus trustee and supplying them with the copy of the final judgment and the certificate of disbursements, and disbursing to the surplus trustee the trustee's cost advance.³⁸

From inception of the program in 2006 through January 13, 2007, there were 10,033 cases assigned to surplus trustees.³⁹ Assuming the clerks of court are collecting both \$15 fees, this equates to a roughly \$30,000 reduction in revenue statewide for the clerks of court per year. The Clerks of Court Operation Corporation determined the loss of this revenue would have a negligible impact.⁴⁰

2. Expenditures:

The clerks of court will no longer be required to notify surplus trustees nor furnish them with a copy of a final judgment. The impact on workload is expected to be neutral.⁴¹

³⁷ Supra, FN 33.

³⁸ S. 45.035, F.S.

³⁹ Supra, FN 34.

⁴⁰ Florida Clerks of Court Operations Corporation, Legislative Bill Analysis for SB 536 (2017) (on file with Judiciary Committee).

⁴¹ Id.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to DFS, the value of the surplus property assigned to surplus trustees since 2006 was \$85,032,758. The maximum amount that the surplus trustee industry could have charged for their services is \$10,203,931, which represents 12 percent of the total value of the disbursed property.⁴² The minimum amount is \$1,700,655, representing the 2 percent search fee. There will be an indeterminate impact on surplus trustees.

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:

DFS formerly enacted Rule 69I-44.021, F.A.C., which attempted to reconcile the conflicts between s. 43.19 and ch. 717, F.S. DFS repealed the rule effective July 25, 2016.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 23, 2018, the Civil Justice & Claims Subcommittee adopted one amendment that changed the effective date of the bill to July 1, 2019, and reported the bill favorably as a committee substitute. This analysis is drafted to committee substitute as passed by the Civil Justice & Claims Subcommittee.

26 from becoming payable or distributable and subject to
 27 certain reporting requirements; amending ss. 717.124,
 28 717.138, and 717.1401, F.S.; conforming cross-
 29 references; providing an effective date.
 30

31 Be It Enacted by the Legislature of the State of Florida:
 32

33 Section 1. Section 43.19, Florida Statutes, is repealed.

34 Section 2. Paragraph (a) of subsection (1), paragraph (f)
 35 of subsection (2), and paragraph (b) of subsection (7) of
 36 section 45.031, Florida Statutes, are amended to read:

37 45.031 Judicial sales procedure.—In any sale of real or
 38 personal property under an order or judgment, the procedures
 39 provided in this section and ss. 45.0315-45.035 may be followed
 40 as an alternative to any other sale procedure if so ordered by
 41 the court.

42 (1) FINAL JUDGMENT.—

43 (a) In the order or final judgment, the court shall direct
 44 the clerk to sell the property at public sale on a specified day
 45 that shall be not less than 20 days or more than 35 days after
 46 the date thereof, on terms and conditions specified in the order
 47 or judgment. A sale may be held more than 35 days after the date
 48 of final judgment or order if the plaintiff or plaintiff's
 49 attorney consents to such time. The final judgment shall contain
 50 the following statement in conspicuous type:

51 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE
 52 ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE
 53 ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS
 54 FINAL JUDGMENT.

55 IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS
 56 REMAINING AFTER THE SALE, IF ANY, YOU MUST FILE A CLAIM WITH THE
 57 CLERK NO LATER THAN THE DATE THAT THE CLERK REPORTS THE FUNDS AS
 58 UNCLAIMED ~~60 DAYS AFTER THE SALE~~. IF YOU FAIL TO FILE A TIMELY
 59 CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

60 (2) PUBLICATION OF SALE.—Notice of sale shall be published
 61 once a week for 2 consecutive weeks in a newspaper of general
 62 circulation, as defined in chapter 50, published in the county
 63 where the sale is to be held. The second publication shall be at
 64 least 5 days before the sale. The notice shall contain:

65 (f) A statement that any person claiming an interest in
 66 the surplus from the sale, if any, other than the property owner
 67 as of the date of the lis pendens must file a claim before the
 68 clerk reports the surplus as unclaimed ~~within 60 days after the~~
 69 ~~sale~~.

70
 71 The court, in its discretion, may enlarge the time of the sale.
 72 Notice of the changed time of sale shall be published as
 73 provided herein.

74 (7) DISBURSEMENTS OF PROCEEDS.—

75 (b) The certificate of disbursements shall be in

76 substantially the following form:

77 (Caption of Action)

78 CERTIFICATE OF DISBURSEMENTS

79 The undersigned clerk of the court certifies that he or she
 80 disbursed the proceeds received from the sale of the property as
 81 provided in the order or final judgment to the persons and in
 82 the amounts as follows:

83 Name Amount

84 Total disbursements: \$....

85 Surplus retained by clerk, if any: \$....

86 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER
 87 THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE
 88 DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED ~~60 DAYS AFTER~~
 89 ~~THE SALE~~. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED
 90 TO ANY REMAINING FUNDS. AFTER THE FUNDS ARE REPORTED AS
 91 UNCLAIMED ~~60 DAYS~~, ONLY THE OWNER OF RECORD AS OF THE DATE OF
 92 THE LIS PENDENS MAY CLAIM THE SURPLUS.

93 WITNESS my hand and the seal of the court on, ...(year)....

94(Clerk)...

95 By ...(Deputy Clerk)...

96 Section 3. Subsection (5) of section 45.032, Florida
 97 Statutes, is renumbered as subsection (4), and paragraph (d) of
 98 subsection (1), subsection (3), and present subsection (4) of
 99 that section are amended, to read:

100 45.032 Disbursement of surplus funds after judicial sale.-

101 (1) For purposes of ss. 45.031-45.035, the term:
 102 ~~(d) "Surplus trustee" means a person qualifying as a~~
 103 ~~surplus trustee pursuant to s. 45.034.~~

104 (3) During the period that 60 days after the clerk holds
 105 ~~issues a certificate of disbursements, the clerk shall hold the~~
 106 surplus pending a court order.:-

107 (a) If the owner of record claims the surplus before the
 108 date that the clerk reports it as unclaimed ~~during the 60-day~~
 109 ~~period~~ and there is no subordinate lienholder, the court shall
 110 order the clerk to deduct any applicable service charges from
 111 the surplus and pay the remainder to the owner of record. The
 112 clerk may establish a reasonable requirement that the owner of
 113 record prove his or her identity before receiving the
 114 disbursement. The clerk may assist an owner of record in making
 115 a claim. An owner of record may use the following form in making
 116 a claim:

117 (Caption of Action)

118 OWNER'S CLAIM FOR
 119 MORTGAGE FORECLOSURE SURPLUS

120 State of

121 County of

122 Under penalty of perjury, I (we) hereby certify that:

123 1. I was (we were) the owner of the following described
 124 real property in County, Florida, prior to the foreclosure
 125 sale and as of the date of the filing of the lis pendens:

126 ... (Legal description of real property)...

127 2. I (we) do not owe any money on any mortgage on the
 128 property that was foreclosed other than the one that was paid
 129 off by the foreclosure.

130 3. I (we) do not owe any money that is the subject of an
 131 unpaid judgment, tax warrant, condominium lien, cooperative
 132 lien, or homeowners' association.

133 4. I am (we are) not currently in bankruptcy.

134 5. I (we) have not sold or assigned my (our) right to the
 135 mortgage surplus.

136 6. My (our) new address is:

137 7. If there is more than one owner entitled to the
 138 surplus, we have agreed that the surplus should be paid
 139 jointly, or to:, at the following address:

140 8. I (WE) UNDERSTAND THAT I (WE) AM (ARE) NOT REQUIRED TO
 141 HAVE A LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT HAVE
 142 TO ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO CLAIM ANY
 143 MONEY TO WHICH I (WE) MAY BE ENTITLED.

144 9. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN UNDER
 145 OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY BE
 146 PROSECUTED CRIMINALLY FOR PERJURY.

147 ... (Signatures)...

148 Sworn to (or affirmed) and subscribed before me this
 149 day of, ... (year) ..., by ... (name of person making
 150 statement)....

151 ...(Signature of Notary Public - State of Florida)...

152 ...(Print, Type, or Stamp Commissioned Name of Notary

153 Public)...

154 Personally Known OR Produced Identification

155 Type of Identification Produced.....

156 (b) If any person other than the owner of record claims an

157 interest in the proceeds prior to the date that the clerk

158 reports the surplus as unclaimed ~~during the 60-day period~~ or if

159 the owner of record files a claim for the surplus but

160 acknowledges that one or more other persons may be entitled to

161 part or all of the surplus, the court shall set an evidentiary

162 hearing to determine entitlement to the surplus. At the

163 evidentiary hearing, an equity assignee has the burden of

164 proving that he or she is entitled to some or all of the surplus

165 funds. The court may grant summary judgment to a subordinate

166 lienholder prior to or at the evidentiary hearing. The court

167 shall consider the factors in s. 45.033 when hearing a claim

168 that any person other than a subordinate lienholder or the owner

169 of record is entitled to the surplus funds.

170 (c) One year after the sale, any surplus remaining with

171 the clerk of the court that has not been disbursed as provided

172 herein is presumed unclaimed as set forth in s. 717.113 and must

173 be reported and remitted to the department in accordance with

174 ss. 717.117 and 717.119, unless there is a pending court

175 proceeding regarding entitlement to the surplus. At the

176 conclusion of any court proceeding and any appeal regarding
 177 entitlement to the surplus, the clerk of the court shall report
 178 and remit the unclaimed property to the department if directed
 179 by a court order, to another entity if directed by the court
 180 order, or, if not directed by the court order, to the owner of
 181 record. For purposes of establishing entitlement to the surplus
 182 after the property has been remitted to the department, only the
 183 owner of record reported by the clerk of the court, or the
 184 beneficiary, as defined in s. 731.201, of a deceased owner of
 185 record reported by the clerk, is entitled to the surplus. A
 186 surplus of less than \$10 escheats to ~~If no claim is filed during~~
 187 ~~the 60-day period, the clerk shall appoint a surplus trustee~~
 188 ~~from a list of qualified surplus trustees as authorized in s.~~
 189 ~~45.034. Upon such appointment, the clerk shall prepare a notice~~
 190 ~~of appointment of surplus trustee and shall furnish a copy to~~
 191 ~~the surplus trustee. The form of the notice may be as follows:~~

192
 193 ~~(Caption of Action)~~

194
 195 ~~NOTICE OF APPOINTMENT~~
 196 ~~OF SURPLUS TRUSTEE~~

197
 198 ~~The undersigned clerk of the court certifies that he or she~~
 199 ~~disbursed the proceeds received from the sale of the property as~~
 200 ~~provided in the order or final judgment to the persons named in~~

201 ~~the certificate of disbursements, and that surplus funds of~~
 202 ~~\$. . . . remain and are subject to disbursement to the owner of~~
 203 ~~record. You have been appointed as surplus trustee for the~~
 204 ~~purpose of finding the owner of record in order for the clerk to~~
 205 ~~disburse the surplus, after deducting costs, to the owner of~~
 206 ~~record.~~

207 ~~WITNESS my hand and the seal of the court on, . . . (year)~~
 208 ~~. . . (Clerk) . . .~~
 209 ~~By . . . (Deputy Clerk) . . .~~
 210

211 ~~(4) If the surplus trustee is unable to locate the owner~~
 212 ~~of record entitled to the surplus within 1 year after~~
 213 ~~appointment, the appointment shall terminate and the clerk shall~~
 214 ~~notify the surplus trustee that his or her appointment was~~
 215 ~~terminated. Thirty days after termination of the appointment of~~
 216 ~~the surplus trustee, the clerk shall treat the remaining funds~~
 217 ~~as unclaimed property to be deposited with the Chief Financial~~
 218 ~~Officer pursuant to chapter 717.~~

219 Section 4. Paragraph (d) of subsection (3) of section
 220 45.033, Florida Statutes, is amended, and paragraph (e) of that
 221 subsection is redesignated as paragraph (d), to read:

222 45.033 Sale or assignment of rights to surplus funds in a
 223 property subject to foreclosure.—

224 (3) A voluntary transfer or assignment shall be a transfer
 225 or assignment qualified under this subsection, thereby entitling

226 the transferee or assignee to the surplus funds or a portion or
 227 percentage of the surplus funds, if:

228 ~~(d) The transferor or assignee is qualified as a surplus~~
 229 ~~trustee, or could qualify as a surplus trustee, pursuant to s.~~
 230 ~~45.034.~~

231 Section 5. Section 45.034, Florida Statutes, is repealed.

232 Section 6. Paragraphs (b) and (d) of subsection (2) of
 233 section 45.035, Florida Statutes, are amended, and paragraph (c)
 234 of that subsection is redesignated as paragraph (b), to read:

235 45.035 Clerk's fees.—In addition to other fees or service
 236 charges authorized by law, the clerk shall receive service
 237 charges related to the judicial sales procedure set forth in ss.
 238 45.031-45.034 and this section:

239 (2) If there is a surplus resulting from the sale, the
 240 clerk may receive the following service charges, which shall be
 241 deducted from the surplus:

242 ~~(b) The clerk is entitled to a service charge of \$15 for~~
 243 ~~notifying a surplus trustee of his or her appointment.~~

244 ~~(d) The clerk is entitled to a service charge of \$15 for~~
 245 ~~appointing a surplus trustee, furnishing the surplus trustee~~
 246 ~~with a copy of the final judgment and the certificate of~~
 247 ~~disbursements, and disbursing to the surplus trustee the~~
 248 ~~trustee's cost advance.~~

249 Section 7. Section 717.113, Florida Statutes, is amended
 250 to read:

251 717.113 Property held by courts and public agencies.—All
 252 intangible property held for the owner by any court, government
 253 or governmental subdivision or agency, public corporation, or
 254 public authority that has not been claimed by the owner for more
 255 than 1 year after it became payable or distributable is presumed
 256 unclaimed. Except as provided in s. 45.032(3)(c), money held in
 257 the court registry and for which no court order has been issued
 258 to determine an owner does not become payable or distributable
 259 and is not subject to reporting under this chapter.

260 Notwithstanding the provisions of this section, funds deposited
 261 in the Minerals Trust Fund pursuant to s. 377.247 are presumed
 262 unclaimed only if the funds have not been claimed by the owner
 263 for more than 5 years after the date of first production from
 264 the well.

265 Section 8. Subsection (8) of section 717.124, Florida
 266 Statutes, is amended to read:

267 717.124 Unclaimed property claims.—

268 (8) This section applies to all unclaimed property
 269 reported and remitted to the Chief Financial Officer, including,
 270 but not limited to, property reported pursuant to ss. ~~43.19,~~
 271 45.032, 732.107, 733.816, and 744.534.

272 Section 9. Section 717.138, Florida Statutes, is amended
 273 to read:

274 717.138 Rulemaking authority.—The department shall
 275 administer and provide for the enforcement of this chapter. The

276 department has authority to adopt rules pursuant to ss.
277 120.536(1) and 120.54 to implement the provisions of this
278 chapter. The department may adopt rules to allow for electronic
279 filing of fees, forms, and reports required by this chapter. The
280 authority to adopt rules pursuant to this chapter applies to all
281 unclaimed property reported and remitted to the Chief Financial
282 Officer, including, but not limited to, property reported and
283 remitted pursuant to ss. ~~43.19~~, 45.032, 732.107, 733.816, and
284 744.534.

285 Section 10. Section 717.1401, Florida Statutes, is amended
286 to read:

287 717.1401 Repeal.—This chapter shall not repeal, but shall
288 be additional and supplemental to the existing provisions of ss.
289 43.18, ~~43.19~~, and 402.17 and chapter 716.

290 Section 11. This act shall take effect July 1, 2019.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 248 and 249, insert:

Section 7. Paragraph (f) of subsection (6) of section 318.1451, Florida Statutes, is amended to read:

318.1451 Driver improvement schools.—

(6) The department shall adopt rules establishing and maintaining policies and procedures to implement the requirements of this section. These policies and procedures may include, but shall not be limited to, the following:

(f) Submission of records.—The department shall require that all course providers submit course completion information to the department through the department's Driver Improvement Certificate Issuance System within 5 days. The department shall



Amendment No.

17 require that all course providers submit course completion
18 information together with the citation number through the
19 Florida Courts E-Filing Portal governed by the Florida Courts
20 E-Filing Authority to the clerk of the circuit court of the
21 county where the citation is issued within 3 days of receipt of
22 the unique course completion certificate number from the
23 department's Driver Improvement Certificate Issuance System.

24
25
26 -----
27 **T I T L E A M E N D M E N T**

28 Remove lines 2-23 and insert:

29 An act relating to clerks of court; repealing s. 43.19, F.S.,
30 relating to the disposition of certain money paid into a court
31 which is unclaimed; amending s. 45.031, F.S.; revising the time
32 periods within which certain persons must file claims for
33 certain unclaimed surplus funds; amending s. 45.032, F.S.;
34 deleting provisions defining and specifying the powers of a
35 "surplus trustee"; authorizing specified entities to claim
36 surplus funds that remain after a judicial sale; specifying
37 procedures for those entities to receive such funds; specifying
38 procedures for the clerk to use in handling surpluses that
39 remain unclaimed; specifying the entities eligible for the
40 surplus once the funds have been remitted to the Department of
41 Financial Services; conforming provisions to changes made by the

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Amendment No.

42 act; amending s. 45.033, F.S.; conforming a provision to changes
43 made by the act; repealing s. 45.034, F.S., relating to
44 qualifications and appointment of a surplus trustee in
45 foreclosure actions; amending s. 45.035, F.S.; revising service
46 charges that a clerk may receive and deduct from surplus
47 amounts; amending s. 318.1451, F.S.; requiring a driver
48 improvement course provider to transmit, within a specified
49 timeframe, the individual completion certificate and citation
50 number through the Florida Courts E-Filing Portal governed by
51 the Florida Courts E-Filing Authority to the clerk of the
52 circuit court in the county where the citation was issued;
53 amending

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1391 Sexual Offenses Against Students
SPONSOR(S): Education Committee; Rodrigues
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N	Painter	Sumner
2) Education Committee	18 Y, 0 N, As CS	Brink	Hassell
3) Judiciary Committee		Painter <i>JMP</i>	Poche <i>MP</i>

SUMMARY ANALYSIS

Florida law contains several provisions designed to protect students, maintain safe and ethical school environments, and hold school officials and employees accountable for misconduct. CS/HB 1391 further enhances student safety and increases accountability for school officials and employees by:

- Disqualifying a person from educator certification or employment in a position with a public school or certain private schools that involves direct contact with students if the person has a conviction for an offense against a student;
- Providing that a conviction for an offense against a student disqualifies a person from educator certification or employment in a position with a public school or certain private schools that involves direct contact with students;
- Providing that an employee's resignation or termination of employment does not affect a school district's responsibility to investigate complaints of misconduct and to report legally sufficient complaints to the Department of Education (DOE) within 30 days;
- Requiring district school board policies to include mandatory reporting of alleged misconduct that involves engaging in sexual, romantic, or lewd conduct with a student or soliciting such conduct and to require district school superintendents to report to law enforcement misconduct by school district personnel that would result in disqualification from certification or employment;
- Expanding the reasons a district school board member's or superintendent's salary may be forfeited for 1 year;
- Requiring a district school superintendent to notify, in writing, the parent of a student affected by certain misconduct and requiring the notification to include certain information;
- Expanding the authority of the DOE to deny certification based upon the Education Practices Commission's (EPC) authority to issue disciplinary action against a certified educator;
- Authorizing the EPC to impose conditions upon the award of an educator certificate; and
- Requiring school districts and certain schools to notify DOE when a teacher or administrator resigns before an investigation of misconduct affecting the health, safety, or welfare of a student is concluded and requiring the DOE to place an alert on the person's certificate file indicating that he or she resigned or was terminated before such an investigation was concluded.

The bill makes it a second-degree felony for an authority figure to solicit or engage in sexual conduct, a relationship of a romantic nature, or lewd conduct with a student enrolled at a school, regardless of the student's age.

The bill also amends the definition of school in the trespass on school grounds statute to include a school bus, allowing law enforcement to arrest someone for trespassing on a school bus, after the commission of the crime and without a warrant, if the officer has probable cause to believe the person committed the offense.

The Criminal Justice Impact Conference (CJIC) considered this bill on January 29, 2018, and determined that the bill will have a positive insignificant impact on the prison population.

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

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Sexual Conduct by Authority Figures with Students

Offenses against Sexual Conduct with Minors

There is no prohibition against consensual sexual conduct between a school authority figure and an adult student. However, there are several statutes in Florida law that prohibit adults from engaging or attempting to engage in sexual or lewd conduct with a minor. A "minor" is defined as any person under the age of 18 years.¹ These offenses include:

- It is a third degree felony to use a computer online service, internet service, or any other device capable of electronic data storage, such as a cell phone, to seduce, solicit, lure, or entice, or attempt to do these things, with someone believed to be a minor.²
- It is a third degree felony for any person to transmit material harmful to a minor.³ "Material harmful to minors" means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:
 - Predominately appeals to a prurient, shameful, or morbid interest;
 - Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
 - Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.⁴
- It is a second degree felony for a person to travel any distance for the purpose of engaging in any illegal act or otherwise engage in other unlawful sexual conduct with a child, or with another person believed by the person to be a child.⁵
- It is a felony offense for an adult to commit any lewd or lascivious battery, molestation, conduct, or exhibition, upon a child.⁶

Reclassification of Sexual Offenses Committed by an Authority Figure on a Minor

Section 943.0435(1)(h)1, F.S., includes the following offenses involving minor victims:

- Kidnapping of child under age 13.⁷
- False imprisonment of child under age 13.⁸
- A person over 18 who intentionally lures or entices or attempts to lure or entice a child under the age of 12 into a structure, dwelling, or conveyance for other than lawful purposes.⁹
- Human trafficking of minors.¹⁰
- Sexual battery of a minor.¹¹
- Unlawful sexual activity with a minor.¹²

¹ S. 847.001(8), F.S.

² S. 847.0135(3), F.S.

³ S. 847.0138(2)-(3), F.S.

⁴ S. 847.001(6), F.S.

⁵ S. 847.0135(4), F.S.

⁶ S. 800.04, F.S.

⁷ S. 787.01, F.S.

⁸ S. 787.02, F.S.

⁹ S. 785.025(2)(c), where the victim is a minor.

¹⁰ S. 787.06(3)(b), (d), (f), or (g), F.S.

¹¹ S. 794.011, F.S.

¹² S. 794.05, F.S.

- Lewd or indecent exposure involving a minor.¹³
- Video voyeurism involving a minor.¹⁴
- Sexual performance by a child.¹⁵
- Distributing harmful material to a minor.¹⁶
- Possession or transmission of child pornography.¹⁷

Florida law enhances any felony offense under s. 943.0435(1)(h)1., F.S., if it is committed by an authority figure of a school upon a student.¹⁸ An authority figure is a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.¹⁹ A student is a person younger than 18 years of age who is enrolled at a school.²⁰ The offense is reclassified as follows:

- A felony of the third-degree²¹ is reclassified to a second-degree felony.
- A felony of the second-degree²² is reclassified to a first-degree felony.
- A felony of the first-degree²³ is reclassified to a life felony.²⁴

Teacher-Adult Student Relationship Laws in Other States

Other states have enacted similar legislation to prohibit teachers from having relationships with adult students. For example, in Connecticut, it is sexual assault in the second degree when a school employee engages in sexual intercourse with a student enrolled in the school, regardless of that student's age.²⁵

North Carolina categorizes the offense level based on the age difference between the school personnel and the adult student.²⁶ If the defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, or other school personnel, is at least four years older than the student and engages in vaginal intercourse or a sexual act with the student, the defendant is guilty of a class G²⁷ felony. If the defendant is less than four years older than the student, then the defendant is guilty of a lesser degree class I²⁸ felony.²⁹

Georgia makes it sexual assault punishable by up to twenty-five years in prison if a teacher, principal, assistant principal, or other administrator of any school who has supervisory or disciplinary authority over a student engages in sexual contact with the student and knew or should have known the student was enrolled at the same school, regardless of age.³⁰ Such conduct is not prohibited if the student is married to the other individual.³¹

In *Paschal v. State*, a teacher was convicted of sexual assault for having a sexual relationship with an eighteen-year-old student.³² Paschal appealed his conviction, arguing that the statute violated his

¹³ S. 800.04, F.S.

¹⁴ S. 810.145(8), F.S.

¹⁵ S. 827.071, F.S.

¹⁶ S. 847.0133, F.S.

¹⁷ S. 847.0135, F.S.

¹⁸ S. 775.0862, F.S.

¹⁹ S. 775.0862(a), F.S.

²⁰ S. 775.0862(c), F.S.

²¹ A third-degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. ss. 775.082(3)(e) and 775.083(1)(c), F.S.

²² A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082(3)(d) and 775.083(1)(b), F.S.

²³ A first-degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082(3)(b)1 and 775.083(1)(b), F.S.

²⁴ A life felony is punishable by up to a term of imprisonment for life and a \$15,000 fine. ss. 775.082(3)(a)3 and 775.083(1)(a), F.S.

²⁵ CONN. GEN. STAT. § 53a-71.

²⁶ N.C. GEN. STAT. ANN. § 14-27.7.

²⁷ Class G felonies are considered mid-level felonies in North Carolina and punishable by potential prison time. See *North Carolina Structured Sentencing*, available at: http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/ssstrainingmanual_09.pdf (last visited February 19, 2018).

²⁸ Class I felonies are considered low-level felonies in North Carolina and punishable by probation. *Id.*

²⁹ *Id.*

³⁰ GA. CODE ANN. § 16-6-5.1.

³¹ *Id.*

³² *Paschal v. State*, 388 S.W. 3d 429 (2012 Ark. 127).

fundamental privacy right to engage in private, consensual, noncommercial acts of sexual intimacy with an adult. The Arkansas Supreme Court agreed, and held that because the two were adults engaged in a consensual sexual relationship, the statute unconstitutionally infringed on a fundamental right. In reaching this decision, the state Supreme Court stated that the statute³³ was not the least restrictive method available to carry out a state's legitimate interest and therefore it was unconstitutional.³⁴ Following the Arkansas Supreme Court Decision, the statute was amended to make it a second degree sexual assault for person in a K-12 public or private school, who is a teacher, principal, athletic coach, or counselor, in a position of trust or authority to use his or her position of trust or authority over a student enrolled in the school and less than twenty-one years of age to engage in sexual contact with that student.³⁵

In *State v. Edwards*,³⁶ a teacher was convicted of unlawful sexual relations after he engaged in sexual intercourse with one of his 18-year-old high school students.³⁷ The criminal statute at issue defined unlawful sexual relations to mean:

consensual sexual intercourse . . . with a person who is not married to the offender if the offender is a teacher³⁸ or a person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse . . . is a student enrolled at the school where the offender is employed.³⁹

Unlike in *Paschal*, the *Edwards* court determined that Kansas's constitution does not provide a teacher a fundamental right to engage in sexual conduct with a student who is of age to consent.⁴⁰ Consistent with court decisions from Washington,⁴¹ Connecticut,⁴² and Texas,⁴³ the court applied a rational basis review of the statute, finding that it is a legitimate state interest to keep the school environment safe and free from sexual coercion from persons in positions of authority or trust.

The court noted that, when read in its entirety, the statute was intended to prohibit sexual conduct of persons with authority over other persons where the ability to freely consent is questionable, especially because teachers have constant unsupervised access to students and are in a unique position to groom or coerce students into exploitive or abusive conduct. Because the prohibition on sexual conduct with students was rationally related to the legitimate state interest, the court held the statute to be constitutional and affirmed the defendant's conviction.⁴⁴

³³ ARK. CODE ANN. § 5-14-125(a)(6).

³⁴ *Id.*

³⁵ GA. CODE ANN. § 16-6-5.1.

³⁶ 288 P.3d 494

³⁷ *Id.*

³⁸ "Teacher" includes teachers, supervisors, principals, superintendents, and any other professional employees in any public or private schools offering grades kindergarten through 12." *Id.* at 498.

³⁹ *Id.* at 498 (citing KAN. STAT. ANN. § 21-3520(a)(8)).

⁴⁰ *Id.* at 502.

⁴¹ *State v. Hirschfelder*, 170 Wash. 2d 536, (Wash. 2010) (upholding statute criminalizing sexual intercourse between school employees and students who are at least 16 years old using rational basis review).

⁴² *State v. McKenzie-Adams*, 281 Conn. 486 (Conn. 2007) (refusing to apply strict scrutiny review of statute prohibiting a sexual relationship between a teacher and a students because it is "an inherently coercive relationship . . . wherein consent might not easily be refused.") *overruled on other grounds.*

⁴³ *In re Shaw*, 204 S.W.3d 9 (Tex. App. 2006) (holding that protecting students from the pressures, emotional strain, conflicts, distractions, and other difficulties brought on by sexual conduct with school employees is a legitimate state interest).

⁴⁴ *Id.* at 504.

Recent Events Involving Teacher and Adult Student Relationships in Florida

In Summer 2017, in Pasco County, a former school resource officer was fired for misconduct involving several high school female students.⁴⁵ An investigation revealed that Resource Officer Milton Arroyo, 50, shared his personal phone number and social media account with female students.⁴⁶ He specifically targeted students 18 years of age or older and asked one female student to send a picture of her bra and another if she'd like to see a picture of his genitals.⁴⁷ Investigations also showed Arroyo used law enforcement databases to look up information on the students, their parents and staff at the school.⁴⁸ Milton Arroyo joined the Pasco Sheriff's Office in January 2015 after 21 years as a law enforcement officer in New York.⁴⁹ The Pasco County Sheriff's Office could not charge Arroyo with any criminal offense for sexual misconduct. However, he was charged with offenses against computer networks and systems for his unauthorized use of a law enforcement database.⁵⁰

Trespass

Trespass of a Structure or Conveyance

Trespass of a structure or conveyance is a second degree misdemeanor⁵¹ and occurs when an individual willfully enters or remains in any structure⁵² or conveyance,⁵³ without being authorized, licensed, or invited, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so.⁵⁴ A conveyance includes a motor vehicle.⁵⁵

In order to arrest someone for misdemeanor trespass of a structure or conveyance, without a warrant, the crime must be committed in the presence of a law enforcement officer.⁵⁶ If a law enforcement officer does not witness the crime, the officer needs an arrest warrant to arrest the offender after the commission of the crime. A judge may issue an arrest warrant if, upon examination of the complaint and proof submitted, he or she is satisfied that probable cause exists that the crime was committed within the judge's jurisdiction.⁵⁷ Probable cause exists when the totality of facts and circumstances within one's knowledge would cause a reasonable person to believe that an offense has been or is being committed.⁵⁸

Trespass on School Property

Section 810.097, F.S., makes it a second degree misdemeanor for any person to enter or remain upon the campus or school facility if the person does not have legitimate business on the campus or any other authorization to be there, or is a student currently under suspension or expulsion. It is a first degree misdemeanor if a person enters or remains on campus or at a school facility after the principal of the school, or his or her designee, has directed the person to leave or not enter the campus or

⁴⁵ WFLA Web Staff, *Former Pasco Co. school resource officer fired for misconduct*, WFLA News Channel 8 (July 8, 2017), available at: <http://wfla.com/2017/07/07/former-school-resource-officer-fired-in-pasco-co/>.

⁴⁶ Id.

⁴⁷ Chris Bowling, *Pasco school resource officer fired for inappropriate messages*, Tampa Bay Times (July 7, 2017), available at: <http://www.tampabay.com/news/publicsafety/crime/pasco-school-resource-officer-fired-for-inappropriate-messages/2329730>.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ WFLA Web Staff, *Former Pasco Co. school resource officer fired for misconduct*, WFLA News Channel 8 (July 8, 2017), available at <http://wfla.com/2017/07/07/former-school-resource-officer-fired-in-pasco-co/>.

⁵¹ A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

⁵² S. 810.011(1), F.S., defines "structure" as a building of any kind.

⁵³ S. 810.011(3), F.S., defines "conveyance" as any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

⁵⁴ S. 810.08, F.S.

⁵⁵ S. 810.011(3), F.S.

⁵⁶ S. 901.15(1), F.S.

⁵⁷ S. 901.02(1), F.S.

⁵⁸ *State v. Betz*, 815 So. 2d 627 (Fla. 2002); see also *Freeman v. State*, 909 So. 2d 965 (Fla. 3d DCA 2005).

school facility.⁵⁹ School means the grounds or any facility of any public or nonpublic kindergarten, elementary school, middle school, junior high school, or secondary school.⁶⁰

The statute allows a chief administrative officer of the school, or an employee, to take a person into custody if he or she has probable cause to believe that person is trespassing on school grounds.⁶¹ If a trespasser is taken into custody, a law enforcement officer must immediately be called.⁶²

Unlike trespass of a structure or conveyance, an officer may arrest a person for trespassing on school grounds, without a warrant and after the commission of the offense, if the officer has probable cause to believe that person committed the offense.⁶³

Qualifications for Educator Certification and Employment

General Requirements

To be an educator in a traditional public school, charter school, virtual school, or other publicly operated school, a person must hold a certificate issued by the Florida Department of Education (DOE).⁶⁴ Persons seeking employment at a public school as a school supervisor, principal, teacher, library media specialist, counselor, athletic coach, or in another instructional capacity must be certified.⁶⁵ The purpose of certification is to require school-based personnel to “possess the credentials, knowledge, and skills necessary to allow the opportunity for a high-quality education in the public schools.”⁶⁶

To be eligible for an educator certificate or appointment in any position in a school district, a person must, among other things, be of good moral character and submit to fingerprinting and background screening and not have a criminal history that requires the applicant’s disqualification from certification or employment.⁶⁷

Instructional personnel and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students must undergo background screening, as applicable.⁶⁸ To be employed in an instructional capacity, the person must be 18 years or older and hold a certificate or license issued by the State Board of Education (SBE) or the Department of Children and Families, except in specific circumstances.⁶⁹

Disqualifying Offenses

A person is ineligible for educator certification, and employment as an instructional personnel or school administrator with direct student contact in a public school or a private school that accepts McKay or Florida Tax Credit scholarship students, if he or she is convicted of a number of specified criminal offenses⁷⁰ under s. 1012.315, F.S.:

- Sexual misconduct with certain developmentally disabled clients, mental health patients, forensic clients, or sexual misconduct in juvenile justice programs.
- Abuse, neglect, or exploitation of aged persons or disabled adults.

⁵⁹ S. 810.097(2), F.S.

⁶⁰ S. 810.097(5), F.S.

⁶¹ S. 810.097(3), F.S.

⁶² Id.

⁶³ S. 810.097(4), F.S.

⁶⁴ SS. 1012.55(1) and 1002.33(12)(f), F.S.

⁶⁵ SS. 1002.33(12)(f) (charter school teachers) and 1012.55(1), F.S. District school boards and charter school governing boards are authorized to hire non-certified individuals who possess expertise in a given field to serve in an instructional capacity. Rule 6A-1.0502, F.A.C.; ss. 1002.33(12)(f) and 1012.55(1)(c), F.S. Occupational therapists, physical therapists, audiologists, and speech therapists are not required to be certified educators. Rule 6A-1.0502(10) and (11), F.A.C.

⁶⁶ S. 1012.54, F.S.; Rule 6A-4.001(1), F.A.C.

⁶⁷ S. 1012.56(2)(a)-(f), F.S.

⁶⁸ S. 1012.32(2)(a), F.S.

⁶⁹ S. 1012.32(1), F.S.

⁷⁰ SS. 1001.42(7), 1012.315(1)-(2), and 1012.32(1), F.S.

- Murder.
- Manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.
- Aggravated assault.
- Aggravated battery.
- Battery on a detention or commitment facility staff member or a juvenile probation officer.
- Kidnapping.
- False imprisonment.
- Luring or enticing a child.
- Leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending custody or dependency proceedings.
- Exhibiting firearms or weapons at a school-sponsored event, on school property, or within 1,000 feet of school.
- Possessing an electric weapon or device, destructive device, or other weapon at a school-sponsored event or on school property.
- Sexual battery.
- Sexual activity with or solicitation of a child by a person in familial or custodial authority.
- Unlawful sexual activity with certain minors.
- Female genital mutilations.
- Prostitution.
- Lewdness and indecent exposure.
- Arson.
- Voyeurism.
- Coordinating the commission of theft in excess of \$3,000.
- Theft from persons 65 years or older.
- Dealing in stolen property.
- Robbery.
- Robbery by sudden snatching.
- Carjacking.
- Home-invasion robbery.
- Fraudulent sale of controlled substance.
- Abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.
- Incest.
- Child abuse, aggravated child abuse, or neglect of a child.
- Contributing to the delinquency or dependency of a child.
- Sexual performance by a child.
- Resisting arrest with violence.
- Obscenity.
- Causing, encouraging, soliciting, or recruiting another to join a criminal street gang.
- Any drug abuse charges under ch. 893, F.S., if offense was a second degree felony or higher.
- Introduction, removal, or possession of contraband at a correctional facility or juvenile detention facility or commitment program.
- Misdemeanor battery if the victim of the offense was a minor.

Any person who is found ineligible for employment or otherwise found through background screening to have been convicted of any crime involving moral turpitude⁷¹ may not be employed, engaged to provide services, or serve in any position that requires direct contact with students.⁷²

⁷¹ Rule 6A-5.056(7), F.A.C., provides a list of offenses that are considered crimes involving moral turpitude, including the offenses listed in s. 1012.315, F.S.

⁷² S. 1012.32(2), F.S.

Education Practices Commission

The SBE has adopted standards for educator conduct, referred to as the Principles of Professional Conduct for the Education Profession.⁷³ The Education Practices Commission (EPC) interprets and applies the principles.⁷⁴ At least once each year, the EPC must report to and meet with the SBE.⁷⁵ The EPC is authorized to revoke or suspend an educator certificate or take other appropriate action as provided in law.⁷⁶

Specifically, the EPC may revoke or suspend an educator's certificate if a person, among other things, has been:⁷⁷

- Guilty of gross immorality or an act involving moral turpitude as defined by SBE rule;
- Convicted or found guilty of, or entered a plea of guilty to, regardless of adjudication of guilt, a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation; or
- Disqualified from educator certification based on a conviction for certain criminal offenses.

Currently, the EPC has final order authority to impose one or more of the following penalties against an educator certificate:

- Denial of an application, including prohibiting reapplication for a period of up to ten years or permanently.
- Revocation or suspension of a certificate.
- Imposition of an administrative fine not to exceed \$2,000 for each count or separate offense
- Probation.
- Restriction of the authorized scope of practice.
- Written reprimand.
- Referral to the recovery network program.⁷⁸

The DOE may deny certification if it has satisfactory evidence that an applicant has committed an act or acts, or that a situation exists, for which the EPC would be authorized to revoke a teaching certificate.⁷⁹ The DOE's decision is subject to review by the EPC upon the filing of a written request from the applicant within 20 days after receipt of notice of denial.⁸⁰

Investigations of Alleged Misconduct

The DOE must expeditiously investigate a filed complaint which, if legally sufficient,⁸¹ contains grounds for the revocation or suspension of a certificate or any other appropriate penalty.⁸² Legally sufficient complaints of misconduct that affect the health, safety, or welfare of a student must be given priority over other pending complaints.⁸³ The DOE's Office of Professional Practice Services administers the state grievance process, investigates alleged misconduct by certified educators, and pursues disciplinary actions against the certificates of educators who are found to have committed acts of misconduct.⁸⁴

⁷³ S. 1012.795(1)(j), F.S.; Rule 6A-10.081, F.A.C.

⁷⁴ S. 1012.79(7)(a), F.S.

⁷⁵ S. 1012.79(7)(c), F.S.

⁷⁶ S. 1012.79(7)(b), F.S.

⁷⁷ S. 1012.795(1), F.S.

⁷⁸ S. 1012.798, F.S.

⁷⁹ S. 1012.56(12)(a), F.S.

⁸⁰ S. 1012.56(12)(b), F.S.

⁸¹ A complaint is legally sufficient if it contains "ultimate facts that show a violation has occurred" as provided in law and state board rule. S. 1012.796(1)(d), F.S.

⁸² S. 1012.796(1)(a), F.S.

⁸³ S. 1012.796(1)(b), F.S.

⁸⁴ Florida Department of Education, *Professional Practices*, <http://www.fldoe.org/teaching/professional-practices/> (last visited February 19, 2018).

Each school district must file with the DOE a legally sufficient complaint within 30 days after the date on which the subject of the complaint comes to the attention of the school district.⁸⁵ The report must include all information relating to the complaint known to the school district. Each district school board must adopt policies and procedures for reporting legally sufficient complaints of misconduct to the DOE.⁸⁶

Complaints and materials relating to a school district's investigation of a complaint are confidential and exempt from public records laws until the conclusion of the preliminary investigation or until the investigation is considered inactive.⁸⁷ A preliminary investigation is active so long as it is continuing with a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future. An investigation is presumed to be inactive if no finding relating to probable cause is made within 60 days after the complaint is made.⁸⁸

Standards of Ethical Conduct for Instructional Personnel and School Administrators

Florida law requires each district school board to adopt policies establishing standards of ethical conduct for instructional personnel and school administrators.⁸⁹ Among other things, the policies must establish the duty of instructional personnel and school administrators to report, and procedures for reporting, alleged misconduct by other instructional personnel and school administrators which affects the health safety, or welfare of a student.⁹⁰

A school board member who knowingly fails to adopt policies that require instructional personnel and school administrators to report alleged misconduct by other instructional personnel and school administrators or that require the investigation of all reports of alleged misconduct that affect the health, safety, or welfare of a student forfeits his or her salary for 1 year.⁹¹ Additionally, a district school superintendent who knowingly fails to investigate any allegation of misconduct by instructional personnel or school administrators that affects the health safety, or welfare of a student or who knowingly fails to report the misconduct to the DOE forfeits his or her salary for 1 year.⁹²

Effect of Proposed Changes

Sexual Conduct by Authority Figures with Adult Students

CS/HB 1391 prohibits an authority figure from soliciting or engaging in sexual conduct, a relationship of a romantic nature, or lewd conduct with a student. The bill criminalizes this conduct between an authority figure and a student, regardless of the student's age and regardless of whether or not the behavior was consensual. In addition, the bill does not require that the authority figure use his or her position of authority over the student in order to procure the sexual conduct. It is enough that the person is an authority figure and engages in such conduct with a student to violate the prohibition of this bill.

An authority figure is defined as a person 18 years of age or older who is employed by, volunteering at, or under contract with a school, including school resource officers. School is given the same meaning as provided in s. 1003.01, F.S. and includes a private school, a voluntary prekindergarten education program, an early learning program, a public school as described in s. 402.3025(1), F.S., the Florida

⁸⁵ S. 1012.796(1)(d), F.S.

⁸⁶ Id.

⁸⁷ S. 1012.31(3)(a)1., F.S.

⁸⁸ Id.

⁸⁹ S. 1001.42(6), F.S. The terms "instructional personnel" and "school administrators" are defined under s. 1012.01(2) and (3)(c), F.S. See also s. 1012.796(1)(d), F.S. (requiring school district policies to include standards of ethical conduct for instructional personnel and school administrators).

⁹⁰ Id.

⁹¹ S. 1001.42(7)(b), F.S.

⁹² S. 1001.51(12), F.S.

School for the Deaf and Blind, and the Florida Virtual School. The term school does not include a facility dedicated exclusively to adult education.

The bill does not define the terms "sexual conduct"⁹³ and "lewd conduct." However, other statutes and case law do define these terms.⁹⁴

Trespass on School Property

The bill amends 810.097, F.S., to include school bus in the definition of school for purposes of trespass on school grounds. This change will allow a chief administrative officer of a school, or an employee designated to maintain order on the campus, to detain someone until law enforcement arrives if they have probable cause to believe the person is trespassing or has trespassed on a school bus. It also allows a law enforcement officer to arrest someone for trespassing on a school bus, after the commission of the offense and without a warrant, if the officer has probable cause to believe the suspected person committed the crime.

Disqualifications from Employment, Duty to Report, and Disciplinary Authority

The bill revises the list of disqualifying criminal offenses to include the newly created prohibition on authority figures engaging or soliciting in sexual, romantic, or lewd conduct with a student. The bill specifies that any person is ineligible for educator certification or employment in any position that requires direct contact with students if he or she has been convicted of a disqualifying offense. The current prohibition expressly applies to instructional personnel and school administrators.

The bill specifies that the act of having a romantic relationship with or soliciting or engaging in sexual contact with a student or minor is an act involving moral turpitude for purposes of certified educator discipline and expressly includes such behavior within the jurisdiction of the EPC to suspend or revoke an educator certificate.

The bill requires that district school board policies include the duty to report misconduct of engaging in or soliciting sexual, romantic, or lewd conduct with a student. Further, district school board policy must require the district school superintendent to report to law enforcement any misconduct by school district personnel that would result in disqualification from educator certification or employment.

The bill provides that a school board member who knowingly fails to adopt a policy requiring the district school superintendent to report disqualifying misconduct forfeits his or her salary for 1 year. A district superintendent who fails to report disqualifying conduct to law enforcement also forfeits his or her salary for 1 year.

With respect to investigations of complaints of misconduct by a school district, the bill provides that the exemption from public records laws for active investigations does not absolve a school district from its duty to provide any legally sufficient complaint to the DOE within 30 days, regardless of the status of the complaint. Further, the bill specifies that a school district must file a legally sufficient complaint with the DOE within 30 days regardless of whether the subject of the complaint is still an employee of the school district.

⁹³ A mother's breastfeeding of her baby does not constitute "sexual conduct." S. 847.001, F.S.

⁹⁴ Section 847.001(16), F.S., defines "sexual conduct" to mean actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, public area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. The term "lewdness" is defined in case law as: the equivalent of both licentiousness (*Holton v. State*, 28 Fla. 303 (1891)) and lasciviousness (*McGuire v. State*, 489 So. 2d 729 (Fla. 1986)); and wicked, lustful, unchaste, licentious, or sensual design by the perpetrator of an act condemned by law as lewd (*Chesebrough v. State*, 255 So. 2d 675 (Fla. 1971)).

The bill requires that the resignation or termination of a public school employee before an investigation of misconduct by the employee affecting the health, safety, or welfare of a student is concluded must be clearly indicated in the employee's personnel file.

The bill also requires school districts, charter schools, and private schools participating in a state scholarship program to notify the department immediately when a teacher or administrator resigns before an investigation of misconduct affecting the health, safety, or welfare of a student is concluded. The DOE must then place an alert on the person's certificate file indicating that he or she resigned or was terminated before such an investigation was concluded.

The bill bases the DOE's authority to deny a certification application on the EPC's authority to discipline, rather than to revoke, a certificate. The bill also clarifies that the EPC may discipline an educator certificate if the certificateholder has had disciplinary action taken against any professional license either in Florida or in another state. The licensing or certifying authority's acceptance of a relinquishment, stipulation, consent order, or other settlement offered in response to or in anticipation of the filing of charges against the licensee or certificateholder must be construed as action against the license or certificate.

The bill expands the EPC's disciplinary authority to include violations of test security and having adjudication withheld for a misdemeanor, felony, or other criminal charge. The bill also clarifies that the EPC may deny the award of a certificate, bar an applicant from reapplying for a certificate, or allow the award of a certificate with one or more of the following conditions:

- Probation for a period of time.
- Restriction on the scope of practice.
- Issuance of a letter of reprimand.
- Referral to the recovery network program provided in s. 1012.798, F.S., under such terms and conditions as the commission may specify.
- Imposition of an administrative fine not to exceed \$2,000 for each count or separate offense.

The bill requires persons placed on probation to notify the DOE upon any separation from employment as opposed to only upon termination.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 800.101, F.S., relating to offenses against students by authority figures.

Section 2: Amends s. 810.097, F.S., relating to trespass upon grounds or facilities of a school; penalties; arrests.

Section 3: Amends s. 1001.42, F.S., relating to powers and duties of district school board.

Section 4: Amends s. 1001.51, F.S., relating to duties and responsibilities of district school superintendent.

Section 5: Amends s. 1012.27, F.S., relating to public school personnel; powers and duties of district school superintendent.

Section 6: Amends s. 1012.31, F.S., relating to personnel files.

Section 7: Amends s. 1012.315, F.S., relating to disqualification from employment.

Section 8: Amends s. 1012.56, F.S., relating to educator certification requirements.

Section 9: Amends s. 1012.795, F.S., relating to Education Practices Commission; authority to discipline.

Section 10: Amends s. 1012.796, F.S., relating to complaints against teachers and administrators; procedure; penalties.

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:

The Criminal Justice Impact Conference (CJIC) considered this bill on January 29, 2018, and determined it will have a positive insignificant impact on the prison population.

Data is not available to determine how many relationships occur between students eighteen years of age and older and authority figures. However, the incarceration rate for a level 4, 2nd degree felony was 30.9% for FY 16-17.⁹⁵ Therefore, the bill will have a positive insignificant impact on the prison population due to the criminalization of a new offense.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

⁹⁵ Criminal Justice Impact Conference, January 29, 2018, available at: <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSHB1391wpa.pdf>.
STORAGE NAME: h1391d.JDC.DOCX
DATE: 2/26/2018

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 7, 2018, the Education Committee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The proposed committee substitute:

- Specified that criminal trespassing on school property includes trespassing on a school bus;
- Required that a public school employee's resignation or termination before an investigation into misconduct affecting the health, safety, or welfare of a student is concluded be clearly indicated in his or her personnel file;
- Required school districts and other schools to notify the department when a teacher or administrator resigns before an investigation of misconduct affecting the health, safety, or welfare of a student is concluded and requiring the department to place an alert on the person's certificate file indicating that he or she resigned or was terminated before such an investigation was concluded;
- Authorized the DOE to discipline or deny a certificate if a person has been disciplined by another licensing body;
- Clarified that the DOE may deny an educator certificate based on the EPC's authority to discipline a certificate;
- Clarified that the commission may impose conditions on the approval of an educator certificate; and
- Required educators placed on probation to notify the DOE upon separation of employment, not only upon termination.

The analysis is drafted to the committee substitute as passed by the Education Committee.

26 of Education; amending 1012.315, F.S.; expanding the
 27 scope of provisions requiring the disqualification of
 28 persons convicted of certain offenses to apply to all
 29 persons who are required to have contact with
 30 students; providing an additional offense that
 31 disqualifies such persons from employment; amending s.
 32 1012.56, F.S.; authorizing the Department of Education
 33 to deny applicants for certification if the applicant
 34 could be disciplined by the Education Practices
 35 Commission; authorizing the commission to approve an
 36 application with certain conditions; amending s.
 37 1012.795, F.S.; authorizing the commission to take
 38 certain actions against persons who meet specified
 39 criteria; revising reporting requirements concerning
 40 specified misconduct by certified personnel; amending
 41 s. 1012.796, F.S.; requiring a school district to file
 42 certain complaints with the Department of Education
 43 even if the subject of the complaint is no longer
 44 employed by the district; requiring certain
 45 information be included on an educator's certificate
 46 file; requiring certified educators who are placed on
 47 probation to immediately notify a specified office
 48 upon separation from, rather than termination of,
 49 employment; providing an effective date.

50

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

52

53 Section 1. Section 800.101, Florida Statutes, is created
54 to read:

55 800.101 Offenses against students by authority figures.-

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

57 (a) "Authority figure" means a person 18 years of age or
58 older who is employed by, volunteering at, or under contract
59 with a school, including school resource officers as provided in
60 s. 1006.12.

61 (b) "School" has the same meaning as provided in s.
62 1003.01 and includes a private school as defined in s. 1002.01,
63 a voluntary prekindergarten education program as described in s.
64 1002.53(3), early learning programs, a public school as
65 described in s. 402.3025(1), the Florida School for the Deaf and
66 the Blind, and the Florida Virtual School established under s.
67 1002.37. The term does not include a facility dedicated
68 exclusively to the education of adults.

69 (c) "Student" means a person who is enrolled at a school.

70 (2) An authority figure shall not solicit or engage in:

71 (a) Sexual conduct;

72 (b) A relationship of a romantic nature; or

73 (c) Lewd conduct

74

75 with a student.

76 (3) A person who violates this section commits a felony of
 77 the second degree, punishable as provided in s. 775.082, s.
 78 775.083, or s. 775.084.

79 (4) This section does not apply to conduct constituting an
 80 offense that is subject to reclassification under s. 775.0862.

81 Section 2. Subsection (5) of section 810.097, Florida
 82 Statutes, is amended to read:

83 810.097 Trespass upon grounds or facilities of a school;
 84 penalties; arrest.—

85 (5) As used in this section, the term "school" means the
 86 grounds or any facility, including school buses, of any
 87 kindergarten, elementary school, middle school, junior high
 88 school, or secondary school, whether public or nonpublic.

89 Section 3. Subsection (6) and paragraph (b) of subsection
 90 (7) of section 1001.42, Florida Statutes, are amended to read:

91 1001.42 Powers and duties of district school board.—The
 92 district school board, acting as a board, shall exercise all
 93 powers and perform all duties listed below:

94 (6) STANDARDS OF ETHICAL CONDUCT FOR INSTRUCTIONAL
 95 PERSONNEL AND SCHOOL ADMINISTRATORS.—Adopt policies establishing
 96 standards of ethical conduct for instructional personnel and
 97 school administrators. The policies must require all
 98 instructional personnel and school administrators, as defined in
 99 s. 1012.01, to complete training on the standards; establish the
 100 duty of instructional personnel and school administrators to

101 | report, and procedures for reporting, alleged misconduct by
 102 | other instructional personnel and school administrators which
 103 | affects the health, safety, or welfare of a student, including
 104 | misconduct that involves engaging in or soliciting sexual,
 105 | romantic, or lewd conduct with a student; require the district
 106 | school superintendent to report to law enforcement misconduct by
 107 | instructional personnel or school administrators that would
 108 | result in disqualification from educator certification or
 109 | employment as provided in s. 1012.315; and include an
 110 | explanation of the liability protections provided under ss.
 111 | 39.203 and 768.095. A district school board, or any of its
 112 | employees, may not enter into a confidentiality agreement
 113 | regarding terminated or dismissed instructional personnel or
 114 | school administrators, or personnel or administrators who resign
 115 | in lieu of termination, based in whole or in part on misconduct
 116 | that affects the health, safety, or welfare of a student, and
 117 | may not provide instructional personnel or school administrators
 118 | with employment references or discuss the personnel's or
 119 | administrators' performance with prospective employers in
 120 | another educational setting, without disclosing the personnel's
 121 | or administrators' misconduct. Any part of an agreement or
 122 | contract that has the purpose or effect of concealing misconduct
 123 | by instructional personnel or school administrators which
 124 | affects the health, safety, or welfare of a student is void, is
 125 | contrary to public policy, and may not be enforced.

126 (7) DISQUALIFICATION FROM EMPLOYMENT.—Disqualify
 127 instructional personnel and school administrators, as defined in
 128 s. 1012.01, from employment in any position that requires direct
 129 contact with students if the personnel or administrators are
 130 ineligible for such employment under s. 1012.315. An elected or
 131 appointed school board official forfeits his or her salary for 1
 132 year if:

133 (b) The school board official knowingly fails to adopt
 134 policies that require:

135 1. Instructional personnel and school administrators to
 136 report alleged misconduct by other instructional personnel and
 137 school administrators;

138 2. The district school superintendent to report misconduct
 139 by instructional personnel or school administrators that would
 140 result in disqualification from educator certification or
 141 employment as provided in s. 1012.315 to the law enforcement
 142 agencies with jurisdiction over the conduct; or

143 3. that require The investigation of all reports of
 144 alleged misconduct by instructional personnel and school
 145 administrators, if the misconduct affects the health, safety, or
 146 welfare of a student.

147 Section 4. Subsection (12) of section 1001.51, Florida
 148 Statutes, is amended to read:

149 1001.51 Duties and responsibilities of district school
 150 superintendent.—The district school superintendent shall

151 exercise all powers and perform all duties listed below and
 152 elsewhere in the law, provided that, in so doing, he or she
 153 shall advise and counsel with the district school board. The
 154 district school superintendent shall perform all tasks necessary
 155 to make sound recommendations, nominations, proposals, and
 156 reports required by law to be acted upon by the district school
 157 board. All such recommendations, nominations, proposals, and
 158 reports by the district school superintendent shall be either
 159 recorded in the minutes or shall be made in writing, noted in
 160 the minutes, and filed in the public records of the district
 161 school board. It shall be presumed that, in the absence of the
 162 record required in this section, the recommendations,
 163 nominations, and proposals required of the district school
 164 superintendent were not contrary to the action taken by the
 165 district school board in such matters.

166 (12) RECORDS AND REPORTS.—Recommend such records as should
 167 be kept in addition to those prescribed by rules of the State
 168 Board of Education; prepare forms for keeping such records as
 169 are approved by the district school board; ensure that such
 170 records are properly kept; and make all reports that are needed
 171 or required, as follows:

172 (a) Forms, blanks, and reports.—Require that all employees
 173 accurately keep all records and promptly make in proper form all
 174 reports required by the education code or by rules of the State
 175 Board of Education; recommend the keeping of such additional

176 records and the making of such additional reports as may be
 177 deemed necessary to provide data essential for the operation of
 178 the school system; and prepare such forms and blanks as may be
 179 required and ensure that these records and reports are properly
 180 prepared.

181 (b) Reports to the department.—Prepare, for the approval
 182 of the district school board, all reports required by law or
 183 rules of the State Board of Education to be made to the
 184 department and transmit promptly all such reports, when
 185 approved, to the department, as required by law. If any reports
 186 are not transmitted at the time and in the manner prescribed by
 187 law or by State Board of Education rules, the salary of the
 188 district school superintendent must be withheld until the report
 189 has been properly submitted. Unless otherwise provided by rules
 190 of the State Board of Education, the annual report on attendance
 191 and personnel is due on or before July 1, and the annual school
 192 budget and the report on finance are due on the date prescribed
 193 by the commissioner.

194
 195 Any district school superintendent who knowingly signs and
 196 transmits to any state official a report that the superintendent
 197 knows to be false or incorrect; who knowingly fails to
 198 investigate any allegation of misconduct by instructional
 199 personnel or school administrators, as defined in s. 1012.01,
 200 which affects the health, safety, or welfare of a student; ~~or~~

201 | who knowingly fails to report the alleged misconduct to the
 202 | department as required in s. 1012.796; or who knowingly fails to
 203 | report misconduct to the law enforcement agencies with
 204 | jurisdiction over the conduct pursuant to district school board
 205 | policy under s. 1001.42(6), forfeits his or her salary for 1
 206 | year following the date of such act or failure to act.

207 | Section 5. Subsections (5) and (6) of section 1012.27,
 208 | Florida Statutes, are amended to read:

209 | 1012.27 Public school personnel; powers and duties of
 210 | district school superintendent.—The district school
 211 | superintendent is responsible for directing the work of the
 212 | personnel, subject to the requirements of this chapter, and in
 213 | addition the district school superintendent shall perform the
 214 | following:

215 | (5) SUSPENSION AND DISMISSAL; NOTIFICATION.—

216 | (a) Suspend members of the instructional staff and other
 217 | school employees during emergencies for a period extending to
 218 | and including the day of the next regular or special meeting of
 219 | the district school board and notify the district school board
 220 | immediately of such suspension. When authorized to do so, serve
 221 | notice on the suspended member of the instructional staff of
 222 | charges made against him or her and of the date of hearing.
 223 | Recommend employees for dismissal under the terms prescribed
 224 | herein.

225 | (b) Notify the parent of a student who was subjected to or

226 affected by misconduct identified under s. 1001.42(6) within 30
 227 days after the date on which the school district learns of the
 228 misconduct. The notification must inform the parent of:

229 1. The alleged misconduct, including which allegations
 230 have been substantiated, if any.

231 2. Whether the district reported the misconduct to the
 232 department, if required by s. 1012.796(1)(d).

233 3. The sanctions imposed by the school district against
 234 the employee, if any.

235 4. The support the school district will make available to
 236 the student in response to the misconduct.

237 (6) EMPLOYMENT HISTORY CHECKS.—Before employing a person
 238 ~~instructional personnel and school administrators, as defined in~~
 239 ~~s. 1012.01~~, in any position that requires direct contact with
 240 students, conduct employment history checks of each of the
 241 ~~person's personnel's or administrators'~~ previous employers,
 242 screen instructional the personnel and ~~or~~ school administrators,
 243 as defined in s. 1012.01, through use of the educator screening
 244 tools described in s. 1001.10(5), and document the findings. If
 245 unable to contact a previous employer, the district school
 246 superintendent shall document efforts to contact the employer.

247 Section 6. Paragraph (a) of subsection (2) and paragraph
 248 (a) of subsection (3) of section 1012.31, Florida Statutes, are
 249 amended to read:

250 1012.31 Personnel files.—Public school system employee

251 | personnel files shall be maintained according to the following
 252 | provisions:

253 | (2)(a) Materials relating to work performance, discipline,
 254 | suspension, or dismissal must be reduced to writing and signed
 255 | by a person competent to know the facts or make the judgment.
 256 | The resignation or termination of an employee before an
 257 | investigation of alleged misconduct by the employee affecting
 258 | the health, safety, or welfare of a student is concluded must be
 259 | clearly indicated in the employee's personnel file.

260 | (3)(a) Public school system employee personnel files are
 261 | subject to the provisions of s. 119.07(1), except as follows:

262 | 1. Any complaint and any material relating to the
 263 | investigation of a complaint against an employee shall be
 264 | confidential and exempt from the provisions of s. 119.07(1)
 265 | until the conclusion of the preliminary investigation or until
 266 | such time as the preliminary investigation ceases to be active.
 267 | If the preliminary investigation is concluded with the finding
 268 | that there is no probable cause to proceed further and with no
 269 | disciplinary action taken or charges filed, a statement to that
 270 | effect signed by the responsible investigating official shall be
 271 | attached to the complaint, and the complaint and all such
 272 | materials shall be open thereafter to inspection pursuant to s.
 273 | 119.07(1). If the preliminary investigation is concluded with
 274 | the finding that there is probable cause to proceed further or
 275 | with disciplinary action taken or charges filed, the complaint

276 and all such materials shall be open thereafter to inspection
 277 pursuant to s. 119.07(1). If the preliminary investigation
 278 ceases to be active, the complaint and all such materials shall
 279 be open thereafter to inspection pursuant to s. 119.07(1). For
 280 the purpose of this subsection, a preliminary investigation
 281 shall be considered active as long as it is continuing with a
 282 reasonable, good faith anticipation that an administrative
 283 finding will be made in the foreseeable future. An investigation
 284 shall be presumed to be inactive if no finding relating to
 285 probable cause is made within 60 days after the complaint is
 286 made. This subparagraph does not absolve the school district of
 287 its duty to provide any legally sufficient complaint to the
 288 department within 30 days after the date on which the subject
 289 matter of the complaint comes to the attention of the school
 290 district pursuant to s. 1012.796(1)(d)1., regardless of the
 291 status of the complaint.

292 2. An employee evaluation prepared pursuant to s. 1012.33,
 293 s. 1012.34, or s. 1012.56 or rules adopted by the State Board of
 294 Education or district school board under the authority of those
 295 sections shall be confidential and exempt from the provisions of
 296 s. 119.07(1) until the end of the school year immediately
 297 following the school year in which the evaluation was made. No
 298 evaluation prepared before July 1, 1983, shall be made public
 299 pursuant to this section.

300 3. No material derogatory to an employee shall be open to

301 inspection until 10 days after the employee has been notified
 302 pursuant to paragraph (2)(c).

303 4. The payroll deduction records of an employee shall be
 304 confidential and exempt from the provisions of s. 119.07(1).

305 5. Employee medical records, including psychiatric and
 306 psychological records, shall be confidential and exempt from the
 307 provisions of s. 119.07(1); however, at any hearing relative to
 308 the competency or performance of an employee, the administrative
 309 law judge, hearing officer, or panel shall have access to such
 310 records.

311 Section 7. Section 1012.315, Florida Statutes, is amended
 312 to read:

313 1012.315 Disqualification from employment.—A person is
 314 ineligible for educator certification or, ~~and instructional~~
 315 ~~personnel and school administrators, as defined in s. 1012.01,~~
 316 ~~are ineligible for~~ employment in any position that requires
 317 direct contact with students in a district school system,
 318 charter school, or private school that accepts scholarship
 319 students under s. 1002.39 or s. 1002.395~~7~~ if the person~~7~~
 320 ~~instructional personnel, or school administrator~~ has been
 321 convicted of:

322 (1) Any felony offense prohibited under any of the
 323 following statutes:

324 (a) Section 393.135, relating to sexual misconduct with
 325 certain developmentally disabled clients and reporting of such

326 sexual misconduct.

327 (b) Section 394.4593, relating to sexual misconduct with
 328 certain mental health patients and reporting of such sexual
 329 misconduct.

330 (c) Section 415.111, relating to adult abuse, neglect, or
 331 exploitation of aged persons or disabled adults.

332 (d) Section 782.04, relating to murder.

333 (e) Section 782.07, relating to manslaughter, aggravated
 334 manslaughter of an elderly person or disabled adult, aggravated
 335 manslaughter of a child, or aggravated manslaughter of an
 336 officer, a firefighter, an emergency medical technician, or a
 337 paramedic.

338 (f) Section 784.021, relating to aggravated assault.

339 (g) Section 784.045, relating to aggravated battery.

340 (h) Section 784.075, relating to battery on a detention or
 341 commitment facility staff member or a juvenile probation
 342 officer.

343 (i) Section 787.01, relating to kidnapping.

344 (j) Section 787.02, relating to false imprisonment.

345 (k) Section 787.025, relating to luring or enticing a
 346 child.

347 (l) Section 787.04(2), relating to leading, taking,
 348 enticing, or removing a minor beyond the state limits, or
 349 concealing the location of a minor, with criminal intent pending
 350 custody proceedings.

351 (m) Section 787.04(3), relating to leading, taking,
 352 enticing, or removing a minor beyond the state limits, or
 353 concealing the location of a minor, with criminal intent pending
 354 dependency proceedings or proceedings concerning alleged abuse
 355 or neglect of a minor.

356 (n) Section 790.115(1), relating to exhibiting firearms or
 357 weapons at a school-sponsored event, on school property, or
 358 within 1,000 feet of a school.

359 (o) Section 790.115(2)(b), relating to possessing an
 360 electric weapon or device, destructive device, or other weapon
 361 at a school-sponsored event or on school property.

362 (p) Section 794.011, relating to sexual battery.

363 (q) Former s. 794.041, relating to sexual activity with or
 364 solicitation of a child by a person in familial or custodial
 365 authority.

366 (r) Section 794.05, relating to unlawful sexual activity
 367 with certain minors.

368 (s) Section 794.08, relating to female genital mutilation.

369 (t) Chapter 796, relating to prostitution.

370 (u) Chapter 800, relating to lewdness and indecent
 371 exposure.

372 (v) Section 800.101, relating to offenses against students
 373 by authority figures.

374 (w)~~(v)~~ Section 806.01, relating to arson.

375 (x)~~(w)~~ Section 810.14, relating to voyeurism.

376 (y)~~(x)~~ Section 810.145, relating to video voyeurism.
 377 (z)~~(y)~~ Section 812.014(6), relating to coordinating the
 378 commission of theft in excess of \$3,000.
 379 (aa)~~(z)~~ Section 812.0145, relating to theft from persons
 380 65 years of age or older.
 381 (bb)~~(aa)~~ Section 812.019, relating to dealing in stolen
 382 property.
 383 (cc)~~(bb)~~ Section 812.13, relating to robbery.
 384 (dd)~~(ee)~~ Section 812.131, relating to robbery by sudden
 385 snatching.
 386 (ee)~~(dd)~~ Section 812.133, relating to carjacking.
 387 (ff)~~(ee)~~ Section 812.135, relating to home-invasion
 388 robbery.
 389 (gg)~~(ff)~~ Section 817.563, relating to fraudulent sale of
 390 controlled substances.
 391 (hh)~~(gg)~~ Section 825.102, relating to abuse, aggravated
 392 abuse, or neglect of an elderly person or disabled adult.
 393 (ii)~~(hh)~~ Section 825.103, relating to exploitation of an
 394 elderly person or disabled adult.
 395 (jj)~~(ii)~~ Section 825.1025, relating to lewd or lascivious
 396 offenses committed upon or in the presence of an elderly person
 397 or disabled person.
 398 (kk)~~(jj)~~ Section 826.04, relating to incest.
 399 (ll)~~(kk)~~ Section 827.03, relating to child abuse,
 400 aggravated child abuse, or neglect of a child.

401 (mm)~~(ll)~~ Section 827.04, relating to contributing to the
 402 delinquency or dependency of a child.

403 (nn)~~(mm)~~ Section 827.071, relating to sexual performance
 404 by a child.

405 (oo)~~(nn)~~ Section 843.01, relating to resisting arrest with
 406 violence.

407 (pp)~~(oo)~~ Chapter 847, relating to obscenity.

408 (qq)~~(pp)~~ Section 874.05, relating to causing, encouraging,
 409 soliciting, or recruiting another to join a criminal street
 410 gang.

411 (rr)~~(qq)~~ Chapter 893, relating to drug abuse prevention
 412 and control, if the offense was a felony of the second degree or
 413 greater severity.

414 (ss)~~(rr)~~ Section 916.1075, relating to sexual misconduct
 415 with certain forensic clients and reporting of such sexual
 416 misconduct.

417 (tt)~~(ss)~~ Section 944.47, relating to introduction,
 418 removal, or possession of contraband at a correctional facility.

419 (uu)~~(tt)~~ Section 985.701, relating to sexual misconduct in
 420 juvenile justice programs.

421 (vv)~~(uu)~~ Section 985.711, relating to introduction,
 422 removal, or possession of contraband at a juvenile detention
 423 facility or commitment program.

424 (2) Any misdemeanor offense prohibited under any of the
 425 following statutes:

426 (a) Section 784.03, relating to battery, if the victim of
 427 the offense was a minor.

428 (b) Section 787.025, relating to luring or enticing a
 429 child.

430 (3) Any criminal act committed in another state or under
 431 federal law which, if committed in this state, constitutes an
 432 offense prohibited under any statute listed in subsection (1) or
 433 subsection (2).

434 (4) Any delinquent act committed in this state or any
 435 delinquent or criminal act committed in another state or under
 436 federal law which, if committed in this state, qualifies an
 437 individual for inclusion on the Registered Juvenile Sex Offender
 438 List under s. 943.0435(1)(h)1.d.

439 Section 8. Subsection (12) of section 1012.56, Florida
 440 Statutes, is amended to read:

441 1012.56 Educator certification requirements.—

442 (12) DENIAL OF CERTIFICATE.—

443 (a) The Department of Education may deny an applicant a
 444 certificate if the department possesses evidence satisfactory to
 445 it that the applicant has committed an act or acts, or that a
 446 situation exists, for which the Education Practices Commission
 447 would be authorized to discipline a certified educator ~~revoke a~~
 448 ~~teaching certificate~~.

449 (b) The decision of the department is subject to review by
 450 the Education Practices Commission upon the filing of a written

451 request from the applicant within 20 days after receipt of the
 452 notice of denial. Upon review, the commission may deny the award
 453 of a certificate, bar an applicant from reapplying for a
 454 certificate, or allow the award of a certificate with one or
 455 more of the following conditions:

- 456 1. Probation for a period of time.
- 457 2. Restriction on the scope of practice.
- 458 3. Issuance of a letter of reprimand.
- 459 4. Referral to the recovery network program provided in s.
 460 1012.798 under such terms and conditions as the commission may
 461 specify.
- 462 5. Imposition of an administrative fine not to exceed
 463 \$2,000 for each count or separate offense.

464 Section 9. Subsections (1) and (5) of section 1012.795,
 465 Florida Statutes, are amended to read:

466 1012.795 Education Practices Commission; authority to
 467 discipline.—

468 (1) The Education Practices Commission may suspend the
 469 educator certificate of any instructional personnel or school
 470 administrator, ~~person~~ as defined in s. 1012.01(2) or (3), for up
 471 to 5 years, thereby denying that person the right to teach or
 472 otherwise be employed by a district school board or public
 473 school in any capacity requiring direct contact with students
 474 for that period of time, after which the person ~~holder~~ may
 475 return to teaching as provided in subsection (4); may revoke the

476 educator certificate of any person, thereby denying that person
 477 the right to teach or otherwise be employed by a district school
 478 board or public school in any capacity requiring direct contact
 479 with students for up to 10 years, with reinstatement subject to
 480 ~~the provisions of~~ subsection (4); may permanently revoke
 481 ~~permanently~~ the educator certificate of any person thereby
 482 denying that person the right to teach or otherwise be employed
 483 by a district school board or public school in any capacity
 484 requiring direct contact with students; may suspend a person's
 485 ~~the~~ educator certificate, upon an order of the court or notice
 486 by the Department of Revenue relating to the payment of child
 487 support; or may impose any other penalty provided by law, if the
 488 person:

489 (a) Obtained or attempted to obtain an educator
 490 certificate by fraudulent means.

491 (b) Knowingly failed to report actual or suspected child
 492 abuse as required in s. 1006.061 or report alleged misconduct by
 493 instructional personnel or school administrators which affects
 494 the health, safety, or welfare of a student as required in s.
 495 1012.796.

496 (c) Has proved to be incompetent to teach or to perform
 497 duties as an employee of the public school system or to teach in
 498 or to operate a private school.

499 (d) Has been guilty of gross immorality or an act
 500 involving moral turpitude as defined by rule of the State Board

501 of Education, including engaging in or soliciting sexual,
 502 romantic, or lewd conduct with a student or minor.

503 (e) Has had an educator certificate or other professional
 504 license sanctioned by this or any other ~~revocation, suspension,~~
 505 ~~or surrender in another state~~ or has had the authority to
 506 practice the regulated profession revoked, suspended, or
 507 otherwise acted against, including a denial of certification or
 508 licensure, by the licensing or certifying authority of any
 509 jurisdiction, including its agencies and subdivisions. The
 510 licensing or certifying authority's acceptance of a
 511 relinquishment, stipulation, consent order, or other settlement
 512 offered in response to or in anticipation of the filing of
 513 charges against the licensee or certificateholder shall be
 514 construed as action against the license or certificate.

515 (f) Has been convicted or found guilty of, has had
 516 adjudication withheld for, or has pled ~~entered a plea of guilty~~
 517 or nolo contendere to, ~~regardless of adjudication of guilt,~~ a
 518 misdemeanor, felony, or any other criminal charge, other than a
 519 minor traffic violation.

520 (g) Upon investigation, has been found guilty of personal
 521 conduct that seriously reduces that person's effectiveness as an
 522 employee of the district school board.

523 (h) Has breached a contract, as provided in s. 1012.33(2)
 524 or s. 1012.335.

525 (i) Has been the subject of a court order or notice by the

526 Department of Revenue pursuant to s. 409.2598 directing the
 527 Education Practices Commission to suspend the certificate as a
 528 result of noncompliance with a child support order, a subpoena,
 529 an order to show cause, or a written agreement with the
 530 Department of Revenue.

531 (j) Has violated the Principles of Professional Conduct
 532 for the Education Profession prescribed by State Board of
 533 Education rules.

534 (k) Has otherwise violated the provisions of law, the
 535 penalty for which is the revocation of the educator certificate.

536 (l) Has violated any order of the Education Practices
 537 Commission.

538 (m) Has been the subject of a court order or plea
 539 agreement in any jurisdiction which requires the
 540 certificateholder to surrender or otherwise relinquish his or
 541 her educator's certificate. A surrender or relinquishment shall
 542 be for permanent revocation of the certificate. A person may not
 543 surrender or otherwise relinquish his or her certificate prior
 544 to a finding of probable cause by the commissioner as provided
 545 in s. 1012.796.

546 (n) Has been disqualified from educator certification
 547 under s. 1012.315.

548 (o) Has committed a third recruiting offense as determined
 549 by the Florida High School Athletic Association (FHSAA) pursuant
 550 to s. 1006.20(2)(b).

551 (p) Has violated test security as provided in s. 1008.24.

552 (5) Each district school superintendent and the governing
 553 authority of each university lab school, state-supported school,
 554 private school, and the FHSAA shall report to the department the
 555 name of any person certified pursuant to this chapter ~~or~~
 556 ~~employed and qualified pursuant to s. 1012.39:~~

557 (a) Who has been convicted or found guilty of, who has had
 558 adjudication withheld for, or who has pled guilty or nolo
 559 contendere to, a misdemeanor, felony, or any other criminal
 560 charge, other than a minor traffic infraction;

561 (b) Who that official has reason to believe has committed
 562 or is found to have committed any act which would be a ground
 563 for revocation or suspension under subsection (1); or

564 (c) Who has been dismissed or severed from employment
 565 because of conduct involving any immoral, unnatural, or
 566 lascivious act.

567 Section 10. Paragraphs (d) and (e) of subsection (1) and
 568 paragraphs (a) and (d) of subsection (7) of section 1012.796,
 569 Florida Statutes, are amended to read:

570 1012.796 Complaints against teachers and administrators;
 571 procedure; penalties.-

572 (1)

573 (d)1. Each school district shall file in writing with the
 574 department all legally sufficient complaints within 30 days
 575 after the date on which subject matter of the complaint comes to

576 the attention of the school district, regardless of whether the
577 subject of the complaint is still an employee of the school
578 district. A complaint is legally sufficient if it contains
579 ultimate facts that show a violation has occurred as provided in
580 s. 1012.795 and defined by rule of the State Board of Education.
581 The school district shall include all information relating to
582 the complaint which is known to the school district at the time
583 of filing.

584 2. A school district shall immediately notify the
585 department if the subject of a legally sufficient complaint of
586 misconduct affecting the health, safety, or welfare of a student
587 resigns or is terminated before the conclusion of the school
588 district's investigation. Upon receipt of the notification, the
589 department shall place an alert on the person's certification
590 file indicating that he or she resigned or was terminated before
591 an investigation involving allegations of misconduct affecting
592 the health, safety, or welfare of a student was concluded. In
593 such circumstances, the database may not include specific
594 information relating to the alleged misconduct until permitted
595 by subsection (4).

596 3. Each district school board shall develop and adopt
597 policies and procedures to comply with this reporting
598 requirement. School board policies and procedures must include
599 standards for screening, hiring, and terminating instructional
600 personnel and school administrators, as defined in s. 1012.01;

601 standards of ethical conduct for instructional personnel and
 602 school administrators; the duties of instructional personnel and
 603 school administrators for upholding the standards; detailed
 604 procedures for reporting alleged misconduct by instructional
 605 personnel and school administrators which affects the health,
 606 safety, or welfare of a student; requirements for the
 607 reassignment of instructional personnel or school administrators
 608 pending the outcome of a misconduct investigation; and penalties
 609 for failing to comply with s. 1001.51 or s. 1012.795. The
 610 district school board policies and procedures shall include
 611 appropriate penalties for all personnel of the district school
 612 board for nonreporting and procedures for promptly informing the
 613 district school superintendent of each legally sufficient
 614 complaint. The district school superintendent is charged with
 615 knowledge of these policies and procedures and is accountable
 616 for the training of all instructional personnel and school
 617 administrators of the school district on the standards of
 618 ethical conduct, policies, and procedures.

619 4. If the district school superintendent has knowledge of
 620 a legally sufficient complaint and does not report the
 621 complaint, or fails to enforce the policies and procedures of
 622 the district school board, and fails to comply with the
 623 requirements of this subsection, in addition to other actions
 624 against certificateholders authorized by law, the district
 625 school superintendent is subject to penalties as specified in s.

626 1001.51(12).

627 5. If the superintendent determines that misconduct by
 628 instructional personnel or school administrators who hold an
 629 educator certificate affects the health, safety, or welfare of a
 630 student and the misconduct warrants termination, the
 631 instructional personnel or school administrators may resign or
 632 be terminated, and the superintendent must report the misconduct
 633 to the department in the format prescribed by the department.
 634 The department shall maintain each report of misconduct as a
 635 public record in the instructional personnel's or school
 636 administrators' certification files. This paragraph does not
 637 limit or restrict the power and duty of the department to
 638 investigate complaints, regardless of the school district's
 639 untimely filing, or failure to file, complaints and followup
 640 reports.

641 (e) If allegations arise against an employee who is
 642 certified under s. 1012.56 and employed in an educator-
 643 certificated position in any public school, charter school or
 644 governing board thereof, or private school that accepts
 645 scholarship students under s. 1002.39 or s. 1002.395, the school
 646 shall file in writing with the department a legally sufficient
 647 complaint within 30 days after the date on which the subject
 648 matter of the complaint came to the attention of the school,
 649 regardless of whether the subject of the allegations is still an
 650 employee of the school. A complaint is legally sufficient if it

651 contains ultimate facts that show a violation has occurred as
 652 provided in s. 1012.795 and defined by rule of the State Board
 653 of Education. The school shall include all known information
 654 relating to the complaint with the filing of the complaint. This
 655 paragraph does not limit or restrict the power and duty of the
 656 department to investigate complaints, regardless of the school's
 657 untimely filing, or failure to file, complaints and followup
 658 reports. A school described in this paragraph shall immediately
 659 notify the department if the subject of a legally sufficient
 660 complaint of misconduct affecting the health, safety, or welfare
 661 of a student resigns or is terminated before the conclusion of
 662 the school's investigation. Upon receipt of the notification,
 663 the department shall place an alert on the person's
 664 certification file indicating that he or she resigned or was
 665 terminated before an investigation involving allegations of
 666 misconduct affecting the health, safety, or welfare of a student
 667 was concluded. In such circumstances, the database may not
 668 include specific information relating to the alleged misconduct
 669 until permitted by subsection (4).

670 (7) A panel of the commission shall enter a final order
 671 either dismissing the complaint or imposing one or more of the
 672 following penalties:

673 (a) Denial of an application for a ~~teaching~~ certificate or
 674 for an administrative or supervisory endorsement on a teaching
 675 certificate. The denial may provide that the applicant may not

676 reapply for certification, and that the department may refuse to
 677 consider that applicant's application, for a specified period of
 678 time or permanently.

679 (d) Placement of the teacher, administrator, or supervisor
 680 on probation for a period of time and subject to such conditions
 681 as the commission may specify, including requiring the certified
 682 teacher, administrator, or supervisor to complete additional
 683 appropriate college courses or work with another certified
 684 educator, with the administrative costs of monitoring the
 685 probation assessed to the educator placed on probation. An
 686 educator who has been placed on probation shall, at a minimum:

687 1. Immediately notify the investigative office in the
 688 Department of Education upon employment or separation from
 689 ~~termination of employment in the state~~ in any public or private
 690 position requiring a Florida educator's certificate.

691 2. Have his or her immediate supervisor submit annual
 692 performance reports to the investigative office in the
 693 Department of Education.

694 3. Pay to the commission within the first 6 months of each
 695 probation year the administrative costs of monitoring probation
 696 assessed to the educator.

697 4. Violate no law and fully comply with all district
 698 school board policies, school rules, and State Board of
 699 Education rules.

700 5. Satisfactorily perform his or her assigned duties in a

701 | competent, professional manner.

702 | 6. Bear all costs of complying with the terms of a final
703 | order entered by the commission.

704 |

705 | The penalties imposed under this subsection are in addition to,
706 | and not in lieu of, the penalties required for a third
707 | recruiting offense pursuant to s. 1006.20(2)(b).

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



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1391 (2018)

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee

2 Representative Rodrigues offered the following:

3

4 **Amendment**

5 Remove line 72

6



Amendment No.2

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove line 105 and insert:

or lewd conduct with a student; require the district

Remove line 502 and insert:

or lewd conduct with a student or minor.



Amendment No.3

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 206 and 207, insert:

Section 1. Paragraphs (o) and (t) of subsection (1) of section 1011.62, Florida Statutes, are amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(1) COMPUTATION OF THE BASIC AMOUNT TO BE INCLUDED FOR OPERATION.—The following procedure shall be followed in



Amendment No.3

16 determining the annual allocation to each district for
17 operation:

18 (o) Calculation of additional full-time equivalent
19 membership based on successful completion of a career-themed
20 course pursuant to ss. 1003.491, 1003.492, and 1003.493, or
21 courses with embedded CAPE industry certifications or CAPE
22 Digital Tool certificates, and issuance of industry
23 certification identified on the CAPE Industry Certification
24 Funding List pursuant to rules adopted by the State Board of
25 Education or CAPE Digital Tool certificates pursuant to s.
26 1003.4203.—

27 1.a. A value of 0.025 full-time equivalent student
28 membership shall be calculated for CAPE Digital Tool
29 certificates earned by students in elementary and middle school
30 grades.

31 b. A value of 0.1 or 0.2 full-time equivalent student
32 membership shall be calculated for each student who completes a
33 course as defined in s. 1003.493(1)(b) or courses with embedded
34 CAPE industry certifications and who is issued an industry
35 certification identified annually on the CAPE Industry
36 Certification Funding List approved under rules adopted by the
37 State Board of Education. A value of 0.2 full-time equivalent
38 membership shall be calculated for each student who is issued a
39 CAPE industry certification that has a statewide articulation
40 agreement for college credit approved by the State Board of

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Amendment No.3

41 Education. For CAPE industry certifications that do not
42 articulate for college credit, the Department of Education shall
43 assign a full-time equivalent value of 0.1 for each
44 certification. Middle grades students who earn additional FTE
45 membership for a CAPE Digital Tool certificate pursuant to sub-
46 subparagraph a. may not use the previously funded examination to
47 satisfy the requirements for earning an industry certification
48 under this sub-subparagraph. Additional FTE membership for an
49 elementary or middle grades student may not exceed 0.1 for
50 certificates or certifications earned within the same fiscal
51 year. The State Board of Education shall include the assigned
52 values on the CAPE Industry Certification Funding List under
53 rules adopted by the state board. Such value shall be added to
54 the total full-time equivalent student membership for grades 6
55 through 12 in the subsequent year. CAPE industry certifications
56 earned through dual enrollment must be reported and funded
57 pursuant to s. 1011.80. However, if a student earns a
58 certification through a dual enrollment course and the
59 certification is not a fundable certification on the
60 postsecondary certification funding list, or the dual enrollment
61 certification is earned as a result of an agreement between a
62 school district and a nonpublic postsecondary institution, the
63 bonus value shall be funded in the same manner as other nondual
64 enrollment course industry certifications. In such cases, the
65 school district may provide for an agreement between the high

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Amendment No.3

66 school and the technical center, or the school district and the
67 postsecondary institution may enter into an agreement for
68 equitable distribution of the bonus funds.

69 c. A value of 0.3 full-time equivalent student membership
70 shall be calculated for student completion of the courses and
71 the embedded certifications identified on the CAPE Industry
72 Certification Funding List and approved by the commissioner
73 pursuant to ss. 1003.4203(5)(a) and 1008.44.

74 d. A value of 0.5 full-time equivalent student membership
75 shall be calculated for CAPE Acceleration Industry
76 Certifications that articulate for 15 to 29 college credit
77 hours, and 1.0 full-time equivalent student membership shall be
78 calculated for CAPE Acceleration Industry Certifications that
79 articulate for 30 or more college credit hours pursuant to CAPE
80 Acceleration Industry Certifications approved by the
81 commissioner pursuant to ss. 1003.4203(5)(b) and 1008.44.

82 2. Each district must allocate at least 80 percent of the
83 funds provided for CAPE industry certification, in accordance
84 with this paragraph, to the program that generated the funds.
85 This allocation may not be used to supplant funds provided for
86 basic operation of the program.

87 3. For CAPE industry certifications earned in the 2013-
88 2014 school year and in subsequent years, the school district
89 shall distribute to each classroom teacher who provided direct
90 instruction toward the attainment of a CAPE industry



Amendment No.3

91 certification that qualified for additional full-time equivalent
92 membership under subparagraph 1.:

93 a. A bonus of \$25 for each student taught by a teacher who
94 provided instruction in a course that led to the attainment of a
95 CAPE industry certification on the CAPE Industry Certification
96 Funding List with a weight of 0.1.

97 b. A bonus of \$50 for each student taught by a teacher who
98 provided instruction in a course that led to the attainment of a
99 CAPE industry certification on the CAPE Industry Certification
100 Funding List with a weight of 0.2.

101 c. A bonus of \$75 for each student taught by a teacher who
102 provided instruction in a course that led to the attainment of a
103 CAPE industry certification on the CAPE Industry Certification
104 Funding List with a weight of 0.3.

105 d. A bonus of \$100 for each student taught by a teacher
106 who provided instruction in a course that led to the attainment
107 of a CAPE industry certification on the CAPE Industry
108 Certification Funding List with a weight of 0.5 or 1.0.

109
110 Bonuses awarded pursuant to this paragraph shall be provided to
111 teachers who are employed by the district in the year in which
112 the additional FTE membership calculation is included in the
113 calculation. Bonuses shall be calculated based upon the
114 associated weight of a CAPE industry certification on the CAPE
115 Industry Certification Funding List for the year in which the



Amendment No.3

116 certification is earned by the student. Any bonus awarded to a
 117 teacher pursuant to ~~under~~ this paragraph is in addition to any
 118 regular wage or other bonus the teacher received or is scheduled
 119 to receive. A bonus may not be awarded to a teacher who fails to
 120 maintain the security of any CAPE industry certification
 121 examination or who otherwise violates the security or
 122 administration protocol of any assessment instrument that may
 123 result in a bonus being awarded to the teacher under this
 124 paragraph.

125 (t) Computation for funding through the Florida Education
 126 Finance Program.—The State Board of Education may adopt rules
 127 establishing programs, industry certifications, and courses for
 128 which the student may earn credit toward high school graduation
 129 and the criteria under which a student's industry certification
 130 or grade may be rescinded.

131 -----

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

133 Remove line 17 and insert:
 134 1011.62, F.S.; prohibiting the award of certain bonuses to
 135 teachers who fail to maintain the security of certain
 136 examinations or violate certain protocols; authorizing the state
 137 board to adopt rules for specified purposes; amending s.
 138 1012.27, F.S.; requiring the district school



Amendment No.4

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 206 and 207, insert:

Section 5. Subsection (4) of section 1006.07, Florida Statutes, is amended to read:

1006.07 District school board duties relating to student discipline and school safety.—The district school board shall provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students, including:

(4) EMERGENCY DRILLS; EMERGENCY PROCEDURES.—

(a) Formulate and prescribe policies and procedures for emergency drills and for actual emergencies, including, but not



Amendment No.4

17 limited to, fires, natural disasters, active shooter and hostage
18 situations, and bomb threats, for all the public schools of the
19 district which comprise grades K-12. District school board
20 policies shall include commonly used alarm system responses for
21 specific types of emergencies and verification by each school
22 that drills have been provided as required by law and fire
23 protection codes. The emergency response agency that is
24 responsible for notifying the school district for each type of
25 emergency must be listed in the district's emergency response
26 policy.

27 (b) Establish model emergency management and emergency
28 preparedness procedures, including emergency notification
29 procedures pursuant to paragraph (a), for the following life-
30 threatening emergencies:

- 31 1. Weapon-use, and hostage, and active shooter situations.
- 32 2. Hazardous materials or toxic chemical spills.
- 33 3. Weather emergencies, including hurricanes, tornadoes,
34 and severe storms.
- 35 4. Exposure as a result of a manmade emergency.

36

37

38

39

40

T I T L E A M E N D M E N T
Remove line 17 and insert:



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1391 (2018)

Amendment No.4

41 | 1006.07, F.S.; requiring district school boards to formulate and
42 | prescribe policies and procedures for active shooter and hostage
43 | situations; amending s. 1012.27, F.S.; requiring the district
44 | school



Amendment No.5

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee

2 Representative Rodrigues offered the following:

4 **Amendment (with title amendment)**

5 Remove line 573 and insert:

6 (d)1. Each school district, and an investigator employed or
7 contracted by the school district to investigate allegations of
8 employee misconduct, shall file in writing with the

10 -----
11 **T I T L E A M E N D M E N T**

12 Remove line 41 and insert:

13 s. 1012.796, F.S.; requiring a school district and certain
14 investigators to file



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 707 and 708, insert:

Section 10. Section 1006.12, Florida Statutes, is amended to read:

1006.12 School resource officers and school safety officers.-

(1) The Legislature finds that the safety of students, teachers, administrative personnel, and other school staff is of the utmost importance and that certified law enforcement officers who are proficient with firearms and are trained in current law enforcement techniques are an invaluable asset to schools in this state. It is the intent of the Legislature to encourage each district school board to place a school resource



Amendment No.

17 officer in each school in the district and to mitigate the
18 financial burden of doing so.

19 (2)~~(1)~~ District school boards may establish school
20 resource officer programs, through a cooperative agreement with
21 law enforcement agencies or in accordance with subsection (3)
22 ~~(2)~~, and are encouraged to place at least one school resource
23 officer at each public school in the district.

24 (a) School resource officers shall be certified law
25 enforcement officers, as defined in s. 943.10(1), or certified
26 part-time law enforcement officers, as defined in s. 943.10(6),
27 who are sometimes referred to as reserve officers, who are
28 employed by a law enforcement agency as defined in s. 943.10(4).
29 The powers and duties of a law enforcement officer or part-time
30 law enforcement officer shall continue throughout the employee's
31 tenure as a school resource officer.

32 (b) School resource officers shall abide by district
33 school board policies and shall consult with and coordinate
34 activities through the school principal, but shall be
35 responsible to the law enforcement agency in all matters
36 relating to employment, subject to agreements between a district
37 school board and a law enforcement agency. Activities conducted
38 by the school resource officer which are part of the regular
39 instructional program of the school shall be under the direction
40 of the school principal.



Amendment No.

41 ~~(3) (a) (2) (a)~~ School safety officers shall be law
42 enforcement officers, as defined in s. 943.10(1), or part-time
43 law enforcement officers, as defined in s. 943.10(6), who are
44 sometimes referred to as reserve officers, certified under the
45 provisions of chapter 943 and employed by either a law
46 enforcement agency or by the district school board. If the
47 officer is employed by the district school board, the district
48 school board is the employing agency for purposes of chapter
49 943, and must comply with the provisions of that chapter.

50 (b) A district school board may commission one or more
51 school safety officers for the protection and safety of school
52 personnel, property, and students within the school district.
53 The district school superintendent may recommend and the
54 district school board may appoint one or more school safety
55 officers.

56 (c) A school safety officer has and shall exercise the
57 power to make arrests for violations of law on district school
58 board property and to arrest persons, whether on or off such
59 property, who violate any law on such property under the same
60 conditions that deputy sheriffs are authorized to make arrests.
61 A school safety officer has the authority to carry weapons when
62 performing his or her official duties.

63 (d) A district school board may enter into mutual aid
64 agreements with one or more law enforcement agencies as provided
65 in chapter 23. A school safety officer's salary may be paid



Amendment No.

66 jointly by the district school board and the law enforcement
67 agency, as mutually agreed to.

68 (4) Fifty percent of the salary of a part-time law
69 enforcement officer, as defined in s. 943.10(6), who serves as a
70 school resource officer or school safety officer and is hired on
71 or after July 1, 2017, shall be provided by the employing
72 district school board and law enforcement agency, as applicable,
73 and 50 percent shall be as provided in the General
74 Appropriations Act.

75 Section 11. Paragraph (a) of subsection (10) of section
76 1002.32, Florida Statutes, is amended to read:

77 1002.32 Developmental research (laboratory) schools.—

78 (10) EXCEPTIONS TO LAW.—To encourage innovative practices
79 and facilitate the mission of the lab schools, in addition to
80 the exceptions to law specified in s. 1001.23(2), the following
81 exceptions shall be permitted for lab schools:

82 (a) The methods and requirements of the following statutes
83 shall be held in abeyance: ss. 316.75; 1001.30; 1001.31;
84 1001.32; 1001.33; 1001.34; 1001.35; 1001.36; 1001.361; 1001.362;
85 1001.363; 1001.37; 1001.371; 1001.372; 1001.38; 1001.39;
86 1001.395; 1001.40; 1001.41; 1001.44; 1001.453; 1001.46;
87 1001.461; 1001.462; 1001.463; 1001.464; 1001.47; 1001.48;
88 1001.49; 1001.50; 1001.51; 1006.12(2) ~~1006.12(1)~~; 1006.21(3),
89 (4); 1006.23; 1010.07(2); 1010.40; 1010.41; 1010.42; 1010.43;
90 1010.44; 1010.45; 1010.46; 1010.47; 1010.48; 1010.49; 1010.50;

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Amendment No.

91 1010.51; 1010.52; 1010.53; 1010.54; 1010.55; 1011.02(1)-(3),
92 (5); 1011.04; 1011.20; 1011.21; 1011.22; 1011.23; 1011.71;
93 1011.72; 1011.73; and 1011.74.

94 Section 12. This act shall take effect July 1, 2019.

95

96 -----

97

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

98

Remove line 49 and insert:

99 employment; amending s. 1006.12, F.S.; providing legislative
100 findings and intent; encouraging a school resource officer to be
101 placed at each public school in the district; authorizing a
102 part-time law enforcement officer to be a school resource
103 officer or school safety officer; providing requirements for the
104 funding of certain school resource officers' and school safety
105 officers' salaries; amending s. 1002.32, F.S.; conforming a
106 cross-reference to changes made by the act; providing an
107 effective date.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

3
 4 **Amendment to Amendment (021201) by Representative Geller**
 5 **(with title amendment)**

6 Remove lines 22-23 of the amendment and insert:
 7 +2), and are encouraged to place one school resource officer for
 8 every 1,000 students, or a fraction thereof, at each public
 9 school in the district.

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

13 Remove lines 100-101 of the amendment and insert:
 14 findings and intent; encouraging one school resource officer for
 15 every 1,000 students, or a fraction thereof, at each public
 16 school in the district; authorizing a



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Geller offered the following:
3
4 **Amendment to Amendment (021201) by Representative Geller**
5 Remove line 94 of the amendment and insert:
6 Section 12. This act shall take effect upon becoming law.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

3
 4 **Amendment (with title amendment)**

5 Between lines 52 and 53, insert:

6 Section 1. Section 318.1215, Florida Statutes, is amended
 7 to read:

8 318.1215 Dori Slosberg Driver Education Safety Act.—

9 Notwithstanding the provisions of s. 318.121, a board of county
 10 commissioners may require, by ordinance, that the clerk of the
 11 court collect an additional \$7 ~~\$5~~ with each civil traffic
 12 penalty, which shall be used to fund driver education programs
 13 in public and nonpublic schools. The ordinance shall provide for
 14 the board of county commissioners to administer the funds, which
 15 shall be used for enhancement, and not replacement, of driver
 16 education program funds. The funds shall be used for direct



Amendment No.

17 educational expenses and shall not be used for administration.
18 Each driver education program receiving funds pursuant to this
19 section shall require that a minimum of 30 percent of a
20 student's time in the program be behind-the-wheel training. This
21 section may be cited as the "Dori Slosberg Driver Education
22 Safety Act."

23

24

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

25

Remove line 2 and insert:

26

An act relating to student safety; amending s.

27

318.1215, F.S.; increasing a fee that may be collected

28

with civil traffic penalties and used to fund driver

29

education programs in public and nonpublic schools;

30

creating s.

31



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 146 and 147, insert:

6 Section 4. The amendment to s. 1001.43, Florida Statutes,
7 by this act may be cited as the "Mayra Capote Act."

8 Section 5. Paragraph (c) of subsection (1) of section
9 1001.43, Florida Statutes, is amended to read:

10 1001.43 Supplemental powers and duties of district school
11 board.—The district school board may exercise the following
12 supplemental powers and duties as authorized by this code or
13 State Board of Education rule.

14 (1) STUDENT MANAGEMENT.—The district school board may
15 adopt programs and policies to ensure the safety and welfare of



Amendment No.

16 individuals, the student body, and school personnel, which
17 programs and policies may:

18 (c) Provide procedures for student dismissal precautions
19 and for granting permission for students to leave school grounds
20 during school hours, including releasing a student from school
21 upon request by a parent, ~~or~~ for public appearances of school
22 groups, or for the school lunch period. However, in a district
23 that has more than 100,000 students in prekindergarten through
24 grade 12, a school may not permit a student to leave school
25 grounds for the lunch period unless the student's parent has, in
26 writing, consented for his or her child to leave school grounds
27 during the lunch period for the school year.

28

29 -----

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

31 Remove line 12 and insert:
32 misconduct to law enforcement agencies; providing a short
33 title; amending s. 1001.43, F.S.; providing that a district
34 school board may adopt policies for releasing students for
35 the school lunch period; requiring schools in certain
36 districts to obtain written parental consent before
37 permitting students to leave school grounds during the
38 lunch period; amending s.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 438 and 439, insert:

Section 8. Subsection (1) of section 1012.45, Florida Statutes, is amended to read:

1012.45 School bus drivers; requirements and duties.—

(1) Each school bus driver must be of good moral character, of good vision and hearing, able-bodied, free from communicable disease, mentally alert, and sufficiently strong physically to handle the bus with ease, and he or she must possess other qualifications prescribed by the Commissioner of Education, including those qualifications described in 49 C.F.R. s. 391, relating to physical qualifications and examinations, and 49 C.F.R. part 40 and part 382, relating to controlled



Amendment No.

17 substance and alcohol use and testing, and he or she must hold a
18 valid commercial driver license with a passenger endorsement. A
19 person who has elected a driver improvement course pursuant to
20 s. 318.14(9) four or more times may not serve as a school bus
21 driver.

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

Remove line 31 and insert:
disqualifies such persons from employment; amending s.
1012.45, F.S.; prohibiting a person who has elected a
driver improvement course more than a certain number of
times from serving as a school bus driver; amending s.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1401 Judgments in Criminal Cases
SPONSOR(S): Criminal Justice Subcommittee; Altman
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1230

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Jones	Sumner
2) Judiciary Committee		Jones (WJJ)	Poche (MU)

SUMMARY ANALYSIS

Every criminal judgment of guilty or not guilty is required to be in writing, signed by the judge, and recorded by the clerk of court. When a defendant is convicted of a felony, petit theft, or any offense under chapter 796, F.S. (relating to prostitution), the defendant's fingerprints are required to be taken in open court and affixed to the judgment, along with the defendant's social security number. The judgment is then admissible in court as prima facie evidence that the fingerprints on the judgment are the fingerprints of the defendant who was convicted of the crime.

CS/HB 1401 allows a criminal judgment to be recorded either in writing or electronically and also allows the judge to take the defendant's fingerprints electronically.

The bill may have a minimal indeterminate fiscal impact on the state and does not appear to have a fiscal impact on local governments.

The effective date of the bill is July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Felony and Petit Theft Judgments

Every judgment adjudicating a person guilty or not guilty of a felony must be in writing, signed by the judge, and recorded by the clerk of court.¹ When a defendant is convicted of a felony, the defendant's fingerprints must be taken in open court and affixed to the judgment, along with the defendant's social security number.² If the defendant is unable or unwilling to provide a social security number, the reason for its absence must be indicated on the judgment.³ The judgment is admissible in court as prima facie evidence that the fingerprints on the judgment are the fingerprints of the defendant who was convicted of the felony.⁴ A defendant convicted of petit theft is also subject to the fingerprinting requirement.⁵

Criminal Judgments Under Chapter 796, F.S.

Chapter 796, F.S., governs prostitution and similar crimes. Under s. 921.242, F.S., every judgment of guilt with respect to any offense under chapter 796 must be in writing, signed by the judge, recorded by the clerk of court, and accompanied by the defendant's fingerprints and social security number.⁶

Effect of Proposed Changes

Definitions

CS/HB 1401 includes the following definitions:

- "Electronic signature" means any letters, characters, symbols, or process manifested by electronic or similar means and attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.⁷
- "Transaction control number" means the unique identifier comprised of numbers, letters, or other symbols for a digital fingerprint record which is generated by the device used to electronically capture the fingerprints.

CS/HB 1401 amends ss. 812.014, F.S., 921.241, F.S., and 921.242, F.S., to permit criminal judgments in felony, petit theft, and chapter 796 cases to be recorded electronically and to allow the judge to take the defendant's fingerprints electronically. For a judgment to be electronically recorded, it must contain the judge's electronic signature and be recorded by the clerk of court. In cases where the defendant's social security number is required to be taken, the social security number must be made a part of the record, whether written or electronic.

For a defendant's fingerprints to be taken electronically, the fingerprints must be electronically captured and the judge must certify that the digital fingerprint record associated with the corresponding transaction control number contains the fingerprints of the defendant. This ensures the record accurately matches a defendant to his or her fingerprints.

The effective date of the bill is July 1, 2018.

¹ S. 921.241, F.S.

² Id.

³ S. 921.241(4), F.S.

⁴ S. 921.241(3), F.S.

⁵ S. 812.014(3)(d)1., F.S.

⁶ S. 921.242, F.S.

⁷ S. 933.40(1)(d), F.S.

B. SECTION DIRECTORY:

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

Section 2: Amends s. 921.241, F.S., relating to felony judgments; fingerprints and social security number required in record.

Section 3: Amends s. 921.242, F.S., relating to subsequent offense under chapter 796; method of proof applicable.

Section 4: 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, infra.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill allows courts the option of recording judgments and taking fingerprints electronically; thus, for courts opting to use an electronic system of taking fingerprints and keeping records, there could be initial costs to implement the electronic system. Courts opting for electronic fingerprinting and electronic recordkeeping may save money over time by reducing their need to keep paper records.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2018, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Made a technical change to the manner in which fingerprints are made a part of an electronic judgment in a criminal case.
- Removed the requirement that the fingerprints and social security numbers of all misdemeanants be attached to the judgment.

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 judgments in criminal cases;
 3 amending s. 812.014, F.S.; providing for electronic
 4 records of judgments; amending s. 921.241, F.S.;
 5 providing for electronic records of judgments;
 6 providing definitions; providing forms; providing for
 7 collection of fingerprints; amending s. 921.242, F.S.;
 8 providing for electronic records of judgments;
 9 providing an effective date.

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

12
 13 Section 1. Paragraph (d) of subsection (3) of section
 14 812.014, Florida Statutes, is amended to read:

15 812.014 Theft.—

16 (3)

17 (d)1. A ~~Every~~ judgment of guilty or not guilty of a petit
 18 theft shall be in:

19 a. A written record that is ~~writing~~, signed by the judge,
 20 and recorded by the clerk of the circuit court; or

21 b. An electronic record that contains the judge's
 22 electronic signature, as defined in s. 933.40, and is recorded
 23 by the clerk of circuit court.

24 2. At the time a defendant is found guilty of petit theft,
 25 the judge shall cause the following to occur ~~to be affixed to~~

26 ~~every such written judgment of guilty of petit theft,~~ in open
 27 court and in the judge's presence: ~~of such judge~~

28 a. For a written judgment of guilty, the fingerprints of
 29 the defendant against whom such judgment is rendered shall be
 30 manually taken and. ~~Such fingerprints shall be~~ affixed beneath
 31 the judge's signature on the ~~to such~~ judgment. Beneath such
 32 fingerprints shall be appended a certificate to the following
 33 effect:

34 "I hereby certify that the above and foregoing fingerprints
 35 on this judgment are the fingerprints of the defendant, ,
 36 and that they were placed thereon by said defendant in my
 37 presence, in open court, this the day of ,
 38 . . . (year)"

39
 40 Such certificate shall be signed by the judge, whose signature
 41 thereto shall be followed by the word "Judge."

42 b. For an electronic judgment of guilty, s. 921.241(3) (b)
 43 applies.

44 3.2. A ~~Any such written~~ or an electronic judgment of
 45 guilty of a petit theft, or a certified copy thereof, is
 46 admissible in evidence in the courts of this state as provided
 47 in s. 921.241(4) ~~prima facie evidence that the fingerprints~~
 48 ~~appearing thereon and certified by the judge are the~~
 49 ~~fingerprints of the defendant against whom such judgment of~~
 50 ~~guilty of a petit theft was rendered.~~

51 Section 2. Section 921.241, Florida Statutes, is amended
 52 to read:

53 921.241 Felony judgments; fingerprints and social security
 54 number required in record.—

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

56 (a) "Electronic signature" has the same meaning as in s.
 57 933.40.

58 (b) "Transaction control number" means the unique
 59 identifier comprised of numbers, letters, or other symbols for a
 60 digital fingerprint record which is generated by the device used
 61 to electronically capture the fingerprints ~~At the time a~~
 62 ~~defendant is found guilty of a felony, the judge shall cause the~~
 63 ~~defendant's fingerprints to be taken.~~

64 (2) A ~~Every~~ judgment of guilty or not guilty of a felony
 65 shall be in:

66 (a) A written record that is ~~writing,~~ signed by the judge,
 67 and recorded by the clerk of the court; or

68 (b) An electronic record that contains the judge's
 69 electronic signature and is recorded by the clerk of court.

70 (3) At the time a defendant is found guilty of a felony,
 71 the judge shall cause the following to occur ~~to be affixed to~~
 72 ~~every written judgment of guilty of a felony,~~ in open court and,
 73 in the judge's presence: ~~of such judge~~

74 (a) For a written judgment of guilty, and at the time the
 75 ~~judgment is rendered,~~ the fingerprints of the defendant shall be

76 manually taken and against whom such judgment is rendered. Such
 77 fingerprints shall be affixed beneath the judge's signature on
 78 the to such judgment. Beneath such fingerprints shall be
 79 appended a certificate to the following effect:

80 "I hereby certify that the above and foregoing fingerprints
 81 on this judgment are the fingerprints of the defendant, ,
 82 and that they were placed thereon by said defendant in my
 83 presence, in open court, this the day of ,
 84 . . . (year)"

85 Such certificate shall be signed by the judge, whose signature
 86 thereto shall be followed by the word "Judge."

87 (b) For an electronic judgment of guilty, the fingerprints
 88 of the defendant shall be electronically captured and the
 89 following certificate shall be included in the electronic
 90 judgment:

91 "I hereby certify that the digital fingerprint record
 92 associated with Transaction Control Number contains the
 93 fingerprints of the defendant, , which were electronically
 94 captured from the defendant in my presence, in open court, this
 95 the day of , . . . (year)"

96
 97 The judge shall place his or her electronic signature, which
 98 shall be followed by the word "Judge," on the certificate.

99 (4)(3) A written or electronic Any such written judgment
 100 of guilty ~~of a felony~~, or a certified copy thereof, shall be

101 | admissible in evidence in the several courts of this state as
 102 | prima facie evidence that the:

103 | (a) Manual fingerprints appearing thereon and certified by
 104 | the judge as aforesaid are the fingerprints of the defendant
 105 | against whom the ~~such~~ judgment of guilty ~~of a felony~~ was
 106 | rendered.

107 | (b) Digital fingerprint record associated with the
 108 | transaction control number specified in the judge's certificate
 109 | contains the fingerprints of the defendant against whom the
 110 | judgment of guilty was rendered.

111 | ~~(5)(4)~~ At the time the defendant's fingerprints are
 112 | manually taken or electronically captured, the judge shall also
 113 | cause the defendant's social security number to be taken. The
 114 | defendant's social security number shall be specified in each
 115 | ~~affixed to every written~~ or electronic judgment of guilty of a
 116 | felony, in open court, in the presence of such judge, and at the
 117 | time the judgment is rendered. If the defendant is unable or
 118 | unwilling to provide his or her social security number, the
 119 | reason for its absence shall be specified in ~~indicated on the~~
 120 | written or electronic judgment.

121 | Section 3. Section 921.242, Florida Statutes, is amended to
 122 | read:

123 | 921.242 Subsequent offenses under chapter 796; method of
 124 | proof applicable.—

125 | (1) A ~~Every~~ judgment of guilty with respect to any offense

126 governed by the provisions of chapter 796 shall be in:

127 (a) A written record that is ~~writing,~~ signed by the judge,
 128 and recorded by the clerk of the circuit court; or

129 (b) An electronic record that contains the judge's
 130 electronic signature, as defined in s. 933.40, and is recorded
 131 by the clerk of circuit court.

132 (2) At the time a defendant is found guilty, the judge
 133 shall cause the following to occur ~~to be affixed to every such~~
 134 ~~written judgment of guilty,~~ in open court and in the judge's
 135 presence: ~~of such judge~~

136 (a) For a written judgment of guilty, the fingerprints of
 137 the defendant against whom such judgment is rendered shall be
 138 manually taken and ~~Such fingerprints shall be~~ affixed beneath
 139 the judge's signature ~~on the to any such~~ judgment. Beneath such
 140 fingerprints shall be appended a certificate to the following
 141 effect:

142 "I hereby certify that the above and foregoing fingerprints
 143 are of the defendant, ...(name)..., and that they were placed
 144 thereon by said defendant in my presence, in open court, this
 145 the day of, ...(year)...."

146 Such certificate shall be signed by the judge, whose
 147 signature thereto shall be followed by the word "Judge."

148 (b) For an electronic judgment of guilty, s. 921.241(3)(b)
 149 applies.



150 (3)~~(2)~~ A ~~Any such~~ written or an electronic judgment of

151 guilty, or a certified copy thereof, shall be admissible in
 152 evidence in the several courts of this state as provided in s.
 153 921.241(4) ~~prima facie evidence that the fingerprints appearing~~
 154 ~~thereon and certified by the judge as aforesaid are the~~
 155 ~~fingerprints of the defendant against whom such judgment of~~
 156 ~~guilty was rendered.~~

157 Section 4. 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	10 Y, 0 N	Gusky	Gusky
2) Judiciary Committee		 MacNamara	Poche 

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 young children, teenagers, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. Victims of human trafficking are often arrested and charged with crimes committed at the direction of their trafficker. The resulting criminal record for these victims acts as a barrier for victims seeking employment, housing, and other necessities for a normal life.

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. Current law does not impose a mandatory minimum sentence for any human trafficking offense.

HB 7039 establishes a mandatory minimum sentence of 10 years for any person who engages in, attempts to engage in, or benefits from human trafficking:

- For labor or services of any child under the age of 18, including unauthorized aliens;
- Using coercion for commercial sexual activity or labor or services of an adult, including an unauthorized alien;
- For labor or services by the transfer or transport of any child under the age of 18 from outside Florida; and
- For commercial sexual activity in which any child under the age of 18, or which involves any person who is mentally defective or mentally incapacitated.

Additionally, the bill amends the definition of "adult theater" to clarify that strip clubs and similar establishments are within the scope of the Department of Business and Professional Regulation's verification and inspection authority.

The bill also prohibits clerks from assessing a filing fee, or any other fee or costs, for victims seeking expungement of a criminal record of crimes committed while a victim of human trafficking.

The Criminal Justice Impact Conference 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 court.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Human Trafficking

Human trafficking is a form of modern-day slavery.¹ Human trafficking is defined as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploiting that person.²

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).³ It is estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.⁴ 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.⁵

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.⁶ In Florida, 429 arrests were made for human trafficking from 2014 through 2017.⁷

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.⁸ 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.⁹ Minors who are trafficked are often charged with offenses such as truancy and running away.¹⁰

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.¹¹

¹ S. 787.06(1)(a), F.S.

² S. 787.06(2)(d), F.S.

³ 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.

⁴ *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, available at: http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html.

⁵ 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>

⁶ American Bar Association, *Trafficking FAQs*, available at: https://www.americanbar.org/groups/human_rights/projects/task_force_human_trafficking/faqs.html.

⁷ Email from Ronald Draa, Florida Department of Law Enforcement (December 4, 2017, 9:32am) (on file with Judiciary Committee).

⁸ 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

⁹ *Id.*

¹⁰ *Id.*

¹¹ 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>.

Criminal Punishment Code

The Criminal Punishment Code (Code) applies to all felony offenses, except capital felonies committed on or after October 1, 1998.¹² 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 chart¹³ or by default.¹⁴ Judges must use the Code worksheet to compute a sentence score for each felony offender.¹⁵

Sentence points are assigned and accrue based on the level ranking assigned to the primary offense, additional offenses and prior offenses.¹⁶ 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.¹⁷ 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.¹⁸

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 the total 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.¹⁹ Absent mitigation,²⁰ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty under s. 775.082, F.S.

Penalties for Human Trafficking Offenses

Current law criminalizes the following activities for 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 (first degree felony ranked in Level 8)²¹
- For labor or services of an adult (first degree felony ranked in Level 7)²²
- Using coercion for commercial sexual activity of an adult (first degree felony ranked in Level 8)²³
- For labor or services of any child under the age of 18 who is an unauthorized alien (first degree felony ranked in Level 9)²⁴
- Using coercion for labor or services of an adult who is an unauthorized alien (first degree felony ranked in Level 8)²⁵
- Using coercion for commercial sexual activity of an adult who is an unauthorized alien (first degree felony ranked in Level 9)²⁶
- For labor or services by transferring or transporting any child from outside of the state into Florida (first degree felony ranked in Level 8)²⁷

¹² S. 921.002, F.S.

¹³ S. 921.0022, F.S.

¹⁴ S. 921.0023, F.S.

¹⁵ S. 921.0024, F.S.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ S. 921.0022(2), F.S.

²⁰ 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.

²¹ S. 787.06(3)(a)1., F.S.

²² S. 787.06(3)(a)2., F.S.

²³ S. 787.06(3)(b), F.S.

²⁴ S. 787.06(3)(c)1., F.S.

²⁵ S. 787.06(3)(c)2., F.S.

²⁶ S. 787.06(3)(d), F.S.

²⁷ S. 787.06(3)(e)1., F.S.

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

Absent mitigation, all human trafficking offenses would require a prison sentence under the Code. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. A life felony is punishable by up to life imprisonment and a \$15,000 fine.

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).³²

Effect of Proposed Changes

Mandatory Minimum Sentences

Mandatory minimum terms of imprisonment limit judicial discretion in sentencing under the Code: If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence.³³ 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. Currently, no human trafficking offenses impose a mandatory minimum sentence.

HB 7039 establishes a 10-year mandatory minimum sentence of imprisonment for any person who engages in, attempts to engage in, or benefits from human trafficking:

- For labor or services of any child under the age of 18, including unauthorized aliens,
- Using coercion for commercial sexual activity or labor or services of an adult, including an unauthorized alien,
- For labor or services who does so by the transfer or transport of any child under the age of 18 from outside this state to within the state, and
- For commercial sexual activity in which any child under the age of 18, or which involves any person who is mentally defective or mentally incapacitated.³⁴

The bill sets the minimum sentence that a judge must impose in a conviction for the enumerated crimes. However, the judge retains the discretion to impose a greater sentence, pursuant to relevant law.

²⁸ S. 787.06(3)(e)2., F.S.

²⁹ S. 787.06(3)(f)1., F.S.

³⁰ S. 787.06(3)(f)2., F.S.

³¹ S. 787.06(3)(g), F.S.

³² Email from Ronald Draa, Florida Department of Law Enforcement (December 8, 2017, 8:51am) (on file with Judiciary Committee); Email from Matthew Hasbrouck, Office of Economic & Demographic Research (February 2, 2018) (on file with Judiciary Committee).

³³ Fla. R. Crim. P. 3.704(d)(26).

³⁴ Current law provides that s. 787.06(3)(g), F.S., is a life felony. However, s. 775.082(3)(a)6, F.S., related to penalties and sentencing structure, uses the term "may" when providing sentencing instructions for that specific crime. As such, the bill imposes a mandatory minimum in the event a court interprets a statute to mean that a life sentence is not mandatory.

Department of Business and Professional Regulation's Inspection Authority

The Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating certain businesses and professions under current law. 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.³⁵ 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.

HB 7039 amends the definition of "adult theater" as used in ch. 847, F.S., 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 DBPR's verification and inspection authority.

Human Trafficking Victim Criminal Record Expunction

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.³⁶

To receive the expunction, a victim of human trafficking must petition the court of original jurisdiction over the crime sought to be expunged.³⁷ 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.³⁸ 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.³⁹

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.⁴⁰ If a court grants an expunction, criminal justice agencies with custody of the expunged record, except FDLE, must physically destroy the record.⁴¹ 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.⁴²

HB 7039 prohibits a clerk from assessing a filing 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. Current FDLE practice similarly waives the department's \$75 expunction certificate fee for victims of human trafficking.

³⁵ S. 450.045, F.S.

³⁶ S. 943.0583(1)(c), F.S.

³⁷ S. 943.0583(2), F.S.

³⁸ S. 943.0583(4), F.S.

³⁹ S. 943.0583(6), F.S.

⁴⁰ S. 943.0583(5), F.S.

⁴¹ 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.

⁴² S. 943.0583(8)(b), 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.

The effective date of the bill is July 1, 2018.

B. SECTION DIRECTORY:

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

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 DBPR 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.⁴³

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

⁴³ Criminal Justice Impact Conference, *HB 7039 Analysis*, available at: <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB7039.pdf>.

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

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

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.