



Justice Appropriations Subcommittee

Meeting Packet

**April 2, 2014
8:00 a.m. – 10:00 a.m.
Morris Hall**



The Florida House of Representatives
APPROPRIATIONS COMMITTEE

Justice Appropriations Subcommittee

Will Weatherford
Speaker

Charles McBurney
Chair

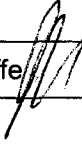
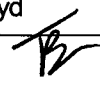
MEETING AGENDA

Morris Hall
April 2, 2014

- I. Meeting Called To Order
- II. Opening Remarks by Chair
- III. Consideration of the following bill(s):
 - CS/HB 41 - Florida Law Enforcement Officers' Hall of Fame by Criminal Justice Subcommittee and Rep. Campbell
 - CS/HB 455 - Restitution for Juvenile Offenses by Criminal Justice Subcommittee and Rep. Eagle
 - CS/HB 561 - Attorneys for Dependent Children with Disabilities by Justice Subcommittee and Rep. Fresen
 - CS/HB 753 - School Safety by K-12 Subcommittee and Rep. Steube
 - CS/HB 1017 - Human Trafficking by Criminal Justice Subcommittee and Reps. Spano, Kerner
 - CS/HB 1029 - Personal Identification Information Theft by Criminal Justice Subcommittee and Rep. Artilis
 - CS/HB 1065 - Licensed Massage Therapists by Health Quality Subcommittee and Rep. Kerner
 - CS/HB 1105 - Sexual Predators and Sexual Offender Absconders by Criminal Justice Subcommittee and Rep. Adkins
 - CS/HB 1215 - False Personation by Criminal Justice Subcommittee & Rep. Watson, B.
- IV. Closing Remarks
- V. Meeting Adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 41 Florida Law Enforcement Officers' Hall of Fame
SPONSOR(S): Criminal Justice Subcommittee; Campbell and others
TIED BILLS: IDEN./SIM. BILLS: SB 1234

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

SUMMARY ANALYSIS

The bill establishes the "Florida Law Enforcement Officers' Hall of Fame" (Hall of Fame). The bill requires the Department of Management Services (DMS) to set aside an appropriate public area for the Hall of Fame on the Plaza Level of the Capitol Building, and to consult with the Florida Department of Law Enforcement (FDLE) in developing the design and theme of the area.

The bill requires FDLE to annually accept recommendations of potential nominees from law enforcement organizations, and to establish criteria and time periods for accepting and selecting such recommendations. FDLE must then choose 10 nominees and submit them to the Governor and Cabinet. The Governor and Cabinet must then select five of the nominees to be inducted into the Hall of Fame. In making recommendations to the Governor and Cabinet, FDLE must give preference to law enforcement officers who:

- Were born in Florida or have adopted Florida as their home state; and
- Who have put their lives on the line for the safety and protection of the citizens of Florida through their works, service, and exemplary accomplishments, during or following their service as law enforcement officers.

The bill authorizes FDLE to establish, organize, and conduct a formal induction ceremony, and requires the names of each inductee to be placed on a plaque on the Plaza Level of the Capitol Building.

The bill will have an insignificant fiscal impact on DMS to maintain the area where the Hall of Fame is located. FDLE reports they will need one FTE, at a cost of \$63,520 to develop the guidelines that will govern the implementation of the Hall of Fame, and to solicit, review, and vet the applications prior to processing the names submitted for consideration. See fiscal section.

The bill is effective on July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida currently has a variety of statutorily created Hall of Fames honoring specified Floridians and their accomplishments.¹ Florida does not have a statutorily-created hall of fame honoring law enforcement officers. However, a number of private organizations have established such memorials. For example:

- The American Police Hall of Fame, located in Titusville, Florida, is a national police museum and memorial honoring the nation's police officers who were killed in the line of duty.²
- The Florida State Law Enforcement Officers Memorial, located on the grounds of the state capital building in Tallahassee, Florida, honors fallen Floridian law enforcement officers;³ and
- The National Law Enforcement Officer Memorial, located in Washington D.C., honors law enforcement officers who were killed in the line of duty.⁴

Effect of the Bill

The bill provides the following legislative intent language:

It is the intent of the Legislature to recognize and honor law enforcement officers, as defined in s. 943.10, F.S., who put their lives on the line for the safety and protection of the citizens of Florida through their works, service, and exemplary accomplishments during or following their service as law enforcement officers.

The bill creates s. 265.004, F.S., establishing the "Florida Law Enforcement Officers' Hall of Fame" (Hall of Fame). The bill requires the Department of Management Services (DMS) to set aside an appropriate public area for the Hall of Fame on the Plaza Level of the Capitol Building. DMS must consult with the Florida Department of Law Enforcement (FDLE) in developing the design and theme of the area.

The bill requires FDLE to annually accept recommendations of law enforcement officers from law enforcement organizations that FDLE deems appropriate. Such organizations include, but are not limited to, the Police Benevolent Association and the Fraternal Order of Police. FDLE may establish criteria and time periods for accepting and selecting recommendations.

After receiving nominee recommendations, FDLE must choose 10 nominees and submit them to the Governor and Cabinet. The Governor and Cabinet must then select five of the nominees to be inducted into the Hall of Fame. In making recommendations to the Governor and Cabinet, FDLE must give preference to law enforcement officers who:

- Were born in Florida or have adopted Florida as their home state; and
- Who have put their lives on the line for the safety and protection of the citizens of Florida through their works, service, and exemplary accomplishments, during or following their service as law enforcement officers.

The bill authorizes FDLE to establish, organize, and conduct a formal induction ceremony. The names of each inductee must be placed on a plaque on the Plaza Level of the Capitol Building.

¹ See, e.g., the Women's Hall of Fame (s. 265.001, F.S.); the Metal of Honor Wall (s. 265.002, F.S.); and the Veterans' Hall of Fame (s. 265.003, F.S.).

² The American Police Hall of Fame, <http://www.aphf.org/> (last visited on March 11, 2014).

³ The Florida State Law Enforcement Officers Memorial, <http://www.floridastatefop.org/flmemorial.asp> (last visited on March 11, 2014).

⁴ The National Law Enforcement Officer Memorial, <http://www.nleomf.org/memorial/> (last visited on March 11, 2014).

B. SECTION DIRECTORY:

Section 1. Creates s. 265.004, F.S., relating to Florida Law Enforcement Officers' Hall of Fame.

Section 2. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

DMS

DMS serves as the managing agency for the Capitol Complex, which includes the operation and maintenance of both the grounds and buildings. This responsibility has historically included assistance in establishing and maintaining public memorials throughout the Capitol Complex.⁵

The bill requires DMS to set aside an appropriate area on the Plaza Level of the Capitol Building for the Hall of Fame, and to consult with FDLE regarding the design and theme of the area. DMS reports that the agency will incur de minimis expenses related to maintaining the area.⁶

FDLE

The bill requires FDLE to handle the acceptance of potential nominees, and gives them ability to create criteria for nominee selection. FDLE reports that in order to implement these requirements, they will need one FTE, at a cost of \$63,520 to develop the guidelines that will govern the implementation, and to solicit, review, and vet the applications prior to processing the names submitted for consideration.⁷

The bill also requires that the name of each person inducted into the Hall of Fame be placed on a plaque displayed in the designated area of the Capitol building. FDLE reports that the costs related to this plaque will be absorbed into FDLE's appropriated budget.⁸

The bill directs FDLE to administer the Hall of Fame without appropriation of state funds. FDLE reports that the costs related to staff time and agency resources that will be expended to carry out the bill's provisions cannot be absorbed within FDLE's existing appropriated resources.⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁵ DMS 2014 Analysis of HB 41 (on file with the Criminal Justice Subcommittee).

⁶ *Id.*

⁷ FDLE 2014 Analysis of HB 41 (on file with the Criminal Justice Subcommittee).

⁸ *Id.*

⁹ *Id.*

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes FDLE to establish criteria and time periods for accepting and selecting Hall of Fame nominee recommendations. The bill does not specifically grant FDLE rulemaking authority for this purpose.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2014, the Criminal Justice Subcommittee adopted one strike all amendment that:

- Clarified the intent language of the bill;
- Defined the term law enforcement officer;
- Included the Fraternal Order of Police to the organizations that FDLE must accept recommendations from; and
- Required FDLE to nominate 10 law enforcement officers to the Governor and Cabinet, who must then select five to be inducted into the Hall of Fame each year.

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

1 A bill to be entitled
 2 An act relating to the Florida Law Enforcement
 3 Officers' Hall of Fame; creating s. 265.004, F.S.;
 4 establishing the Florida Law Enforcement Officers'
 5 Hall of Fame; providing for administration by the
 6 Department of Law Enforcement; designating location;
 7 providing procedures for selection, nomination, and
 8 induction; providing an effective date.

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

11
 12
 13 Section 1. Section 265.004, Florida Statutes, is created
 14 to read:

15 265.004 Florida Law Enforcement Officers' Hall of Fame.—

16 (1) It is the intent of the Legislature to recognize and
 17 honor law enforcement officers, as defined in s. 943.10, who put
 18 their lives on the line for the safety and protection of the
 19 citizens of Florida through their works, service, and exemplary
 20 accomplishments during or following their service as law
 21 enforcement officers.

22 (2) There is established the Florida Law Enforcement
 23 Officers' Hall of Fame.

24 (a) The Florida Law Enforcement Officers' Hall of Fame is
 25 administered by the Department of Law Enforcement without
 26 appropriation of state funds.

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

27 (b) The Department of Management Services shall set aside
 28 an appropriate public area on the Plaza Level of the Capitol
 29 Building for the Florida Law Enforcement Officers' Hall of Fame
 30 and shall consult with the Department of Law Enforcement
 31 regarding the design and theme of the area.

32 (c) The Department of Law Enforcement may establish,
 33 organize, and conduct a formal induction ceremony. The
 34 department shall affix the name of each law enforcement officer
 35 inducted into the Florida Law Enforcement Officers' Hall of Fame
 36 on a plaque displayed in the designated area of the Capitol
 37 Building.

38 (3)(a) The Department of Law Enforcement shall annually
 39 accept recommendations of law enforcement officers to be
 40 considered for induction into the Florida Law Enforcement
 41 Officers' Hall of Fame. The department shall accept
 42 recommendations from law enforcement organizations that the
 43 department deems appropriate, including, but not limited to, the
 44 Police Benevolent Association and the Fraternal Order of Police.
 45 The department shall nominate 10 law enforcement officers from
 46 the recommendations submitted and forward the names of the
 47 nominees to the Governor and Cabinet. The Governor and Cabinet
 48 must select five of the nominees to be inducted.

49 (b) In determining who should be nominated, the department
 50 shall give preference to law enforcement officers who were born
 51 in Florida or who have adopted Florida as their home state and
 52 who have put their lives on the line for the safety and

CS/HB 41

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53 protection of the citizens of Florida through their works,
54 service, and exemplary accomplishments during or following their
55 service as law enforcement officers.

56 (4) The Department of Law Enforcement may establish
57 criteria and set specific time periods for accepting
58 recommendations and for selecting nominees.

59 Section 2. This act shall take effect July 1, 2014.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 41 (2014)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee

3 Representative Campbell offered the following:

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

6 Remove lines 24-59 and insert:

7 (a) The Department of Management Services shall set aside
8 an appropriate public area on the Plaza Level of the Capitol
9 Building for the Florida Law Enforcement Officers' Hall of Fame
10 and shall consult with the Department of Law Enforcement
11 regarding the design and theme of the area.

12 (b) The Department of Law Enforcement may establish,
13 organize, and conduct a formal induction ceremony. The
14 department shall affix the name of each law enforcement officer
15 inducted into the Florida Law Enforcement Officers' Hall of Fame

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Amendment No. 1

16 on a plaque displayed in the designated area of the Capitol
17 Building.

18 (3) (a) The Department of Law Enforcement shall annually
19 accept nominations of law enforcement officers to be considered
20 for induction into the Florida Law Enforcement Officers' Hall of
21 Fame from the Florida Police Chiefs' Association, the Florida
22 Sheriffs' Association, the Police Benevolent Association, the
23 Fraternal Order of Police, and the State Law Enforcement Chiefs
24 Association. Each association may submit a maximum of three
25 nominations in any given year. The department shall transmit a
26 list of no more than 10 nominees to the Governor and Cabinet who
27 will select up to 5 nominees to be inducted.

28 (b) In making its recommendations to the Governor and
29 Cabinet, the Department of Law Enforcement shall give preference
30 to law enforcement officers who were born in Florida or adopted
31 Florida as their home state.

32 (4) The Department of Law Enforcement may establish
33 criteria and set specific time periods for the acceptance of
34 nominations and for the selection process for nominees.

35 Section 2. For fiscal year 2014-2015 the sum of \$63,142 in
36 recurring funds is appropriated from the General Revenue Fund to
37 the Department of Law Enforcement for the implementation of this
38 act.

39
40 Section 3. This act shall take effect October 1, 2014.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 41 (2014)

Amendment No. 1

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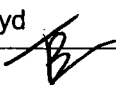
T I T L E A M E N D M E N T

Remove line 8 and insert:

induction; providing an appropriation; providing an effective
date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 455 Restitution for Juvenile Offenses
SPONSOR(S): Criminal Justice Subcommittee; Eagle
TIED BILLS: IDEN./SIM. **BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cox	Cunningham
2) Health & Human Services Committee	16 Y, 0 N	Poche	Calamas
3) Justice Appropriations Subcommittee		deNagy 	Lloyd 
4) Judiciary Committee			

SUMMARY ANALYSIS

Section 985.437, F.S., authorizes a court with jurisdiction over a child that has been adjudicated delinquent to order the child to pay restitution to the victim for any damage or loss caused by the child's offense in a reasonable amount or manner. Restitution may be satisfied by monetary payments, with a promissory note cosigned by the child's parent or guardian, or by performing community service. A parent or guardian may be absolved of liability for restitution in their child's criminal case if the court makes a finding that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."

The bill amends s. 985.437, F.S., in cases that the court has determined an order of restitution is appropriate, to *require*, rather than authorize, the court to order a child *and* the child's parent or legal guardian to pay restitution. The bill further amends s. 985.437, F.S., to:

- Authorize the court to set up a payment plan if the child and the child's parents or legal guardians are unable to pay the restitution in one lump-sum payment;
- Absolve a parent or guardian of any liability for restitution if, after a hearing:
 - The court finds that it is the child's first referral *and* the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; or
 - If the victim entitled to the restitution is that child's parent or guardian;
- Authorize the court to order both of the child's parents or guardians liable for such child's restitution, regardless of whether one parent has sole parental responsibility for the child; and
- Specify that the Department of Children and Families, a foster parent, or the community-based care lead agency supervising the placement of a child while under contract with the department is not considered a guardian responsible for restitution for the delinquent acts of a child who is found to be dependent.

The bill makes conforming changes to s. 985.35, F.S., and amends s. 985.513, F.S., to remove duplicative language relating to the court's authority to order a parent or guardian to be responsible for the child's restitution.

To the extent that the bill increases the number and/or length of restitution hearings, which must be conducted by the court prior to entering an order of restitution, it could create an insignificant increased workload on the courts.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Restitution in Juvenile Criminal Cases

Currently, section 985.437, F.S., authorizes, but does not require, a court with jurisdiction over a child that has been adjudicated delinquent to order the child to pay restitution to the victim for *any damage*¹ or loss caused by the child's offense² in a reasonable amount or manner.³ Similarly, s. 985.35, F.S., authorizes the court to place a child found to have committed a violation of law in a probation program.⁴ The probation program may include restitution in money or in kind.⁵ The court determines the amount or manner of restitution that is reasonable.⁶

To enter an order of restitution, a trial court must first conduct a restitution hearing addressing the child's ability to pay and the amount of restitution to which the victim is entitled.⁷ A restitution hearing is not required if the child previously entered into an agreement to pay⁸ or has waived his or her right to attend a restitution hearing.⁹ When restitution is ordered by the court, the amount of restitution may not exceed an amount the child or the parent or guardian could reasonably be expected to pay.¹⁰

Restitution may be satisfied by monetary payments, with a promissory note cosigned by the child's parent or guardian, or by performing community service.¹¹ However, a parent or guardian may be absolved of any liability for restitution in their child's criminal case if, after a hearing, the court finds that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."¹²

The clerk of the circuit court receives and dispenses restitution payments, and must notify the court if restitution is not made. The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or until the court orders otherwise.¹³

¹ "Any damage" has been interpreted by Florida's courts to include damage for pain and suffering. *C.W. v. State*, 655 So.2d 87 (Fla. 1995).

² The damage or loss must be directly or indirectly related to the child's offense or criminal episode. *L.R.L. v. State*, 9 So.3d 714 (Fla. 2d DCA 2009).

³ If restitution is ordered, it becomes a condition of probation, or if the child is committed to a residential commitment program, part of community-based sanctions upon release from the program. Section 985.437(1), F.S.

⁴ Section 985.35(4) and (5), F.S.

⁵ Section 985.35(4)(a), F.S.

⁶ Section 985.437(2), F.S.

⁷ *J.G. v. State*, 978 So.2d 270 (Fla. 4th DCA 2008). If a court intends to establish an amount of restitution based solely on evidence adduced at a hearing of a charge of delinquency, the juvenile must be given notice.

⁸ *T.P.H. v. State*, 739 So.2d 1180 (Fla. 4th DCA 1999).

⁹ *T.L. v. State*, 967 So.2d 421 (Fla. 1st DCA 2007).

¹⁰ Section 985.437(2), F.S.

¹¹ Section 985.437(2), F.S. Similar to the process for juveniles, a parent or guardian cannot be ordered to pay restitution arising from offenses committed by their minor child, without the court providing the parent with meaningful notice and an opportunity to be heard, or without making a determination of the parents' ability to do so. See *S.B.L. v. State*, 737 So.2d 1131 (Fla. 1st DCA 1999); *A.T. v. State*, 706 So.2d 109 (Fla. 2d DCA 1998); and *M.H. v. State*, 698 So.2d 395 (Fla. 4th DCA 1997).

¹² Section 985.437(4), F.S.

¹³ Section 985.437(5), F.S.

Court's Powers over a Juvenile Offender's Parent or Guardian

Section 985.513, F.S., authorizes, but does not require, a court that has jurisdiction over a child that has been adjudicated delinquent to order the parents or guardians of such child to perform community service and participate in family counseling. The statute also authorizes the court to:

- Order the parent or guardian to make restitution in money or in kind for any damage or loss caused by the child's offense; and
- Require the child's parent or legal guardian to be responsible for any restitution ordered against the child, as provided under s. 985.437, F.S.¹⁴

Current statute does not specifically exempt the Department of Children and Families, a foster parent, or a community-based care organization supervising a child from paying restitution when a court requires the child's parent or legal guardian to be responsible for restitution ordered against the child.¹⁵

Failing to Pay Restitution Order

Section 985.0301(h), F.S., states that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089, F.S. Section 775.089, F.S., provides that a restitution order may be enforced in the same manner as a judgment in a civil lien. Thus, if a child or parent fails to pay court-ordered restitution, a civil lien may be placed upon the parent or child's real property.¹⁶ The court may transfer a restitution order to a collection court or a private collection agency to collect unpaid restitution.¹⁷

Effect of the Bill

The bill amends s. 985.437, F.S., in cases that the court has determined an order of restitution is appropriate, to *require*, rather than authorize, the court to order a child *and* the child's parent or legal guardian to pay restitution. The bill further amends s. 985.437, F.S., to authorize the court to set up a payment plan if the child and the child's parents or legal guardians are unable to pay the restitution in one lump-sum payment. The payment plan must reflect the ability of a child and the child's parent or legal guardian to pay the restitution amount.

The bill absolves a parent or guardian of any liability for restitution if, after a hearing:

- The court finds that it is the child's first referral *and* the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; *or*
- The victim entitled to the restitution is that child's parent or guardian.

The bill authorizes the court to order both of the child's parents or guardians liable for such child's restitution, regardless of whether one parent has sole parental responsibility for the child.

The bill specifies that the Department of Children and Families, which includes a foster parent or community-based care lead agency, is not considered a guardian responsible for restitution for the delinquent acts of a child who is found to be dependent, as defined in s. 39.01(15), F.S.

The bill makes conforming changes to s. 985.35, F.S., and amends s. 985.513, F.S., to remove duplicative language relating to the court's authority to order a parent or guardian to be responsible for the child's restitution.

¹⁴ Section 985.513(1)(b), F.S.

¹⁵ E-mail correspondence with the Department of Children and Families, March 18, 2014, on file with committee staff.

¹⁶ Section 775.089(5), F.S.

¹⁷ Section 985.045, F.S., also states that this is allowed in a case where the circuit court has retained jurisdiction over the child and the child's parent or legal guardian.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 985.35, F.S., relating to adjudicatory hearings; withheld adjudications; orders of adjudication.
- Section 2:** Amends s. 985.437, F.S., relating to restitution.
- Section 3:** Amends s. 985.513, F.S., relating to powers of the court over parent or guardian at disposition.
- Section 4:** Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill amends s. 985.437, F.S., in cases that the court has determined an order of restitution is appropriate, to *require*, rather than authorize, the court to order a child *and* the child's parent or legal guardian to pay restitution. To enter an order of restitution, the court must conduct a restitution hearing. To the extent that the bill increases the number and/or length of restitution hearings, the bill may result in a workload increase for the court system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Parents and legal guardians of children that have been adjudicated delinquent will be liable for restitution in money or in kind for damages caused by the child's offense. Therefore, a victim of a child's offense may be more likely to receive restitution.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the requirement that a parent cosign the child's promissory note since it is no longer necessary with the parent or guardian being directly liable for any restitution;
- Authorizes the court to order both of the child's parents or guardians liable for restitution, regardless of whether one parent has sole parental responsibility for the child;
- Clarifies that foster parents and community-based care lead agencies are not considered guardians liable for restitution under the act; and
- Conforms s. 985.35, F.S., to changes made by the act.

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 restitution for juvenile offenses;
 3 amending s. 985.35, F.S.; conforming provisions to
 4 changes made by the act; amending s. 985.437, F.S.;
 5 requiring a child's parent or guardian, in addition to
 6 the child, to make restitution for damage or loss
 7 caused by the child's offense; providing for payment
 8 plans in certain circumstances; authorizing the parent
 9 or guardian to be absolved of liability for
 10 restitution in certain circumstances; authorizing the
 11 court to order both parents or guardians liable for
 12 the child's restitution regardless of one parent
 13 having sole parental responsibility; specifying that
 14 the Department of Children and Families, foster
 15 parents, and specified agencies contracted with the
 16 department are not guardians for purposes of
 17 restitution; amending s. 985.513, F.S.; removing
 18 duplicative provisions authorizing the court to
 19 require a parent or guardian to be responsible for any
 20 restitution ordered against the child; providing an
 21 effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Paragraph (a) of subsection (4) of section
 26 985.35, Florida Statutes, is amended to read:

27 985.35 Adjudicatory hearings; withheld adjudications;
 28 orders of adjudication.—

29 (4) If the court finds that the child named in the
 30 petition has committed a delinquent act or violation of law, it
 31 may, in its discretion, enter an order stating the facts upon
 32 which its finding is based but withholding adjudication of
 33 delinquency.

34 (a) Upon withholding adjudication of delinquency, the
 35 court may place the child in a probation program under the
 36 supervision of the department or under the supervision of any
 37 other person or agency specifically authorized and appointed by
 38 the court. The court may, as a condition of the program, impose
 39 as a penalty component restitution in money or in kind to be
 40 made by the child and the child's parent or guardian as provided
 41 in s. 985.437, community service, a curfew, urine monitoring,
 42 revocation or suspension of the driver's license of the child,
 43 or other nonresidential punishment appropriate to the offense,
 44 and may impose as a rehabilitative component a requirement of
 45 participation in substance abuse treatment, or school or other
 46 educational program attendance.

47 Section 2. Subsection (5) of section 985.437, Florida
 48 Statutes, is renumbered as subsection (7), subsections (1), (2),
 49 and (4) are amended, and new subsections (5) and (6) are added
 50 to that section, to read:

51 985.437 Restitution.—

52 (1) Regardless of whether adjudication is imposed or

53 withheld, the court that has jurisdiction over a an adjudicated
 54 ~~delinquent~~ child may, by an order stating the facts upon which a
 55 determination of a sanction and rehabilitative program was made
 56 at the disposition hearing, order the child and the child's
 57 parent or guardian to make restitution in the manner provided in
 58 this section. This order shall be part of the child's probation
 59 program to be implemented by the department or, in the case of a
 60 committed child, as part of the community-based sanctions
 61 ordered by the court at the disposition hearing or before the
 62 child's release from commitment.

63 (2) If the court orders restitution, the court shall ~~may~~
 64 order the child and the child's parent or guardian to make
 65 restitution in money, through a promissory note ~~assigned by the~~
 66 ~~child's parent or guardian~~, or in kind for any damage or loss
 67 caused by the child's offense in a reasonable amount or manner
 68 to be determined by the court. When restitution is ordered by
 69 the court, the amount of restitution may not exceed an amount
 70 the child and the parent or guardian could reasonably be
 71 expected to pay or make. If the child and the child's parent or
 72 guardian are unable to pay the restitution in one lump-sum
 73 payment, the court may set up a payment plan that reflects their
 74 ability to pay the restitution amount.

75 (4) The parent or guardian may be absolved of liability
 76 for restitution under this section, if:

77 (a) After a hearing, the court finds that it is the
 78 child's first referral to the delinquency system and ~~A finding~~

79 ~~by the court, after a hearing,~~ that the parent or guardian has
 80 made diligent and good faith efforts to prevent the child from
 81 engaging in delinquent acts; or

82 (b) The victim entitled to restitution as a result of
 83 damage or loss caused by the child's offense is that child's
 84 parent or guardian absolves the parent or guardian of liability
 85 for restitution under this section.

86 (5) The court may order both parents or guardians liable
 87 for restitution associated with the child's care,
 88 notwithstanding instances when one parent or guardian has sole
 89 parental responsibility.

90 (6) For purposes of this section, the Department of
 91 Children and Families, a foster parent with whom the child is
 92 placed, or the community-based care lead agency supervising the
 93 placement of the child pursuant to a contract with the
 94 Department of Children and Families are not considered guardians
 95 responsible for restitution for the delinquent acts of a child
 96 who is found to be dependent as defined in s. 39.01(15).

97 Section 3. Subsection (1) of section 985.513, Florida
 98 Statutes, is amended to read:

99 985.513 Powers of the court over parent or guardian at
 100 disposition.—

101 (1) The court that has jurisdiction over an adjudicated
 102 delinquent child may, by an order stating the facts upon which a
 103 determination of a sanction and rehabilitative program was made
 104 at the disposition hearing, +


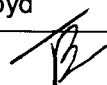
105 ~~(a)~~ order the child's parent or guardian, together with
 106 the child, to render community service in a public service
 107 program or to participate in a community work project. In
 108 addition to the sanctions imposed on the child, the court may
 109 order the child's parent or guardian to perform community
 110 service if the court finds that the parent or guardian did not
 111 make a diligent and good faith effort to prevent the child from
 112 engaging in delinquent acts.

113 ~~(b) Order the parent or guardian to make restitution in~~
 114 ~~money or in kind for any damage or loss caused by the child's~~
 115 ~~offense. The court may also require the child's parent or legal~~
 116 ~~guardian to be responsible for any restitution ordered against~~
 117 ~~the child, as provided under s. 985.437. The court shall~~
 118 ~~determine a reasonable amount or manner of restitution, and~~
 119 ~~payment shall be made to the clerk of the circuit court as~~
 120 ~~provided in s. 985.437. The court may retain jurisdiction, as~~
 121 provided under s. 985.0301, over the child and the child's
 122 parent or legal guardian whom the court has ordered to pay
 123 restitution until the restitution order is satisfied or the
 124 court orders otherwise.

125 Section 4. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 561 Attorneys for Dependent Children with Disabilities
SPONSOR(S): Civil Justice Subcommittee; Fresen
TIED BILLS: None **IDEN./SIM. BILLS:** SB 972

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 0 N, As CS	Ward	Bond
2) Justice Appropriations Subcommittee		deNagy 	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

"Dependency" is a legal determination that an abandoned, neglected, or abused child requires intervention by the state. The term "dependent child" means that the child has been determined by a court to be dependent on the state for support or services. Some dependent children are disabled.

The bill provides legislative findings that though there are other organizations which provide representation to children with proven effect, a disabled child in the dependency system has a particular need for legal services. The bill requires that the court appoint an attorney to represent the following children who have been adjudicated dependent:

- A medically dependent or technologically dependent child who because of a medical condition requires continuous therapeutic interventions or supervision and resides in a skilled nursing facility or is being considered for placement in a skilled nursing facility;
- A dependent child who has been prescribed a psychotropic medication;
- A dependent child with a suspected diagnosis of developmental disability;
- A dependent child being placed in a residential treatment center or being considered for placements in a residential treatment center; and
- A dependent child who has been a victim of sexual abuse or human trafficking and who is suspected to be in need of mental health treatment.

The bill directs that the appointed attorney be adequately compensated and be provided with funds for appellate counsel and litigation costs. The implementation of the law is subject to appropriations expressly made for that purpose.

The bill's impact is indeterminate but significant. The bill specifies the implementation of this section is subject to appropriations expressly made for that purpose. The House of Representatives proposed FY 2014-15 GAA appropriates \$200,000 be used by the Justice Administrative Commission to contract with attorneys selected by the Guardian ad Litem Program to represent dependent children as specified in this bill or similar legislation within the 11th Judicial Circuit, contingent upon this bill or similar legislation becoming law. See FISCAL SECTION.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Dependent Children

Proceedings related to children are governed by ch. 39, F.S. The stated purpose of the chapter is to "provide for the care, safety, and protection of dependent children in an environment that fosters healthy social, emotional, intellectual, and physical development; to ensure secure and safe custody; to promote the health and well-being of all children under the state's care; and to prevent the occurrence of child abuse, neglect, and abandonment."¹

"Dependency," "dependent child" and "adjudication of dependency" are terms used throughout ch. 39, F.S., to describe the legal process whereby parental rights and responsibilities are partially or fully surrendered to the state. The statutes do not define "dependency" but define "dependent child."² "Dependent child," is defined by the adjudication of the condition, after notice and hearing,³ based upon one or more of the findings set out in the statute.⁴

The dependency process in Florida begins with an investigation into an allegation of child abuse, abandonment, or neglect.⁵ A child protection investigator conducts an on-site investigation of the alleged abuse or neglect.⁶ If warranted, a dependency petition is filed with the court by the Department of Children and Families.⁷

A child may be taken into custody and placed in a shelter without a hearing if there is probable cause of imminent danger or injury to the child.⁸ If a child is taken into custody, a hearing is held within 24 hours.⁹ A guardian ad litem¹⁰ will be, and an attorney ad litem¹¹ may be, appointed to represent the child's best interests in the proceeding. An adjudicatory hearing is held to determine whether the child is dependent based upon a preponderance of the evidence.¹² A disposition hearing is held to determine appropriate services and placement setting for the child.¹³ A case plan¹⁴ determining permanency of the child placement, with goals such as reunification of the family or another outcome, is also approved by the court.¹⁵

The court holds periodic judicial reviews, generally every six months, until supervision is terminated, to determine the child's status, the progress in following the case plan, and the status of the goals and objectives of the case plan.¹⁶ After twelve months, if the case plan goals have not been met, the court holds a permanency hearing to determine the child's permanent placement goal.¹⁷

¹ Section 39.001(1)(a), F.S.

² Section 39.01(15), F.S.

³ Section 39.502(1), F.S.

⁴ Section 39.01(15), F.S.

⁵ Section 39.301(1), F.S.

⁶ *Id.*

⁷ Section 39.501(3)(c), F.S.

⁸ Section 39.402(1), F.S.

⁹ Sections 39.01(69) and 39.402(8)(a), F.S.

¹⁰ Section 39.822(1), F.S.

¹¹ Section 39.4085(20), F.S.

¹² Section 39.507, F.S.

¹³ Sections 39.01(25) and 39.521, F.S.

¹⁴ Section 39.01(11), F.S.

¹⁵ Section 39.521(1), F.S. See also, s. 39.6011, F.S., *et seq.*

¹⁶ Section 39.521(1)(c), F.S.

¹⁷ Section 39.621(1), F.S.

Dependent Children in Nursing Homes

In December 2011, the U.S. Department of Justice (DOJ) opened an investigation against the State of Florida regarding the services the state provides to children with disabilities. The DOJ visited a number of nursing homes that served severely disabled children throughout Florida. The DOJ found that the children housed at these facilities had little social activity, received little stimulation, and were often confined to their rooms or housed among the elderly. The DOJ found that the state failed to provide for these children as required by the Americans with Disability Act (ADA). In a letter from the DOJ, which was received by Attorney General Pam Bondi on September 1, 2012, the DOJ warned: "In the event we determine that we cannot secure compliance voluntarily to correct the deficiencies described in this letter, the [U.S.] Attorney General may initiate a lawsuit pursuant to the ADA."¹⁸

The Fiscal Year 2013-14 General Appropriations Act, Ch. 2013-40, L.O.F., currently appropriates \$323,000 in recurring general revenue funds to be used by the Justice Administrative Commission to contract with attorneys selected by the Guardian ad Litem Program to represent dependent children with disabilities in, or being considered for placement in, skilled nursing facilities. Attorney fees shall not exceed \$4,500 per child per year and due process costs shall not exceed \$5,000 per year per child.

Representation in Dependency Cases

The court may appoint an attorney to represent a child in a dependency proceeding, but it is not mandatory. A guardian ad litem is appointed to represent the best interests of the child in a dependency proceeding.¹⁹

Effect of the Bill

The bill creates the classifications of children to be served by the bill in the definition of "dependent child with a suspected or known disability" as:

- A medically dependent or technologically dependent child who because of a medical condition requires continuous therapeutic interventions or supervision and resides in a skilled nursing facility or is being considered for placement in a skilled nursing facility;
- A dependent child who has been prescribed a psychotropic medication and refuses to take the psychotropic medication;
- A dependent child with a suspected diagnosis of developmental disability as defined in s. 393.063, F.S.;
- A dependent child being placed in a residential treatment center or being considered for placements in a residential treatment center; or
- A dependent child who has been a victim of sexual abuse or human trafficking and who is suspected to be in need of mental health treatment.

The bill provides legislative findings that:

- All children in ch. 39, F.S., proceedings have important interests at stake;
- A dependent child with a suspected or known disability has a particular need for an attorney in dependency through appellate proceedings;
- A dependent child with a suspected or known disability has a particular need for an attorney to address medical and related needs of the child;
- It is the intent of the Legislature that the court appoint an attorney to represent each dependent child with a suspected or known disability;

¹⁸ Letter to Attorney General Pam Bondi from Thomas E. Perez, Assistant Attorney General, Department of Justice (September 4, 2012), available at http://www.ada.gov/olmstead/documents/florida_findings_letter.pdf (last visited February 13, 2014).

¹⁹ Section 39.822, F.S.

- There already exist organizations that provide effective representation to children;
- Funding under this bill is not intended to supplant funding to organizations providing effective representation to disabled children; and
- There is no intent to limit the ability of a pro bono attorney to appear on behalf of a child.

The bill provides that:

- The court must appoint an attorney for a dependent child with a suspected or known disability (see definition above). The order must be in writing;
- The appointment of the attorney continues in effect until the case is closed or the attorney is discharged by the court;
- With permission of the court, the attorney may arrange for counsel to handle an appellate proceeding;
- The appointed attorney must be adequately compensated; and
- The appointed attorney must be provided with costs of litigation.

The bill does not limit the authority of the court to appoint an attorney for a proceeding under ch. 39, F.S.

The bill provides that implementation of the law is subject to appropriations expressly made for the purposes of the law.

The bill has an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 creates s. 39.01305, F.S., relating to appointment of an attorney for a dependent child with disabilities.

Section 2 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

If the bill were implemented statewide, it would have an indeterminate, but significant fiscal impact. The Department of Children and Families (DCF) estimated as of January 27, 2014, the number of children who meet the definition of a "dependent child with disabilities" is 3,915.²⁰ The cost of an attorney for each child is unknown. There is no standard for determination of fees and costs, nor is there a limit, creating a significant fiscal impact.

The bill specifies the implementation of this section is subject to appropriations expressly made for that purpose (lines 94-95). The House of Representatives proposed FY 2014-15 GAA appropriates \$200,000 in nonrecurring general revenue funds to be used by the Justice Administrative Commission to contract with attorneys selected by the Guardian ad Litem Program to represent dependent children as specified in this bill or similar legislation within the 11th Judicial Circuit, contingent upon this bill or similar legislation becoming law.

The bill requires that an attorney representing a dependent child with a disability must be "adequately" compensated and provided with funds for costs of litigation (lines 82-90). There is no standard for determination of fees and costs, nor is there a limit. Other statutes providing for attorneys' fees pre-determine those fees in some fashion, and have a "reasonable" standard for costs and fees.²¹ However, the Florida Supreme Court has found that attorneys' fees and costs for court appointed counsel can exceed statutory minimums in certain circumstances.²² Therefore, it is unknown how quickly the \$200,000 in nonrecurring general revenue will be spent within the 11th Judicial Circuit.

The House of Representatives proposed FY 2014-15 GAA also appropriates \$323,000 in recurring general revenue funds to be used by the Justice Administrative Commission to contract with attorneys selected by the Guardian ad Litem Program to represent dependent children with disabilities in, or being considered for placement in, skilled nursing facilities. Attorney fees shall not exceed \$4,500 per child per year and due process costs shall not exceed \$5,000 per year per child. Funds anticipated to be in excess of those necessary to represent these children may be used for attorney training on legal issues involving children with disabilities. This appropriation will cover the costs of attorneys for any dependent child who resides in a skilled nursing facility statewide. This appropriation is not contingent upon this bill or similar legislation becoming law.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a positive fiscal impact on attorneys who represent the dependent children who meet the definitions of this bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

²¹ See, e.g., ss. 16.0155(5), and 27.5304, F.S.

²² *Makemson v. Martin County*, 491 So.2d 1109 (Fla. 1986); *Bd. of County Comm'rs of Hillsborough County v. Scruggs*, 545 So.2d 910, 912 (Fla. 2d DCA 1989)(expanding *Makemson* to court-appointed attorneys in civil dependency hearings).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides legislative findings recognizing that there already exist organizations that provide attorney representation to children in many jurisdictions in the state with some proven effect, and that it is not the intent that the funding under the bill to supplant those organizations which are effective and proven. The amendment provides that an attorney shall be appointed to represent the children described in the bill. The bill amendment also removed a reference to perpetrators of sexual abuse or human trafficking. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to attorneys for dependent children
 3 with disabilities; creating s. 39.01305, F.S.;
 4 providing legislative findings and intent; requiring
 5 appointment of an attorney to represent a dependent
 6 child with a suspected or known disability; requiring
 7 the appointment to be in writing; requiring that the
 8 appointment continue in effect until the attorney is
 9 allowed to withdraw or is discharged by the court or
 10 until the case is dismissed; requiring that an
 11 attorney not acting in a pro bono capacity be
 12 adequately compensated for his or her services;
 13 providing for financial oversight by the Justice
 14 Administrative Commission; providing for
 15 applicability; providing an effective date.

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

18
 19 Section 1. Section 39.01305, Florida Statutes, is created
 20 to read:

21 39.01305 Appointment of an attorney for a dependent child
 22 with disabilities.-

23 (1)(a) The Legislature finds that:

24 1. All children in proceedings under this chapter have
 25 important interests at stake, such as health, safety, and well-
 26 being and the need to obtain permanency.

27 2. A dependent child with a suspected or known disability
 28 has a particular need for an attorney to represent the dependent
 29 child in such proceedings, as well as in fair hearings and
 30 appellate proceedings, so that the attorney may address the
 31 medical and related needs and the services and supports
 32 necessary for the child to live successfully in the community.

33 (b) It is the intent of the Legislature that the court
 34 appoint an attorney to represent each dependent child who has a
 35 suspected or known disability.

36 (c) The Legislature recognizes that there already exist
 37 organizations that provide attorney representation to children
 38 in certain jurisdictions throughout the state. Some of these
 39 organizations have proven effective through independent rigorous
 40 evaluation in producing significantly improved outcomes for
 41 children and many have been embraced by their local
 42 jurisdictions. The Legislature therefore does not intend that
 43 funding provided for representation under this section supplant
 44 proven and existing organizations representing children.
 45 Instead, the Legislature intends that funding provided for
 46 representation under this section be an additional resource for
 47 the representation of more children in these jurisdictions to
 48 the extent necessary to meet the requirements of this chapter
 49 and with the cooperation of existing local organizations or
 50 through the expansion of such organizations. The Legislature
 51 encourages the expansion of pro bono representation for
 52 children. This section is not intended to limit the ability of a

53 pro bono attorney to appear on behalf of a child.
 54 (2) An attorney shall be appointed for a dependent child
 55 with disabilities who meets one or more of the following
 56 criteria:
 57 (a) A dependent child who is medically dependent or
 58 technologically dependent, who because of a medical condition
 59 requires continuous therapeutic interventions or skilled
 60 interventions, and who resides in a skilled nursing facility or
 61 is being considered for placement in a skilled nursing facility;
 62 (b) A dependent child who is prescribed a psychotropic
 63 medication and refuses to take the psychotropic medication;
 64 (c) A dependent child with a suspected or known diagnosis
 65 of developmental disability as defined in s. 393.063;
 66 (d) A dependent child being placed in a residential
 67 treatment center or being considered for placement in a
 68 residential treatment center; or
 69 (e) A dependent child who has been a victim of sexual
 70 abuse or human trafficking and who is suspected to be in need of
 71 mental health treatment.
 72 (3) A court order appointing an attorney under this
 73 section must be in writing. The appointment continues in effect
 74 until the attorney is allowed to withdraw, the attorney is
 75 discharged by the court, or the case is dismissed. An attorney
 76 who is appointed to represent the child shall provide the
 77 complete range of legal services from removal from the home or
 78 initial appointment through all available appellate proceedings.

79 With the permission of the court, the attorney for the dependent
 80 child may arrange for supplemental or separate counsel to handle
 81 proceedings at an appellate hearing.

82 (4) Except where the attorney has agreed to provide pro
 83 bono services, an appointed attorney must be adequately
 84 compensated and provided with access to funding for expert
 85 witnesses, depositions, and other costs of litigation. Payment
 86 to an attorney is subject to appropriations and subject to
 87 review by the Justice Administrative Commission for
 88 reasonableness. The Justice Administrative Commission may
 89 contract with attorneys selected by the Guardian ad Litem
 90 program.

91 (5) This section does not limit the authority of the court
 92 to appoint an attorney for a dependent child in a proceeding
 93 under this chapter.

94 (6) Implementation of this section is subject to
 95 appropriations expressly made for that purpose.

96 Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 753 School Safety
SPONSOR(S): Steube
TIED BILLS: IDEN./SIM. **BILLS:** SB 968

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	9 Y, 4 N, As CS	Brink	Ahearn
2) Justice Appropriations Subcommittee		McAuliffe	Lloyd
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill allows district school superintendents and school principals to create a school safety designee program through which the school principal, or, for an administration building, the district superintendent, may designate one or more individuals to carry a concealed weapon or firearm on school property. Weapons or firearms may only be carried in a concealed manner and must be on the individual's person at all times while performing official school duties. The bill requires designees to possess a concealed weapon license.

The bill establishes criteria and training requirements which designees must meet. The bill also requires a level 2 background screening for designees who are volunteers and authorizes school principals to require additional background screenings for all designees.

The bill requires district school board policies and procedures for emergencies and emergency drills to include active shooter and hostage situations. Active shooter situation training for each school must be conducted by the designated first responding law enforcement agency or agencies for the school's campus.

The bill requires each district school superintendent to provide recommendations to improve school safety and security to the first responding local law enforcement agencies.

The bill requires school districts and private schools to allow first-responding law enforcement agencies to tour the school campuses once every three years. Any recommendations relating to school safety and emergency issues based on a campus tour must be documented by the district or private school.

The bill specifies that a district school board may commission one or more school safety officers on each school campus.

The bill specifies that the required training will be created and defined by the Criminal Justice Standards and Training Commission which is administered by the Florida Department of Law Enforcement (FDLE). According to the FDLE, the cost to develop and implement the training required by this bill would be \$157,927. See Fiscal Impact on State Government.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Gun Free School Zones

Federal Law

Federal law prohibits an individual from possessing a firearm at a place the person knows, or has reasonable cause to believe, is a school zone.¹ The prohibition does not apply to possession of a firearm:

- On private property not part of school grounds;
- By individuals licensed to possess a firearm by the state or a political subdivision of the state in which the school zone is located if the licensing law requires law enforcement verification that the individual meets the law's qualifications to receive the license before issuance;
- That is unloaded and stored in a locked container on a motor vehicle;
- Authorized pursuant to a program approved by the school in the school zone;
- By an individual pursuant to a contract between a school and the individual or an employer of the individual;
- By a law enforcement officer acting in his or her official capacity; or
- That is unloaded and is possessed by an individual who is authorized by the school to cross school grounds for the purpose of gaining access to public or private lands open to hunting.²

Federal law also prohibits the knowing or reckless discharge or attempted discharge of a firearm by a person at a place that the person knows is a school zone.³ The prohibition does not apply to the discharge of a firearm:

- On private property not part of school grounds;
- Authorized pursuant to a program approved by the school in the school zone;
- Pursuant to a contract entered into between a school and the individual or an employer of the individual; or
- By a law enforcement officer acting in his or her official capacity.⁴

Federal law further provides that it is not Congress's intent to occupy the field of firearms regulation, unless there is a direct, positive, and irreconcilable conflict between a federal and state firearms law regulating the same subject matter. Thus, states may regulate firearms in a manner that is consistent with federal law.⁵

¹ 18 U.S.C. s. 922(q)(2)(A). An element of the offense is that the person knowingly possess a firearm that has moved in or that otherwise affects interstate or foreign commerce.

² 18 U.S.C. s. 922(q)(2)(B).

³ 18 U.S.C. s. 922(q)(3)(A). An element of the offense is that the firearm have been moved in or otherwise affect interstate or foreign commerce.

⁴ 18 U.S.C. s. 922(q)(3)(B).

⁵ 18 U.S.C. s. 927.

Florida Law

Florida law prohibits, with exceptions, the possession or discharge of weapons or firearms at a preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.⁶ The law prohibits:

- Exhibition of a weapon⁷ or firearm in the presence of another in a rude, careless, angry, or threatening manner on school property or a school bus, at a school bus stop or school-sponsored event, or within 1,000 feet⁸ of a K-12 public or private school, during school hours or at the time of a school activity.⁹ Such exhibition is a third degree felony,¹⁰ unless it is made in lawful self-defense.¹¹
- Possession of a weapon¹² or firearm, “except as authorized in support of school-sanctioned activities, at a school-sponsored event or on the property of any school, school bus, or school bus stop.” Penalties for such possession vary, as follows:
 - A person who willfully and knowingly possesses a firearm unlawfully on school property or a school bus or at a school bus stop or school-sponsored activity or event commits a third degree felony.¹³
 - A person who fails to securely store a firearm, enabling a minor to access it who then unlawfully possesses it on school property or a school bus or at a school bus stop or school-sponsored activity or event, commits a second degree misdemeanor.¹⁴
 - A person who discharges a firearm while unlawfully possessing it on school property or a school bus or at a school bus stop or school-sponsored activity or event, commits a second degree felony,¹⁵ unless discharged for lawful defense of self or others or for a lawful purpose.¹⁶

The penalties for unlawful exhibition or possession of a firearm or weapon differ for licensed concealed weapons permit holders. Violations by such individuals constitute a second degree misdemeanor.¹⁷

The law provides several exceptions allowing individuals to carry a firearm on school property or a school bus or at a school bus stop or school-sponsored activity or event without express approval by school officials. A firearm may be carried:

- In a case to a school-approved firearms program;
- In a case to a career center having a firearms training range; or

⁶ Section 790.115(2)(a), F.S. (flush left provision at end of paragraph).

⁷ “Weapon” means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife. Section 790.001(13), F.S. Exhibiting a sword, sword cane, electric weapon or device, destructive device, razor blade, box cutter, or common pocketknife is also prohibited. Section 790.115(1), F.S.

⁸ The prohibition on exhibition of a firearm or weapon on private real property within 1,000 feet of a school does not apply to the property owner or those whose presence is authorized by the owner. Section 790.115(1), F.S.

⁹ Section 790.115(1), F.S.

¹⁰ A third degree felony is punishable by term of imprisonment not exceeding five years and a fine not exceeding \$5,000. Sections 775.082(3)(d) and 775.083(1)(c), F.S.

¹¹ Section 790.115(1), F.S.

¹² In addition to firearms and items defined as weapons, this provision also applies to possession of an electric weapon or device, destructive device, and a razor blade or box cutter. Section 790.115(2)(a), F.S.; *see supra* text accompanying note 4.

¹³ Section 790.115(2)(e), F.S.

¹⁴ Section 790.115(2)(c), F.S. This does not apply if the firearm was securely stored and the minor obtains the firearm as a result of an unlawful entry by any person or to members of the Armed Forces, National Guard, State Militia, or law enforcement officers, with respect to firearm possession by a minor which occurs during or incidental to the performance of their official duties.

¹⁵ A second degree felony is punishable by a term of imprisonment not exceeding 15 years and a fine not exceeding \$10,000.

¹⁶ Section 790.115(2)(d), F.S.

¹⁷ Sections 790.115(2)(e) and 790.06(12)(a) and (d), F.S. A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a fine not exceeding \$500. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

- In a vehicle by a person who is at least 18 years of age and the firearm is securely encased or not readily accessible for immediate use.¹⁸

School districts may adopt policies waiving the vehicle exception for purposes of student and campus parking privileges.¹⁹

Concealed Weapons Permits

Florida law authorizes the Department of Agriculture and Consumer Services (DACS) to issue a concealed weapons permit (CWP) to individuals who meet statutory qualifications. Among other criteria, CWP applicants must pass a fingerprint-based criminal background check and complete a CWP training class. The CWP is a photo identification that enables the holder to carry a concealed weapon or firearm in public, except for specified locations, e.g., school or college athletic events; elementary, secondary, and postsecondary schools; and career centers.²⁰

School Safety

Emergency Policies

Florida law requires each district school board to formulate policies and procedures for emergency response drills and actual emergencies. These policies must include procedures for responding to various emergencies, such as fires, natural disasters, and bomb threats. Commonly used alarm system responses for specific types of emergencies must be incorporated into such policies.²¹

The *Safety and Security Best Practices* (Best Practices) is a self-assessment tool that each school district must use to annually assess the effectiveness of district emergency response policies. Among other “best practices,” the self-assessment suggests that school districts:

- Develop a district-wide plan for potential attacks against school sites;
- Develop a checklist with step-by-step emergency procedures for use in every classroom which includes, among other things, procedures for weapons and hostage situations; and
- Share emergency plans and procedures with designated school and school district personnel, identify training for all types of school staff and staff that require specialized training, and incorporate such training into the Master Plan for In-Service Training.²²

Each district school superintendent must make recommendations to the school board for improving emergency response policies based upon the self-assessment results. The self-assessment results and superintendent’s recommendations must be addressed in a publicly noticed school board meeting. The results of the self-assessment and any school board action on the superintendent’s recommendations must be reported to the Commissioner of Education within 30 days after the school board meeting.²³

School Safety Officers

School safety officers are certified law enforcement officers who are employed by either a law enforcement agency or a district school board. A school safety officer has the authority to carry firearms

¹⁸ Section 790.115(2)(a), F.S.

¹⁹ Section 790.115(2)(c), F.S.; *see, e.g.*, Policies 1217, 3217, 4217, 5772, and 7217, Leon County School Board.

²⁰ Section 790.06, F.S.

²¹ Section 1006.07(4)(a), F.S. Additionally, district school boards must establish model emergency management and preparedness procedures for weapon-use and hostage situations; hazardous materials or toxic chemical spills; weather emergencies, including hurricanes, tornadoes, and severe storms; and exposure resulting from manmade emergencies. Section 1006.07(4)(b), F.S.

²² Section 1006.07(6), F.S.; Florida Department of Education, *District Safety and Security Best Practices*, <http://www.fldoe.org/EM/security-practices.asp> (last visited Feb. 28, 2014). The self-assessment is developed by the Office of Program Policy Analysis and Government Accountability. *Id.*

²³ Section 1006.07(6), F.S.

or other weapons when performing official duties.²⁴ School boards are authorized, but not required, to commission and assign to schools school safety officers for the protection of school personnel, property, and students within the school district. School boards may enter into mutual aid agreements with one or more law enforcement agencies. A school safety officer's salary may be paid jointly by the school board and the law enforcement agency, if mutually agreed to.²⁵

Background Screening

Florida law requires school district employees to undergo a fingerprint-based background screening as a condition of employment.²⁶ Instructional and noninstructional personnel²⁷ and noninstructional school district employees and contracted personnel²⁸ must undergo Level 2 background screening.²⁹ Level 2 background screening requires individuals to be screened against a statutorily prescribed list of 51 criminal offenses.³⁰ Such employees must be rescreened every five years.³¹

Available Firearms and Security Training

Individuals seeking a Class "D" license as a private security officer must complete at least 40 hours of professional training by a provider licensed by DACS.³² The training addresses legal liability issues and court procedures; personal security; traffic and crowd control; fire detection and life safety; crime and accident prevention; terrorism awareness; first aid; emergency response procedures; ethics; and patrol, communication, observation, report writing, and interviewing techniques.³³

Individuals holding a Class "G" statewide firearm license must annually complete four hours of firearms recertification training taught by a licensed firearms instructor as a condition of license renewal.³⁴ Such training includes a review of legal aspects of firearms use and when to use a gun, operational firearms safety and mechanical training, and range-based firearms requalification.³⁵ In lieu of proof of statewide firearms recertification training, such individuals may submit:

- Proof of current certification as a law enforcement officer or correctional officer and completion of law enforcement firearms requalification training annually during the previous two years of the licensure period;
- Proof of current certification as a federal law enforcement officer and receipt of law enforcement firearms training administered by a federal law enforcement agency annually during the previous two years of the licensure period; or
- A Florida Criminal Justice Standards and Training Commission Instructor Certificate, National Rifle Association Private Security Firearm Instructor Certificate, or a firearms instructor certificate issued by a federal law enforcement agency and proof of having completed

²⁴ Section 1006.12(2)(a) and (c), F.S.

²⁵ Section 1006.12(2)(b) and (d), F.S.

²⁶ Sections 1012.32, 1012.465, and 1012.467, F.S. Private schools participating in educational choice scholarship programs must also submit fingerprints of employees and contracted personnel with direct student contact to the Florida Department of Law Enforcement. *See* ss. 943.0542 and 1002.421(2)(i), F.S.

²⁷ Instructional and noninstructional personnel are individuals who are hired or contracted to fill positions that require direct contact with students in any public school. Section 1012.32(2), F.S.

²⁸ Noninstructional school district employees and contracted personnel are individuals who are permitted access to school grounds when students are present; who have direct contact with students; or who have access to, or control of, school funds. Section 1012.465(1), F.S.

²⁹ Sections 1012.32(1)-(2), 1012.465(2), and 1012.56(10), F.S.

³⁰ *See* ss. 435.04, 1012.32(2), 1012.465(1), and 1012.56(10), F.S.

³¹ Sections 1012.465(2) and 1012.56(10)(b), F.S.

³² Section 493.6303(4)(a), F.S.

³³ Florida Department of Agriculture and Consumer Services, *Security Officer Training Curriculum Guide* (July 2010) [hereinafter *Security Officer Training*].

³⁴ Section 493.6113(b), F.S.

³⁵ *Security Officer Training*, *supra* note 33.

requalification training during the previous two years of the licensure period.³⁶

Effect of Proposed Changes

The bill allows district school superintendents and school principals to create a school safety designee program. Under the program, each public or private school principal, or, for an administration building, the superintendent, may designate one or more employees or volunteers to carry a concealed weapon or firearm on school property. Weapons or firearms may only be carried in a concealed manner and must be on the designee's person at all times while performing official school duties.

The bill requires designated personnel to annually complete eight hours of active shooter training and four hours of firearm proficiency training and submit to the authorizing principal or superintendent proof of completion of a minimum of 40 hours of a school safety program. The bill specifies that the required training is created and defined by the Criminal Justice Standards and Training Commission and that the training programs are administered by the State of Florida Criminal Justice Training Centers.³⁷ The bill is silent regarding whether the designee or school district is to pay the cost of training, if any. Accordingly, each district can decide how expenses for designee training are to be borne.

The bill requires that a designee be licensed to carry a concealed firearm as provided by law and:

- Be a military veteran who was honorably discharged and who has not been found to have committed a firearms-related disciplinary infraction during his or her service;
- Be an active duty member of the military, the National Guard, or military reserves who has not been found to have committed a firearms-related disciplinary infraction during his or her service;
- Be a law enforcement officer or a former law enforcement officer who has not been found to have committed a firearms-related disciplinary infraction during his or her law enforcement service; or
- Be a school district employee or volunteer as provided in the bill.

The bill provides that s. 790.115, F.S., does not apply to designees in the conduct of official school duties.³⁸ Among other things, this appears to exempt designees, when performing official school duties, from penalties for:

- Failure to securely store a firearm, enabling a minor to access it who then unlawfully possesses it on school property or a school bus or at a school bus stop or school-sponsored activity or event; and
- Rude, careless, angry, or threatening exhibition of a weapon or firearm on school property or at school functions.

The bill requires designees who are volunteers to undergo a level 2 background screening and provides principals and superintendents the authority to require additional screening for all designees.

³⁶ Section 493.6113(3)(b), F.S.

³⁷ The Commission is comprised of 19 members including various law enforcement and correctional personnel, the attorney general or a proxy, and a Florida resident who is not a law enforcement or correctional personnel. The Commission establishes various training standards and training programs and requirements and performs other duties. Florida Department of Law Enforcement, *Criminal Justice Standards & Training Commission*, <http://www.fdle.state.fl.us/content/getdoc/91a75023-5a74-40ef-814d-8e7e5b622d4d/cjstc-home-page.aspx> (last visited March 12, 2014). The Criminal Justice Professionalism Division of the Florida Department of Law Enforcement provides staff support to the Commission. Florida Department of Law Enforcement, *Criminal Justice Professionalism Division*, <https://www.fdle.state.fl.us/Content/getdoc/05c013ca-a32e-48a1-aca8-df7f06854d49/CJP-Home-Page.aspx> (last visited March 12, 2014). A list of State of Florida Criminal Justice Training Centers can be found at <https://www.fdle.state.fl.us/Content/getdoc/f1431117-7788-4e70-bb0a-86d4f7717558/Training-Centers.aspx> (last visited March 12, 2014).

³⁸ This could be construed to mean that no provisions of the section, including the provisions of this bill, would apply to designees.

The bill requires district school board policies and procedures for emergencies and emergency drills to include active shooter and hostage situations. The bill requires each district school board to address active shooter situations in the board's model emergency management and emergency preparedness procedures. The training for each school must be conducted by the law enforcement agency or agencies that are designated as first responders to the school's campus.

The bill requires each district school superintendent to provide recommendations, which identify strategies and activities that the district school board should implement in order to improve school safety and security, and which currently are provided only to the district school board,³⁹ to the local law enforcement agencies that are first responders to the district's school campuses.

In addition, each district school board or private school principal or governing board must allow first-responding law enforcement agencies to tour the school campuses once every three years. Any recommendations relating to school safety and emergency issues based on a campus tour must be documented by the district or private school.

The bill specifies that a district school board may commission one or more school safety officers for the protection and safety of school personnel, property, and students on each school campus, instead of simply within the district.

B. SECTION DIRECTORY:

Section 1. Provides a statement of legislative intent.

Section 2. Amends s. 790.115, F.S., providing an exception to the prohibition on possession of firearms and other specified devices on school property; providing for school safety programs by which persons may be designated to carry a concealed weapon; providing requirements for designees.

Section 3. Amends s. 1006.07, F.S., requiring that district school boards and private schools allow campus tours by local law enforcement agencies for specified purposes; requiring that all recommendations be documented.

Section 4. Amends s. 1006.12, F.S., permitting district school boards to commission one or more school safety officers on each school campus.

Section 5. Amends s. 435.04, F.S., conforming cross-references.

Section 6. Amends s. 790.251, F.S., conforming cross-references.

Section 7. Amends s. 921.0022, F.S., conforming cross-references.

Section 8. Amends s. 1012.315, F.S., conforming cross-references.

Section 9. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill specifies that the required training will be created and defined by the Criminal Justice Standards and Training Commission which is administered by the Florida Department of Law Enforcement (FDLE). According to FDLE, School Safety Officer, Firearms Proficiency, and Active Shooter training would be required for school safety designees as provided in this bill. The Firearms Proficiency Course and Active Shooter Course can be developed using existing materials. The School Safety Officer Course for Civilians, however, is unique and must take into consideration all Florida statutes governing the school safety officer's authority to act. Also, the safety of the school safety officer must be addressed in the training as well as limited first responder activity, officer survival, tactical operations, and environmental considerations.

Workload that will be borne by FDLE includes: preliminary research and planning; selection of subject matter experts; staffing and planning of workshops and per diems for subject matter experts to attend; analysis and course development; and editing and final course review. Total cost are expected to be \$157,927.

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 is silent as to whether a fee would be charged for participation in the training and whether the training fee would be borne by the school district or the trainee.

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.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Previous drafting concerns were addressed by the adoption of a strike all amendment by the K-12 Subcommittee on March 12, 2014. See Amendments/Committee Substitute Changes *infra*.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2014, the House K-12 Subcommittee adopted a strike all amendment to HB 753 and reported the bill favorably as a committee substitute. The strike all amendment addresses certain drafting concerns by:

- Exempting designated volunteers, in addition to designated school or district personnel, from laws prohibiting the concealed carrying of a firearm on school property or a district administration building, as applicable;
- Changing designee qualifications to require that designated volunteers and personnel be licensed to carry a concealed firearm as provided by law;
- Specifying that designees who are volunteers must undergo a level 2 background screening and providing principals and superintendents the authority to require additional screening for all designees;
- Clarifying that the required training is created and defined by the Criminal Justice Standards and Training Commission and that the training programs are administered by the State of Florida Criminal Justice Training Centers;
- Including career centers and postsecondary schools in the definition of "school;" and
- Requiring school districts and private schools to allow first-responding law enforcement agencies to tour the school campuses once every three years. Any recommendations relating to school safety and emergency issues based on a campus tour must be documented by the district or private school.

1 A bill to be entitled
 2 An act relating to school safety; providing
 3 legislative intent; amending s. 790.115, F.S.;
 4 providing an exception to a prohibition on possession
 5 of firearms or other specified devices on school
 6 property or other specified areas for authorized
 7 concealed weapon or firearm licensees as designated by
 8 school principals or district superintendents;
 9 providing requirements for designees; amending s.
 10 1006.07, F.S.; requiring school boards to formulate
 11 policies and procedures for managing active shooter
 12 and hostage situations; requiring that active shooter
 13 training for each school be conducted by the law
 14 enforcement agency that is designated as the first
 15 responder agency for the school; requiring that
 16 district school boards and private schools allow
 17 campus tours by local law enforcement agencies for
 18 specified purposes; requiring that all recommendations
 19 be documented; amending s. 1006.12, F.S.; permitting
 20 district school boards to commission one or more
 21 school safety officers on each school campus; amending
 22 ss. 435.04, 790.251, 921.0022, and 1012.315, F.S.;
 23 conforming cross-references; providing an effective
 24 date.

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

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Section 1. It is the intent of the Legislature to prevent violent crimes from occurring on school grounds. The Legislature acknowledges that the safekeeping of our students, teachers, and campuses is imperative. In addition, the Legislature's intent is not to mandate that a school have one or more designees as described in the amendments made by this act to s. 790.115, Florida Statutes; rather, the intent of the amendments is to allow the school principal or authorizing superintendent the opportunity to do so.

Section 2. Section 790.115, Florida Statutes, is amended to read:

790.115 Possessing or discharging weapons or firearms at a school-sponsored event or on school property prohibited; penalties; exceptions.-

(1) As used in this section, the term "school" means any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.

(2)~~(1)~~ A person who exhibits any sword, sword cane, firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade, box cutter, or common pocketknife, except as authorized in support of school-sanctioned activities, in the presence of one or more persons in a rude, careless, angry, or threatening manner and not in lawful self-defense, at a school-sponsored

53 event or on the grounds or facilities of any school, school bus,
 54 or school bus stop, or within 1,000 feet of the real property
 55 that comprises a public or private elementary school, middle
 56 school, or secondary school, during school hours or during the
 57 time of a sanctioned school activity, commits a felony of the
 58 third degree, punishable as provided in s. 775.082, s. 775.083,
 59 or s. 775.084. This subsection does not apply to the exhibition
 60 of a firearm or weapon on private real property within 1,000
 61 feet of a school by the owner of such property or by a person
 62 whose presence on such property has been authorized, licensed,
 63 or invited by the owner.

64 (3) Subsection (4) does not apply to a member of a
 65 school's personnel or a volunteer who has been designated by the
 66 school principal of the school at which the member of the
 67 school's personnel or volunteer is employed or volunteering, or,
 68 for an administration building, a member of the district's
 69 personnel or a volunteer who has been designated by the district
 70 school superintendent, as authorized to carry a concealed weapon
 71 or firearm on school property.

72 (a)1. A designee authorized to carry a concealed weapon or
 73 firearm on such school property under this subsection may only
 74 carry such weapon or firearm in a concealed manner. The weapon
 75 or firearm must be carried on the designee's person at all times
 76 while the designee is performing his or her official school
 77 duties.

78 2. The designee must submit to the authorizing principal

79 or authorizing superintendent proof of completion of a minimum
 80 of 40 hours of a school safety program and annually complete 8
 81 hours of active shooter training and 4 hours of firearm
 82 proficiency training. These training programs are created and
 83 defined by the Criminal Justice Standards and Training
 84 Commission. The training programs are administered by State of
 85 Florida Criminal Justice Training Centers. In addition, the
 86 State of Florida Criminal Justice Training Center must certify
 87 and provide proof of the designee's completion of the trainings
 88 in a manner prescribed by the Criminal Justice Standards and
 89 Training Commission. For purposes of this subsection, a designee
 90 is an individual licensed to carry a concealed firearm pursuant
 91 to s. 790.06 who is:

92 a. A military veteran who was honorably discharged and who
 93 has not been found to have committed a firearms-related
 94 disciplinary infraction during his or her service;

95 b. An active duty member of the military, the National
 96 Guard, or military reserves who has not been found to have
 97 committed a firearms-related disciplinary infraction during his
 98 or her service;

99 c. A law enforcement officer in good standing or a former
 100 law enforcement officer who has left the law enforcement agency
 101 in good standing; or

102 d. A school district employee or volunteer as otherwise
 103 provided in this subsection.

104 (b) School superintendents and principals may create a

105 school safety designee program for employees or volunteers. Each
 106 public or private school principal or, for an administration
 107 building, the superintendent, may designate one or more such
 108 designees who have provided proof of completion of training as
 109 created by the Criminal Justice Standards and Training
 110 Commission and administered and certified by the State of
 111 Florida Criminal Justice Training Centers. The school principal
 112 or superintendent must require volunteer designees to undergo
 113 level 2 background screening pursuant to s. 435.04 and every 5
 114 years thereafter and may require additional screening or
 115 screenings for all designees.

116 ~~(4)~~(2)(a) A person shall not possess any firearm, electric
 117 weapon or device, destructive device, or other weapon as defined
 118 in s. 790.001(13), including a razor blade or box cutter, except
 119 as authorized in support of school-sanctioned activities, at a
 120 school-sponsored event or on the property of any school, school
 121 bus, or school bus stop; however, a person may carry a firearm:

122 1. In a case to a firearms program, class or function
 123 which has been approved in advance by the principal or chief
 124 administrative officer of the school as a program or class to
 125 which firearms could be carried;

126 2. In a case to a career center having a firearms training
 127 range; or

128 3. In a vehicle pursuant to s. 790.25(5); except that
 129 school districts may adopt written and published policies that
 130 waive the exception in this subparagraph for purposes of student

131 and campus parking privileges.

132

133 ~~For the purposes of this section, "school" means any preschool,~~
 134 ~~elementary school, middle school, junior high school, secondary~~
 135 ~~school, career center, or postsecondary school, whether public~~
 136 ~~or nonpublic.~~

137 (b) A person who willfully and knowingly possesses any
 138 electric weapon or device, destructive device, or other weapon
 139 as defined in s. 790.001(13), including a razor blade or box
 140 cutter, except as authorized in support of school-sanctioned
 141 activities, in violation of this subsection commits a felony of
 142 the third degree, punishable as provided in s. 775.082, s.
 143 775.083, or s. 775.084.

144 (c)1. A person who willfully and knowingly possesses any
 145 firearm in violation of this subsection commits a felony of the
 146 third degree, punishable as provided in s. 775.082, s. 775.083,
 147 or s. 775.084.

148 2. A person who stores or leaves a loaded firearm within
 149 the reach or easy access of a minor who obtains the firearm and
 150 commits a violation of subparagraph 1. commits a misdemeanor of
 151 the second degree, punishable as provided in s. 775.082 or s.
 152 775.083; except that this does not apply if the firearm was
 153 stored or left in a securely locked box or container or in a
 154 location which a reasonable person would have believed to be
 155 secure, or was securely locked with a firearm-mounted push-
 156 button combination lock or a trigger lock; if the minor obtains

157 the firearm as a result of an unlawful entry by any person; or
 158 to members of the Armed Forces, National Guard, or State
 159 Militia, or to police or other law enforcement officers, with
 160 respect to firearm possession by a minor which occurs during or
 161 incidental to the performance of their official duties.

162 (d) A person who discharges any weapon or firearm while in
 163 violation of paragraph (a), unless discharged for lawful defense
 164 of himself or herself or another or for a lawful purpose,
 165 commits a felony of the second degree, punishable as provided in
 166 s. 775.082, s. 775.083, or s. 775.084.

167 (e) The penalties of this subsection shall not apply to
 168 persons licensed under s. 790.06. Persons licensed under s.
 169 790.06 shall be punished as provided in s. 790.06(12), except
 170 that a licenseholder who unlawfully discharges a weapon or
 171 firearm on school property as prohibited by this subsection
 172 commits a felony of the second degree, punishable as provided in
 173 s. 775.082, s. 775.083, or s. 775.084.

174 (5)~~(3)~~ This section does not apply to any law enforcement
 175 officer as defined in s. 943.10(1), (2), (3), (4), (6), (7),
 176 (8), (9), or (14).

177 (6)~~(4)~~ Notwithstanding s. 985.24, s. 985.245, or s.
 178 985.25(1), any minor under 18 years of age who is charged under
 179 this section with possessing or discharging a firearm on school
 180 property shall be detained in secure detention, unless the state
 181 attorney authorizes the release of the minor, and shall be given
 182 a probable cause hearing within 24 hours after being taken into

183 custody. At the hearing, the court may order that the minor
 184 continue to be held in secure detention for a period of 21 days,
 185 during which time the minor shall receive medical, psychiatric,
 186 psychological, or substance abuse examinations pursuant to s.
 187 985.18, and a written report shall be completed.

188 Section 3. Subsections (4) and (6) of section 1006.07,
 189 Florida Statutes, are amended and subsection (7) is added to
 190 that section to read:

191 1006.07 District school board duties relating to student
 192 discipline and school safety.—The district school board shall
 193 provide for the proper accounting for all students, for the
 194 attendance and control of students at school, and for proper
 195 attention to health, safety, and other matters relating to the
 196 welfare of students, including:

197 (4) EMERGENCY DRILLS; EMERGENCY PROCEDURES.—

198 (a) Formulate and prescribe policies and procedures for
 199 emergency drills and for actual emergencies, including, but not
 200 limited to, fires, natural disasters, active shooters, hostage
 201 situations, and bomb threats, for all the public schools of the
 202 district which comprise grades K-12. District school board
 203 policies shall include commonly used alarm system responses for
 204 specific types of emergencies and verification by each school
 205 that drills have been provided as required by law and fire
 206 protection codes. The emergency response agency that is
 207 responsible for notifying the school district for each type of
 208 emergency must be listed in the district's emergency response

209 policy.

210 (b) Establish model emergency management and emergency
 211 preparedness procedures, including emergency notification
 212 procedures pursuant to paragraph (a), for the following life-
 213 threatening emergencies:

214 1. Weapon-use, ~~and~~ hostage, and active shooter situations.
 215 The active shooter situation training for each school must be
 216 conducted by the law enforcement agency or agencies that are
 217 designated as first responders to the school's campus.

218 2. Hazardous materials or toxic chemical spills.

219 3. Weather emergencies, including hurricanes, tornadoes,
 220 and severe storms.

221 4. Exposure as a result of a manmade emergency.

222 (6) SAFETY AND SECURITY BEST PRACTICES.—Use the Safety and
 223 Security Best Practices developed by the Office of Program
 224 Policy Analysis and Government Accountability to conduct a self-
 225 assessment of the school districts' current safety and security
 226 practices. Based on these self-assessment findings, the district
 227 school superintendent shall provide recommendations to the
 228 district school board and local law enforcement agencies that
 229 are first responders to the district campuses which identify
 230 strategies and activities that the district school board should
 231 implement in order to improve school safety and security.
 232 Annually each district school board must receive the self-
 233 assessment results at a publicly noticed district school board
 234 meeting to provide the public an opportunity to hear the

235 | district school board members discuss and take action on the
 236 | report findings. Each district school superintendent shall
 237 | report the self-assessment results and school board action to
 238 | the commissioner within 30 days after the district school board
 239 | meeting.

240 | (7) SAFETY IN CONSTRUCTION AND PLANNING.—A district school
 241 | board or private school principal or governing board must allow
 242 | local law enforcement agencies that are first responders to the
 243 | schools to tour the school campuses once every 3 years. Any
 244 | changes related to school safety and emergency issues
 245 | recommended by a law enforcement agency based on a campus tour
 246 | must be documented by the district school board or the private
 247 | school principal or governing board.

248 | Section 4. Paragraph (b) of subsection (2) of section
 249 | 1006.12, Florida Statutes, is amended to read:

250 | 1006.12 School resource officers and school safety
 251 | officers.—

252 | (2)

253 | (b) A district school board may commission one or more
 254 | school safety officers for the protection and safety of school
 255 | personnel, property, and students on each school campus within
 256 | the school district. The district school superintendent may
 257 | recommend and the district school board may appoint the ~~one or~~
 258 | ~~more~~ school safety officers.

259 | Section 5. Paragraphs (p) and (q) of subsection (2) of
 260 | section 435.04, Florida Statutes, are amended to read:

261 435.04 Level 2 screening standards.—

262 (2) The security background investigations under this
 263 section must ensure that no persons subject to the provisions of
 264 this section have been arrested for and are awaiting final
 265 disposition of, have been found guilty of, regardless of
 266 adjudication, or entered a plea of nolo contendere or guilty to,
 267 or have been adjudicated delinquent and the record has not been
 268 sealed or expunged for, any offense prohibited under any of the
 269 following provisions of state law or similar law of another
 270 jurisdiction:

271 (p) Section 790.115(2) ~~790.115(1)~~, relating to exhibiting
 272 firearms or weapons within 1,000 feet of a school.

273 (q) Section 790.115(4)(b) ~~790.115(2)(b)~~, relating to
 274 possessing an electric weapon or device, destructive device, or
 275 other weapon on school property.

276 Section 6. Paragraph (a) of subsection (7) of section
 277 790.251, Florida Statutes, is amended to read:

278 790.251 Protection of the right to keep and bear arms in
 279 motor vehicles for self-defense and other lawful purposes;
 280 prohibited acts; duty of public and private employers; immunity
 281 from liability; enforcement.—

282 (7) EXCEPTIONS.—The prohibitions in subsection (4) do not
 283 apply to:

284 (a) Any school property as defined in s. 790.115(1) and
 285 regulated under that section ~~s. 790.115~~.

286 Section 7. Paragraphs (d) and (f) of subsection (3) of

CS/HB 753

2014

287 | section 921.0022, Florida Statutes, are amended to read:
 288 | 921.0022 Criminal Punishment Code; offense severity
 289 | ranking chart.—

290 | (3) OFFENSE SEVERITY RANKING CHART

291 | (d) LEVEL 4

292 |

Florida Statute	Felony Degree	Description
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293 |

316.1935(3) (a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
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294 |

499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
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295 |

499.0051(2)	3rd	Failure to authenticate pedigree papers.
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296 |

499.0051(6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
-------------	-----	---

297 |

CS/HB 753

2014

298	517.07(1)	3rd	Failure to register securities.
299	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
300	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
301	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
302	784.075	3rd	Battery on detention or commitment facility staff.
303	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
304	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
305	784.081(3)	3rd	Battery on specified official or employee.

CS/HB 753

2014

306	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
307	784.083(3)	3rd	Battery on code inspector.
308	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
309	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
310	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
311	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.

CS/HB 753

2014

312	787.07	3rd	Human smuggling.
313	<u>790.115(2)</u> 790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
314	<u>790.115(4)(b)</u> 790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
315	<u>790.115(4)(c)</u> 790.115(2)(c)	3rd	Possessing firearm on school property.
316	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
317	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
318	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

CS/HB 753

2014

319	810.06	3rd	Burglary; possession of tools.
320	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
321	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
322	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
323	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
324	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
325	817.568(2)(a)	3rd	Fraudulent use of personal identification information.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

CS/HB 753

2014

326	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
327	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
328	837.02(1)	3rd	Perjury in official proceedings.
329	837.021(1)	3rd	Make contradictory statements in official proceedings.
330	838.022	3rd	Official misconduct.
331	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
332	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Family Services.
	843.021	3rd	Possession of a concealed

CS/HB 753

2014

			handcuff key by a person in custody.
333	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
334	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
335	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
336	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
337	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
338			

CS/HB 753

2014

339	914.14(2)	3rd	Witnesses accepting bribes.
340	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
341	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
342	918.12	3rd	Tampering with jurors.
343	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
344	(f) LEVEL 6		
345	Florida Statute	Felony Degree	Description
346	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
347	499.0051(3)	2nd	Knowing forgery of pedigree papers.
348			

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

CS/HB 753

2014

349	499.0051 (4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
350	499.0051 (5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
351	775.0875 (1)	3rd	Taking firearm from law enforcement officer.
352	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
353	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
354	784.041	3rd	Felony battery; domestic battery by strangulation.
355	784.048 (3)	3rd	Aggravated stalking; credible threat.
356	784.048 (5)	3rd	Aggravated stalking of person under 16.

CS/HB 753

2014

357	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
358	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
359	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
360	784.081(2)	2nd	Aggravated assault on specified official or employee.
361	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
362	784.083(2)	2nd	Aggravated assault on code inspector.
363	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
	<u>790.115(4)(d)</u>	2nd	Discharging firearm or weapon

CS/HB 753

2014

364	790.115(2)(d)		on school property.
365	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
366	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
367	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
368	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
369	794.05(1)	2nd	Unlawful sexual activity with specified minor.
	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older

			but less than 16 years; offender less than 18 years.
370	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
371	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
372	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
373	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
374	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
375	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
376			

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

CS/HB 753

2014

377	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
378	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
379	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
380	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
381	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
382	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
383	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

CS/HB 753

2014

384	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
385	827.03(2)(c)	3rd	Abuse of a child.
386	827.03(2)(d)	3rd	Neglect of a child.
387	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
388	836.05	2nd	Threats; extortion.
389	836.10	2nd	Written threats to kill or do bodily injury.
390	843.12	3rd	Aids or assists person to escape.
391	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

CS/HB 753

2014

392	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
393	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
394	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
395	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
396	944.40	2nd	Escapes.
397	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
	944.47(1)(a)5.	2nd	Introduction of contraband

CS/HB 753

2014

419 | Section 9. This act shall take effect July 1, 2014. |

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 753 (2014)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee

3 Representative Steube offered the following:
4

5 **Amendment (with title amendment)**

6 Between lines 115 and 116, insert:

7 (c) The designee's fingerprints must be submitted by the
8 school, or an entity or vendor as authorized by s. 943.053 (13).

9 The fingerprints shall be forwarded to the Department of Law
10 Enforcement for state processing, and the Department of Law
11 Enforcement shall forward them to the Federal Bureau of
12 Investigation for national processing.

13 (d) All fingerprints submitted to the Department of Law
14 Enforcement as required under this subsection shall be retained
15 by the Department of Law Enforcement as provided under s.
16 943.05(2)(g) and (h) and enrolled in the Federal Bureau of
17 Investigation's national retained print arrest notification

935733 - h0753 lines 115 Stuebe #1.docx

Published On: 4/1/2014 5:55:17 PM

Amendment No. 1

18 program. Fingerprints shall be enrolled in the national retained
19 print arrest notification program when the Department of Law
20 Enforcement begins participation with the Federal Bureau of
21 Investigation. Arrest fingerprints will be searched against the
22 retained prints by the Department of Law Enforcement and the
23 Federal Bureau of Investigation, and any arrest record that is
24 identified shall be reported to the school by the Department of
25 Law Enforcement

26 (e) The fees for state and national fingerprint processing,
27 along with the fingerprint retention fees, shall be borne by the
28 designee or school. The state cost for fingerprint processing
29 is that authorized in s. 943.053(3)(b) for records provided to
30 persons or entities other than those specified as exceptions
31 therein.

32 (f) The school shall notify the Department of Law
33 Enforcement regarding any person whose fingerprints have been
34 retained but who no longer volunteers or is designated under
35 this chapter.

36 (g) The school shall screen background results to determine
37 if a designee meets Level 2 background screening requirements
38 under s. 435.04.

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 753 (2014)

Amendment No. 1

44
45
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49

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

Remove line 9 and insert:
providing requirements for designees; providing for fingerprint
processing and retention; providing fees shall be borne by the
designee or school; amending s.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 753 (2014)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee
3 Representative McBurney offered the following:
4

Amendment (with title amendment)

6 Between lines 418 and 419, insert:

7 Section 9. For Fiscal year 2014-2015 the sum of \$157,927 in
8 nonrecurring funds is appropriated from the General Revenue Fund
9 to the Department of Law Enforcement for the Criminal Justice
10 Standards and Training Commission to develop the training
11 curriculum as required by this act.

12
13
14
15 -----
16 **T I T L E A M E N D M E N T**

17 Remove line 23 and insert:

338887 - H0753 lines 418 McBurney #2.docx

Published On: 4/1/2014 6:13:24 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 753 (2014)

Amendment No. 2

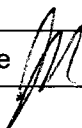

18 conforming cross-references; providing an appropriation;

19 providing an effective

20

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1017 Human Trafficking
SPONSOR(S): Criminal Justice Subcommittee; Spano; Kerner and others
TIED BILLS: CS/HB 1019, CS/HB 1021 **IDEN./SIM. BILLS:** SB 1440

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Thomas	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 787.06, F.S., defines human trafficking as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person. The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking, using coercion for labor or services, and using coercion for commercial sexual activity. In recent years, the Legislature has overhauled Florida's human trafficking laws to increase penalties for human trafficking and to make human trafficking prosecutions easier. The Legislature has also recognized the plight of victims of human trafficking, and has passed laws designed to protect and assist such persons.

The bill amends a variety of states to prevent human trafficking, enhance penalties related to human trafficking, and provide protections to human trafficking victims. Specifically, the bill:

- Amends s. 450.021, F.S., to prohibit minors from working in an adult theater;
- Amends s. 450.045, F.S., to require an adult theater to verify the age of each of its employees or independent contractors, and maintain such records;
- Amends s. 775.15, F.S., to remove the statute of limitations for human trafficking violations;
- Amends s. 787.06, F.S., to increase certain penalties relating to the trafficking of children;
- Amends s. 787.06, F.S., to create a new penalty if a trafficker permanently brands their victim;
- Amends s. 796.07, F.S., to provide legislative intent adults who involve children in any prostitution-related act should not be prosecuted under ch. 796, F.S., but should rather be prosecuted under other criminal laws;
- Amends s. 796.05, F.S., to increase penalties for those who derive support from the proceeds of prostitution;
- Amends s. 796.07(7), F.S., to increase various prostitution-related offenses from second degree misdemeanors to third degree felonies; and
- Amends s. 943.0583, F.S., to expand provisions relating to the expunction of criminal history records for victims of human trafficking.

The Criminal Justice Impact Conference met on March 25, 2014, and found the prison bed impact of this bill to be indeterminate. This bill increases the penalties for current human trafficking offenses, primarily where the victim is under the age of 18. Since these are new penalties the number of offenders that will be sentenced to prison cannot be predicted. However, in 2013-2014 no one was sentenced for any of the existing human trafficking offenses, so the impact will likely be insignificant. See FISCAL IMPACT ON STATE GOVERNMENT.

The bill may have a negative jail bed impact in that it creates two new second degree misdemeanor offenses in the Child Labor Law.

The bill is effective October 1, 2014.

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

STORAGE NAME: h1017a.JUAS.DOCX

DATE: 3/26/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, men, and women. Victims are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.¹ The International Labor Organization (ILO), the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that as many as 27 million adults and children are in forced labor, bonded labor, and commercial sexual servitude at any given time.² The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500-17,500.³

It is estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.⁴ The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets, and generally come from homes where they have been abused, or from families that have abandoned them. These children often become involved in prostitution as a way to support themselves financially.⁵ The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.⁶

Third party or pimp-controlled commercial sexual exploitation of children is linked to escort and massage services, private dancing, drinking and photographic clubs, major sporting and recreational events, major cultural events, conventions, and tourist destinations. About one-fifth of these children become involved in nationally organized crime networks and are trafficked nationally. They are transported around the United States by a variety of means - cars, buses, vans, trucks or planes - and are often provided counterfeit identification to use in the event of arrest.

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 prostitution and other related offenses, and may plead guilty not understanding the consequences. Multiple arrests, incarceration, police violence, deportation, employment, and housing discrimination may result.⁷

2012 Florida Legislation on Human Trafficking

Section 787.06, F.S., is Florida's human trafficking statute and defines "human trafficking" as the "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person." The statute contains a variety of provisions

¹ U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*, available at <http://www.acf.hhs.gov/trafficking/about/index.html#> (last visited on March 6, 2014).

² See U.S. Department of State, *The 2013 Trafficking in Persons (TIP) Report*, June 2013, available at <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm> (last visited on March 6, 2014).

³ Sonide Simon, *Human Trafficking and Florida Law Enforcement*, Florida Criminal Justice Executive Institute, pg. 2, March 2008, available at <http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx> (last visited on March 6, 2014).

⁴ *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, available at http://ojp.gov/newsroom/factsheets/ojpbs_humantrafficking.html (last visited on March 6, 2014).

⁵ Richard J. Estes and Neil Alan Weiner, *Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico*, University of Pennsylvania, 2001, available at <http://www.sp2.upenn.edu/restes/CSEC.htm> (last visited March 6, 2014).

⁶ *Id.*

⁷ Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions For Trafficked Persons: A Legal Memorandum for Advocates and Legislators*. Urban Justice Center. The Sex Workers Project, April 3, 2012, available at <http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf> (last visited on March 6, 2014).

prohibiting persons from knowingly engaging in human trafficking using coercion for labor or services, or for commercial sexual activity.⁸ In 2012, Florida passed comprehensive legislation that updated and enhanced Florida's human trafficking statutes.⁹ The 2012 law:

- Combined Florida's three existing human trafficking statutes into one statute making it more user-friendly for law enforcement;
- Increased penalties for the crime of human smuggling from a first-degree misdemeanor to a third degree felony;
- Provided that those convicted of human sex trafficking may be designated as sex offenders and sex predators;
- Provided that any property used for human trafficking is subject to forfeiture;
- Required massage establishments and employees to present valid photo identification upon request; and
- Gave jurisdiction for human trafficking offenses to the Statewide Prosecutor and the Statewide Grand Jury.

Effect of the Bill

The bill amends a variety of statutes to prevent human trafficking, enhance penalties related to human trafficking, and provide protections to human trafficking victims. A description of these statutes and the changes made by the bill follows.

Child Labor Laws

Part I of ch. 450, F.S., commonly referred to as Florida's Child Labor Law, provides for the regulation of child labor in Florida. The regulations include provisions:

- Requiring children to be at least a certain age to work in specified occupations;
- Requiring employers to obtain and keep on record proof of a child's age;
- Requiring employers to display posters notifying minors of the Child Labor Law;
- Prohibiting children of certain ages from working in specified hazardous occupations;
- Limiting the hours children of certain ages may work; and
- Providing for enforcement of the Child Labor Law.

A person who violates any provision of part I of ch. 450, F.S., commits a second degree misdemeanor¹⁰ and may be subject to a fine up to \$2,500.¹¹

Effect of the Bill

The bill amends s. 450.021, F.S., to prohibit a person under the age of 18¹² from working in an adult theater.¹³ The bill also amends s. 450.045, F.S., to require an adult theater to obtain proof of the identity and age of its employees and independent contractors prior to employment or the provision of services. The adult theater must also verify the validity of the identification documents used to provide such proof.

The adult theater must maintain a photocopy of the person's government-issued photo identification card, as well as proof of the verification of the validity of the identification document. These records must be kept during the entire period of employment or business relationship and for at least three years after the end of the employment or business relationship. The bill authorizes the Department of

⁸ Section 787.06(3), F.S.

⁹ Chapter 2012-97, L.O.F. This legislation took effect July 1, 2012.

¹⁰ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

¹¹ Section 450.141, F.S.

¹² Regardless of whether the person's disabilities of nonage have been removed by marriage or otherwise.

¹³ "Adult theater" means an enclosed building or an enclosed space within a building used for presenting either films, live plays, dances, or other performances that are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults. Section 847.001(2)(b), F.S.

Business and Professional Regulation to enter and inspect an adult theater during operating hours, without prior notice, to enforce these provisions.

Human Trafficking - Criminal Penalties

The Criminal Punishment Code / Offense Severity Ranking Chart

The Criminal Punishment Code (Code)¹⁴ is Florida's framework for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the Code are ranked in the offense severity ranking chart (Chart) from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense.¹⁵ If an offense is not listed in the Chart, it defaults to a score as provided in s. 921.0023, F.S. – third degree felonies default to a Level 1 offense, second degree felonies default to a Level 4 offense, first degree felonies default to a Level 7 offense, first degree felonies punishable by life default to a Level 9 offense, and life felonies default to a Level 10 offense.

Points are also assigned and accrue based upon any additional offenses, victim injury, sexual contact, prior offenses, legal status violations, community sanction violations, possession of a firearm, and prior serious felonies.¹⁶ Points accrued for any of these factors are added (and multiplied if a sentencing multiplier applies) to determine one's total sentence points.

If total sentence points are less than or equal to 44 points, the lowest permissible sentence is any non-state prison sanction (e.g., probation). The maximum penalty depends on the felony degree of the primary offense.¹⁷ The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years, and for a third degree felony is five years.

If total sentence points are greater than 44 points, one must subtract 28 points from the total sentence points and decrease the remaining total by 25 percent. This resulting figure is the lowest permissible sentence in prison months.¹⁸ Again, the maximum penalty depends on the felony degree of the primary offense.¹⁹

Human Trafficking Offenses

Section 787.06(3), F.S., provides the following criminal penalties for human trafficking offenses:²⁰

- *Using coercion for labor or services* is a first degree felony ranked in Level 7 of the Chart;²¹
- *Using coercion for commercial sexual activity* is a first degree felony ranked in Level 8 of the Chart;²²
- *Commercial sexual activity involving a child 15 years of age or older but less than 18 years of age* is a first degree felony, punishable by life, ranked in Level 9 of the Chart.²³

¹⁴ Sections 921.002-921.0027, F.S.

¹⁵ Section 921.0022, F.S.

¹⁶ Section 921.0024, F.S.

¹⁷ The maximum penalty for the felony degree is generally prescribed in s. 775.082, F.S. An exception is when the scored lowest permissible sentence exceeds the maximum penalty prescribed in s. 775.082, F.S. In this case, the scored lowest permissible sentence for the primary offense becomes both the minimum and maximum penalty for the primary offense.

¹⁸ Mandatory minimum terms are an exception to general sentencing under the Code. "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the ... Code and any mandatory minimum penalties apply." Rule 3.704(d)(26), Florida Rules of Criminal Procedure.

¹⁹ The maximum penalty for the felony degree is generally prescribed in s. 775.082, F.S. An exception is when the scored lowest permissible sentence exceeds the maximum penalty prescribed in s. 775.082, F.S. In this case, the scored lowest permissible sentence for the primary offense becomes both the minimum and maximum penalty for the primary offense.

²⁰ Each instance of human trafficking constitutes a separate crime, and authorizes separate punishment for each crime. Section 787.06(3), F.S. (flush left language at the end of the subsection). Convictions for human trafficking for commercial sexual activity offenses are included in the list of offenses that require an offender to be designated a sexual predator or sexual offender. Sections 775.21(4)(a), 943.0435(1)(a)1., 944.606(1)(b), and 944.607(1)(a)1., F.S.

²¹ Sections 787.06(3)(a) and 921.0022(3)(g), F.S.

²² Sections 787.06(3)(b) and 921.0022(3)(h), F.S.

- *Commercial sexual activity involving a child under the age of 15* is a life felony ranked in Level 10 of the Chart.²⁴
- *Using coercion for labor or services of an unauthorized alien* is a first degree felony ranked in Level 8 of the Chart.²⁵
- *Using coercion for commercial sexual activity of an unauthorized alien* is a first degree felony ranked in Level 9 of the Chart.²⁶
- *Using coercion for labor or services by transferring or transporting a person from outside Florida to within Florida* is a first degree felony ranked in Level 7 of the Chart.²⁷
- *Using coercion for commercial sexual activity by transferring or transporting a person from outside Florida to within Florida* is a first degree felony ranked in Level 8 of the Chart.²⁸

Section 787.06(4), F.S., provides that it is a first degree felony ranked in Level 9 of the Chart for a parent, legal guardian, or other person having custody or control of a minor to:

- Sell or otherwise transfer custody or control of the minor, or offer to sell or otherwise transfer custody or control of the minor with knowledge or in reckless disregard of the fact that as a consequence of the sale or transfer, the minor will be subject to human trafficking.²⁹

Effect of the Bill

The bill enhances the penalties for the above-described human trafficking offenses that involve minors by removing the element of coercion, increasing the felony degree of the offenses, and/or by ranking offenses in a higher level in the Chart. These changes are described below:

- *Human trafficking for labor or services of a child under the age of 18* remains a first degree felony but is ranked in Level 8 of the Chart (currently it's a Level 7 offense and requires coercion).
- *Human trafficking for commercial sexual activity of a child under the age of 18 or any person who is mentally defective³⁰ or mentally incapacitated³¹* is a life felony ranked in Level 10 of the Chart (currently it's a first degree felony ranked in Level 9 if the child is between 15 and 18 years of age, and a life felony ranked in Level 10 if the child is under 15 years of age).
- *Human trafficking for labor or services of a child under the age of 18 who is an unauthorized alien* is a first degree felony ranked in Level 9 of the Chart (currently it's a Level 8 offense and requires coercion).
- *Human trafficking for labor or services by transferring or transporting a child under the age of 18 from outside Florida to within Florida* is a first degree felony ranked in Level 8 of the Chart (currently it's a Level 7 offense and requires coercion).
- *Human trafficking for commercial sexual activity by transferring or transporting a child under the age of 18 from outside Florida to within Florida* is a first degree felony punishable by life imprisonment and ranked in Level 9 of the Chart (currently it's a first degree felony ranked in Level 8 and requires coercion).

²³ Sections 787.06(3)(g) and 921.0022(3)(i), F.S. The State does not need to prove that the defendant knew that the person had not attained the age of 18 years, if the defendant had a reasonable opportunity to observe the person who was subject to human trafficking.

²⁴ Sections 787.06(3)(h) and 921.0022(3)(j), F.S. The State does not need to prove that the defendant knew that the person had not attained the age of 15 years, if the defendant had a reasonable opportunity to observe the person who was subject to human trafficking.

²⁵ Sections 787.06(3)(c) and 921.0022(3)(h), F.S.

²⁶ Sections 787.06(3)(d) and 921.0022(3)(i), F.S.

²⁷ Sections 787.06(3)(e) and 921.0022(3)(g), F.S.

²⁸ Sections 787.06(3)(f) and 921.0022(3)(h), F.S.

²⁹ Section 921.0022(3)(i), F.S.

³⁰ Section 794.011(1)(b), F.S., defines "mentally defective" as "a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct."

³¹ Section 794.011(1)(c), F.S., defines "mentally incapacitated" as "temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent."

The bill also amends s. 787.06(4), F.S. (prohibiting the sale of minors knowing the minor will be subject to human trafficking), to increase the penalty to a life felony (from a first degree felony) and rank the offense in Level 10 of the Chart (from a Level 9).

The bill specifies that the defendant's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the defendant's bona fide belief of the victim's age cannot be raised as a defense.

The bill also creates a new offense making it a third degree felony for a person to permanently brand, or directs to be branded, a human trafficking victim. "Permanently brand" is defined as "a mark on the individual's body that, if it can be removed or repaired at all, can only be removed or repaired by surgical means, laser treatment, or other medical procedure."

Statute of Limitations

Statutes of limitations set forth time limitations for commencing criminal prosecutions and civil actions. In *State v. Hickman*,³² the court explained that:

Statutes of Limitation are construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity.

Similarly, in *State v. Garofalo*, the court found that "[t]he sole purpose of a statute of limitations in a criminal context is to prevent the State from hampering defense preparation by delaying prosecution until a point in time when its evidence is stale and defense witnesses have died, disappeared or otherwise become unavailable."³³

Section 775.15, F.S., sets forth the following general time limitations for commencing criminal prosecutions:

- For a capital felony, a life felony, or a felony resulting in death, there is no time limitation;
- For a first degree felony, there is a four-year limitation; and
- For any other felony, there is a three-year limitation.

The general time limitations described above currently apply to human trafficking offenses.

Effect of the Bill

The bill amends s. 775.15, F.S., to provide there is no time limitation for the criminal prosecution of a violation of s. 787.06, F.S., relating to human trafficking offenses.

Prostitution

Chapter 796, F.S., contains the following offenses relating to prostitution, with penalties that range from second degree misdemeanors to first degree felonies:

- Section 796.03, F.S. (procuring persons under age of 18 for prostitution);
- Section 796.035, F.S. (selling or buying of minors into prostitution);
- Section 796.036, F.S. (reclassifying prostitution violations involving minors);
- Section 796.04, F.S. (forcing, compelling, or coercing another to become a prostitute);
- Section 796.05, F.S. (deriving support from the proceeds of prostitution);
- Section 796.06, F.S. (renting space to be used for lewdness, assignation, or prostitution);

³² 189 So.2d 254, 262 (Fla. 2d DCA 1966).

³³ 453 So.2d 905, 906 (Fla. 4th DCA 1984)(citing *State v. Hickman*, 189 So.2d 254 (Fla. 2d DCA 1966)).

- Section 796.07, F.S. (prohibiting prostitution and related acts);
- Section 796.08, F.S. (prostitution, HIV and sexually transmissible diseases); and
- Section 796.09, F.S. (creating a civil cause of action).

Effect of the Bill

The bill provides legislative intent that adults who involve children in any act prohibited under ch. 796, F.S., should not be prosecuted under ch. 796, F.S., but should rather be prosecuted under other criminal laws, such as, but not limited to, s. 787.06, F.S. (human trafficking), ch. 794, F.S. (sexual battery), ch. 800, F.S. (lewdness and indecent exposure), s. 810.145, F.S. (video voyeurism), ch. 827, F.S. (abuse of children), and ch. 847, F.S. (obscenity). Because of the infirmities of age, minors are unable to consent to an act of "prostitution," and therefore, perpetrators of these acts should be prosecuted under laws designed to address forced acts of sexual abuse on children.

Since ch. 796, F.S., should not be used to prosecute crimes involving minors, the bill repeals the following provisions:

- Procuring person under age of 18 for prostitution;³⁴
- Selling or buying of minors into prostitution;³⁵ and
- Reclassifying prostitution violations involving minors.³⁶

Currently, s. 796.05, F.S., makes it a third degree felony ranked in Level 3 of the Chart for any person, with reasonable belief or knowing another person is engaged in prostitution, to live or derive support or maintenance in whole or in part from what is believed to be the earnings or proceeds of such person's prostitution. The bill increases the penalties for violations of s. 796.05, F.S., as follows:

- A first offense is a second degree felony ranked in Level 5 of the Chart;
- A second offense is a first degree felony ranked in Level 7 of the Chart; and
- A third or subsequent offense is a first degree felony, with a mandatory minimum term of imprisonment of 10 years, ranked in Level 7 of the Chart.

The bill also increases the penalty for the following offenses from a second degree misdemeanor to a third degree felony:

- To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution.³⁷
- To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act.³⁸
- To receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose.³⁹
- To direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation.⁴⁰
- To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.⁴¹
- To aid, abet, or participate in any of the acts or things enumerated in this subsection.⁴²
- To purchase the services of any person engaged in prostitution.⁴³

³⁴ Section 796.03, F.S.

³⁵ Section 796.035, F.S.

³⁶ Section 796.036, F.S.

³⁷ Section 796.07(2)(a), F.S.

³⁸ Section 796.07(2)(b), F.S.

³⁹ Section 796.07(2)(c), F.S.

⁴⁰ Section 796.07(2)(d), F.S.

⁴¹ Section 796.07(2)(f), F.S.

⁴² Section 796.07(2)(h), F.S.

⁴³ Section 796.07(2)(i), F.S.

The bill makes a second offense of any of the above-listed crimes a second degree felony (currently a second offense is a first degree misdemeanor). The bill makes a third or subsequent offense a first degree felony (current a third or subsequent offense is a third degree felony).

The bill also requires the court to assess a criminal penalty of \$5,000 for the above-listed crimes if the violation results in any judicial disposition other than acquittal or dismissal (current law imposes a \$5,000 civil fine, but only for a violation of s. 796.07(2)(f), F.S., which prohibits a person from soliciting another to commit prostitution). \$500 of the fine is allocated to pay administrative costs of drug court programs, and the remainder of the fine goes to the Operations and Maintenance Trust Fund of the Department of Children and Families for the purpose of funding safe houses and short-term safe houses. As a criminal fine, its collection can be enforced as part of the defendant's criminal sentence.

The bill also deletes a provision requiring persons charged a third or subsequent time with any offense in ch. 796, F.S., to be offered admission into a pretrial intervention program or a substance abuse treatment program.

Expunged Records

Expunging Criminal History Records - Generally

Section 943.0585, F.S., sets forth procedures for expunging a criminal history record. When a criminal history record⁴⁴ is expunged, criminal justice agencies⁴⁵ other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.⁴⁶ FDLE is required to retain expunged records.⁴⁷ Records that have been expunged are confidential and exempt from the public records law,⁴⁸ and it is a first degree misdemeanor⁴⁹ to divulge their existence.⁵⁰

Persons who have had their criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,⁵¹ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.⁵²

In 1992, the Legislature amended s. 943.0585, F.S., to require a person petitioning the court for an expunction to first obtain a certificate of eligibility for expunction (certificate) from FDLE.⁵³ In order to receive a certificate, a person must:

- Submit to FDLE a written, certified statement from the appropriate state attorney or statewide prosecutor indicating that:

⁴⁴ Section 943.045(6), F.S., defines a "criminal history record" as any nonjudicial record maintained by a criminal justice agency containing criminal history information.

⁴⁵ Section 943.045(11), F.S., defines a "criminal justice agency" as: a court; the Florida Department of Law Enforcement; the Department of Juvenile Justice; the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect; or any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.

⁴⁶ Section 943.0585(4), F.S. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order

⁴⁷ *Id.*

⁴⁸ Section 943.0585(4)(c), F.S.

⁴⁹ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁵⁰ Section 943.0585(4)(c), F.S., requires FDLE to disclose expunged criminal history records to specified entities for specified purposes.

⁵¹ These include candidates for employment with a criminal justice agency; applicants for admission to the Florida Bar; those seeking a sensitive position involving direct contact with children, the developmentally disabled, or the elderly with the Department of Children and Family Services, Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; persons seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or a Florida seaport.

⁵² Section 943.0585(4)(c), F.S.

⁵³ Chapter 1992-73, L.O.F.

- An indictment, information, or other charging document was not filed or issued in the case; or if filed, was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction;
 - None of the charges related to the record the person wishes to expunge resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt; and
 - The criminal history record does not relate to a violation of specified offenses regardless of whether adjudication was withheld;⁵⁴
- Pay a \$75 processing fee;
 - Submit a certified copy of the disposition of the record they wish to have expunged;
 - Have never been adjudicated guilty or delinquent for committing a felony or misdemeanor specified in s. 943.051(3)(b), F.S.,⁵⁵ prior to the date of their application for the certificate;
 - Have never been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity of the record they wish to have expunged;
 - Have never had a prior sealing or expunction of criminal history record unless an expunction is sought for a record previously sealed for 10 years and the record is otherwise eligible for expunction;
 - No longer be under any court supervision related to the disposition of the record they wish to have expunged; and
 - Have previously obtained a court order sealing the record for a minimum of 10 years because adjudication was withheld or because all charges related to the record they wish to have expunged were not dismissed prior to trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.⁵⁶

Once a petition to expunge is submitted, it is up to the court to decide whether the expunction is appropriate.⁵⁷

Expunging Human Trafficking Criminal History Records

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for the expunction of any conviction for 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 minor who is a victim of human trafficking, or an individual subject to human trafficking as defined by federal law.⁵⁸

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.⁵⁹ The petition must include:

⁵⁴ These offenses include: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients, or the reporting of such sexual misconduct; luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child, lewd or lascivious offenses committed on an elderly or disabled person; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sexually explicit conduct; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, and burglary.

⁵⁵ These offenses include: assault, as defined in s. 784.011, F.S.; battery, as defined in s. 784.03, F.S.; carrying a concealed weapon, as defined in s. 790.01(1), F.S.; unlawful use of destructive devices or bombs, as defined in s. 790.1615(1), F.S.; negligent treatment of children, as defined in s. 827.05, F.S.; assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b), F.S.; open carrying of a weapon, as defined in s. 790.053 F.S.; exposure of sexual organs, as defined in s. 800.03, F.S.; unlawful possession of a firearm, as defined in s. 790.22(5), F.S.; petit theft, as defined in s. 812.014(3), F.S.; cruelty to animals, as defined in s. 828.12(1), F.S.; arson, as defined in s. 806.031(1), F.S.; and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115, F.S.

⁵⁶ The does not apply when a plea was not entered or all charges related to the record they wish to have expunged were dismissed prior to trial. Section 943.0585(2), F.S.

⁵⁷ Section 943.0585, F.S.

⁵⁸ Section 943.0583(1)(c), F.S.

⁵⁹ Section 943.0583(4), F.S.

- A sworn statement attesting that the victim is eligible for such expunction to the best of his or her knowledge or belief and does not have another petition to expunge or seal before any other court; and
- Official documentation of the victim's status as a victim of human trafficking, if any exists.⁶⁰

The court's determination of the petition must be by a preponderance of the evidence.⁶¹ A determination made without official documentation must be made by a showing of clear and convincing evidence.⁶² If a court grants an expunction, criminal justice agencies with custody of the expunged record, except FDLE, must physically destroy the record.⁶³ 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 a defendant in a criminal prosecution.⁶⁴

Effect of the Bill

The bill amends s. 943.0583, F.S., to expand provisions relating to the expunction of criminal history records for victims of human trafficking. The bill authorizes a victim of human trafficking to petition the court for the expunction of any criminal history record resulting from the arrest or filing of charges (not just a conviction) for an offense committed or reported to have been committed while he or she was a victim of human trafficking. If the victim of human trafficking whose criminal records are expunged was adjudicated not guilty by reason of insanity or was found to be incompetent to stand trial for the expunged charges, the expunction does not prevent:

- FDLE from entering the judgment or finding in state and national databases used to determine eligibility for the purchase of a firearm or to carry a concealed firearm; or
- Any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm from accessing or using the record of the judgment or finding in the course of such agency's official duties.

B. SECTION DIRECTORY:

Section 1. Amends s. 450.021, F.S., relating to minimum age; general.

Section 2. Amends s. 450.045, F.S., relating to proof of age; posting of notices.

Section 3. Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

Section 4. Amends s. 787.06, F.S., relating to human trafficking.

Section 5. Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

Section 6. Creates s. 796.001, F.S., relating to offenses by adults involving minors; intent.

Section 7. Repeals s. 796.03, F.S., relating to procuring person under age of 18 for prostitution; s. 796.035, F.S., relating to selling or buying of minors into prostitution; penalties; and s. 796.036, F.S., relating to violations involving minors; reclassification.

Section 8. Amends s. 796.05, F.S., relating to deriving support from the proceeds of prostitution.

⁶⁰ Section 943.0583(6), F.S.

⁶¹ Section 943.0583(3), F.S.

⁶² Section 943.0583(5), F.S.

⁶³ Section 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 shall be made available to criminal justice agencies for their respective criminal justice purposes. Section 943.0583(10)(a), F.S.

⁶⁴ Section 943.0583(8)(b), F.S.

- Section 9. Amends s. 796.07, F.S., relating to prohibiting prostitution and related acts.
- Section 10. Amends s. 943.0583, F.S., relating to human trafficking victim expunction.
- Section 11. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.
- Section 12. Amends s. 39.01, F.S., relating to definitions.
- Section 13. Amends s. 90.404, F.S., relating to character evidence; when admissible.
- Section 14. Amends s. 772.102, F.S., relating to definitions.
- Section 15. Amends s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.
- Section 16. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.
- Section 17. Amends s. 787.01, F.S., relating to kidnapping; kidnapping of child under age 13, aggravating circumstances.
- Section 18. Amends s. 787.02, F.S., relating to false imprisonment; false imprisonment of child under age 13, aggravating circumstances.
- Section 19. Amends s. 794.056, F.S., relating to Rape Crisis Program Trust Fund.
- Section 20. Amends s. 856.022, F.S., relating to loitering or prowling by certain offenders in close proximity to children; penalty.
- Section 21. Amends s. 895.02, F.S., relating to definitions.
- Section 22. Amends s. 938.085, F.S., relating to additional cost to fund rape crisis centers.
- Section 23. Amends s. 938.10, F.S., relating to additional court cost imposed in cases of certain crimes.
- Section 24. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.
- Section 25. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.
- Section 26. Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.
- Section 27. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.
- Section 28. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.
- Section 29. Amends s. 948.013, F.S., relating to administrative probation.
- Section 30. Amends s. 948.32, F.S., relating to requirements of law enforcement agency upon arrest of persons for certain sex offenses.
- Section 31. Provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met on March 25, 2014, and found the prison bed impact of this bill to be indeterminate. This bill increases the penalties for current human trafficking offenses, primarily where the victim is under the age of 18. Since these are new penalties the number of offenders that will be sentenced to prison cannot be predicted. However, in 2013-2014 no one was sentenced for any of the existing human trafficking offenses.

Forty sentencing events resulted in a prison sanction for a third prostitution violation. Since these offenses will be ranked in level 7 of the criminal code, it is possible that the incarceration rate will increase, but not likely significantly. According to the Office of Economic and Demographic Research, the impact of changing the current prostitution statute is unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill may have a negative jail bed impact in that it creates two new second degree misdemeanor offenses in the Child Labor Law.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill may require FDLE to revise its rules relating to the expunction of records, however, adequate rulemaking authority appears to exist.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorable as a committee substitute. The proposed committee substitute revised the criminal penalties as provided in the bill as filed.

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 human trafficking; amending s.
 3 450.021, F.S.; prohibiting the employment of minors in
 4 adult theaters; amending s. 450.045, F.S.; requiring
 5 adult theaters to verify the ages of employees and
 6 independent contractors and maintain specified
 7 documentation; amending s. 775.15, F.S.; eliminating
 8 the statute of limitations for prosecutions under a
 9 specified human trafficking provision; providing
 10 applicability; amending s. 787.06, F.S.; revising and
 11 providing penalties for various human trafficking
 12 offenses against minors and adults; amending s.
 13 775.082, F.S.; providing a life sentence for a
 14 specified felony; creating s. 796.001, F.S.; providing
 15 legislative intent concerning prosecutions of certain
 16 offenses by adults involving minors; repealing ss.
 17 796.03, 796.035, and 796.036, F.S., relating to
 18 procuring a person under the age of 18 for
 19 prostitution, selling or buying of minors into
 20 prostitution, and reclassification of certain
 21 violations involving minors, respectively; amending
 22 ss. 796.05 and 796.07, F.S.; revising and providing
 23 penalties for various prostitution offenses; amending
 24 s. 943.0583, F.S.; providing for expunction of
 25 criminal history records of certain criminal charges
 26 against victims of human trafficking that did not

27 result in convictions; requiring destruction of
 28 investigative records related to such expunged
 29 records; amending s. 921.0022, F.S.; conforming
 30 provisions of the offense severity ranking chart of
 31 the Criminal Punishment Code to changes made by the
 32 act; amending ss. 39.01, 90.404, 772.102, 775.0877,
 33 775.21, 787.01, 787.02, 794.056, 856.022, 895.02,
 34 938.085, 938.10, 943.0435, 943.0585, 943.059, 944.606,
 35 944.607, 948.013, and 948.32, F.S.; conforming cross-
 36 references; providing an effective date.

37
 38 Be It Enacted by the Legislature of the State of Florida:
 39

40 Section 1. Subsection (5) is added to section 450.021,
 41 Florida Statutes, to read:

42 450.021 Minimum age; general.—
 43 (5) In order to better ensure the elimination of minors
 44 being exploited and becoming victims of human trafficking, a
 45 person under the age of 18, whether or not such person's
 46 disabilities of nonage have been removed by marriage or
 47 otherwise, may not be employed, permitted, or suffered to work
 48 in an adult theater, as defined in s. 847.001(2)(b).

49 Section 2. Subsection (3) is added to section 450.045,
 50 Florida Statutes, to read:

51 450.045 Proof of identity and age; posting of notices.—
 52 (3)(a) In order to provide the department and law

53 enforcement agencies the means to more effectively identify,
 54 investigate, and arrest persons engaging in human trafficking,
 55 an adult theater, as defined in s. 847.001(2)(b), shall obtain
 56 proof of the identity and age of each of its employees or
 57 independent contractors, and shall verify the validity of the
 58 identification and age verification document with the issuer,
 59 before his or her employment or provision of services as an
 60 independent contractor.

61 (b) The adult theater shall obtain and keep on record a
 62 photocopy of the person's driver license or state or federal
 63 government-issued photo identification card, along with a record
 64 of the verification of the validity of the identification and
 65 age verification document with the issuer, during the entire
 66 period of employment or business relationship with the
 67 independent contractor and for at least 3 years after the
 68 employee or independent contractor ceases employment or the
 69 provision of services.

70 (c) The department and its agents have the authority to
 71 enter during operating hours, unannounced and without prior
 72 notice, and inspect at any time a place or establishment covered
 73 by this subsection and to have access to age verification
 74 documents kept on file by the adult theater and such other
 75 records as may aid in the enforcement of this subsection.

76 Section 3. Subsection (18) is added to section 775.15,
 77 Florida Statutes, to read:

78 775.15 Time limitations; general time limitations;

79 exceptions.-

80 (18) A prosecution for a violation of s. 787.06 may be
 81 commenced at any time. This subsection applies to any such
 82 offense except an offense the prosecution of which would have
 83 been barred by subsection (2) on or before October 1, 2014.

84 Section 4. Subsections (3) and (4) of section 787.06,
 85 Florida Statutes, are amended, and subsection (8) is added to
 86 that section, to read:

87 787.06 Human trafficking.-

88 (3) Any person who knowingly, or in reckless disregard of
 89 the facts, engages in human trafficking, or attempts to engage
 90 in human trafficking, or benefits financially by receiving
 91 anything of value from participation in a venture that has
 92 subjected a person to human trafficking:

93 (a) 1. Using coercion For labor or services of any child
 94 under the age of 18 commits a felony of the first degree,
 95 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

96 2. Using coercion for labor or services of an adult
 97 commits a felony of the first degree, punishable as provided in
 98 s. 775.082, s. 775.083, or s. 775.084.

99 (b) Using coercion for commercial sexual activity of an
 100 adult commits a felony of the first degree, punishable as
 101 provided in s. 775.082, s. 775.083, or s. 775.084.

102 (c) 1. Using coercion For labor or services of any child
 103 under the age of 18 ~~individual~~ who is an unauthorized alien
 104 commits a felony of the first degree, punishable as provided in

105 s. 775.082, s. 775.083, or s. 775.084.

106 2. Using coercion for labor or services of an adult who is
 107 an unauthorized alien commits a felony of the first degree,
 108 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

109 (d) Using coercion for commercial sexual activity of an
 110 adult ~~any individual~~ who is an unauthorized alien commits a
 111 felony of the first degree, punishable as provided in s.
 112 775.082, s. 775.083, or s. 775.084.

113 (e) 1. Using coercion For labor or services who does so by
 114 the transfer or transport of any child under the age of 18
 115 ~~individual~~ from outside this state to within the state commits a
 116 felony of the first degree, punishable as provided in s.
 117 775.082, s. 775.083, or s. 775.084.

118 2. Using coercion for labor or services who does so by the
 119 transfer or transport of an adult from outside this state to
 120 within the state commits a felony of the first degree,
 121 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

122 (f) 1. Using coercion For commercial sexual activity who
 123 does so by the transfer or transport of any child under the age
 124 of 18 ~~individual~~ from outside this state to within the state
 125 commits a felony of the first degree, punishable by imprisonment
 126 for a term of years not exceeding life, or as provided in s.
 127 775.082, s. 775.083, or s. 775.084.

128 2. Using coercion for commercial sexual activity who does
 129 so by the transfer or transport of an adult from outside this
 130 state to within the state commits a felony of the first degree,

131 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

132 (g) For commercial sexual activity in which any child
 133 under the age of 18, or in which any person who is mentally
 134 defective or mentally incapacitated as those terms are defined
 135 in s. 794.011(1), is involved commits a life felony ~~of the first~~
 136 ~~degree, punishable by imprisonment for a term of years not~~
 137 ~~exceeding life, or as provided in s. 775.082(3)(a)5. 775.082, s.~~
 138 ~~775.083, or s. 775.084. In a prosecution under this paragraph in~~
 139 ~~which the defendant had a reasonable opportunity to observe the~~
 140 ~~person who was subject to human trafficking, the state need not~~
 141 ~~prove that the defendant knew that the person had not attained~~
 142 ~~the age of 18 years.~~

143 ~~(h) For commercial sexual activity in which any child~~
 144 ~~under the age of 15 is involved commits a life felony,~~
 145 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~
 146 ~~In a prosecution under this paragraph in which the defendant had~~
 147 ~~a reasonable opportunity to observe the person who was subject~~
 148 ~~to human trafficking, the state need not prove that the~~
 149 ~~defendant knew that the person had not attained the age of 15~~
 150 ~~years.~~

151
 152 For each instance of human trafficking of any individual under
 153 this subsection, a separate crime is committed and a separate
 154 punishment is authorized.

155 (4) (a) Any parent, legal guardian, or other person having
 156 custody or control of a minor who sells or otherwise transfers

157 custody or control of such minor, or offers to sell or otherwise
 158 transfer custody of such minor, with knowledge or in reckless
 159 disregard of the fact that, as a consequence of the sale or
 160 transfer, the minor will be subject to human trafficking commits
 161 a life ~~first-degree~~ felony, punishable as provided in s.
 162 775.082, s. 775.083, or s. 775.084.

163 (b) Any person who permanently brands, or directs to be
 164 branded, a victim of an offense under this section commits a
 165 second degree felony, punishable as provided in s. 775.082, s.
 166 775.083, or s. 775.084. For purposes of this subsection, the
 167 term "permanently branded" means a mark on the individual's body
 168 that, if it can be removed or repaired at all, can only be
 169 removed or repaired by surgical means, laser treatment, or other
 170 medical procedure.

171 (8) In a prosecution under this section, the defendant's
 172 ignorance of the victim's age, the victim's misrepresentation of
 173 his or her age, or the defendant's bona fide belief of the
 174 victim's age cannot be raised as a defense.

175 Section 5. Paragraph (a) of subsection (3) of section
 176 775.082, Florida Statutes, is amended to read:

177 775.082 Penalties; applicability of sentencing structures;
 178 mandatory minimum sentences for certain reoffenders previously
 179 released from prison.—

180 (3) A person who has been convicted of any other
 181 designated felony may be punished as follows:

182 (a)1. For a life felony committed prior to October 1,

183 1983, by a term of imprisonment for life or for a term of years
 184 not less than 30.

185 2. For a life felony committed on or after October 1,
 186 1983, by a term of imprisonment for life or by a term of
 187 imprisonment not exceeding 40 years.

188 3. Except as provided in subparagraph 4., for a life
 189 felony committed on or after July 1, 1995, by a term of
 190 imprisonment for life or by imprisonment for a term of years not
 191 exceeding life imprisonment.

192 4.a. Except as provided in sub-subparagraph b., for a life
 193 felony committed on or after September 1, 2005, which is a
 194 violation of s. 800.04(5)(b), by:

195 (I) A term of imprisonment for life; or

196 (II) A split sentence that is a term of not less than 25
 197 years' imprisonment and not exceeding life imprisonment,
 198 followed by probation or community control for the remainder of
 199 the person's natural life, as provided in s. 948.012(4).

200 b. For a life felony committed on or after July 1, 2008,
 201 which is a person's second or subsequent violation of s.
 202 800.04(5)(b), by a term of imprisonment for life.

203 5. For a life felony committed on or after October 1,
 204 2014, which is a violation of s. 787.06(3)(g), by a term of
 205 imprisonment for life.

206 Section 6. Section 796.001, Florida Statutes, is created
 207 to read:

208 796.001 Offenses by adults involving minors; intent.—It is

209 the intent of the Legislature that adults who involve minors in
 210 any behavior prohibited under this chapter be prosecuted under
 211 other laws of this state, such as, but not limited to, s.
 212 787.06, chapter 794, chapter 800, s. 810.145, chapter 827, and
 213 chapter 847. The Legislature finds that prosecution of such
 214 adults under this chapter is inappropriate since a minor is
 215 unable to consent to such behavior.

216 Section 7. Sections 796.03, 796.035, and 796.036, Florida
 217 Statutes, are repealed.

218 Section 8. Section 796.05, Florida Statutes, is amended to
 219 read:

220 796.05 Deriving support from the proceeds of
 221 prostitution.—

222 (1) It shall be unlawful for any person with reasonable
 223 belief or knowing another person is engaged in prostitution to
 224 live or derive support or maintenance in whole or in part from
 225 what is believed to be the earnings or proceeds of such person's
 226 prostitution.

227 (2) Anyone violating this section commits:

228 (a) For a first offense, a felony of the second ~~third~~
 229 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 230 775.084.

231 (b) For a second offense, a felony of the first degree,
 232 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

233 (c) For a third or subsequent offense, a felony of the
 234 first degree punishable as provided in s. 775.082, s. 775.083,

235 | or s. 775.084, with a mandatory minimum term of imprisonment of
 236 | 10 years.

237 | Section 9. Subsection (2) and subsection (4) through (6)
 238 | of section 796.07, Florida Statutes, are amended to read:

239 | 796.07 Prohibiting prostitution and related acts.—

240 | (2) It is unlawful:

241 | (a) To own, establish, maintain, or operate any place,
 242 | structure, building, or conveyance for the purpose of lewdness,
 243 | assignation, or prostitution.

244 | (b) To offer, or to offer or agree to secure, another for
 245 | the purpose of prostitution or for any other lewd or indecent
 246 | act.

247 | (c) To receive, or to offer or agree to receive, any
 248 | person into any place, structure, building, or conveyance for
 249 | the purpose of prostitution, lewdness, or assignation, or to
 250 | permit any person to remain there for such purpose.

251 | (d) To direct, take, or transport, or to offer or agree to
 252 | direct, take, or transport, any person to any place, structure,
 253 | or building, or to any other person, with knowledge or
 254 | reasonable cause to believe that the purpose of such directing,
 255 | taking, or transporting is prostitution, lewdness, or
 256 | assignation.

257 | (e) To offer to commit, or to commit, or to engage in,
 258 | prostitution, lewdness, or assignation.

259 | (f) To solicit, induce, entice, or procure another to
 260 | commit prostitution, lewdness, or assignation.

261 (g) To reside in, enter, or remain in, any place,
 262 structure, or building, or to enter or remain in any conveyance,
 263 for the purpose of prostitution, lewdness, or assignation.

264 (h) To aid or, ~~abet, or participate~~ in any of the acts or
 265 things enumerated in this subsection.

266 (i) To purchase the services of any person engaged in
 267 prostitution.

268 (4) A person who violates paragraph (2)(e) or (g) ~~any~~
 269 ~~provision of this section~~ commits:

270 (a) A misdemeanor of the second degree for a first
 271 violation, punishable as provided in s. 775.082 or s. 775.083.

272 (b) A misdemeanor of the first degree for a second
 273 violation, punishable as provided in s. 775.082 or s. 775.083.

274 (c) A felony of the third degree for a third or subsequent
 275 violation, punishable as provided in s. 775.082, s. 775.083, or
 276 s. 775.084.

277 (5) (a) A person who violates paragraphs (2)(a), (b), (c),
 278 (d), (f), (h), or (i) commits:

279 1. For a first offense, a felony of the third degree,
 280 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

281 2. For a second offense, a felony of the second degree,
 282 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

283 3. For a third or subsequent offense, a felony of the
 284 first degree, punishable as provided in s. 775.082, s. 775.083,
 285 or s. 775.084. A person who is charged with a third or
 286 subsequent violation of this section shall be offered admission

287 ~~to a pretrial intervention program or a substance abuse~~
 288 ~~treatment program as provided in s. 948.08.~~

289 (6) A person who violates paragraphs (2)(a), (b), (c),
 290 (d), (f), (h), or (i) ~~paragraph (2)(f)~~ shall be assessed a
 291 criminal ~~civil~~ penalty of \$5,000 if the violation results in any
 292 judicial disposition other than acquittal or dismissal. Of the
 293 proceeds from each penalty assessed under this subsection, the
 294 first \$500 shall be paid to the circuit court administrator for
 295 the sole purpose of paying the administrative costs of
 296 treatment-based drug court programs provided under s. 397.334.
 297 The remainder of the penalty assessed shall be deposited in the
 298 Operations and Maintenance Trust Fund of the Department of
 299 Children and Family Services for the sole purpose of funding
 300 safe houses and short-term safe houses as provided in s.
 301 409.1678.

302 Section 10. Subsection (3), paragraph (a) of subsection
 303 (8), and paragraph (a) of subsection (10) of section 943.0583,
 304 Florida Statutes, are amended to read:

305 943.0583 Human trafficking victim expunction.-

306 (3) A person who is a victim of human trafficking may
 307 petition for the expunction of a criminal history record
 308 resulting from the arrest or filing of charges ~~any conviction~~
 309 for an offense committed or reported to have been committed
 310 while the person ~~he or she~~ was a victim of human trafficking,
 311 which offense was committed or reported to have been committed
 312 as a part of the human trafficking scheme of which the person ~~he~~

313 ~~or she~~ was a victim or at the direction of an operator of the
 314 scheme, including, but not limited to, violations under chapters
 315 796 and 847, without regard to the disposition of the arrest or
 316 of any charges. However, this section does not apply to any
 317 offense listed in s. 775.084(1)(b)1. Determination of the
 318 petition under this section should be by a preponderance of the
 319 evidence. A conviction expunged under this section is deemed to
 320 have been vacated due to a substantive defect in the underlying
 321 criminal proceedings. If a person is adjudicated not guilty by
 322 reason of insanity or is found to be incompetent to stand trial
 323 for any such charge, the expunction of the criminal history
 324 record may not prevent the entry of the judgment or finding in
 325 state and national databases for use in determining eligibility
 326 to purchase or possess a firearm or to carry a concealed
 327 firearm, as authorized in s. 790.065(2)(a)4.c. and 18 U.S.C. s.
 328 922(t), nor shall it prevent any governmental agency that is
 329 authorized by state or federal law to determine eligibility to
 330 purchase or possess a firearm or to carry a concealed firearm
 331 from accessing or using the record of the judgment or finding in
 332 the course of such agency's official duties.

333 (8)(a) Any criminal history record of a minor or an adult
 334 that is ordered expunged by the court of original jurisdiction
 335 over the charges ~~crime~~ sought to be expunged pursuant to this
 336 section must be physically destroyed or obliterated by any
 337 criminal justice agency having custody of such record, except
 338 that any criminal history record in the custody of the

339 department must be retained in all cases.

340 (10) (a) A criminal history record ordered expunged under
 341 this section that is retained by the department is confidential
 342 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 343 Constitution, except that the record shall be made available to
 344 criminal justice agencies for their respective criminal justice
 345 purposes and to any governmental agency that is authorized by
 346 state or federal law to determine eligibility to purchase or
 347 possess a firearm or to carry a concealed firearm for use in the
 348 course of such agency's official duties. Otherwise, such record
 349 shall not be disclosed to any person or entity except upon order
 350 of a court of competent jurisdiction. A criminal justice agency
 351 may retain a notation indicating compliance with an order to
 352 expunge.

353 Section 11. Paragraphs (c), (e), and (g) through (j) of
 354 subsection (3) of section 921.0022, Florida Statutes, are
 355 amended to read:

356 921.0022 Criminal Punishment Code; offense severity
 357 ranking chart.—

358 (3) OFFENSE SEVERITY RANKING CHART

359 (c) LEVEL 3

360

Florida	Felony	Description
Statute	Degree	

361

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

CS/HB 1017

2014

362	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
363	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
364	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
365	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
366	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
367	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
368	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

CS/HB 1017

2014

369	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
370	327.35(2)(b)	3rd	Felony BUI.
371	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
372	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
373	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine

CS/HB 1017

2014

			turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
374	379.2431 (1) (e) 6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
375	400.9935 (4)	3rd	Operating a clinic without a license or filing false license application or other required information.
376	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
377	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
378			

CS/HB 1017

2014

379	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
380	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
381	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
382	697.08	3rd	Equity skimming.
383	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
384	796.05(1)	3rd	Live on earnings of a prostitute.
385	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
	806.10(2)	3rd	Interferes with or assaults

			firefighter in performance of duty.
386	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
387	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
388	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
389	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
390	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
391	817.233	3rd	Burning to defraud insurer.
392			

CS/HB 1017

2014

393	817.234 (8) (b) - (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
394	817.234 (11) (a)	3rd	Insurance fraud; property value less than \$20,000.
395	817.236	3rd	Filing a false motor vehicle insurance application.
396	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
397	817.413 (2)	3rd	Sale of used goods as new.
398	817.505 (4)	3rd	Patient brokering.
399	828.12 (2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
	831.28 (2) (a)	3rd	Counterfeiting a payment

			instrument with intent to defraud or possessing a counterfeit payment instrument.
400	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
401	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
402	843.19	3rd	Injure, disable, or kill police dog or horse.
403	860.15(3)	3rd	Overcharging for repairs and parts.
404	870.01(2)	3rd	Riot; inciting or encouraging.
405	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8.,

406	893.13(1)(d)2.	2nd	(2)(c)9., (3), or (4) drugs). Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
407	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
408	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
409	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for

410	893.13(7)(a)9.	3rd	a controlled substance.
411	893.13(7)(a)10.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
412	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
413	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
414	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.

CS/HB 1017

2014

415	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
416	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
417	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
418	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
419	944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

CS/HB 1017

2014

420	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
421	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
422	(e) LEVEL 5		
423			
424	Florida Statute	Felony Degree	Description
425	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
426	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
427	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.

CS/HB 1017

2014

428	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
429	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
430	379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
431	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
432	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
433	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
	440.381(2)	2nd	Submission of false, misleading, or incomplete

			information with the purpose of avoiding or reducing workers' compensation premiums.
434	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
435	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
436	790.01(2)	3rd	Carrying a concealed firearm.
437	790.162	2nd	Threat to throw or discharge destructive device.
438	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
439	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
440	790.23	2nd	Felons in possession of

CS/HB 1017

2014

			firearms, ammunition, or electronic weapons or devices.
441	<u>796.05(1)</u>	<u>2nd</u>	<u>Live on earnings of a prostitute; 1st offense.</u>
442	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
443	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
444	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
445	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
446	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
447			

CS/HB 1017

2014

448	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
449	812.131(2)(b)	3rd	Robbery by sudden snatching.
450	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
451	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
452	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
453	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services

			received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
454	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
455	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
456	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
457	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes

			sexual conduct by a child.
458	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
459	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
460	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
461	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
462	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
463	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal

464	874.05(2)(a)	2nd	gang; second or subsequent offense.
465	893.13(1)(a)1.	2nd	Encouraging or recruiting person under 13 to join a criminal gang. Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
466	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
467			

468	893.13(1)(d)1.	1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.</p>
469	893.13(1)(e)2.	2nd	<p>Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.</p>
470	893.13(1)(f)1.	1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.</p>

CS/HB 1017

2014

471	893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
472	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
473	(g) LEVEL 7		
474			
475	Florida Statute	Felony Degree	Description
476	316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
477	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with

			wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
478	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
479	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
480	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
481	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
482	456.065(2)	3rd	Practicing a health care profession without a license.
483			

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

CS/HB 1017

2014

484	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
485	458.327(1)	3rd	Practicing medicine without a license.
486	459.013(1)	3rd	Practicing osteopathic medicine without a license.
487	460.411(1)	3rd	Practicing chiropractic medicine without a license.
488	461.012(1)	3rd	Practicing podiatric medicine without a license.
489	462.17	3rd	Practicing naturopathy without a license.
490	463.015(1)	3rd	Practicing optometry without a license.
491	464.016(1)	3rd	Practicing nursing without a license.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

CS/HB 1017

2014

492	465.015(2)	3rd	Practicing pharmacy without a license.
493	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
494	467.201	3rd	Practicing midwifery without a license.
495	468.366	3rd	Delivering respiratory care services without a license.
496	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
497	483.901(9)	3rd	Practicing medical physics without a license.
498	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
499	484.053	3rd	Dispensing hearing aids without a license.

CS/HB 1017

2014

500	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
501	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
502	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
503	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew

			driver's license or identification card; other registration violations.
504	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
505	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
506	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
507	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
508	782.071	2nd	Killing of a human being or viable fetus by the operation

			of a motor vehicle in a reckless manner (vehicular homicide).
509	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
510	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
511	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
512	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
513	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
514	784.048(7)	3rd	Aggravated stalking; violation of court order.
515			

CS/HB 1017

2014

516	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
517	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
518	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
519	784.081(1)	1st	Aggravated battery on specified official or employee.
520	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
521	784.083(1)	1st	Aggravated battery on code inspector.
522	787.06(3)(a) <u>2.</u>	1st	Human trafficking using coercion for labor and services <u>of an adult.</u>
	787.06(3)(e) <u>2.</u>	1st	Human trafficking using

			coercion for labor and services by the transfer or transport of <u>an adult</u> any individual from outside Florida to within the state.
523	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
524	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
525	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
526	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
527	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
528			

CS/HB 1017

2014

529	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
530	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
531	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
532	796.03	2nd	Procuring any person under 16 years for prostitution.
533	<u>796.05(1)</u>	1st	<u>Live on earnings of a prostitute; 2nd offense.</u>
	<u>796.05(1)</u>	1st	<u>Live on earnings of a prostitute; 3rd and subsequent</u>

			<u>offense.</u>
534	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
535	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
536	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
537	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
538	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
539	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
540			

CS/HB 1017

2014

541	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
542	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
543	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
544	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
545	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
546	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

CS/HB 1017

2014

547	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
548	812.131(2)(a)	2nd	Robbery by sudden snatching.
549	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
550	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
551	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
552	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
553	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
	817.2341	1st	Making false entries of

	(2) (b) & (3) (b)		material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
554	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
555	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
556	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
557	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
558	827.04(3)	3rd	Impregnation of a child under

CS/HB 1017

2014

			16 years of age by person 21 years of age or older.
559	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
560	838.015	2nd	Bribery.
561	838.016	2nd	Unlawful compensation or reward for official behavior.
562	838.021(3)(a)	2nd	Unlawful harm to a public servant.
563	838.22	2nd	Bid tampering.
564	843.0855(2)	3rd	Impersonation of a public officer or employee.
565	843.0855(3)	3rd	Unlawful simulation of legal process.
566	843.0855(4)	3rd	Intimidation of a public officer or employee.
567			

CS/HB 1017

2014

568	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
569	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
570	872.06	2nd	Abuse of a dead human body.
571	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
572	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child

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

			care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
573	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
574	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
575	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
576	893.135	1st	Trafficking in cocaine, more

577	(1) (b) 1.a.	1st	than 28 grams, less than 200 grams.
578	893.135 (1) (c) 1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
579	893.135 (1) (d) 1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
580	893.135 (1) (e) 1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
581	893.135 (1) (f) 1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
582	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
	893.135 (1) (h) 1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1

CS/HB 1017

2014

583			kilogram or more, less than 5 kilograms.
583	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
584	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
585	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
586	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
587	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
588			

CS/HB 1017

2014

589	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
590	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
591	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
592	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
593	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
	944.607(9)	3rd	Sexual offender; failure to

			comply with reporting requirements.
594	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
595	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
596	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
597	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
598	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
599			

CS/HB 1017

2014

600	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
601	(h) LEVEL 8		
602			
	Florida Statute	Felony Degree	Description
603	316.193	2nd	DUI manslaughter.
	(3) (c) 3.a.		
604	316.1935(4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
605			
606	327.35(3) (c) 3.	2nd	Vessel BUI manslaughter.
607	499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
608	499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.

CS/HB 1017

2014

609	560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
610	560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
611	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
612	777.03(2)(a)	1st	Accessory after the fact, capital felony.
	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery,

burglary, kidnapping,
 aggravated fleeing or eluding
 with serious bodily injury or
 death, aircraft piracy, or
 unlawfully discharging bomb.

613

782.051(2) 1st Attempted felony murder while
 perpetrating or attempting to
 perpetrate a felony not
 enumerated in s. 782.04(3).

614

782.071(1)(b) 1st Committing vehicular homicide
 and failing to render aid or
 give information.

615

782.072(2) 1st Committing vessel homicide and
 failing to render aid or give
 information.

616

787.06(3)(a)1. 1st Human trafficking for labor and
services of a child.

617

787.06(3)(b) 1st Human trafficking using
 coercion for commercial sexual
 activity of an adult.

618

CS/HB 1017

2014

619	787.06(3)(c) <u>2.</u>	1st	Human trafficking using coercion for labor and services of an unauthorized alien <u>adult</u> .
620	<u>787.06(3)(e)1.</u>	<u>1st</u>	<u>Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.</u>
621	787.06(3)(f) <u>2.</u>	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any <u>adult individual</u> from outside Florida to within the state.
622	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
623	794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.

CS/HB 1017

2014

624	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
625	800.04(4)	2nd	Lewd or lascivious battery.
626	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
627	810.02(2)(a)	1st, PBL	Burglary with assault or battery.
628	810.02(2)(b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
629	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
630	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.

CS/HB 1017

2014

631	812.13(2)(b)	1st	Robbery with a weapon.
632	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
633	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
634	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
635	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
636	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.

CS/HB 1017

2014

637	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
638	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
639	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
640	825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
641	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
642	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.

CS/HB 1017

2014

643	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
644	860.16	1st	Aircraft piracy.
645	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
646	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
647	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
648	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
	893.135	1st	Trafficking in cocaine, more

CS/HB 1017

2014

649	(1) (b) 1.b.	1st	than 200 grams, less than 400 grams.
650	893.135 (1) (c) 1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
651	893.135 (1) (d) 1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
652	893.135 (1) (e) 1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
653	893.135 (1) (f) 1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
654	893.135 (1) (g) 1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
	893.135 (1) (h) 1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5

CS/HB 1017

2014

			kilograms or more, less than 10 kilograms.
655	893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
656	893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
657	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
658	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
659	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
660			

CS/HB 1017

2014

661	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
662	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
663	896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.
664	(i) LEVEL 9		
665	Florida Statute	Felony Degree	Description
666	316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
667	327.35(3)(c)3.b.	1st	BUI manslaughter; failing to

CS/HB 1017

2014

			render aid or give information.
668	409.920 (2) (b) 1.c.	1st	Medicaid provider fraud; \$50,000 or more.
669	499.0051 (9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
670	560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
671	560.125 (5) (c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
672	655.50 (10) (b) 3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
673	775.0844	1st	Aggravated white collar crime.
674			

675	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
676	782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
677	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
678	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
679	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to

680	787.01(1)(a)4.	1st, PBL	commit or facilitate commission of any felony.
681	787.02(3)(a)	1st	Kidnapping with intent to interfere with performance of any governmental or political function.
682	<u>787.06(3)(c)1.</u>	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
683	787.06(3)(d)	1st	<u>Human trafficking for labor and services of an unauthorized alien child.</u>
684			Human trafficking using coercion for commercial sexual activity of an unauthorized <u>adult</u> alien.

CS/HB 1017

2014

685	<u>787.06(3)(f)1.</u>	<u>1st, PBL</u>	<u>Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.</u>
686	787.06(3)(g)	1st, PBL	Human trafficking for commercial sexual activity of a child under the age of 18.
687	787.06(4)	1st	Selling or buying of minors into human trafficking.
688	790.161	1st	Attempted capital destructive device offense.
689	790.166(2)	1st, PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
690	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
	794.011(2)	Life	Sexual battery; offender

			younger than 18 years and commits sexual battery on a person less than 12 years.
691	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
692	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
693	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
694	796.035	1st	Selling or buying of minors into prostitution.
695	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
696	812.13(2)(a)	1st, PBL	Robbery with firearm or other

697			deadly weapon.
	812.133(2)(a)	1st, PBL	Carjacking; firearm or other deadly weapon.
698			
	812.135(2)(b)	1st	Home-invasion robbery with weapon.
699			
	817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
700			
	817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
701			
	817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
702			

CS/HB 1017

2014

703	817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
704	827.03(2)(a)	1st	Aggravated child abuse.
705	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
706	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
707	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.

CS/HB 1017

2014

708	893.135	1st	Attempted capital trafficking offense.
709	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
710	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
711	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
712	893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
713	893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
714	893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
	893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10

CS/HB 1017

2014

715			kilograms or more.
716	893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
717	893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
718	896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding \$100,000.
719	896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$100,000.
720	(j) LEVEL 10		
721	Florida Statute	Felony Degree	Description
722	499.0051(10)	1st	Knowing sale or purchase of contraband prescription drugs

			resulting in death.
723	782.04(2)	1st,PBL	Unlawful killing of human; act is homicide, unpremeditated.
724	782.07(3)	1st	Aggravated manslaughter of a child.
725	787.01(1)(a)3.	1st,PBL	Kidnapping; inflict bodily harm upon or terrorize victim.
726	787.01(3)(a)	Life	Kidnapping; child under age 13, perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
727	<u>787.06(3)(g)</u> 787.06(3)(h)	Life	Human trafficking for commercial sexual activity of a child under the age of <u>18 or mentally defective or incapacitated person</u> 15 .
728	<u>787.06(4)(a)</u>	<u>Life</u>	<u>Selling or buying of minors</u>

into human trafficking.

729

794.011(3) Life Sexual battery; victim 12 years or older, offender uses or threatens to use deadly weapon or physical force to cause serious injury.

730

812.135(2)(a) 1st,PBL Home-invasion robbery with firearm or other deadly weapon.

731

876.32 1st Treason against the state.

732

733 Section 12. Paragraph (g) of subsection (67) of section
734 39.01, Florida Statutes, is amended to read:

735 39.01 Definitions.—When used in this chapter, unless the
736 context otherwise requires:

737 (67) "Sexual abuse of a child" for purposes of finding a
738 child to be dependent means one or more of the following acts:

739 (g) The sexual exploitation of a child, which includes the
740 act of a child offering to engage in or engaging in
741 prostitution, provided that the child is not under arrest or is
742 not being prosecuted in a delinquency or criminal proceeding for
743 a violation of any offense in chapter 796 based on such
744 behavior; or allowing, encouraging, or forcing a child to:

745 1. Solicit for or engage in prostitution;

746 2. Engage in a sexual performance, as defined by chapter
747 827; or

748 3. Participate in the trade of human ~~sex~~ trafficking as
749 provided in s. 787.06(3)(g) ~~796.035~~.

750 Section 13. Paragraphs (b) and (c) of subsection (2) of
751 section 90.404, Florida Statutes, are amended to read:

752 90.404 Character evidence; when admissible.—

753 (2) OTHER CRIMES, WRONGS, OR ACTS.—

754 (b)1. In a criminal case in which the defendant is charged
755 with a crime involving child molestation, evidence of the
756 defendant's commission of other crimes, wrongs, or acts of child
757 molestation is admissible and may be considered for its bearing
758 on any matter to which it is relevant.

759 2. For the purposes of this paragraph, the term "child
760 molestation" means conduct proscribed by s. 787.025(2)(c), s.
761 787.06(3)(g) ~~and (h)~~, s. 794.011, excluding s. 794.011(10), s.
762 794.05, ~~s. 796.03, s. 796.035~~, s. 800.04, s. 827.071, s.
763 847.0135(5), s. 847.0145, or s. 985.701(1) when committed
764 against a person 16 years of age or younger.

765 (c)1. In a criminal case in which the defendant is charged
766 with a sexual offense, evidence of the defendant's commission of
767 other crimes, wrongs, or acts involving a sexual offense is
768 admissible and may be considered for its bearing on any matter
769 to which it is relevant.

770 2. For the purposes of this paragraph, the term "sexual
771 offense" means conduct proscribed by s. 787.025(2)(c), s.

772 787.06(3) (b), (d), (f), or (g), ~~or (h)~~, s. 794.011, excluding s.
 773 794.011(10), s. 794.05, ~~s. 796.03, s. 796.035~~, s.
 774 825.1025(2) (b), s. 827.071, s. 847.0135(5), s. 847.0145, or s.
 775 985.701(1).

776 Section 14. Paragraph (a) of subsection (1) of section
 777 772.102, Florida Statutes, is amended to read:

778 772.102 Definitions.—As used in this chapter, the term:

779 (1) "Criminal activity" means to commit, to attempt to
 780 commit, to conspire to commit, or to solicit, coerce, or
 781 intimidate another person to commit:

782 (a) Any crime that is chargeable by indictment or
 783 information under the following provisions:

- 784 1. Section 210.18, relating to evasion of payment of
 785 cigarette taxes.
- 786 2. Section 414.39, relating to public assistance fraud.
- 787 3. Section 440.105 or s. 440.106, relating to workers'
 788 compensation.
- 789 4. Part IV of chapter 501, relating to telemarketing.
- 790 5. Chapter 517, relating to securities transactions.
- 791 6. Section 550.235 or s. 550.3551, relating to dogracing
 792 and horseracing.
- 793 7. Chapter 550, relating to jai alai frontons.
- 794 8. Chapter 552, relating to the manufacture, distribution,
 795 and use of explosives.
- 796 9. Chapter 562, relating to beverage law enforcement.
- 797 10. Section 624.401, relating to transacting insurance

798 without a certificate of authority, s. 624.437(4)(c)1., relating
 799 to operating an unauthorized multiple-employer welfare
 800 arrangement, or s. 626.902(1)(b), relating to representing or
 801 aiding an unauthorized insurer.

802 11. Chapter 687, relating to interest and usurious
 803 practices.

804 12. Section 721.08, s. 721.09, or s. 721.13, relating to
 805 real estate timeshare plans.

806 13. Chapter 782, relating to homicide.

807 14. Chapter 784, relating to assault and battery.

808 15. Chapter 787, relating to kidnapping or human
 809 trafficking.

810 16. Chapter 790, relating to weapons and firearms.

811 17. Section ~~796.03~~, s. 796.04, s. 796.05, or s. 796.07,
 812 relating to prostitution.

813 18. Chapter 806, relating to arson.

814 19. Section 810.02(2)(c), relating to specified burglary
 815 of a dwelling or structure.

816 20. Chapter 812, relating to theft, robbery, and related
 817 crimes.

818 21. Chapter 815, relating to computer-related crimes.

819 22. Chapter 817, relating to fraudulent practices, false
 820 pretenses, fraud generally, and credit card crimes.

821 23. Section 827.071, relating to commercial sexual
 822 exploitation of children.

823 24. Chapter 831, relating to forgery and counterfeiting.

824 25. Chapter 832, relating to issuance of worthless checks
825 and drafts.

826 26. Section 836.05, relating to extortion.

827 27. Chapter 837, relating to perjury.

828 28. Chapter 838, relating to bribery and misuse of public
829 office.

830 29. Chapter 843, relating to obstruction of justice.

831 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
832 s. 847.07, relating to obscene literature and profanity.

833 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
834 849.25, relating to gambling.

835 32. Chapter 893, relating to drug abuse prevention and
836 control.

837 33. Section 914.22 or s. 914.23, relating to witnesses,
838 victims, or informants.

839 34. Section 918.12 or s. 918.13, relating to tampering
840 with jurors and evidence.

841 Section 15. Paragraph (m) of subsection (1) of section
842 775.0877, Florida Statutes, is amended to read:

843 775.0877 Criminal transmission of HIV; procedures;
844 penalties.-

845 (1) In any case in which a person has been convicted of or
846 has pled nolo contendere or guilty to, regardless of whether
847 adjudication is withheld, any of the following offenses, or the
848 attempt thereof, which offense or attempted offense involves the
849 transmission of body fluids from one person to another:

850 (m) Sections ~~796.03~~, 796.07, and 796.08, relating to
 851 prostitution; or
 852
 853 the court shall order the offender to undergo HIV testing, to be
 854 performed under the direction of the Department of Health in
 855 accordance with s. 381.004, unless the offender has undergone
 856 HIV testing voluntarily or pursuant to procedures established in
 857 s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or
 858 rule providing for HIV testing of criminal offenders or inmates,
 859 subsequent to her or his arrest for an offense enumerated in
 860 paragraphs (a)-(n) for which she or he was convicted or to which
 861 she or he pled nolo contendere or guilty. The results of an HIV
 862 test performed on an offender pursuant to this subsection are
 863 not admissible in any criminal proceeding arising out of the
 864 alleged offense.

865 Section 16. Paragraph (a) of subsection (4) and paragraph
 866 (b) of subsection (10) of section 775.21, Florida Statutes, is
 867 amended to read:

868 775.21 The Florida Sexual Predators Act.—

869 (4) SEXUAL PREDATOR CRITERIA.—

870 (a) For a current offense committed on or after October 1,
 871 1993, upon conviction, an offender shall be designated as a
 872 "sexual predator" under subsection (5), and subject to
 873 registration under subsection (6) and community and public
 874 notification under subsection (7) if:

875 1. The felony is:

876 a. A capital, life, or first-degree felony violation, or
 877 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
 878 is a minor and the defendant is not the victim's parent or
 879 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a
 880 violation of a similar law of another jurisdiction; or

881 b. Any felony violation, or any attempt thereof, of s.
 882 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a
 883 minor and the defendant is not the victim's parent or guardian;
 884 s. 787.06(3)(b), (d), (f), or (g), ~~or (h)~~; s. 794.011, excluding
 885 s. 794.011(10); s. 794.05; ~~s. 796.03; s. 796.035~~; s. 800.04; s.
 886 810.145(8)(b); s. 825.1025(2)(b); s. 827.071; s. 847.0135(5); s.
 887 847.0145; or s. 985.701(1); or a violation of a similar law of
 888 another jurisdiction, and the offender has previously been
 889 convicted of or found to have committed, or has pled nolo
 890 contendere or guilty to, regardless of adjudication, any
 891 violation of s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 892 the victim is a minor and the defendant is not the victim's
 893 parent or guardian; s. 787.06(3)(b), (d), (f), or (g), ~~or (h)~~;
 894 s. 794.011, excluding s. 794.011(10); s. 794.05; ~~s. 796.03; s.~~
 895 ~~796.035~~; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s.
 896 847.0135, excluding s. 847.0135(6); s. 847.0145; or s.
 897 985.701(1); or a violation of a similar law of another
 898 jurisdiction;

899 2. The offender has not received a pardon for any felony
 900 or similar law of another jurisdiction that is necessary for the
 901 operation of this paragraph; and

902 3. A conviction of a felony or similar law of another
 903 jurisdiction necessary to the operation of this paragraph has
 904 not been set aside in any postconviction proceeding.

905 (10) PENALTIES.—

906 (b) A sexual predator who has been convicted of or found
 907 to have committed, or has pled nolo contendere or guilty to,
 908 regardless of adjudication, any violation, or attempted
 909 violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 910 the victim is a minor and the defendant is not the victim's
 911 parent or guardian; s. 794.011, excluding s. 794.011(10); s.
 912 794.05; ~~s. 796.03; s. 796.035;~~ s. 800.04; s. 827.071; s.
 913 847.0133; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a
 914 violation of a similar law of another jurisdiction when the
 915 victim of the offense was a minor, and who works, whether for
 916 compensation or as a volunteer, at any business, school, child
 917 care facility, park, playground, or other place where children
 918 regularly congregate, commits a felony of the third degree,
 919 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

920 Section 17. Paragraph (a) of subsection (3) of section
 921 787.01, Florida Statutes, is amended to read:

922 787.01 Kidnapping; kidnapping of child under age 13,
 923 aggravating circumstances.—

924 (3)(a) A person who commits the offense of kidnapping upon
 925 a child under the age of 13 and who, in the course of committing
 926 the offense, commits one or more of the following:

927 1. Aggravated child abuse, as defined in s. 827.03;

CS/HB 1017

2014

928 2. Sexual battery, as defined in chapter 794, against the
929 child;

930 3. Lewd or lascivious battery, lewd or lascivious
931 molestation, lewd or lascivious conduct, or lewd or lascivious
932 exhibition, in violation of s. 800.04 or s. 847.0135(5);

933 4. A violation of ~~s. 796.03~~ or s. 796.04, relating to
934 prostitution, upon the child; or

935 5. Exploitation of the child or allowing the child to be
936 exploited, in violation of s. 450.151,

937

938 commits a life felony, punishable as provided in s. 775.082, s.
939 775.083, or s. 775.084.

940 Section 18. Paragraph (a) of subsection (3) of section
941 787.02, Florida Statutes, is amended to read:

942 787.02 False imprisonment; false imprisonment of child
943 under age 13, aggravating circumstances.—

944 (3)(a) A person who commits the offense of false
945 imprisonment upon a child under the age of 13 and who, in the
946 course of committing the offense, commits any offense enumerated
947 in subparagraphs 1.-5., commits a felony of the first degree,
948 punishable by imprisonment for a term of years not exceeding
949 life or as provided in s. 775.082, s. 775.083, or s. 775.084.

950 1. Aggravated child abuse, as defined in s. 827.03;

951 2. Sexual battery, as defined in chapter 794, against the
952 child;

953 3. Lewd or lascivious battery, lewd or lascivious

954 molestation, lewd or lascivious conduct, or lewd or lascivious
 955 exhibition, in violation of s. 800.04 or s. 847.0135(5);

956 4. A violation of ~~s. 796.03~~ or s. 796.04, relating to
 957 prostitution, upon the child; or

958 5. Exploitation of the child or allowing the child to be
 959 exploited, in violation of s. 450.151.

960 Section 19. Subsection (1) of section 794.056, Florida
 961 Statutes, is amended to read:

962 794.056 Rape Crisis Program Trust Fund.—

963 (1) The Rape Crisis Program Trust Fund is created within
 964 the Department of Health for the purpose of providing funds for
 965 rape crisis centers in this state. Trust fund moneys shall be
 966 used exclusively for the purpose of providing services for
 967 victims of sexual assault. Funds credited to the trust fund
 968 consist of those funds collected as an additional court
 969 assessment in each case in which a defendant pleads guilty or
 970 nolo contendere to, or is found guilty of, regardless of
 971 adjudication, an offense provided in s. 775.21(6) and (10)(a),
 972 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.
 973 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.
 974 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.
 975 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;
 976 ~~s. 796.03; s. 796.035;~~ s. 796.04; s. 796.05; s. 796.06; s.
 977 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.
 978 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s.
 979 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s.

980 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and
 981 (14)(c); or s. 985.701(1). Funds credited to the trust fund also
 982 shall include revenues provided by law, moneys appropriated by
 983 the Legislature, and grants from public or private entities.

984 Section 20. Subsection (1) of section 856.022, Florida
 985 Statutes, is amended to read:

986 856.022 Loitering or prowling by certain offenders in
 987 close proximity to children; penalty.—

988 (1) Except as provided in subsection (2), this section
 989 applies to a person convicted of committing, or attempting,
 990 soliciting, or conspiring to commit, any of the criminal
 991 offenses proscribed in the following statutes in this state or
 992 similar offenses in another jurisdiction against a victim who
 993 was under 18 years of age at the time of the offense: s. 787.01,
 994 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 995 the offender was not the victim's parent or guardian; s.
 996 794.011, excluding s. 794.011(10); s. 794.05; ~~s. 796.03; s.~~
 997 ~~796.035;~~ s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s.
 998 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.
 999 847.0145; s. 985.701(1); or any similar offense committed in
 1000 this state which has been redesignated from a former statute
 1001 number to one of those listed in this subsection, if the person
 1002 has not received a pardon for any felony or similar law of
 1003 another jurisdiction necessary for the operation of this
 1004 subsection and a conviction of a felony or similar law of
 1005 another jurisdiction necessary for the operation of this

CS/HB 1017

2014

1006 subsection has not been set aside in any postconviction
 1007 proceeding.

1008 Section 21. Paragraph (a) of subsection (1) of section
 1009 895.02, Florida Statutes, is amended to read:

1010 895.02 Definitions.—As used in ss. 895.01-895.08, the
 1011 term:

1012 (1) "Racketeering activity" means to commit, to attempt to
 1013 commit, to conspire to commit, or to solicit, coerce, or
 1014 intimidate another person to commit:

1015 (a) Any crime that is chargeable by petition, indictment,
 1016 or information under the following provisions of the Florida
 1017 Statutes:

1018 1. Section 210.18, relating to evasion of payment of
 1019 cigarette taxes.

1020 2. Section 316.1935, relating to fleeing or attempting to
 1021 elude a law enforcement officer and aggravated fleeing or
 1022 eluding.

1023 3. Section 403.727(3)(b), relating to environmental
 1024 control.

1025 4. Section 409.920 or s. 409.9201, relating to Medicaid
 1026 fraud.

1027 5. Section 414.39, relating to public assistance fraud.

1028 6. Section 440.105 or s. 440.106, relating to workers'
 1029 compensation.

1030 7. Section 443.071(4), relating to creation of a
 1031 fictitious employer scheme to commit reemployment assistance

- 1032 fraud.
- 1033 8. Section 465.0161, relating to distribution of medicinal
- 1034 drugs without a permit as an Internet pharmacy.
- 1035 9. Section 499.0051, relating to crimes involving
- 1036 contraband and adulterated drugs.
- 1037 10. Part IV of chapter 501, relating to telemarketing.
- 1038 11. Chapter 517, relating to sale of securities and
- 1039 investor protection.
- 1040 12. Section 550.235 or s. 550.3551, relating to dogracing
- 1041 and horseracing.
- 1042 13. Chapter 550, relating to jai alai frontons.
- 1043 14. Section 551.109, relating to slot machine gaming.
- 1044 15. Chapter 552, relating to the manufacture,
- 1045 distribution, and use of explosives.
- 1046 16. Chapter 560, relating to money transmitters, if the
- 1047 violation is punishable as a felony.
- 1048 17. Chapter 562, relating to beverage law enforcement.
- 1049 18. Section 624.401, relating to transacting insurance
- 1050 without a certificate of authority, s. 624.437(4)(c)1., relating
- 1051 to operating an unauthorized multiple-employer welfare
- 1052 arrangement, or s. 626.902(1)(b), relating to representing or
- 1053 aiding an unauthorized insurer.
- 1054 19. Section 655.50, relating to reports of currency
- 1055 transactions, when such violation is punishable as a felony.
- 1056 20. Chapter 687, relating to interest and usurious
- 1057 practices.

- 1058 21. Section 721.08, s. 721.09, or s. 721.13, relating to
 1059 real estate timeshare plans.
- 1060 22. Section 775.13(5)(b), relating to registration of
 1061 persons found to have committed any offense for the purpose of
 1062 benefiting, promoting, or furthering the interests of a criminal
 1063 gang.
- 1064 23. Section 777.03, relating to commission of crimes by
 1065 accessories after the fact.
- 1066 24. Chapter 782, relating to homicide.
- 1067 25. Chapter 784, relating to assault and battery.
- 1068 26. Chapter 787, relating to kidnapping or human
 1069 trafficking.
- 1070 27. Chapter 790, relating to weapons and firearms.
- 1071 28. Chapter 794, relating to sexual battery, but only if
 1072 such crime was committed with the intent to benefit, promote, or
 1073 further the interests of a criminal gang, or for the purpose of
 1074 increasing a criminal gang member's own standing or position
 1075 within a criminal gang.
- 1076 29. Section ~~796.03, s. 796.035, s.~~ 796.04, s. 796.05, or
 1077 s. 796.07, relating to prostitution and sex trafficking.
- 1078 30. Chapter 806, relating to arson and criminal mischief.
- 1079 31. Chapter 810, relating to burglary and trespass.
- 1080 32. Chapter 812, relating to theft, robbery, and related
 1081 crimes.
- 1082 33. Chapter 815, relating to computer-related crimes.
- 1083 34. Chapter 817, relating to fraudulent practices, false

- 1084 | pretenses, fraud generally, and credit card crimes.
- 1085 | 35. Chapter 825, relating to abuse, neglect, or
- 1086 | exploitation of an elderly person or disabled adult.
- 1087 | 36. Section 827.071, relating to commercial sexual
- 1088 | exploitation of children.
- 1089 | 37. Section 828.122, relating to fighting or baiting
- 1090 | animals.
- 1091 | 38. Chapter 831, relating to forgery and counterfeiting.
- 1092 | 39. Chapter 832, relating to issuance of worthless checks
- 1093 | and drafts.
- 1094 | 40. Section 836.05, relating to extortion.
- 1095 | 41. Chapter 837, relating to perjury.
- 1096 | 42. Chapter 838, relating to bribery and misuse of public
- 1097 | office.
- 1098 | 43. Chapter 843, relating to obstruction of justice.
- 1099 | 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
- 1100 | s. 847.07, relating to obscene literature and profanity.
- 1101 | 45. Chapter 849, relating to gambling, lottery, gambling
- 1102 | or gaming devices, slot machines, or any of the provisions
- 1103 | within that chapter.
- 1104 | 46. Chapter 874, relating to criminal gangs.
- 1105 | 47. Chapter 893, relating to drug abuse prevention and
- 1106 | control.
- 1107 | 48. Chapter 896, relating to offenses related to financial
- 1108 | transactions.
- 1109 | 49. Sections 914.22 and 914.23, relating to tampering with

1110 or harassing a witness, victim, or informant, and retaliation
 1111 against a witness, victim, or informant.

1112 50. Sections 918.12 and 918.13, relating to tampering with
 1113 jurors and evidence.

1114 Section 22. Section 938.085, Florida Statutes, is amended
 1115 to read:

1116 938.085 Additional cost to fund rape crisis centers.—In
 1117 addition to any sanction imposed when a person pleads guilty or
 1118 nolo contendere to, or is found guilty of, regardless of
 1119 adjudication, a violation of s. 775.21(6) and (10)(a), (b), and
 1120 (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;
 1121 s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.
 1122 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.
 1123 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; ~~s. 796.03;~~
 1124 ~~s. 796.035;~~ s. 796.04; s. 796.05; s. 796.06; s. 796.07(2)(a)–(d)
 1125 and (i); s. 800.03; s. 800.04; s. 810.14; s. 810.145; s.
 1126 812.135; s. 817.025; s. 825.102; s. 825.1025; s. 827.071; s.
 1127 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s. 847.0145;
 1128 s. 943.0435(4)(c), (7), (8), (9)(a), (13), and (14)(c); or s.
 1129 985.701(1), the court shall impose a surcharge of \$151. Payment
 1130 of the surcharge shall be a condition of probation, community
 1131 control, or any other court-ordered supervision. The sum of \$150
 1132 of the surcharge shall be deposited into the Rape Crisis Program
 1133 Trust Fund established within the Department of Health by
 1134 chapter 2003-140, Laws of Florida. The clerk of the court shall
 1135 retain \$1 of each surcharge that the clerk of the court collects

1136 as a service charge of the clerk's office.

1137 Section 23. Subsection (1) of section 938.10, Florida
 1138 Statutes, is amended to read:

1139 938.10 Additional court cost imposed in cases of certain
 1140 crimes.—

1141 (1) If a person pleads guilty or nolo contendere to, or is
 1142 found guilty of, regardless of adjudication, any offense against
 1143 a minor in violation of s. 784.085, chapter 787, chapter 794, ~~s.~~
 1144 ~~796.03, s. 796.035,~~ s. 800.04, chapter 827, s. 847.012, s.
 1145 847.0133, s. 847.0135(5), s. 847.0138, s. 847.0145, s.
 1146 893.147(3), or s. 985.701, or any offense in violation of s.
 1147 775.21, s. 823.07, s. 847.0125, s. 847.0134, or s. 943.0435, the
 1148 court shall impose a court cost of \$151 against the offender in
 1149 addition to any other cost or penalty required by law.

1150 Section 24. Paragraph (a) of subsection (1) of section
 1151 943.0435, Florida Statutes, is amended to read:

1152 943.0435 Sexual offenders required to register with the
 1153 department; penalty.—

1154 (1) As used in this section, the term:

1155 (a)1. "Sexual offender" means a person who meets the
 1156 criteria in sub-subparagraph a., sub-subparagraph b., sub-
 1157 subparagraph c., or sub-subparagraph d., as follows:

1158 a.(I) Has been convicted of committing, or attempting,
 1159 soliciting, or conspiring to commit, any of the criminal
 1160 offenses proscribed in the following statutes in this state or
 1161 similar offenses in another jurisdiction: s. 787.01, s. 787.02,

1162 or s. 787.025(2)(c), where the victim is a minor and the
 1163 defendant is not the victim's parent or guardian; s.
 1164 787.06(3)(b), (d), (f), or (g), ~~or (h)~~; s. 794.011, excluding s.
 1165 794.011(10); s. 794.05; ~~s. 796.03; s. 796.035~~; s. 800.04; s.
 1166 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
 1167 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
 1168 or s. 985.701(1); or any similar offense committed in this state
 1169 which has been redesignated from a former statute number to one
 1170 of those listed in this sub-sub-subparagraph; and

1171 (II) Has been released on or after October 1, 1997, from
 1172 the sanction imposed for any conviction of an offense described
 1173 in sub-sub-subparagraph (I). For purposes of sub-sub-
 1174 subparagraph (I), a sanction imposed in this state or in any
 1175 other jurisdiction includes, but is not limited to, a fine,
 1176 probation, community control, parole, conditional release,
 1177 control release, or incarceration in a state prison, federal
 1178 prison, private correctional facility, or local detention
 1179 facility;

1180 b. Establishes or maintains a residence in this state and
 1181 who has not been designated as a sexual predator by a court of
 1182 this state but who has been designated as a sexual predator, as
 1183 a sexually violent predator, or by another sexual offender
 1184 designation in another state or jurisdiction and was, as a
 1185 result of such designation, subjected to registration or
 1186 community or public notification, or both, or would be if the
 1187 person were a resident of that state or jurisdiction, without

1188 regard to whether the person otherwise meets the criteria for
 1189 registration as a sexual offender;

1190 c. Establishes or maintains a residence in this state who
 1191 is in the custody or control of, or under the supervision of,
 1192 any other state or jurisdiction as a result of a conviction for
 1193 committing, or attempting, soliciting, or conspiring to commit,
 1194 any of the criminal offenses proscribed in the following
 1195 statutes or similar offense in another jurisdiction: s. 787.01,
 1196 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 1197 the defendant is not the victim's parent or guardian; s.
 1198 787.06(3)(b), (d), (f), or (g), ~~or (h)~~; s. 794.011, excluding s.
 1199 794.011(10); s. 794.05; ~~s. 796.03; s. 796.035~~; s. 800.04; s.
 1200 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
 1201 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
 1202 or s. 985.701(1); or any similar offense committed in this state
 1203 which has been redesignated from a former statute number to one
 1204 of those listed in this sub-subparagraph; or

1205 d. On or after July 1, 2007, has been adjudicated
 1206 delinquent for committing, or attempting, soliciting, or
 1207 conspiring to commit, any of the criminal offenses proscribed in
 1208 the following statutes in this state or similar offenses in
 1209 another jurisdiction when the juvenile was 14 years of age or
 1210 older at the time of the offense:

- 1211 (I) Section 794.011, excluding s. 794.011(10);
- 1212 (II) Section 800.04(4)(b) where the victim is under 12
- 1213 years of age or where the court finds sexual activity by the use

1214 of force or coercion;

1215 (III) Section 800.04(5)(c)1. where the court finds
1216 molestation involving unclothed genitals; or

1217 (IV) Section 800.04(5)(d) where the court finds the use of
1218 force or coercion and unclothed genitals.

1219 2. For all qualifying offenses listed in sub-subparagraph
1220 (1)(a)1.d., the court shall make a written finding of the age of
1221 the offender at the time of the offense.

1222

1223 For each violation of a qualifying offense listed in this
1224 subsection, the court shall make a written finding of the age of
1225 the victim at the time of the offense. For a violation of s.
1226 800.04(4), the court shall additionally make a written finding
1227 indicating that the offense did or did not involve sexual
1228 activity and indicating that the offense did or did not involve
1229 force or coercion. For a violation of s. 800.04(5), the court
1230 shall additionally make a written finding that the offense did
1231 or did not involve unclothed genitals or genital area and that
1232 the offense did or did not involve the use of force or coercion.

1233 Section 25. Section 943.0585, Florida Statutes, is amended
1234 to read:

1235 943.0585 Court-ordered expunction of criminal history
1236 records.—The courts of this state have jurisdiction over their
1237 own procedures, including the maintenance, expunction, and
1238 correction of judicial records containing criminal history
1239 information to the extent such procedures are not inconsistent

1240 with the conditions, responsibilities, and duties established by
 1241 this section. Any court of competent jurisdiction may order a
 1242 criminal justice agency to expunge the criminal history record
 1243 of a minor or an adult who complies with the requirements of
 1244 this section. The court shall not order a criminal justice
 1245 agency to expunge a criminal history record until the person
 1246 seeking to expunge a criminal history record has applied for and
 1247 received a certificate of eligibility for expunction pursuant to
 1248 subsection (2). A criminal history record that relates to a
 1249 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 1250 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
 1251 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
 1252 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
 1253 or any violation specified as a predicate offense for
 1254 registration as a sexual predator pursuant to s. 775.21, without
 1255 regard to whether that offense alone is sufficient to require
 1256 such registration, or for registration as a sexual offender
 1257 pursuant to s. 943.0435, may not be expunged, without regard to
 1258 whether adjudication was withheld, if the defendant was found
 1259 guilty of or pled guilty or nolo contendere to the offense, or
 1260 if the defendant, as a minor, was found to have committed, or
 1261 pled guilty or nolo contendere to committing, the offense as a
 1262 delinquent act. The court may only order expunction of a
 1263 criminal history record pertaining to one arrest or one incident
 1264 of alleged criminal activity, except as provided in this
 1265 section. The court may, at its sole discretion, order the

CS/HB 1017

2014

1266 expunction of a criminal history record pertaining to more than
 1267 one arrest if the additional arrests directly relate to the
 1268 original arrest. If the court intends to order the expunction of
 1269 records pertaining to such additional arrests, such intent must
 1270 be specified in the order. A criminal justice agency may not
 1271 expunge any record pertaining to such additional arrests if the
 1272 order to expunge does not articulate the intention of the court
 1273 to expunge a record pertaining to more than one arrest. This
 1274 section does not prevent the court from ordering the expunction
 1275 of only a portion of a criminal history record pertaining to one
 1276 arrest or one incident of alleged criminal activity.

1277 Notwithstanding any law to the contrary, a criminal justice
 1278 agency may comply with laws, court orders, and official requests
 1279 of other jurisdictions relating to expunction, correction, or
 1280 confidential handling of criminal history records or information
 1281 derived therefrom. This section does not confer any right to the
 1282 expunction of any criminal history record, and any request for
 1283 expunction of a criminal history record may be denied at the
 1284 sole discretion of the court.

1285 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
 1286 petition to a court to expunge a criminal history record is
 1287 complete only when accompanied by:

1288 (a) A valid certificate of eligibility for expunction
 1289 issued by the department pursuant to subsection (2).

1290 (b) The petitioner's sworn statement attesting that the
 1291 petitioner:

1292 1. Has never, prior to the date on which the petition is
 1293 filed, been adjudicated guilty of a criminal offense or
 1294 comparable ordinance violation, or been adjudicated delinquent
 1295 for committing any felony or a misdemeanor specified in s.
 1296 943.051(3)(b).

1297 2. Has not been adjudicated guilty of, or adjudicated
 1298 delinquent for committing, any of the acts stemming from the
 1299 arrest or alleged criminal activity to which the petition
 1300 pertains.

1301 3. Has never secured a prior sealing or expunction of a
 1302 criminal history record under this section, s. 943.059, former
 1303 s. 893.14, former s. 901.33, or former s. 943.058, unless
 1304 expunction is sought of a criminal history record previously
 1305 sealed for 10 years pursuant to paragraph (2)(h) and the record
 1306 is otherwise eligible for expunction.

1307 4. Is eligible for such an expunction to the best of his
 1308 or her knowledge or belief and does not have any other petition
 1309 to expunge or any petition to seal pending before any court.

1310
 1311 Any person who knowingly provides false information on such
 1312 sworn statement to the court commits a felony of the third
 1313 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1314 775.084.

1315 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
 1316 petitioning the court to expunge a criminal history record, a
 1317 person seeking to expunge a criminal history record shall apply

1318 | to the department for a certificate of eligibility for
 1319 | expunction. The department shall, by rule adopted pursuant to
 1320 | chapter 120, establish procedures pertaining to the application
 1321 | for and issuance of certificates of eligibility for expunction.
 1322 | A certificate of eligibility for expunction is valid for 12
 1323 | months after the date stamped on the certificate when issued by
 1324 | the department. After that time, the petitioner must reapply to
 1325 | the department for a new certificate of eligibility. Eligibility
 1326 | for a renewed certification of eligibility must be based on the
 1327 | status of the applicant and the law in effect at the time of the
 1328 | renewal application. The department shall issue a certificate of
 1329 | eligibility for expunction to a person who is the subject of a
 1330 | criminal history record if that person:

1331 | (a) Has obtained, and submitted to the department, a
 1332 | written, certified statement from the appropriate state attorney
 1333 | or statewide prosecutor which indicates:

1334 | 1. That an indictment, information, or other charging
 1335 | document was not filed or issued in the case.

1336 | 2. That an indictment, information, or other charging
 1337 | document, if filed or issued in the case, was dismissed or nolle
 1338 | prosequi by the state attorney or statewide prosecutor, or was
 1339 | dismissed by a court of competent jurisdiction, and that none of
 1340 | the charges related to the arrest or alleged criminal activity
 1341 | to which the petition to expunge pertains resulted in a trial,
 1342 | without regard to whether the outcome of the trial was other
 1343 | than an adjudication of guilt.

1344 3. That the criminal history record does not relate to a
 1345 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 1346 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
 1347 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
 1348 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
 1349 or any violation specified as a predicate offense for
 1350 registration as a sexual predator pursuant to s. 775.21, without
 1351 regard to whether that offense alone is sufficient to require
 1352 such registration, or for registration as a sexual offender
 1353 pursuant to s. 943.0435, where the defendant was found guilty
 1354 of, or pled guilty or nolo contendere to any such offense, or
 1355 that the defendant, as a minor, was found to have committed, or
 1356 pled guilty or nolo contendere to committing, such an offense as
 1357 a delinquent act, without regard to whether adjudication was
 1358 withheld.

1359 (b) Remits a \$75 processing fee to the department for
 1360 placement in the Department of Law Enforcement Operating Trust
 1361 Fund, unless such fee is waived by the executive director.

1362 (c) Has submitted to the department a certified copy of
 1363 the disposition of the charge to which the petition to expunge
 1364 pertains.

1365 (d) Has never, prior to the date on which the application
 1366 for a certificate of eligibility is filed, been adjudicated
 1367 guilty of a criminal offense or comparable ordinance violation,
 1368 or been adjudicated delinquent for committing any felony or a
 1369 misdemeanor specified in s. 943.051(3)(b).

1370 (e) Has not been adjudicated guilty of, or adjudicated
 1371 delinquent for committing, any of the acts stemming from the
 1372 arrest or alleged criminal activity to which the petition to
 1373 expunge pertains.

1374 (f) Has never secured a prior sealing or expunction of a
 1375 criminal history record under this section, s. 943.059, former
 1376 s. 893.14, former s. 901.33, or former s. 943.058, unless
 1377 expunction is sought of a criminal history record previously
 1378 sealed for 10 years pursuant to paragraph (h) and the record is
 1379 otherwise eligible for expunction.

1380 (g) Is no longer under court supervision applicable to the
 1381 disposition of the arrest or alleged criminal activity to which
 1382 the petition to expunge pertains.

1383 (h) Has previously obtained a court order sealing the
 1384 record under this section, former s. 893.14, former s. 901.33,
 1385 or former s. 943.058 for a minimum of 10 years because
 1386 adjudication was withheld or because all charges related to the
 1387 arrest or alleged criminal activity to which the petition to
 1388 expunge pertains were not dismissed prior to trial, without
 1389 regard to whether the outcome of the trial was other than an
 1390 adjudication of guilt. The requirement for the record to have
 1391 previously been sealed for a minimum of 10 years does not apply
 1392 when a plea was not entered or all charges related to the arrest
 1393 or alleged criminal activity to which the petition to expunge
 1394 pertains were dismissed prior to trial.

1395 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

1396 (a) In judicial proceedings under this section, a copy of
 1397 the completed petition to expunge shall be served upon the
 1398 appropriate state attorney or the statewide prosecutor and upon
 1399 the arresting agency; however, it is not necessary to make any
 1400 agency other than the state a party. The appropriate state
 1401 attorney or the statewide prosecutor and the arresting agency
 1402 may respond to the court regarding the completed petition to
 1403 expunge.

1404 (b) If relief is granted by the court, the clerk of the
 1405 court shall certify copies of the order to the appropriate state
 1406 attorney or the statewide prosecutor and the arresting agency.
 1407 The arresting agency is responsible for forwarding the order to
 1408 any other agency to which the arresting agency disseminated the
 1409 criminal history record information to which the order pertains.
 1410 The department shall forward the order to expunge to the Federal
 1411 Bureau of Investigation. The clerk of the court shall certify a
 1412 copy of the order to any other agency which the records of the
 1413 court reflect has received the criminal history record from the
 1414 court.

1415 (c) For an order to expunge entered by a court prior to
 1416 July 1, 1992, the department shall notify the appropriate state
 1417 attorney or statewide prosecutor of an order to expunge which is
 1418 contrary to law because the person who is the subject of the
 1419 record has previously been convicted of a crime or comparable
 1420 ordinance violation or has had a prior criminal history record
 1421 sealed or expunged. Upon receipt of such notice, the appropriate

1422 state attorney or statewide prosecutor shall take action, within
 1423 60 days, to correct the record and petition the court to void
 1424 the order to expunge. The department shall seal the record until
 1425 such time as the order is voided by the court.

1426 (d) On or after July 1, 1992, the department or any other
 1427 criminal justice agency is not required to act on an order to
 1428 expunge entered by a court when such order does not comply with
 1429 the requirements of this section. Upon receipt of such an order,
 1430 the department must notify the issuing court, the appropriate
 1431 state attorney or statewide prosecutor, the petitioner or the
 1432 petitioner's attorney, and the arresting agency of the reason
 1433 for noncompliance. The appropriate state attorney or statewide
 1434 prosecutor shall take action within 60 days to correct the
 1435 record and petition the court to void the order. No cause of
 1436 action, including contempt of court, shall arise against any
 1437 criminal justice agency for failure to comply with an order to
 1438 expunge when the petitioner for such order failed to obtain the
 1439 certificate of eligibility as required by this section or such
 1440 order does not otherwise comply with the requirements of this
 1441 section.

1442 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
 1443 criminal history record of a minor or an adult which is ordered
 1444 expunged by a court of competent jurisdiction pursuant to this
 1445 section must be physically destroyed or obliterated by any
 1446 criminal justice agency having custody of such record; except
 1447 that any criminal history record in the custody of the

1448 department must be retained in all cases. A criminal history
 1449 record ordered expunged that is retained by the department is
 1450 confidential and exempt from the provisions of s. 119.07(1) and
 1451 s. 24(a), Art. I of the State Constitution and not available to
 1452 any person or entity except upon order of a court of competent
 1453 jurisdiction. A criminal justice agency may retain a notation
 1454 indicating compliance with an order to expunge.

1455 (a) The person who is the subject of a criminal history
 1456 record that is expunged under this section or under other
 1457 provisions of law, including former s. 893.14, former s. 901.33,
 1458 and former s. 943.058, may lawfully deny or fail to acknowledge
 1459 the arrests covered by the expunged record, except when the
 1460 subject of the record:

- 1461 1. Is a candidate for employment with a criminal justice
 1462 agency;
- 1463 2. Is a defendant in a criminal prosecution;
- 1464 3. Concurrently or subsequently petitions for relief under
 1465 this section, s. 943.0583, or s. 943.059;
- 1466 4. Is a candidate for admission to The Florida Bar;
- 1467 5. Is seeking to be employed or licensed by or to contract
 1468 with the Department of Children and Families, the Division of
 1469 Vocational Rehabilitation within the Department of Education,
 1470 the Agency for Health Care Administration, the Agency for
 1471 Persons with Disabilities, the Department of Health, the
 1472 Department of Elderly Affairs, or the Department of Juvenile
 1473 Justice or to be employed or used by such contractor or licensee

1474 in a sensitive position having direct contact with children, the
 1475 disabled, or the elderly; or

1476 6. Is seeking to be employed or licensed by the Department
 1477 of Education, any district school board, any university
 1478 laboratory school, any charter school, any private or parochial
 1479 school, or any local governmental entity that licenses child
 1480 care facilities.

1481 (b) Subject to the exceptions in paragraph (a), a person
 1482 who has been granted an expunction under this section, former s.
 1483 893.14, former s. 901.33, or former s. 943.058 may not be held
 1484 under any provision of law of this state to commit perjury or to
 1485 be otherwise liable for giving a false statement by reason of
 1486 such person's failure to recite or acknowledge an expunged
 1487 criminal history record.

1488 (c) Information relating to the existence of an expunged
 1489 criminal history record which is provided in accordance with
 1490 paragraph (a) is confidential and exempt from the provisions of
 1491 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 1492 except that the department shall disclose the existence of a
 1493 criminal history record ordered expunged to the entities set
 1494 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
 1495 respective licensing, access authorization, and employment
 1496 purposes, and to criminal justice agencies for their respective
 1497 criminal justice purposes. It is unlawful for any employee of an
 1498 entity set forth in subparagraph (a)1., subparagraph (a)4.,
 1499 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to

1500 disclose information relating to the existence of an expunged
 1501 criminal history record of a person seeking employment, access
 1502 authorization, or licensure with such entity or contractor,
 1503 except to the person to whom the criminal history record relates
 1504 or to persons having direct responsibility for employment,
 1505 access authorization, or licensure decisions. Any person who
 1506 violates this paragraph commits a misdemeanor of the first
 1507 degree, punishable as provided in s. 775.082 or s. 775.083.

1508 (5) STATUTORY REFERENCES.—Any reference to any other
 1509 chapter, section, or subdivision of the Florida Statutes in this
 1510 section constitutes a general reference under the doctrine of
 1511 incorporation by reference.

1512 Section 26. Section 943.059, Florida Statutes, is amended
 1513 to read:

1514 943.059 Court-ordered sealing of criminal history
 1515 records.—The courts of this state shall continue to have
 1516 jurisdiction over their own procedures, including the
 1517 maintenance, sealing, and correction of judicial records
 1518 containing criminal history information to the extent such
 1519 procedures are not inconsistent with the conditions,
 1520 responsibilities, and duties established by this section. Any
 1521 court of competent jurisdiction may order a criminal justice
 1522 agency to seal the criminal history record of a minor or an
 1523 adult who complies with the requirements of this section. The
 1524 court shall not order a criminal justice agency to seal a
 1525 criminal history record until the person seeking to seal a

1526 criminal history record has applied for and received a
 1527 certificate of eligibility for sealing pursuant to subsection
 1528 (2). A criminal history record that relates to a violation of s.
 1529 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
 1530 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
 1531 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
 1532 s. 916.1075, a violation enumerated in s. 907.041, or any
 1533 violation specified as a predicate offense for registration as a
 1534 sexual predator pursuant to s. 775.21, without regard to whether
 1535 that offense alone is sufficient to require such registration,
 1536 or for registration as a sexual offender pursuant to s.
 1537 943.0435, may not be sealed, without regard to whether
 1538 adjudication was withheld, if the defendant was found guilty of
 1539 or pled guilty or nolo contendere to the offense, or if the
 1540 defendant, as a minor, was found to have committed or pled
 1541 guilty or nolo contendere to committing the offense as a
 1542 delinquent act. The court may only order sealing of a criminal
 1543 history record pertaining to one arrest or one incident of
 1544 alleged criminal activity, except as provided in this section.
 1545 The court may, at its sole discretion, order the sealing of a
 1546 criminal history record pertaining to more than one arrest if
 1547 the additional arrests directly relate to the original arrest.
 1548 If the court intends to order the sealing of records pertaining
 1549 to such additional arrests, such intent must be specified in the
 1550 order. A criminal justice agency may not seal any record
 1551 pertaining to such additional arrests if the order to seal does

1552 not articulate the intention of the court to seal records
 1553 pertaining to more than one arrest. This section does not
 1554 prevent the court from ordering the sealing of only a portion of
 1555 a criminal history record pertaining to one arrest or one
 1556 incident of alleged criminal activity. Notwithstanding any law
 1557 to the contrary, a criminal justice agency may comply with laws,
 1558 court orders, and official requests of other jurisdictions
 1559 relating to sealing, correction, or confidential handling of
 1560 criminal history records or information derived therefrom. This
 1561 section does not confer any right to the sealing of any criminal
 1562 history record, and any request for sealing a criminal history
 1563 record may be denied at the sole discretion of the court.

1564 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each
 1565 petition to a court to seal a criminal history record is
 1566 complete only when accompanied by:

1567 (a) A valid certificate of eligibility for sealing issued
 1568 by the department pursuant to subsection (2).

1569 (b) The petitioner's sworn statement attesting that the
 1570 petitioner:

1571 1. Has never, prior to the date on which the petition is
 1572 filed, been adjudicated guilty of a criminal offense or
 1573 comparable ordinance violation, or been adjudicated delinquent
 1574 for committing any felony or a misdemeanor specified in s.
 1575 943.051(3)(b).

1576 2. Has not been adjudicated guilty of or adjudicated
 1577 delinquent for committing any of the acts stemming from the

1578 arrest or alleged criminal activity to which the petition to
 1579 seal pertains.

1580 3. Has never secured a prior sealing or expunction of a
 1581 criminal history record under this section, s. 943.0585, former
 1582 s. 893.14, former s. 901.33, or former s. 943.058.

1583 4. Is eligible for such a sealing to the best of his or
 1584 her knowledge or belief and does not have any other petition to
 1585 seal or any petition to expunge pending before any court.

1586

1587 Any person who knowingly provides false information on such
 1588 sworn statement to the court commits a felony of the third
 1589 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1590 775.084.

1591 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
 1592 petitioning the court to seal a criminal history record, a
 1593 person seeking to seal a criminal history record shall apply to
 1594 the department for a certificate of eligibility for sealing. The
 1595 department shall, by rule adopted pursuant to chapter 120,
 1596 establish procedures pertaining to the application for and
 1597 issuance of certificates of eligibility for sealing. A
 1598 certificate of eligibility for sealing is valid for 12 months
 1599 after the date stamped on the certificate when issued by the
 1600 department. After that time, the petitioner must reapply to the
 1601 department for a new certificate of eligibility. Eligibility for
 1602 a renewed certification of eligibility must be based on the
 1603 status of the applicant and the law in effect at the time of the

1604 renewal application. The department shall issue a certificate of
 1605 eligibility for sealing to a person who is the subject of a
 1606 criminal history record provided that such person:

1607 (a) Has submitted to the department a certified copy of
 1608 the disposition of the charge to which the petition to seal
 1609 pertains.

1610 (b) Remits a \$75 processing fee to the department for
 1611 placement in the Department of Law Enforcement Operating Trust
 1612 Fund, unless such fee is waived by the executive director.

1613 (c) Has never, prior to the date on which the application
 1614 for a certificate of eligibility is filed, been adjudicated
 1615 guilty of a criminal offense or comparable ordinance violation,
 1616 or been adjudicated delinquent for committing any felony or a
 1617 misdemeanor specified in s. 943.051(3)(b).

1618 (d) Has not been adjudicated guilty of or adjudicated
 1619 delinquent for committing any of the acts stemming from the
 1620 arrest or alleged criminal activity to which the petition to
 1621 seal pertains.

1622 (e) Has never secured a prior sealing or expunction of a
 1623 criminal history record under this section, s. 943.0585, former
 1624 s. 893.14, former s. 901.33, or former s. 943.058.

1625 (f) Is no longer under court supervision applicable to the
 1626 disposition of the arrest or alleged criminal activity to which
 1627 the petition to seal pertains.

1628 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.—

1629 (a) In judicial proceedings under this section, a copy of

1630 the completed petition to seal shall be served upon the
 1631 appropriate state attorney or the statewide prosecutor and upon
 1632 the arresting agency; however, it is not necessary to make any
 1633 agency other than the state a party. The appropriate state
 1634 attorney or the statewide prosecutor and the arresting agency
 1635 may respond to the court regarding the completed petition to
 1636 seal.

1637 (b) If relief is granted by the court, the clerk of the
 1638 court shall certify copies of the order to the appropriate state
 1639 attorney or the statewide prosecutor and to the arresting
 1640 agency. The arresting agency is responsible for forwarding the
 1641 order to any other agency to which the arresting agency
 1642 disseminated the criminal history record information to which
 1643 the order pertains. The department shall forward the order to
 1644 seal to the Federal Bureau of Investigation. The clerk of the
 1645 court shall certify a copy of the order to any other agency
 1646 which the records of the court reflect has received the criminal
 1647 history record from the court.

1648 (c) For an order to seal entered by a court prior to July
 1649 1, 1992, the department shall notify the appropriate state
 1650 attorney or statewide prosecutor of any order to seal which is
 1651 contrary to law because the person who is the subject of the
 1652 record has previously been convicted of a crime or comparable
 1653 ordinance violation or has had a prior criminal history record
 1654 sealed or expunged. Upon receipt of such notice, the appropriate
 1655 state attorney or statewide prosecutor shall take action, within

1656 60 days, to correct the record and petition the court to void
 1657 the order to seal. The department shall seal the record until
 1658 such time as the order is voided by the court.

1659 (d) On or after July 1, 1992, the department or any other
 1660 criminal justice agency is not required to act on an order to
 1661 seal entered by a court when such order does not comply with the
 1662 requirements of this section. Upon receipt of such an order, the
 1663 department must notify the issuing court, the appropriate state
 1664 attorney or statewide prosecutor, the petitioner or the
 1665 petitioner's attorney, and the arresting agency of the reason
 1666 for noncompliance. The appropriate state attorney or statewide
 1667 prosecutor shall take action within 60 days to correct the
 1668 record and petition the court to void the order. No cause of
 1669 action, including contempt of court, shall arise against any
 1670 criminal justice agency for failure to comply with an order to
 1671 seal when the petitioner for such order failed to obtain the
 1672 certificate of eligibility as required by this section or when
 1673 such order does not comply with the requirements of this
 1674 section.

1675 (e) An order sealing a criminal history record pursuant to
 1676 this section does not require that such record be surrendered to
 1677 the court, and such record shall continue to be maintained by
 1678 the department and other criminal justice agencies.

1679 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
 1680 history record of a minor or an adult which is ordered sealed by
 1681 a court of competent jurisdiction pursuant to this section is

1682 confidential and exempt from the provisions of s. 119.07(1) and
 1683 s. 24(a), Art. I of the State Constitution and is available only
 1684 to the person who is the subject of the record, to the subject's
 1685 attorney, to criminal justice agencies for their respective
 1686 criminal justice purposes, which include conducting a criminal
 1687 history background check for approval of firearms purchases or
 1688 transfers as authorized by state or federal law, to judges in
 1689 the state courts system for the purpose of assisting them in
 1690 their case-related decisionmaking responsibilities, as set forth
 1691 in s. 943.053(5), or to those entities set forth in
 1692 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
 1693 licensing, access authorization, and employment purposes.

1694 (a) The subject of a criminal history record sealed under
 1695 this section or under other provisions of law, including former
 1696 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 1697 deny or fail to acknowledge the arrests covered by the sealed
 1698 record, except when the subject of the record:

- 1699 1. Is a candidate for employment with a criminal justice
 1700 agency;
- 1701 2. Is a defendant in a criminal prosecution;
- 1702 3. Concurrently or subsequently petitions for relief under
 1703 this section, s. 943.0583, or s. 943.0585;
- 1704 4. Is a candidate for admission to The Florida Bar;
- 1705 5. Is seeking to be employed or licensed by or to contract
 1706 with the Department of Children and Families, the Division of
 1707 Vocational Rehabilitation within the Department of Education,

1708 the Agency for Health Care Administration, the Agency for
 1709 Persons with Disabilities, the Department of Health, the
 1710 Department of Elderly Affairs, or the Department of Juvenile
 1711 Justice or to be employed or used by such contractor or licensee
 1712 in a sensitive position having direct contact with children, the
 1713 disabled, or the elderly;

1714 6. Is seeking to be employed or licensed by the Department
 1715 of Education, any district school board, any university
 1716 laboratory school, any charter school, any private or parochial
 1717 school, or any local governmental entity that licenses child
 1718 care facilities; or

1719 7. Is attempting to purchase a firearm from a licensed
 1720 importer, licensed manufacturer, or licensed dealer and is
 1721 subject to a criminal history check under state or federal law.

1722 (b) Subject to the exceptions in paragraph (a), a person
 1723 who has been granted a sealing under this section, former s.
 1724 893.14, former s. 901.33, or former s. 943.058 may not be held
 1725 under any provision of law of this state to commit perjury or to
 1726 be otherwise liable for giving a false statement by reason of
 1727 such person's failure to recite or acknowledge a sealed criminal
 1728 history record.

1729 (c) Information relating to the existence of a sealed
 1730 criminal record provided in accordance with the provisions of
 1731 paragraph (a) is confidential and exempt from the provisions of
 1732 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 1733 except that the department shall disclose the sealed criminal

1734 history record to the entities set forth in subparagraphs (a)1.,
 1735 4., 5., 6., and 8. for their respective licensing, access
 1736 authorization, and employment purposes. It is unlawful for any
 1737 employee of an entity set forth in subparagraph (a)1.,
 1738 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
 1739 subparagraph (a)8. to disclose information relating to the
 1740 existence of a sealed criminal history record of a person
 1741 seeking employment, access authorization, or licensure with such
 1742 entity or contractor, except to the person to whom the criminal
 1743 history record relates or to persons having direct
 1744 responsibility for employment, access authorization, or
 1745 licensure decisions. Any person who violates the provisions of
 1746 this paragraph commits a misdemeanor of the first degree,
 1747 punishable as provided in s. 775.082 or s. 775.083.

1748 (5) STATUTORY REFERENCES.—Any reference to any other
 1749 chapter, section, or subdivision of the Florida Statutes in this
 1750 section constitutes a general reference under the doctrine of
 1751 incorporation by reference.

1752 Section 27. Paragraph (b) of subsection (1) of section
 1753 944.606, Florida Statutes, is amended to read:

1754 944.606 Sexual offenders; notification upon release.—

1755 (1) As used in this section:

1756 (b) "Sexual offender" means a person who has been
 1757 convicted of committing, or attempting, soliciting, or
 1758 conspiring to commit, any of the criminal offenses proscribed in
 1759 the following statutes in this state or similar offenses in

1760 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),
 1761 where the victim is a minor and the defendant is not the
 1762 victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g) ~~r~~
 1763 ~~or (h)~~; s. 794.011, excluding s. 794.011(10); s. 794.05; ~~s.~~
 1764 ~~796.03; s. 796.035;~~ s. 800.04; s. 810.145(8); s. 825.1025; s.
 1765 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 1766 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any
 1767 similar offense committed in this state which has been
 1768 redesignated from a former statute number to one of those listed
 1769 in this subsection, when the department has received verified
 1770 information regarding such conviction; an offender's
 1771 computerized criminal history record is not, in and of itself,
 1772 verified information.

1773 Section 28. Paragraph (a) of subsection (1) of section
 1774 944.607, Florida Statutes, is amended to read:

1775 944.607 Notification to Department of Law Enforcement of
 1776 information on sexual offenders.-

1777 (1) As used in this section, the term:

1778 (a) "Sexual offender" means a person who is in the custody
 1779 or control of, or under the supervision of, the department or is
 1780 in the custody of a private correctional facility:

1781 1. On or after October 1, 1997, as a result of a
 1782 conviction for committing, or attempting, soliciting, or
 1783 conspiring to commit, any of the criminal offenses proscribed in
 1784 the following statutes in this state or similar offenses in
 1785 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),

CS/HB 1017

2014

1786 where the victim is a minor and the defendant is not the
 1787 victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g) ~~r~~
 1788 ~~or (h)~~; s. 794.011, excluding s. 794.011(10); s. 794.05; ~~s.~~
 1789 ~~796.03; s. 796.035~~; s. 800.04; s. 810.145(8); s. 825.1025; s.
 1790 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 1791 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any
 1792 similar offense committed in this state which has been
 1793 redesignated from a former statute number to one of those listed
 1794 in this paragraph; or

1795 2. Who establishes or maintains a residence in this state
 1796 and who has not been designated as a sexual predator by a court
 1797 of this state but who has been designated as a sexual predator,
 1798 as a sexually violent predator, or by another sexual offender
 1799 designation in another state or jurisdiction and was, as a
 1800 result of such designation, subjected to registration or
 1801 community or public notification, or both, or would be if the
 1802 person were a resident of that state or jurisdiction, without
 1803 regard as to whether the person otherwise meets the criteria for
 1804 registration as a sexual offender.

1805 Section 29. Subsection (2) of section 948.013, Florida
 1806 Statutes, is amended to read:

1807 948.013 Administrative probation.—

1808 (2) Effective for an offense committed on or after July 1,
 1809 1998, a person is ineligible for placement on administrative
 1810 probation if the person is sentenced to or is serving a term of
 1811 probation or community control, regardless of the conviction or

CS/HB 1017

2014

1812 adjudication, for committing, or attempting, conspiring, or
 1813 soliciting to commit, any of the felony offenses described in s.
 1814 787.01 or s. 787.02, where the victim is a minor and the
 1815 defendant is not the victim's parent; s. 787.025; chapter 794;
 1816 ~~s. 796.03~~; s. 800.04; s. 825.1025(2)(b); s. 827.071; s.
 1817 847.0133; s. 847.0135; or s. 847.0145.

1818 Section 30. Subsection (1) of section 948.32, Florida
 1819 Statutes, is amended to read:

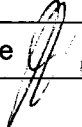

1820 948.32 Requirements of law enforcement agency upon arrest
 1821 of persons for certain sex offenses.—

1822 (1) When any state or local law enforcement agency
 1823 investigates or arrests a person for committing, or attempting,
 1824 soliciting, or conspiring to commit, a violation of s.
 1825 787.025(2)(c), chapter 794, ~~s. 796.03~~, s. 800.04, s. 827.071, s.
 1826 847.0133, s. 847.0135, or s. 847.0145, the law enforcement
 1827 agency shall contact the Department of Corrections to verify
 1828 whether the person under investigation or under arrest is on
 1829 probation, community control, parole, conditional release, or
 1830 control release.

1831 Section 31. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1029 Personal Identification Information Theft
SPONSOR(S): Criminal Justice Subcommittee; Artiles
TIED BILLS: IDEN./SIM. BILLS: SB 1472

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

SUMMARY ANALYSIS

Currently, it is third degree felony for a person to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, personal identification information (PII) concerning an individual without first obtaining that individual's consent. The penalty may be enhanced based on the pecuniary value of the PII involved in the offense or based on the number of individuals whose PII was fraudulently used.

The bill amends s. 817.568, F.S., to make it a second degree felony for any person to willfully and without authorization fraudulently use the PII of an individual, without first obtaining their consent, who is:

- 60 years of age or older;
- A disabled adult as defined in s. 825.101, F.S.;
- A public servant as defined in s. 838.014, F.S.;
- A veteran as defined in s. 1.01, F.S.;
- A first responder as defined in s. 125.01045, F.S.;
- An individual who is employed by the State of Florida; or
- An individual who is employed by the Federal Government.

The bill also requires the court to impose a \$151 surcharge on persons convicted of any crime in s. 817.568, F.S. The bill allocates the surcharge as follows:

- \$75 of the surcharge is deposited into the Florida Department of Law Enforcement (FDLE) Operating Trust Fund for the department to provide grants to local law enforcement agencies in Palm Beach, Broward, and Miami-Dade Counties to investigate the criminal use of PII;
- \$75 of the surcharge is deposited into the State Attorneys Revenue Trust Fund for the purpose of funding prosecutions of offenses relating to the criminal use of PII in the Eleventh, Fifteenth, and Seventeenth Circuits; and
- The clerk of the court retains \$1 of each surcharge.

The bill creates s. 817.5686, F.S., to establish the Identity Theft and Fraud Task Force (Task Force) within FDLE. The purpose of the Task Force is to develop strategies and techniques that will assist in the investigation and prosecution of the criminal use of PII in Palm Beach, Broward, and Miami-Dade Counties.

The Criminal Justice Impact Conference met March 25, 2014 and determined the bill will have an insignificant impact on state prison beds. The bill will have a negative fiscal impact on FDLE of \$318,767 to administer the task force. The bill will have an insignificant positive revenue impact on local governments and State Attorneys. See Fiscal Section.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Identity Theft

Florida has the nation's highest rate of identity theft in the country.¹ The Federal Trade Commission reports that in 2012, south Florida led the country with 645 identity theft complaints per 100,000 people.² Tech security expert Alan Crowetz, believes that Florida's large transient and tourist population may be contributing to Florida's identify theft ranking.³ "You come here, you are on public Wi-Fi and unknown hotels," he said. "If someone rips you off, the next day you may not even be in the same city anymore, ID thieves act fast and often prey on older, less tech-savvy people."⁴

Criminal Use of Personal Identification Information

Section 817.568, F.S., attempts to address the identity theft issue by imposing penalties for the criminal use of personal identification information. The statute makes it a third degree felony⁵ for a person to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent. A person who fraudulently uses personal identification information as proscribed above:

- Commits a second degree felony,⁶ punishable by a three-year minimum mandatory sentence, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is \$5,000 or more or if the person fraudulently uses the personal identification information of 10 or more individuals, but fewer than 20 individuals, without their consent;
- Commits a first degree felony,⁷ punishable by a five-year minimum mandatory sentence, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is \$50,000 or more, or if the person fraudulently used the personal identification information of 20 or more but fewer than 30 individuals; or
- Commits a first degree felony, punishable by a 10-year minimum mandatory sentence, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is \$100,000 or more, or if the person fraudulently used the personal identification information of 30 or more individuals.⁸

The penalty is enhanced for crimes when the victim is a minor. Section 817.568(6), F.S., makes it a second degree felony for any person who willfully and without authorization fraudulently uses personal identification information concerning an individual who is less than 18 years of age without first obtaining the consent of that individual or of his or her legal guardian.

"Personal identification information" is defined as any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or

¹ *Theft a 'huge problem' in South Florida*, Linda Trischitta, SunSentinel, February 17, 2014, http://articles.sun-sentinel.com/2014-02-17/news/fl-fbi-miami-chief-priorities-20140217_1_id-theft-tax-returns-fighting-id (last accessed March 20, 2014).

² *Id.*

³ *South Florida #1 in U.S. for identity theft: Why?*, February 28, 2014,

<http://www.firstcoastnews.com/story/news/local/florida/2014/02/28/south-florida-1-in-us-for-identity-theft-why/5892223/> (last accessed March 20, 2014).

⁴ *Id.*

⁵ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁶ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁷ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁸ Section 817.568(2), F.S.

taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;

- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person's financial resources.⁹

Effect of the Bill

Section 817.568, F.S.

The bill enhances the penalties for personal identification information crimes against specified victims. The bill amends s. 817.568, F.S., to make it a second degree felony for any person to willfully and without authorization fraudulently use the personal identification information of an individual, without first obtaining their consent, who is:

- 60 years of age or older;
- A disabled adult as defined in s. 825.101, F.S.;
- A public servant as defined in s. 838.014, F.S.;
- A veteran as defined in s. 1.01, F.S.;
- A first responder as defined in s. 125.01045, F.S.;
- An individual who is employed by the State of Florida; or
- An individual who is employed by the Federal Government.

The bill also requires the court to impose a \$151 surcharge on persons convicted of any crime in s. 817.568, F.S. Payment of the surcharge must be a condition of probation, community control, or any other court-ordered supervision and may not be waived by the court. If a defendant has been ordered to pay restitution in accordance with s. 775.089, F.S., the \$151 surcharge must be included in a judgment. The bill allocates the surcharge as follows:

- \$75 of the surcharge is deposited into the Florida Department of Law Enforcement's (FDLE) Operating Trust Fund for FDLE to provide grants to local law enforcement agencies in Palm Beach, Broward, and Miami-Dade Counties to investigate the criminal use of personal identification information;
- \$75 of the surcharge is deposited into the State Attorneys Revenue Trust Fund for the purpose of funding prosecutions of offenses relating to the criminal use of personal identification information in the Eleventh, Fifteenth, and Seventeenth Circuits; and
- The clerk of the court retains \$1 of the surcharge.

Task Force

The bill creates s. 817.5686, F.S., to establish the Identity Theft and Fraud Task Force (Task Force) within FDLE. The purpose of the Task Force is to develop strategies and techniques that will assist in the investigation and prosecution of the criminal use of personal identification information in Palm Beach, Broward, and Miami-Dade Counties.¹⁰

The Task Force must consist of the following members or their designees:

- The Special Agent in Charge of FDLE's Miami Regional Operation Center, who serves as chair;
- The Sheriffs of Palm Beach and Broward Counties;
- The Police Chief from the Miami-Dade Police Department;
- The State Attorneys of the Eleventh, Fifteenth, and Seventeenth Circuits; and

⁹ Section 817.568(1)(f), F.S.

¹⁰ The bill provides the following legislative intent language: The Legislature finds that there is a need to develop and implement a strategy to address the investigation and prosecution of the criminal use of personal identification information in Palm Beach, Broward, and Miami-Dade Counties.

- Six members appointed by the chair, consisting of two chiefs of police from Palm Beach County, two chiefs of police from Broward County, and two representatives from the Miami-Dade Police Department.¹¹

Members of the Task Force must serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S. FDLE must provide administrative and support services for the Task Force. The bill requires FDLE to adopt rules pursuant to implement the Task Force.

The Task Force must organize by December 31, 2014, and must meet at least four times per year thereafter. Additional meetings may be held if the chair determines that extraordinary circumstances require such meetings.¹² A majority of the members of the Task Force constitutes a quorum. The chair of the Task Force may appoint subcommittees and subcommittee chairs as necessary in order to address issues related to the Task Force.¹³

The Task Force must coordinate efforts in Palm Beach, Broward, and Miami-Dade Counties to:

- Develop strategies and techniques that will assist in the investigation and prosecution of the criminal use of personal identification information; and
- Incorporate other objectives reasonably related to the goals of enhancing the investigation and prosecution of the criminal use of personal identification information and a citizen's ability to prevent and detect identity theft and fraud.

By December 1, 2017, the Task Force must submit a report on its activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include any recommendations on how to better investigate and prosecute the criminal use of personal identification information. The Task Force dissolves on December 31, 2017.

B. SECTION DIRECTORY:

Section 1. Amends s. 817.568, F.S., relating to criminal use of personal identification information.

Section 2. Creates s. 817.5686, F.S., relating to Identity Theft and Fraud Task Force.

Section 3. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill requires \$75 of the \$151 surcharge to be deposited into the State Attorneys Revenue Trust Fund for the purpose of funding prosecutions of offenses relating to the criminal use of personal identification information in the Eleventh, Fifteenth, and Seventeenth Circuits. In Fiscal Year 2012-13 there were 1,209 sentenced for fraudulent use of personal identification information. If one quarter of those victims fell within those delineated in the bill it would generate \$45,337 (\$22,669 for local law enforcement grants and \$22,669 for deposit in the State Attorneys Revenue Trust Fund).

¹¹ The bill specifies that Legislature finds that the task force serves a legitimate state, county, and municipal purpose and that service on the task force is consistent with a member's principal service in public office or employment. Therefore, membership on the task force does not disqualify a member from holding any other public office or from being employed by a public entity.

¹² Members may appear at meetings by electronic means.

¹³ A subcommittee chair serves at the pleasure of the chair.

2. Expenditures:

The Criminal Justice Impact Conference met March 25, 2014 and determined the bill will have an insignificant impact on state prison beds.

The bill also establishes the Task Force within FDLE. FDLE must provide administrative and support services for the Task Force, which will have a negative workload impact on FDLE. According to FDLE, administering the task force would require the addition of four FTE at a total cost of \$318,767 for salary, benefits, and expenses.

Position	Position Detail	Salary and Benefits	Equipment and Expenses	Total
Government Analyst I	Coordinate meetings, minutes, analyze funding requests and make funding recommendations, and to prepare quarterly and annual task force reports	\$53,142	\$10,378	\$63,520
Operations Review Specialist	Monitor and report each grant's performance	\$58,296	\$10,378	\$68,674
Accountant II	Track grant awards, expenditures, requests for reimbursements, and prepare financial reports required by the Department of Financial Services	\$41,722	\$10,378	\$52,100
Special Agent	Trained and equipped for identity theft investigations and investigative forensics	\$75,832	\$58,641	\$134,473
Total		\$228,992	\$89,775	\$318,767

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill requires \$75 of the \$150 surcharge to be deposited into FDLE's Operating Trust Fund for FDLE to provide grants to local law enforcement agencies in Palm Beach, Broward, and Miami-Dade Counties to investigate the criminal use of personal identification information. In Fiscal Year 2012-13 there were 1,209 sentenced for fraudulent use of personal identification information. If one quarter of those victims fell within those delineated in the bill it would generate \$45,337 (\$22,669 for local law enforcement grants and \$22,669 for deposit in the State Attorneys Revenue Trust Fund).

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because:

- Portions of the bill are criminal law; and
- The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides FDLE with rule-making authority to implement the Task Force.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorable as a committee substitute. The proposed committee substitute enhances the penalties for personal identification information crimes against specified victims and creates s. 817.5686, F.S., to establish the Identity Theft and Fraud Task Force (Task Force) within FDLE.

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 personal identification information
 3 theft; amending s. 817.568, F.S.; providing that it is
 4 unlawful for any person to willfully and without
 5 authorization fraudulently use personal identification
 6 information concerning specified individuals without
 7 their consent; providing criminal penalties; providing
 8 for a surcharge and allocation thereof; providing
 9 legislative findings; creating s. 817.5686, F.S.;
 10 creating the Identity Theft and Fraud Task Force
 11 within the Department of Law Enforcement to assist in
 12 investigation and prosecution of criminal use of
 13 personal identification information in specified
 14 counties; providing for membership; requiring the task
 15 force to organize by a specified date; providing for
 16 meetings; specifying the duties of the task force;
 17 providing rulemaking authority; requiring a report to
 18 the Governor and Legislature; providing for future
 19 repeal; providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Subsections (11) through (17) of section
 24 817.568, Florida Statutes, are renumbered as subsections (13)
 25 through (19), respectively, and new subsections (11) and (12)
 26 are added to that section to read:

27 817.568 Criminal use of personal identification
 28 information.—

29 (11) A person who willfully and without authorization
 30 fraudulently uses personal identification information concerning
 31 an individual who is 60 years of age or older; a disabled adult
 32 as defined in s. 825.101; a public servant as defined in s.
 33 838.014; a veteran as defined in s. 1.01; a first responder as
 34 defined in s. 125.01045; an individual who is employed by the
 35 State of Florida; or an individual who is employed by the
 36 Federal Government without first obtaining the consent of that
 37 individual commits a felony of the second degree, punishable as
 38 provided in s. 775.082, s. 775.083, or s. 775.084.

39 (12) In addition to any sanction imposed when a person
 40 pleads guilty or nolo contendere to, or is found guilty of,
 41 regardless of adjudication, a violation of this section, the
 42 court shall impose a surcharge of \$151. Payment of the surcharge
 43 shall be a condition of probation, community control, or any
 44 other court-ordered supervision. The sum of \$75 of the surcharge
 45 shall be deposited into the Department of Law Enforcement
 46 Operating Trust Fund for the department to provide grants to
 47 local law enforcement agencies in Palm Beach, Broward, and
 48 Miami-Dade Counties to investigate the criminal use of personal
 49 identification information. The sum of \$75 of the surcharge
 50 shall be deposited into the State Attorneys Revenue Trust Fund
 51 for the purpose of funding prosecutions of offenses relating to
 52 the criminal use of personal identification information in the

53 Eleventh Circuit, the Fifteenth Circuit, and the Seventeenth
 54 Circuit. The clerk of the court shall retain \$1 of each
 55 surcharge that he or she collects as a service charge of the
 56 clerk's office.

57 (a) The surcharge may not be waived by the court.

58 (b) In the event that the person has been ordered to pay
 59 restitution in accordance with s. 775.089, the surcharge shall
 60 be included in a judgment.

61 Section 2. Section 817.5686, Florida Statutes, is created
 62 to read:

63 817.5686 Identity Theft and Fraud Task Force.-

64 (1) FINDINGS.-The Legislature finds that there is a need
 65 to develop and implement a strategy to address the investigation
 66 and prosecution of the criminal use of personal identification
 67 information in Palm Beach, Broward, and Miami-Dade Counties.

68 (2) ESTABLISHMENT.-There is created the Identity Theft and
 69 Fraud Task Force within the Department of Law Enforcement. The
 70 purpose of the task force is to develop strategies and
 71 techniques that will assist in the investigation and prosecution
 72 of the criminal use of personal identification information in
 73 Palm Beach, Broward, and Miami-Dade Counties. The task force
 74 shall dissolve on December 31, 2017.

75 (3) MEMBERSHIP.-

76 (a) The task force shall consist of the following members
 77 or their designees:

78 1. The special agent in charge of the Miami Regional

79 Operations Center of the Department of Law Enforcement, who
 80 shall serve as chair.

81 2. The sheriffs of Palm Beach and Broward Counties.

82 3. The police chief of the Miami-Dade Police Department.

83 4. The state attorneys of the Eleventh Circuit, the
 84 Fifteenth Circuit, and the Seventeenth Circuit.

85 5. Six members appointed by the chair, consisting of two
 86 police chiefs from Palm Beach County, two police chiefs from
 87 Broward County, and two representatives from the Miami-Dade
 88 Police Department.

89 (b) The Legislature finds that the task force serves a
 90 legitimate state, county, and municipal purpose and that service
 91 on the task force is consistent with a member's principal
 92 service in public office or employment. Therefore, membership on
 93 the task force does not disqualify a member from holding any
 94 other public office or from being employed by a public entity.

95 (c) Members of the task force shall serve without
 96 compensation but are entitled to reimbursement for per diem and
 97 travel expenses in accordance with s. 112.061.

98 (d) The chair of the task force may appoint subcommittees
 99 and subcommittee chairs as necessary in order to address issues
 100 related to the task force. A subcommittee chair shall serve at
 101 the pleasure of the chair.

102 (4) MEETINGS.—The task force shall organize by December
 103 31, 2014. Thereafter, the task force shall meet at least four
 104 times per year. Additional meetings may be held if the chair

105 determines that extraordinary circumstances require an
 106 additional meeting. Members may appear at meetings by electronic
 107 means. A majority of the members of the task force constitutes a
 108 quorum. The Department of Law Enforcement shall provide
 109 administrative and support services for the task force.

110 (5) DUTIES.—The task force shall coordinate efforts in
 111 Palm Beach, Broward, and Miami-Dade Counties to:

112 (a) Develop strategies and techniques that will assist in
 113 the investigation and prosecution of the criminal use of
 114 personal identification information.

115 (b) Incorporate other objectives reasonably related to the
 116 goals of enhancing the investigation and prosecution of the
 117 criminal use of personal identification information and a
 118 citizen's ability to prevent and detect identity theft and
 119 fraud.

120 (6) RULEMAKING.—The Department of Law Enforcement shall
 121 adopt rules to implement the requirements of this section.

122 (7) REPORT.—By December 1, 2017, the task force shall
 123 submit a report on its activities to the Governor, the President
 124 of the Senate, and the Speaker of the House of Representatives.
 125 The report shall include any recommendations on how to better
 126 investigate and prosecute the criminal use of personal
 127 identification information.

128 (8) REPEAL.—This section is repealed December 31, 2017.
 129 Section 3. This act shall take effect July 1, 2014.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee

3 Representative Artiles offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 44-128 and insert:

7 other court-ordered supervision.

8 (a) The sum of \$75 of the surcharge shall be deposited into
9 the Department of Law Enforcement Operating Trust Fund for the
10 department to provide grants to local law enforcement agencies to
11 investigate offenses related to the criminal use of personal
12 identification information as provided in s. 817.5686.

13 (b) The sum of \$75 of the surcharge shall be deposited into
14 the State Attorneys Revenue Trust Fund for the purpose of funding
15 prosecution of offenses relating to the criminal use of personal
16 identification information.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1029 (2014)

Amendment No. 1

17 (c) The clerk of the court shall retain \$1 of each \$151
18 surcharge that he or she collects as a service charge of the
19 clerk's office.

20 (d) The surcharge may not be waived by the court. In the
21 event that the person has been ordered to pay restitution in
22 accordance with 775.089, the surcharge shall be included in a
23 judgment

24 Section 2. Section 817.5686, Florida Statutes is created to
25 read:

26 817.5686 Identity Theft and Fraud Grant Program.-

27 (1) There is created the Identity Theft and Fraud Grant
28 Program within the Department of Law Enforcement to award grants
29 to support local law enforcement agencies in the investigation
30 and enforcement of personal identification information theft and
31 fraud.

32 (2) Funds collected pursuant to s. 817.568(12)(a) and any
33 funds specifically appropriated for the grant program shall be
34 awarded annually by the Department of Law Enforcement to local
35 law enforcement agencies. The total amount of grants awarded may
36 not exceed funding appropriated for the grant program.

37 (3) The Department of Law Enforcement may establish criteria
38 and set specific time periods for the acceptance of applications
39 and for the selection process for awards.

40 Section 3. For fiscal year 2014-2015 the sum of \$72,000 in
41 recurring funds is appropriated from the General Revenue Fund to
42 the Department of Law Enforcement for local law enforcement

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1029 (2014)

Amendment No. 1

43 grants as provided in s. 817.5686. For fiscal year 2014-2015 the
44 sum of \$42,000 in recurring funds is appropriated, and associated
45 salary rate is authorized, from the General Revenue Fund and one
46 full-time equivalent position to administer the Identity Theft
47 and Fraud Grant Program as provided in s. 817.5686. For fiscal
48 year 2014-2015 the sum of \$186,000 in recurring funds is
49 appropriated from the General Revenue Fund to the State Attorneys
50 Revenue Trust Fund to be distributed equally to the State
51 Attorneys of the Eleventh, Fifteenth and Seventeenth Circuit for
52 salaries and benefits for one assistant state attorney for each
53 circuit to prosecute personal identity theft and fraud offenses.

54
55
56
57 -----
58 **T I T L E A M E N D M E N T**

59 Remove lines 8-19 and insert:

60 for a surcharge and allocation thereof; creating s. 817.5686,
61 F.S.; creating the Identity Theft and Fraud Grant Program;
62 providing an appropriation; providing an effective date.

63

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1065 Licensed Massage Therapists
SPONSOR(S): Health Quality Subcommittee; Kerner
TIED BILLS: IDEN./SIM. **BILLS:** SB 1068

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N, As CS	Guzzo	O'Callaghan
2) Justice Appropriations Subcommittee		deNagy <i>SN</i>	Lloyd <i>B</i>
3) Health & Human Services Committee			

SUMMARY ANALYSIS

In 2012, the Legislature created the Care Provider Background Screening Clearinghouse to create a single program of screening individuals for criminal background checks prior to employment in certain health related service positions.

Chapter 480, F.S., entitled the "Massage Practice Act", governs the practice of massage in Florida. Currently, an applicant for licensure as a massage therapist is not required to undergo a criminal history background screening.

The bill requires applicants for licensure as a massage therapist and individuals with ownership in or management responsibilities for a massage establishment to submit fingerprints for background screening. The bill requires the Board of Massage Therapy to deny applications for initial licensure and licensure renewal of any individual screened and determined to have been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, specified criminal acts.

The bill also requires massage therapists and individuals with ownership in or management responsibilities for a massage establishment who were licensed prior to July 1, 2014, to submit to the background screening requirements by January 31, 2015. The bill authorizes the Department of Health to issue an emergency order suspending the license of a massage therapist, or massage establishment, upon receipt of information that the individual has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, specified criminal acts.

The bill is expected to have a net positive fiscal impact on state government. See FISCAL SECTION.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Regulation of Massage Therapists and Establishments

Chapter 480, F.S., entitled the "Massage Practice Act" (Act), governs the practice of massage¹ in Florida. A significant portion of the Act is dedicated to regulating massage establishments, which are defined as "a site or premises, or portion thereof, wherein a massage therapist practices massage."²

Massage establishments may only operate if they have applied for and received a license from the Department of Health (DOH) in accordance with rules adopted by the Board of Massage Therapy (Board).³ The Board's rules:⁴

- Govern the operation of massage establishments and their facilities, personnel, safety and sanitary requirements, financial responsibility, and insurance coverage;
- Require DOH to inspect a proposed massage establishment upon receipt of an application for licensure to ensure that the site is to be utilized for massage; and
- Require DOH to periodically inspect licensed massage establishments at least once a year.

In order to be licensed as a massage therapist, an applicant must:⁵

- Be at least 18 years of age or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a massage school or apprentice program approved by the board; and
- Pass an examination.

In addition to practicing massage therapy in a licensed massage establishment, a massage therapist may practice at a client's residence or office, at a sports event, or at a convention or trade show.⁶

Background Screening

In 2012, the Legislature passed CS/CS/CS/HB 943, which created the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single "program" of screening individuals and allow for the results of criminal history checks of persons acting as covered care providers to be shared among designated agencies. Designated agencies include the Agency for Health Care Administration (AHCA), DOH, the Department of Children and Families, the Department of Elder Affairs, the Agency for Persons with Disabilities, and Vocational Rehabilitation within the Department of Education. Once a person's screening record is in the Clearinghouse, that person will avoid the need for any future state screens and related fees. Final implementation of the Clearinghouse by the designated state agencies

¹ The term "massage" is defined as the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation. Section 480.033(3), F.S.

² Section 480.033(7), F.S.

³ Section 480.043(1), F.S.

⁴ See Rules 64B7-26.003, 64B7-26.004, and 64B7-26.005, F.A.C.

⁵ Sections 480.041, and 480.042, F.S.

⁶ Section 480.046(1)(n), F.S.

was required by October 1, 2013. The Clearinghouse was initially implemented by AHCA on January 1, 2013.

Florida licensure laws require providers licensed by AHCA to conduct Level 2⁷ criminal background screenings for:⁸

- The licensee;
- Administrators and financial officers;
- Staff of health care providers who offer residential and home care services that provide personal care services or have access to client property, funds or living areas; and
- Any person who is a controlling interest if there is reason to suspect they have committed a disqualifying criminal offense.

Florida licensure laws also require certain health care practitioners licensed by DOH to submit to background screening as a condition of licensure, including, physicians⁹, chiropractors¹⁰, podiatrists¹¹, nurses¹², and persons licensed or registered under part XIV of ch. 468, F.S.¹³ In addition, some health care practitioners may be required to undergo background screening as a condition of employment or to perform volunteer service in a facility that provides care to children, the elderly, or individuals with disabilities.¹⁴

Currently, massage therapists and the owners or operators of massage establishments are not required to undergo a criminal background screening prior to licensure.

Effect of Proposed Changes

The bill amends s. 456.0135, F.S., to add applicants seeking licensure under the Massage Practice Act, ch. 480, F.S., to the list of applicants required to provide electronic fingerprints to FDLE for an FBI national criminal history check. The bill requires all fingerprints submitted to FDLE to be retained by FDLE and enrolled in the national retained print arrest notification program at the FBI, effective when FDLE begins participation in the program. The bill provides that DOH is not required to request FDLE to forward retained prints of an applicant for licensure renewal to the FBI if the fingerprints are already enrolled in the national retained print arrest notification program. The bill also requires all fingerprints submitted to FDLE to be entered into the Clearinghouse.

The bill amends s. 456.074, F.S., to require DOH to issue an emergency order to suspend the license of a massage therapist; massage establishment; person with an ownership interest in the establishment; or, for a corporation that has more than \$250,000 of business assets in Florida, the owner, officer, or individual directly involved in the management of the establishment when DOH learns that the licensee has been convicted or found guilty of a specified felony offense, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, a specified felony offense. Specifically, the bill requires emergency suspension for a criminal offense under sections:

- 787.01, F.S., relating to kidnapping;
- 787.02, F.S., relating to false imprisonment;

⁷ Section 435.04, F.S. A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigation databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of certain specified offenses under s. 435.04(2), F.S.

⁸ Section 408.809, F.S.

⁹ Sections 458.311(1)(g), and 459.0055(1)(j), F.S.

¹⁰ Section 460.406(2)(f), F.S.

¹¹ Section 461.006(1)(e), F.S.

¹² Sections 464.008(1)(b), and 464.009(4), F.S.

¹³ Orthotists, prosthetists, pedorthists, orthotic fitters, orthotic fitter assistants, and orthotist and prosthetist residents.

¹⁴ Section 943.0542, F.S.

- 787.025, F.S., relating to luring or enticing a child;
- 787.06, F.S., relating to human trafficking;
- 787.07, F.S., relating to human smuggling;
- 794.011, F.S., relating to sexual battery;
- 794.08, F.S., relating to female genital mutilation;
- 796.03, F.S., relating to procuring a person under the age of 18 for prostitution;
- 796.035, F.S., relating to the selling or buying of minors into prostitution;
- 796.04, F.S., relating to forcing, compelling, or coercing another to become a prostitute;
- 796.05, F.S., relating to deriving support from the proceeds of a prostitute;
- 796.07(4)(c), F.S., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, F.S., relating to prohibiting prostitution and related acts;
- 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;
- 827.071, F.S., relating to sexual performance by a child;
- 847.0133, F.S., relating to the protection of minors;
- 847.0135, F.S., relating to computer pornography;
- 847.0138, F.S., relating to the transmission of harmful materials to a minor by electronic device or equipment; and
- 847.0145, F.S., relating to the selling or buying of minors.

The bill amends s. 480.041, F.S., to require applicants for initial licensure or renewal licensure as a massage therapist to submit to background screening. The bill provides that massage therapists licensed before July 1, 2014, must submit to background screening by January 31, 2015. Further, the bill requires the board to deny applications for licensure if the applicant has been found guilty of, or entered a plea to, any of the criminal offenses enumerated above.

The bill amends s. 480.043, F.S., to require a person who has an ownership interest in a massage establishment to submit to the background screening requirements under s. 456.0135, F.S. If a corporation submits proof of having more than \$250,000 of business assets in Florida, the owner, officer, or individual directly involved in the management of the establishment is required to submit to the background screening requirements. DOH is required to deny the application for a new or renewal license if a person with an ownership interest, or, for a corporation that has more than \$250,000 of business assets in Florida, the owner, officer, or individual directly involved in the management of a massage establishment, has been found guilty of, or entered a plea to, any of the criminal offenses enumerated above.

Finally, the bill amends s. 480.0465, F.S., to conform a cross-reference.

B. SECTION DIRECTORY:

Section 1: Amends s. 456.0135, F.S., relating to general background screening provisions.

Section 2: Amends s. 456.074, F.S., relating to certain health care practitioners; immediate suspension of license.

Section 3: Amends s. 480.041, F.S., relating to massage therapists; qualifications; licensure; endorsement.

Section 4: Amends s. 480.043, F.S., relating to massage establishments; requisites; licensure; inspection.

Section 5: Amends s. 480.0465, F.S., relating to advertisement.

Section 6: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

An estimated 63,878 massage therapists and other individuals involved in overseeing, managing, or owning massage establishments will be submitting fingerprints for background screening in the first year and 5,896 in the recurring years. These individuals will be charged a fee of \$24 for a state criminal history check and a fee of \$24 for a state retention fee.¹⁵ The estimated total revenue is \$3,066,144 in the first fiscal year and \$283,008 in the recurring fiscal years.¹⁶

2. Expenditures:

FDLE will need to assist with the fingerprint retention processing required by the bill and will need to process the criminal record checks. The estimated costs to FDLE will be \$63,520 in the first fiscal year and \$59,747 in the recurring fiscal years.¹⁷ The projected revenues from the background checks will cover the FDLE costs associated with this bill.

DOH anticipates the background screening of current licensees will result in expenses associated with enforcement actions of approximately \$145,000, as they will need four OPS Investigation Specialists for a period of 6 months and one Senior Attorney for 1 year. However, DOH has indicated that those costs can be absorbed within current budget authority.¹⁸

	Year 1	Year 2	Year 3
Revenues	\$3,066,114	\$283,008	\$283,008
FDLE Expenditures	\$ 63,520	\$ 59,747	\$ 59,747
DOH Expenditures	\$ 145,000	\$145,000	\$145,000
Positive Net Impact	\$2,857,594	\$ 78,261	\$ 78,261

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

All licensed massage therapists and specified persons associated with currently licensed massage establishments will be required to submit to background screening by January 1, 2015. These individuals will be charged a fee of \$24 for a state criminal history check and a fee of \$24 for a state fingerprint retention fee.¹⁹

D. FISCAL COMMENTS:

None.

¹⁵ Florida Department of Law Enforcement, HB 1065 Bill Analysis (March 6, 2014) on file with Justice Appropriations Subcommittee.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Florida Department of Health, HB 1065 Bill Analysis (March 3, 2014) on file with the Health Quality Subcommittee.

¹⁹ Florida Department of Law Enforcement, HB 1065 Bill Analysis (March 6, 2014) on file with Justice Appropriations Subcommittee.

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.

B. RULE-MAKING AUTHORITY:

No additional rule-making is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Health Quality Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Requires DOH to suspend a license of a person who commits a violation of specified crimes, including the license of a massage establishment.
- Requires the Board of Massage Therapy to deny applications for therapist licensure renewal in the same manner for initial licensure.
- Requires DOH to deny applications for massage establishment licensure renewal in the same manner for initial licensure.
- Adds three offenses related to prostitution to the list of disqualifying offenses for massage therapists and owners or managers of massage establishments.
- Changes the terminology that describes which representatives of a massage establishment must submit to background screening to make it consistent throughout the bill.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.

1 A bill to be entitled
 2 An act relating to licensed massage therapists;
 3 amending s. 456.0135, F.S.; requiring an applicant for
 4 licensure under chapter 480, F.S., to submit to
 5 certain fingerprinting requirements; requiring
 6 fingerprints to be enrolled in the national retained
 7 print arrest notification program and the Care
 8 Provider Background Screening Clearinghouse; amending
 9 s. 456.074, F.S.; requiring the Department of Health
 10 to issue an emergency order suspending the license of
 11 a massage therapist or establishment for certain
 12 offenses; amending s. 480.041, F.S.; requiring an
 13 applicant for a massage therapist license to submit to
 14 certain background screening requirements; requiring a
 15 massage therapist who was issued a license before a
 16 specified date to submit to certain background
 17 screening requirements by a specified date; requiring
 18 the Board of Massage Therapy to deny an application
 19 for a new or renewal massage therapy license for
 20 certain offenses; amending s. 480.043, F.S.; requiring
 21 a person with a specified interest in an establishment
 22 to submit to certain background screening
 23 requirements; authorizing the department to adopt
 24 rules related to corporate assets; requiring the
 25 department to deny an application for a new or renewal
 26 massage establishment license for certain offenses;

27 requiring a person with a specified interest in a
 28 massage establishment that was issued a license before
 29 a specified date to submit to certain background
 30 screening requirements by a specified date; conforming
 31 a cross-reference; amending s. 480.0465, F.S.;
 32 conforming a cross-reference; providing an effective
 33 date.

34

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

36

37 Section 1. Section 456.0135, Florida Statutes, is amended
 38 to read:

39 456.0135 General background screening provisions.—

40 (1) An application for initial licensure received on or
 41 after January 1, 2013, under chapter 458, chapter 459, chapter
 42 460, chapter 461, chapter 464, ~~or~~ s. 465.022, or chapter 480
 43 shall include fingerprints pursuant to procedures established by
 44 the department through a vendor approved by the Department of
 45 Law Enforcement and fees imposed for the initial screening and
 46 retention of fingerprints. Fingerprints must be submitted
 47 electronically to the Department of Law Enforcement for state
 48 processing, and the Department of Law Enforcement shall forward
 49 the fingerprints to the Federal Bureau of Investigation for
 50 national processing. Each board, or the department if there is
 51 no board, shall screen the results to determine if an applicant
 52 meets licensure requirements. For any subsequent renewal of the

53 applicant's license that requires a national criminal history
 54 check, the department shall request the Department of Law
 55 Enforcement to forward the retained fingerprints of the
 56 applicant to the Federal Bureau of Investigation unless the
 57 fingerprints are enrolled in the national retained print arrest
 58 notification program.

59 (2) All fingerprints submitted to the Department of Law
 60 Enforcement as required under subsection (1) shall be retained
 61 by the Department of Law Enforcement as provided under s.
 62 943.05(2)(g) and (h) and (3) and enrolled in the national
 63 retained print arrest notification program at the Federal Bureau
 64 of Investigation when the Department of Law Enforcement begins
 65 participation in the program. The department shall notify the
 66 Department of Law Enforcement regarding any person whose
 67 fingerprints have been retained but who is no longer licensed.

68 (3) The costs of fingerprint processing, including the
 69 cost for retaining fingerprints, shall be borne by the applicant
 70 subject to the background screening.

71 (4) All fingerprints received under this section shall be
 72 entered into the Care Provider Background Screening
 73 Clearinghouse as provided in s. 435.12.

74 Section 2. Subsection (5) is added to section 456.074,
 75 Florida Statutes, to read:

76 456.074 Certain health care practitioners; immediate
 77 suspension of license.-

78 (5) The department shall issue an emergency order

79 suspending the license of a massage therapist or establishment
 80 as defined in chapter 480 upon receipt of information that the
 81 massage therapist, a person with an ownership interest in the
 82 establishment, or, for a corporation that has more than \$250,000
 83 of business assets in this state, the owner, officer, or
 84 individual directly involved in the management of the
 85 establishment has been convicted or found guilty of, or has
 86 entered a plea of guilty or nolo contendere to, regardless of
 87 adjudication, a felony offense under any of the following
 88 provisions of state law or a similar provision in another
 89 jurisdiction:

90 (a) Section 787.01, relating to kidnapping.

91 (b) Section 787.02, relating to false imprisonment.

92 (c) Section 787.025, relating to luring or enticing a
 93 child.

94 (d) Section 787.06, relating to human trafficking.

95 (e) Section 787.07, relating to human smuggling.

96 (f) Section 794.011, relating to sexual battery.

97 (g) Section 794.08, relating to female genital mutilation.

98 (h) Section 796.03, relating to procuring a person under
 99 the age of 18 for prostitution.

100 (i) Section 796.035, relating to the selling or buying of
 101 minors into prostitution.

102 (j) Section 796.04, relating to forcing, compelling, or
 103 coercing another to become a prostitute.

104 (k) Section 796.05, relating to deriving support from the

105 proceeds of prostitution.

106 (l) Section 796.07(4)(c), relating to a felony of the
 107 third degree for a third or subsequent violation of s. 796.07,
 108 relating to prohibiting prostitution and related acts.

109 (m) Section 800.04, relating to lewd or lascivious
 110 offenses committed upon or in the presence of persons less than
 111 16 years of age.

112 (n) Section 825.1025(2)(b), relating to lewd or lascivious
 113 offenses committed upon or in the presence of an elderly or
 114 disabled person.

115 (o) Section 827.071, relating to sexual performance by a
 116 child.

117 (p) Section 847.0133, relating to the protection of
 118 minors.

119 (q) Section 847.0135, relating to computer pornography.

120 (r) Section 847.0138, relating to the transmission of
 121 material harmful to minors to a minor by electronic device or
 122 equipment.

123 (s) Section 847.0145, relating to the selling or buying of
 124 minors.

125 Section 3. Subsections (3) and (4) of section 480.041,
 126 Florida Statutes, are renumbered as subsections (4) and (5),
 127 respectively, and a new subsection (3) and subsections (6) and
 128 (7) are added to that section to read:

129 480.041 Massage therapists; qualifications; licensure;
 130 endorsement.—

131 (3) An applicant must submit to background screening under
 132 s. 456.0135.

133 (6) Massage therapists who were issued a license before
 134 July 1, 2014, must submit to the background screening
 135 requirements of s. 456.0135 by January 31, 2015.

136 (7) The board shall deny an application for a new or
 137 renewal license if an applicant has been convicted or found
 138 guilty of, or enters a plea of guilty or nolo contendere to,
 139 regardless of adjudication, a felony offense under any of the
 140 following provisions of state law or a similar provision in
 141 another jurisdiction:

142 (a) Section 787.01, relating to kidnapping.

143 (b) Section 787.02, relating to false imprisonment.

144 (c) Section 787.025, relating to luring or enticing a
 145 child.

146 (d) Section 787.06, relating to human trafficking.

147 (e) Section 787.07, relating to human smuggling.

148 (f) Section 794.011, relating to sexual battery.

149 (g) Section 794.08, relating to female genital mutilation.

150 (h) Section 796.03, relating to procuring a person under
 151 the age of 18 for prostitution.

152 (i) Section 796.035, relating to the selling or buying of
 153 minors into prostitution.

154 (j) Section 796.04, relating to forcing, compelling, or
 155 coercing another to become a prostitute.

156 (k) Section 796.05, relating to deriving support from the

157 proceeds of prostitution.

158 (l) Section 796.07(4)(c), relating to a felony of the
 159 third degree for a third or subsequent violation of s. 796.07,
 160 relating to prohibiting prostitution and related acts.

161 (m) Section 800.04, relating to lewd or lascivious
 162 offenses committed upon or in the presence of persons less than
 163 16 years of age.

164 (n) Section 825.1025(2)(b), relating to lewd or lascivious
 165 offenses committed upon or in the presence of an elderly or
 166 disabled person.

167 (o) Section 827.071, relating to sexual performance by a
 168 child.

169 (p) Section 847.0133, relating to the protection of
 170 minors.

171 (q) Section 847.0135, relating to computer pornography.

172 (r) Section 847.0138, relating to the transmission of
 173 material harmful to minors to a minor by electronic device or
 174 equipment.

175 (s) Section 847.0145, relating to the selling or buying of
 176 minors.

177 Section 4. Subsections (2) through (6) of section 480.043,
 178 Florida Statutes, are renumbered as subsections (3) through (7),
 179 respectively, present subsections (7) through (9) are renumbered
 180 as subsections (9) through (11), respectively, present
 181 subsections (5) and (6) are amended, and new subsections (2),
 182 (8), and (12) are added to that section, to read:

183 480.043 Massage establishments; requisites; licensure;
 184 inspection.-

185 (2) A person who has an ownership interest in an
 186 establishment shall submit to the background screening
 187 requirements under s. 456.0135. However, if a corporation
 188 submits proof of having more than \$250,000 of business assets in
 189 this state, the department shall require the owner, officer, or
 190 individual directly involved in the management of the
 191 establishment to submit to the background screening requirements
 192 of s. 456.0135. The department may adopt rules regarding the
 193 type of proof that may be submitted by a corporation.

194 ~~(6)(5)~~ If, based upon the application and any necessary
 195 investigation, the department determines that the proposed
 196 establishment would fail to meet the standards adopted by the
 197 board under subsection (3) ~~(2)~~, the department shall deny the
 198 application for license. Such denial shall be in writing and
 199 shall list the reasons for denial. Upon correction of any
 200 deficiencies, an applicant previously denied permission to
 201 operate a massage establishment may reapply for licensure.

202 ~~(7)(6)~~ If, based upon the application and any necessary
 203 investigation, the department determines that the proposed
 204 massage establishment may reasonably be expected to meet the
 205 standards adopted by the department under subsection (3) ~~(2)~~,
 206 the department shall grant the license under such restrictions
 207 as it shall deem proper as soon as the original licensing fee is
 208 paid.

209 (8) The department shall deny an application for a new or
 210 renewal license if a person with an ownership interest in the
 211 establishment or, for a corporation that has more than \$250,000
 212 of business assets in this state, the owner, officer, or
 213 individual directly involved in the management of the
 214 establishment has been convicted or found guilty of, or entered
 215 a plea of guilty or nolo contendere to, regardless of
 216 adjudication, a felony offense under any of the following
 217 provisions of state law or a similar provision in another
 218 jurisdiction:

- 219 (a) Section 787.01, relating to kidnapping.
- 220 (b) Section 787.02, relating to false imprisonment.
- 221 (c) Section 787.025, relating to luring or enticing a
 222 child.
- 223 (d) Section 787.06, relating to human trafficking.
- 224 (e) Section 787.07, relating to human smuggling.
- 225 (f) Section 794.011, relating to sexual battery.
- 226 (g) Section 794.08, relating to female genital mutilation.
- 227 (h) Section 796.03, relating to procuring a person under
 228 the age of 18 for prostitution.
- 229 (i) Section 796.035, relating to selling or buying of
 230 minors into prostitution.
- 231 (j) Section 796.04, relating to forcing, compelling, or
 232 coercing another to become a prostitute.
- 233 (k) Section 796.05, relating to deriving support from the
 234 proceeds of prostitution.

235 (l) Section 796.07(4)(c), relating to a felony of the
 236 third degree for a third or subsequent violation of s. 796.07,
 237 relating to prohibiting prostitution and related acts.

238 (m) Section 800.04, relating to lewd or lascivious
 239 offenses committed upon or in the presence of persons less than
 240 16 years of age.

241 (n) Section 825.1025(2)(b), relating to lewd or lascivious
 242 offenses committed upon or in the presence of an elderly or
 243 disabled person.

244 (o) Section 827.071, relating to sexual performance by a
 245 child.

246 (p) Section 847.0133, relating to the protection of
 247 minors.

248 (q) Section 847.0135, relating to computer pornography.

249 (r) Section 847.0138, relating to the transmission of
 250 material harmful to minors to a minor by electronic device or
 251 equipment.

252 (s) Section 847.0145, relating to the selling or buying of
 253 minors.

254 (12) A person with an ownership interest in or, for a
 255 corporation that has more than \$250,000 of business assets in
 256 this state, the owner, officer, or individual directly involved
 257 in the management of an establishment that was issued a license
 258 before July 1, 2014, shall submit to the background screening
 259 requirements of s. 456.0135 before January 31, 2015.

260 Section 5. Section 480.0465, Florida Statutes, is amended

261 to read:

262 480.0465 Advertisement.—Each massage therapist or massage
 263 establishment licensed under the provisions of this act shall
 264 include the number of the license in any advertisement of
 265 massage services appearing in a any newspaper, airwave
 266 transmission, telephone directory, or other advertising medium.
 267 Pending licensure of a new massage establishment pursuant to the
 268 provisions of s. 480.043(7) ~~480.043(6)~~, the license number of a
 269 licensed massage therapist who is an owner or principal officer
 270 of the establishment may be used in lieu of the license number
 271 for the establishment.

272 Section 6. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1105 Sexual Predator and Sexual Offender Absconders
SPONSOR(S): Criminal Justice Subcommittee; Adkins
TIED BILLS: IDEN./SIM. **BILLS:** SB 1416

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cunningham	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Lloyd
3) Judiciary Committee			

SUMMARY ANALYSIS

The Department of Corrections (DOC) supervises offenders sentenced to supervision in circuit court. When an offender absconds from DOC's supervision, it is a violation of the terms and conditions of supervision, and results in a warrant being issued for the offender's arrest.

When a registered sexual predator or sexual offender absconds from supervision, DOC's local probation office notifies local law enforcement agencies that the offender has absconded, and provides them with the warrant and the offender's last known address. DOC, the Florida Police Chiefs Association, and the Florida Sheriffs Association all report that DOC and local law enforcement routinely work together to apprehend registered sex offenders who have absconded from supervision. In addition to these efforts:

- DOC's Absconder Unit assists local probation offices in locating absconders and maintains a website that provides photographs of absconders and a tip line to call or email with information;
- The Florida Department of Law Enforcement (FDLE) shares information with local law enforcement agencies in an effort to ensure that sexual offenders who abscond from registration are located; and
- The United States Marshal's Office's Sex Offender Investigations Branch assists state, local, tribal and territorial authorities in locating and apprehending non-compliant and fugitive sex offenders.

The bill creates the Sexual Predator and Sexual Offender Absconder Strike Force (Strike Force) within the Office of the Attorney General (OAG), whose purpose is to locate registered sexual predators and sexual offenders who are under DOC's supervision and who have absconded from such supervision. The Strike Force consists of the following 11 members or their designees:

- The Attorney General (chair); the executive director of FDLE (vice chair); the Secretary of Children and Families; the Secretary of DOC; the chair of the Parole Commission; the executive director of the Department of Highway Safety and Motor Vehicles; and five members appointed by the Attorney General, consisting of two sheriffs, two chiefs of police, and one state attorney.

The Strike Force must meet at least four times a year and has two duties. It must coordinate with FDLE, DOC and local law enforcement agencies to:

- Arrest registered sexual predators and sexual offenders who are under DOC's supervision and who have absconded from such supervision; and
- Create a statewide list of known absconders and to provide such list to local law enforcement agencies.

The Strike Force must annually submit a report on its activities and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill will require the OAG to administer the strike force which will require one FTE, travel and per diem expenses of approximately \$101,000.

The bill is effective July 1, 2014.

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

STORAGE NAME: h1105a.JUAS.DOCX

DATE: 3/31/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Probation, Community Control, and Conditional Release

Probation is a form of community supervision requiring specified contacts with parole and probation officers, compliance with standard statutory terms and conditions, and compliance with any specific terms and conditions required by the sentencing court.¹ Community control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by probation officers with restricted caseloads.² Conditional release, administered by the Florida Parole Commission (Commission), is a mandatory postrelease supervision required for certain violent inmates.³

Courts are required to impose the conditions of supervision found in s. 948.03, F.S., on probationers and community controllees.⁴ Similarly, the Commission is required to impose the conditions of supervision found in s. 947.1405, F.S., on conditional releasees.⁵ The standard conditions of probation include provisions that require all offenders to:

- Report to the probation and parole supervisors as directed;
- Permit such supervisors to visit him or her at his or her home or elsewhere; and
- Remain within a specified place.⁶

The Department of Corrections (DOC) supervises all probationers, community controllees, and conditional releasees sentenced in circuit court.⁷

Violations of Probation, Community Control, and Conditional Release

Section 948.06, F.S., establishes the procedures that must be used when an offender violates the terms and conditions of his or her supervision. Upon violation, the offender is arrested and brought before the sentencing court. At the first hearing on the violation, the offender is advised of the charge. If the offender admits the charge, the court may immediately revoke, modify, or continue supervision, or place the offender into a community control program.⁸

If the offender denies having violated the terms of the probation, the court may commit him or her to jail or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation violation.⁹ Unless dismissed, the court must conduct a hearing and determine whether the

¹ Section 948.001(8), F.S.

² Section 948.001(3), F.S.

³ Section 947.1405, F.S., requires conditional release for an inmate who:

- Is convicted of a crime committed on or after October 1, 1988, and before January 1, 1994, and any inmate who is convicted of a crime committed on or after January 1, 1994, which crime is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), and who has served at least one prior felony commitment at a state or federal correctional institution;
- Is sentenced as a habitual or violent habitual offender or a violent career criminal pursuant to s. 775.084, F.S.; or
- Is found to be a sexual predator under s. 775.21, F.S., or former s. 775.23, F.S.

⁴ Sections 948.001(8) and 948.03, F.S. These conditions require offenders to comply with a variety of requirements (e.g., report to probation supervisors as directed, permit probation supervisors to visit at home or elsewhere, work faithfully at suitable employment, make restitution, not associate with persons engaged in criminal activities, etc.).

⁵ Section 947.1405(2), F.S.

⁶ Section 948.03(1)(a), (b), and (d), F.S. In addition to these standard conditions of supervision, the court/Commission may add special conditions of supervision that it deems proper. Sections 948.03(2) and 947.1405(6), F.S.

⁷ Sections 948.01(1) and 947.1405, F.S.

⁸ Section 948.06(2), F.S.

⁹ Section 948.06(2)(c), F.S.

offender has knowingly and willfully violated the terms of his or her probation.¹⁰ If the court finds that the offender has violated, the court may immediately revoke, modify, or continue the supervision, or place the offender into a community control program.¹¹

If supervision is revoked, the court must adjudicate the offender guilty of the offense charged and proven or admitted. The court may then impose any sentence that it might have originally imposed for the offense for which the offender was placed on supervision.

Absconders

Occasionally, offenders abscond from DOC's supervision (i.e., they make themselves unavailable for supervision and all efforts to locate the offender have been exhausted).¹² Absconding is a violation of the terms and conditions of supervision, and subjects the offender to the above-described violation process. However, because the offender's location is unknown, he or she cannot be arrested and brought before the sentencing court. Instead, a judge issues a warrant for the offender's arrest.¹³

When a registered sexual predator or sexual offender¹⁴ absconds from supervision, DOC's local probation office and officers notify local law enforcement agencies that the offender has absconded, and provide them with the warrant and the offender's last known address.¹⁵ DOC, the Florida Police Chiefs Association, and the Florida Sheriffs Association all report that DOC and local law enforcement routinely work together to apprehend registered sex offenders who have absconded from supervision.¹⁶

In addition to the local efforts to track down absconders, DOC created an Absconder Unit 13 years ago.¹⁷ Stationed at DOC's Central Office in Tallahassee, the Absconder Unit assists local probation offices in locating high profile absconders.¹⁸ The Absconder Unit maintains a link on DOC's public website¹⁹ that provides photographs of absconders and a tip line to call or email with information. The Absconder Unit investigates tips and coordinates arrests with local law enforcement. The Absconder Unit also uses people search software and other resources to locate absconders or confirm their death.²⁰

The Florida Department of Law Enforcement (FDLE) also assists in the apprehension of sexual predators and sexual offenders who abscond. Section 943.043(5), F.S., requires FDLE to share information with local law enforcement agencies in an effort to ensure that sexual predators and sexual offenders who fail to respond to address-verification attempts or who otherwise abscond from registration are located in a timely manner. FDLE must review and analyze all available information

¹⁰ Section 948.06(2)(d), F.S.

¹¹ Section 948.06(2)(e), F.S.

¹² E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Criminal Justice Subcommittee).

¹³ Section 948.06(1), F.S. Additionally, whenever there are reasonable grounds to believe that an offender has violated his or her supervision, any law enforcement officer who is aware of the supervision status of the offender or any parole or probation supervisor may arrest the offender without warrant and return him or her to the court granting such supervision.

¹⁴ Sections 775.21 and 943.0435, F.S., set forth the criteria for determining whether a person is a "sexual predator" or a "sexual offender." Sexual predators and sexual offenders must comply with a number of statutory registration requirements. Whether a person has to register depends on their offense date (sexual predators) or the date on which the offender was released from the sanction imposed (sexual offenders).

¹⁵ E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Criminal Justice Subcommittee).

¹⁶ *Id.* Also see, E-mail from Amy Mercer, Executive Director of the Florida Police Chiefs Association, dated March 7, 2014; E-mail from Sarah Carroll, Assistant Executive Director of Operations of the Florida Sheriffs Association, dated March 7, 2014 (all on file with the Criminal Justice Subcommittee).

¹⁷ E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Criminal Justice Subcommittee).

¹⁸ *Id.*

¹⁹ The web address for this site is <http://www.dc.state.fl.us/wanted.html> (last visited on March 11, 2014).

²⁰ *Id.*

concerning any such predator or offender and provide the information to local law enforcement agencies in order to assist the agencies in locating and apprehending the offender.²¹ On the federal level, the United States Marshal's Office created the Sex Offender Investigations Branch (SOIB) following the passage of the Adam Walsh Child Protection and Safety Act (AWA) in 2006.²² The SOIB:

- Assists state, local, tribal and territorial authorities in the location and apprehension of non-compliant and fugitive sex offenders;
- Investigates violations of the AWA for federal prosecution; and
- Assists in the identification and location of sex offenders relocated as a result of a major disaster.²³

There are currently 7,906 sexual predators and sexual offenders under DOC's supervision who are required to register.²⁴ Of this pool, there are currently 379 absconders.²⁵

The number of sex offender absconders (who are required to register) has been reduced over the past eight years from 419 in 2007, to 379 in 2014.²⁶

Effect of the Bill

The bill provides the following legislative finding:

- The Legislature finds that there is a need to locate and arrest registered sexual predators and sexual offenders who are under the supervision of the Department of Corrections and who have absconded from such supervision.

The bill creates s. 16.581, F.S., to establish the Sexual Predator and Sexual Offender Absconder Strike Force (Strike Force) within the Office of the Attorney General (OAG). The purpose of the Strike Force is to locate registered sexual predators²⁷ and sexual offenders²⁸ who are under DOC's supervision and who have absconded from such supervision.

The Strike Force must consist of the following 11 members or their designees:

- The Attorney General, who shall serve as chair;
- The executive director of the Department of Law Enforcement, who shall serve as vice chair;
- The Secretary of Children and Families;
- The Secretary of Corrections;
- The chair of the Parole Commission;
- The executive director of the Department of Highway Safety and Motor Vehicles; and
- Five members appointed by the Attorney General, consisting of two sheriffs, two chiefs of police, and one state attorney.²⁹

The five members appointed by the Attorney General must be appointed to 4-year terms.³⁰ Each of the remaining members is a standing member of the Strike Force and may not serve beyond the time he or

²¹ Section 943.043(5), F.S.

²² <http://www.usmarshals.gov/investigations/index.html> (last visited in March 11, 2014).

²³ *Id.*

²⁴ E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Criminal Justice Subcommittee).

²⁵ *Id.* Out of the 379 absconder warrants, 157 were issued 10 or more years ago, while 114 were issued less than three years ago.

²⁶ *Id.*

²⁷ The bill defines "sexual predator" as a person required to register as a sexual predator under s. 775.21, F.S.

²⁸ The bill defines "sexual offender" as a person required to register as a sexual offender under ss. 943.0435 or 944.607, F.S.

²⁹ In making these appointments, the Attorney General must consider representation by geography, population, ethnicity, and other relevant factors in order to ensure that the membership of the Strike Force is representative of the state as a whole.

³⁰ For the purpose of providing staggered terms of the initial appointments, two members must be appointed to a 2-year term, two members must be appointed to a 3-year term, and one member must be appointed to a 4-year term.

she holds the position that was the basis for the membership.³¹ Vacancies must be filled in the same manner as the original appointment, but only for the remainder of the term. Members of the Strike Force must serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S.

OAG must provide administrative and support services for the Strike Force, which must organize by December 31, 2014. Thereafter, the Strike Force must meet at least four times per year. Additional meetings may be held if the chair determines that extraordinary circumstances require an additional meeting. Members may appear at meetings by electronic means, and a majority of the members constitutes a quorum.

The Strike Force has two duties. It must coordinate with FDLE, DOC and local law enforcement agencies to:

- Arrest registered sexual predators and sexual offenders who are under DOC's supervision and who have absconded from such supervision; and
- Create a statewide list of known absconders and to provide such list to local law enforcement agencies.

By October 1, 2015, and annually thereafter, the Strike Force must submit a report on its activities and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

B. SECTION DIRECTORY:

Section 1. Creates s. 16.581, F.S., relating to Sexual Predator and Sexual Offender Absconder Strike Force.

Section 2. Provides and effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill establishes the Sexual Predator and Sexual Offender Absconder Strike Force within OAG. OAG must provide administrative and support services for the Strike Force. This will require one FTE at approximately \$65,000 in salaries and benefits, and travel and per diem expenses for six traveling members of the Strike Force of approximately \$36,000, for a total cost of \$101,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

³¹ Membership on the Strike Force does not disqualify a member from holding any other public office or from being employed by a public entity, except that that a member of the Legislature may not serve on the strike force.

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 because the bill does not appear to require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Currently, OAG has no role in supervising sexual predators or sexual offenders, or in locating sexual predators or sexual offenders who have absconded from supervision. It is unclear why the bill locates the Strike Force within OAG.

The bill requires the Strike Force to submit a report on its activities and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives. However, the duties of the Strike Force do not include making recommendations (only arresting absconders and creating a statewide list of absconders).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2014, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorable as a committee substitute. The proposed committee substitute removed provisions of HB 1105 that amended ch. 394, F.S.

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 sexual predator and sexual offender
 3 absconders; creating s. 16.581, F.S.; providing
 4 legislative findings; creating the Sexual Predator and
 5 Sexual Offender Absconder Strike Force within the
 6 Office of the Attorney General; providing definitions;
 7 providing for the membership and terms of the strike
 8 force; requiring the office to provide administrative
 9 services to the strike force; requiring the strike
 10 force to organize by a specified date; providing for
 11 meetings; specifying the duties of the strike force;
 12 requiring an annual report to the Governor and
 13 Legislature; providing an effective date.

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

16
 17 Section 1. Section 16.581, Florida Statutes, is created to
 18 read:

19 16.581 Sexual Predator and Sexual Offender Absconder
 20 Strike Force.—

21 (1) FINDINGS.—The Legislature finds that there is a need
 22 to locate and arrest registered sexual predators and sexual
 23 offenders who are under the supervision of the Department of
 24 Corrections and who have absconded from such supervision.

25 (2) ESTABLISHMENT.—There is created the Sexual Predator
 26 and Sexual Offender Absconder Strike Force within the Office of

27 the Attorney General. The purpose of the strike force is to
 28 locate registered sexual predators and sexual offenders who are
 29 under the supervision of the Department of Corrections and who
 30 have absconded from such supervision.

31 (3) DEFINITIONS.—As used in this section, the term:

32 (a) "Sexual offender" means a person required to register
 33 as a sexual offender under s. 943.0435 or s. 944.607.

34 (b) "Sexual predator" means a person required to register
 35 as a sexual predator under s. 775.21.

36 (4) MEMBERSHIP.—The strike force shall consist of the
 37 following 11 members or their designees:

38 (a) The Attorney General, who shall serve as chair.

39 (b) The executive director of the Department of Law
 40 Enforcement, who shall serve as vice chair.

41 (c) The Secretary of Children and Families.

42 (d) The Secretary of Corrections.

43 (e) The chair of the Parole Commission.

44 (f) The executive director of the Department of Highway
 45 Safety and Motor Vehicles.

46 (g) Five members appointed by the Attorney General,
 47 consisting of two sheriffs, two chiefs of police, and one state
 48 attorney. In making these appointments, the Attorney General
 49 shall consider representation by geography, population,
 50 ethnicity, and other relevant factors in order to ensure that
 51 the membership of the strike force is representative of the
 52 state as a whole.

53 (5) TERMS OF MEMBERSHIP; COMPENSATION; ADMINISTRATIVE
 54 SERVICES.-

55 (a) The five members appointed by the Attorney General
 56 shall be appointed to 4-year terms; however, for the purpose of
 57 providing staggered terms of the initial appointments, two
 58 members shall be appointed to a 2-year term, two members shall
 59 be appointed to a 3-year term, and one member shall be appointed
 60 to a 4-year term. Each of the remaining members is a standing
 61 member of the strike force and may not serve beyond the time he
 62 or she holds the position that was the basis for the membership.
 63 A vacancy shall be filled in the same manner as the original
 64 appointment but only for the remainder of the term.

65 (b) The Legislature finds that the strike force serves a
 66 legitimate state, county, and municipal purpose and that service
 67 on the strike force is consistent with a member's principal
 68 service in public office or employment. Therefore, membership on
 69 the strike force does not disqualify a member from holding any
 70 other public office or from being employed by a public entity,
 71 except that that a member of the Legislature may not serve on
 72 the strike force.

73 (c) Members of the strike force shall serve without
 74 compensation but are entitled to reimbursement for per diem and
 75 travel expenses in accordance with s. 112.061.

76 (d) The Office of the Attorney General shall provide
 77 administrative and support services for the strike force.

78 (6) MEETINGS.-The strike force shall organize by December

79 31, 2014. Thereafter, the strike force shall meet at least four
 80 times per year. Additional meetings may be held if the chair
 81 determines that extraordinary circumstances require an
 82 additional meeting. Members may appear at meetings by electronic
 83 means. A majority of the members of the strike force constitutes
 84 a quorum.

85 (7) DUTIES.- The strike force shall coordinate with the
 86 Department of Law Enforcement, the Department of Corrections,
 87 and local law enforcement agencies to:

88 (a) Arrest registered sexual predators and sexual
 89 offenders who are under the supervision of the Department of
 90 Corrections and who have absconded from such supervision.

91 (b) Create a statewide list of known absconders and to
 92 provide such list to local law enforcement agencies.

93 (8) REPORT.-By October 1, 2015, and annually thereafter,
 94 the strike force shall submit a report on its activities and
 95 recommendations to the Governor, the President of the Senate,
 96 and the Speaker of the House of Representatives.

97 Section 2. This act shall take effect July 1, 2014.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1105 (2014)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee

3 Representative Adkins offered the following:
4

5 **Amendment (with title amendment)**

6 Remove lines 26-96 and insert:

7 and Sexual Offender Absconder Strike Force within the Department
8 of Law Enforcement. The purpose of the strike force is to
9 develop and prioritize coordinated strategies for the
10 apprehension of registered sexual predators and sexual offenders
11 who are under the supervision of the Department of Corrections
12 and who have absconded from such supervision.

13 (3) DEFINITIONS.—As used in this section, the term:

14 (a) "Sexual offender" means a person required to register
15 as a sexual offender under s. 943.0435 or s. 944.607.

16 (b) "Sexual predator" means a person required to register
17 as a sexual predator under s. 775.21.

667905 - h1105 line 26 Adkins #1.docx

Published On: 4/1/2014 6:50:42 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1105 (2014)

Amendment No. 1

18 (4) MEMBERSHIP.—The strike force shall consist of the
19 following 10 members or their designees:

20 (a) The executive director of the Department of Law
21 Enforcement, who shall serve as chair.

22 (b) The Secretary of Corrections, who shall serve as vice
23 chair.

24 (c) The Secretary of Juvenile Justice.

25 (d) The chair of the Parole Commission.

26 (e) The executive director of the Department of Highway
27 Safety and Motor Vehicles.

28 (f) Five members appointed by the executive director of
29 the Department of Law Enforcement, consisting of two sheriffs,
30 two chiefs of police, and one state attorney. In making these
31 appointments, the executive director of the Department of Law
32 Enforcement shall consider representation by geography,
33 population, ethnicity, and other relevant factors in order to
34 ensure that the membership of the strike force is representative
35 of the state as a whole.

36 (5) TERMS OF MEMBERSHIP; COMPENSATION; ADMINISTRATIVE
37 SERVICES.—

38 (a) The five members appointed by the executive director
39 of the Department of Law Enforcement shall be appointed to 4-
40 year terms; however, for the purpose of providing staggered
41 terms of the initial appointments, two members shall be
42 appointed to a 2-year term, two members shall be appointed to a
43 3-year term, and one member shall be appointed to a 4-year term.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1105 (2014)

Amendment No. 1

44 Each of the remaining members is a standing member of the strike
45 force and may not serve beyond the time he or she holds the
46 position that was the basis for the membership. A vacancy shall
47 be filled in the same manner as the original appointment but
48 only for the remainder of the term.

49 (b) The Legislature finds that the strike force serves a
50 legitimate state, county, and municipal purpose and that service
51 on the strike force is consistent with a member's principal
52 service in public office or employment. Therefore, membership on
53 the strike force does not disqualify a member from holding any
54 other public office or from being employed by a public entity,
55 except that that a member of the Legislature may not serve on
56 the strike force.

57 (c) Members of the strike force shall serve without
58 compensation but are entitled to reimbursement for per diem and
59 travel expenses in accordance with s. 112.061.

60 (d) The Department of Law Enforcement shall provide
61 administrative and support services for the strike force.

62 (6) MEETINGS.—The strike force shall organize by December
63 31, 2014. Thereafter, the strike force shall meet at least four
64 times per year. Additional meetings may be held if the chair
65 determines that extraordinary circumstances require an
66 additional meeting. Members may appear at meetings by electronic
67 means. A majority of the members of the strike force constitutes
68 a quorum.

Amendment No. 1

69 (7) DUTIES.—The strike force shall coordinate with the
70 Department of Corrections and local law enforcement agencies to:

71 (a) Develop and review a statewide list of known sexual
72 predators and sexual offender absconders.

73 (b) Prioritize those absconders that pose the greatest
74 risk to public safety by evaluating their criminal history, most
75 recent dates of offense, length of time as an absconder, and
76 other factors and disseminate such list to local law enforcement
77 agencies.

78 (c) Develop and recommend coordinated state-wide
79 strategies for the apprehension of sexual predators and sexual
80 offender absconders with special focus on those that pose the
81 greatest risk to public safety.

82 (8) REPORT.—By October 1, 2015, and annually thereafter,
83 the strike force shall submit a report on its activities and
84 recommendations to the Governor, the President of the Senate,
85 and the Speaker of the House of Representatives.

86 Section 2. For the 2014-2015 fiscal year, the sum of
87 \$101,418 in recurring funds is appropriated from the General
88 Revenue Fund to the Department of Law Enforcement for the
89 implementation of this act.

90

91

92

93

94

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1105 (2014)

Amendment No. 1

95 Remove lines 6-13 and insert:
96 Department of Law Enforcement; providing definitions;
97 providing for the membership and terms of the strike
98 force; requiring the department to provide
99 administrative services to the strike force; requiring
100 the strike force to organize by a specified date;
101 providing for meetings; specifying the duties of the
102 strike force; requiring an annual report to the
103 Governor and Legislature; providing an appropriation;
104 providing an effective date.
105

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1215 False Personation
SPONSOR(S): Criminal Justice Subcommittee; Watson, B.
TIED BILLS: IDEN./SIM. BILLS: SB 190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Lloyd
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 843.08, F.S., makes it a third degree felony for a person to falsely assume or pretend to be a specified officer and take it upon himself or herself to act as such officer, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such an officer. The offense is reclassified to a second degree felony or a first degree felony in specified instances.

Section 843.085, F.S., makes it a first degree misdemeanor for a person to own or operate a motor vehicle marked or identified in any manner by words or insignia which could deceive a reasonable person into believing that the vehicle is authorized by a law enforcement agency for use by the person operating the vehicle. The prohibited words and insignia include words such as "police," "patrolman," "sheriff," and "deputy."

The bill amends s. 843.08, F.S., to add "firefighter" to the list of officers that may not be falsely personated. The bill expands the application of s. 843.085, F.S., to prohibit a person from:

- Wearing or displaying the word "fire department" on any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof;
- Marking or identifying a vehicle by the word "fire department," or any lettering, marking, insignia, or colorable imitation thereof; and
- Selling, transferring, or giving away the authorized badge, or colorable imitation thereof, including miniatures which bear the word "fire department."

The bill addresses a 2005 Florida Supreme Court decision by requiring proof that the offender had the intent to mislead or cause another person to believe (rather than requiring proof that a reasonable person could be deceived) that the:

- Person is a member of that agency or is authorized to wear or display such item; or
- Vehicle is an official vehicle of that agency and is authorized to be used by that agency.

The Criminal Justice Impact Conference (CJIC) met March 25, 2014 and determined this bill will have an insignificant prison bed impact. The bill may also have a negative jail bed impact on local governments, because it expands the application of a misdemeanor offense.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

False Personation of an Officer or Others

Section 843.08, F.S., makes it a third degree felony¹ for a person to falsely assume or pretend to be a specified officer and take it upon himself or herself to act as such officer, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such an officer.² This section applies to the false personation of the following:

- A sheriff or deputy sheriff;
- Officers of the Florida Highway Patrol;
- Officers of the Fish and Wildlife Conservation Commission;
- Officers of the Department of Transportation;
- Officers of the Department of Financial Services;
- Officers of the Department of Corrections;
- Correctional probation officers;
- State Attorneys, assistant state attorneys, and state attorney investigators;
- The Statewide Prosecutor and assistant statewide prosecutors;
- Coroners;
- Police officers;
- Lottery special agents and lottery investigators;
- Beverage enforcement agents;
- Watchman;
- Members of the Parole Commission and any administrative aid or supervisor employed by the Parole Commission;
- Any personnel or representative of the Florida Department of Law Enforcement (FDLE); and
- Federal law enforcement officers as defined in s. 901.1505, F.S.

If a person falsely personates any of the above listed officers during the commission of a felony, the offense is reclassified to a second degree felony.³ If the commission of a felony results in the death or injury of another person, the offense is reclassified to a first degree felony.⁴

Currently, the term "watchman" is not defined.

Effect of the Bill

The bill amends s. 843.08, F.S., to add "firefighter" to the list of officers described above, and defines the term "watchman" as a security officer licensed under ch. 493, F.S.⁵

The bill amends the title of this offense to "false personation" and makes conforming changes in s. 921.0022, F.S., to reflect this title change.

¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

² Section 843.08, F.S.

³ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

⁴ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁵ Section 493.6101(19), F.S., defines a "security officer" as any individual who, for consideration:

- Advertises as providing or performs bodyguard services or otherwise guards persons or property;
- Attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or
- Attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof.

Unlawful Use of Police Badges or Other Indicia of Authority

Unlawful use of Police Badges

Section 843.085(1), F.S., makes it a first degree misdemeanor,⁶ for a person, unless authorized by the appropriate agency, to wear or display any authorized indicia of authority including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof of a law enforcement agency which could deceive a reasonable person into believing that such item is authorized by the agency for use by the person displaying or wearing it.

The subsection also prohibits a person from wearing or displaying any item which displays the word "police," "patrolman," "agent," "sheriff," "deputy," "trooper," "highway patrol," "Wildlife Officer," "Marine Patrol Officer," "state attorney," "public defender," "marshal," "constable," or "bailiff" and which could deceive a reasonable person into believing that such item is authorized by the law enforcement agency for use by the person displaying or wearing it.

Operating a Vehicle Marked as a Law Enforcement Vehicle

Section 843.085(2), F.S., makes it a first degree misdemeanor for a person to own or operate a motor vehicle marked or identified in any manner or combination (marked vehicle) by words or insignia which could deceive a reasonable person into believing that the vehicle is authorized by a law enforcement agency for use by the person operating the vehicle.⁷ The prohibited words and insignia include:

- The word or words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff;" or
- Any lettering, marking, or insignia or colorable imitation thereof, including, but not limited to, stars, badges, or shields, officially used to identify the marked vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency.⁸

Section 843.085(2), F.S., does not apply if:

- The marked vehicle is owned or operated by the appropriate agency and its use is authorized by such agency;
- The local law enforcement agency authorizes the use of the marked vehicle; or
- The person is appointed by the Governor pursuant to ch. 354, F.S.⁹

An exception is also provided to allow fraternal, benevolent, or labor organizations or associations (fraternal association), to use any of the following words in the official name of the organization or association:

- "Police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff."¹⁰

Selling Badges

Currently, s. 843.085(3), F.S., makes it a first degree misdemeanor to sell, transfer, or give away the authorized badge, or colorable imitation thereof of any criminal justice agency or bearing words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "Wildlife Officer," "Marine Patrol Officer,"

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

⁷ Section 843.085(2), F.S.

⁸ Section 943.045, F.S., defines the term "criminal justice agency" as a court, FDLE, the Department of Juvenile Justice, the protective investigations component of the Department of Children and Family Services, which investigates the crimes of abuse and neglect, and any other governmental agency or subunit thereof which performs the administration of criminal justice pursuant to a statute or rule of court and which allocates a substantial part of its annual budget to the administration of criminal justice.

⁹ Chapter 354, F.S., requires the Governor to appoint one or more persons who have met specified law enforcement qualifications and training requirements as special officers for the protection and safety of railroads and common carriers; their passengers and employees; and the property of such carriers, passengers, and employees.

¹⁰ Section 843.085(4), F.S.

“marshal,” “constable,” “agent,” “state attorney,” “public defender,” or “bailiff,” which could deceive a reasonable person into believing that such item is authorized by the agency.¹¹

Sult v. State¹²

In *Sult v. State*,¹³ the Florida Supreme Court held that s. 843.085, F.S., was unconstitutionally overbroad and vague. The court found the statute unconstitutional because it did not require that the offender had a specific intent to deceive and it made no distinction between innocent wearing of law enforcement items and wearing of these items in order to deceive the public into believing the wearer was a member of the law enforcement agency. The court found:

With no specific intent-to-deceive element, the section extends its prohibitions to innocent wearing and displaying of specified words. The reach of the statute is not tailored toward the legitimate public purpose of prohibiting conduct intended to deceive the public into believing law enforcement impersonators. The “could deceive a reasonable person element of section 843.085(1), in conjunction with the prohibition of a display in any manner or combination of words listed in the statute, results in a virtually boundless and uncertain restriction on expression. Thus...[the section] is overbroad because it reaches a substantial amount of constitutionally protected conduct.¹⁴

Effect of the Bill

The bill expands the application of s. 843.085, F.S., to prohibit a person from:

- Wearing or displaying the word “fire department” on any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof;
- Marking or identifying a vehicle by the word “fire department,” or any lettering, marking, insignia, or colorable imitation thereof; and
- Selling, transferring, or giving away the authorized badge, or colorable imitation thereof, including miniatures which bear the word “fire department.”

The bill addresses the *Sult v. State* decision by requiring proof that the offender had the intent to mislead or cause another person to believe (rather than requiring proof that a reasonable person could be deceived) that the:

- Person is a member of that agency or is authorized to wear or display such item; or
- Vehicle is an official vehicle of that agency and is authorized to be used by that agency.

B. SECTION DIRECTORY:

Section 1. Amends s. 843.08, F.S., relating to falsely personating officer, etc.

Section 2. Amends s. 843.085, F.S., relating to unlawful use of police badges or other indicia of authority.

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

Section 4. Provides an effective date of October 1, 2014.

¹¹ The bill provides an exception for “agency purchases or upon the presentation and recordation of both a driver's license and other identification showing any transferee to actually be a member of such criminal justice agency or unless the person is appointed by the Governor pursuant to chapter 354.” A transferor of an item covered by this subsection is required to maintain for 2 years a written record of the transaction, including records showing compliance with this subsection, and if such transferor is a business, it must make such records available during normal business hours for inspection by any law enforcement agency having jurisdiction in the area where the business is located. Violation of this provision is a first degree misdemeanor. The bill does not change this provision.

¹² 906 So.2d 1013 (Fla. 2005).

¹³ *Id.*

¹⁴ *Sult*, 906 So.2d at 1021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met March 25, 2014 and determined this bill will have an insignificant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill may also have a negative jail bed impact on local governments because it expands the application of s. 843.085, F.S., a first degree misdemeanor, to include vehicles marked or identified by the word "fire department," or any lettering, marking, insignia, or colorable imitation thereof.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment adds "fire department" to s. 843.085(1) and (3), F.S., and corrects the intent language in these sections to bring the section into compliance with the Florida Supreme Court's decision in *Sult v. State*.

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 false personation; amending s.
 3 843.08, F.S.; prohibiting a person from falsely
 4 personating a firefighter; revising terminology;
 5 amending s. 843.085, F.S.; prohibiting the sale or
 6 transfer of specified badges bearing in any manner or
 7 combination the words "fire department" and the
 8 ownership or operation of vehicles marked or
 9 identified by the words "fire department"; requiring
 10 specified intent for certain offenses; providing an
 11 exception; amending s. 921.0022, F.S.; conforming
 12 provisions to changes made by the act; providing an
 13 effective date.

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

16
 17 Section 1. Section 843.08, Florida Statutes, is amended to
 18 read:

19 843.08 False personation ~~Falsely personating officer,~~
 20 ~~etc.~~—A person who falsely assumes or pretends to be a
 21 firefighter, sheriff, officer of the Florida Highway Patrol,
 22 officer of the Fish and Wildlife Conservation Commission,
 23 officer of the Department of Transportation, officer of the
 24 Department of Financial Services, officer of the Department of
 25 Corrections, correctional probation officer, deputy sheriff,
 26 state attorney or assistant state attorney, statewide prosecutor

27 or assistant statewide prosecutor, state attorney investigator,
 28 coroner, police officer, lottery special agent or lottery
 29 investigator, beverage enforcement agent, or watchman, or any
 30 member of the Parole Commission and any administrative aide or
 31 supervisor employed by the commission, or any personnel or
 32 representative of the Department of Law Enforcement, or a
 33 federal law enforcement officer as defined in s. 901.1505, and
 34 takes upon himself or herself to act as such, or to require any
 35 other person to aid or assist him or her in a matter pertaining
 36 to the duty of any such officer, commits a felony of the third
 37 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 38 775.084. However, a person who falsely personates any such
 39 officer during the course of the commission of a felony commits
 40 a felony of the second degree, punishable as provided in s.
 41 775.082, s. 775.083, or s. 775.084. If the commission of the
 42 felony results in the death or personal injury of another human
 43 being, the person commits a felony of the first degree,
 44 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 45 The term "watchman" means a security officer licensed under
 46 chapter 493.

47 Section 2. Section 843.085, Florida Statutes, is amended
 48 to read:

49 843.085 Unlawful use of ~~police~~ badges or other indicia of
 50 authority. ~~It is unlawful for any person:~~

51 (1) It is unlawful for any person, unless appointed by the
 52 Governor pursuant to chapter 354, authorized by the appropriate

53 agency, or displayed in a closed or mounted case as a collection
 54 or exhibit, to wear or display any authorized indicia of
 55 authority, including any badge, insignia, emblem, identification
 56 card, or uniform, or any colorable imitation thereof, of any
 57 federal, state, county, or municipal law enforcement agency, or
 58 other criminal justice agency as now or hereafter defined in s.
 59 943.045, with the intent to mislead or cause another person to
 60 believe that he or she is a member of that agency or is
 61 authorized to display or wear such item, or to wear or display
 62 any item that ~~which could deceive a reasonable person into~~
 63 ~~believing that such item is authorized by any of the agencies~~
 64 ~~described above for use by the person displaying or wearing it,~~
 65 ~~or which~~ displays in any manner or combination the word or words
 66 "police," "patrolman," "agent," "sheriff," "deputy," "trooper,"
 67 "highway patrol," "commission officer," "Wildlife Officer,"
 68 "Marine Patrol Officer," "state attorney," "public defender,"
 69 "marshal," "constable," ~~or~~ "bailiff," or "fire department," with
 70 the intent to mislead or cause another person to believe that he
 71 or she is a member of that agency or is authorized to wear or
 72 display such item ~~which could deceive a reasonable person into~~
 73 ~~believing that such item is authorized by any of the agencies~~
 74 ~~described above for use by the person displaying or wearing it.~~

75 (2) It is unlawful for a person to own or operate a motor
 76 vehicle marked or identified in any manner or combination by the
 77 word or words "police," "patrolman," "sheriff," "deputy,"
 78 "trooper," "highway patrol," "commission officer," "Wildlife

79 Officer," "Marine Patrol Officer," "marshal," "constable," ~~or~~
 80 "bailiff," or "fire department," or by any lettering, marking,
 81 or insignia, or colorable imitation thereof, including, but not
 82 limited to, stars, badges, or shields, officially used to
 83 identify the vehicle as a federal, state, county, or municipal
 84 law enforcement vehicle or a vehicle used by a criminal justice
 85 agency as ~~now or hereafter~~ defined in s. 943.045, or a vehicle
 86 used by a fire department with the intent to mislead or cause
 87 another person to believe that such vehicle is an official
 88 vehicle of that agency and is authorized to be used by that
 89 agency which could deceive a reasonable person into believing
 90 that such vehicle is authorized by any of the agencies described
 91 above for use by the person operating the motor vehicle, unless
 92 such vehicle is owned or operated by the appropriate agency and
 93 its use is authorized by such agency, or the local law
 94 enforcement agency or fire department authorizes the use of such
 95 vehicle, or unless the person is appointed by the Governor
 96 pursuant to chapter 354.

97 (3) It is unlawful for a person to sell, transfer, or give
 98 away the authorized badge, or colorable imitation thereof,
 99 including miniatures, of any criminal justice agency as ~~now or~~
 100 ~~hereafter~~ defined in s. 943.045, or bearing in any manner or
 101 combination the word or words "police," "patrolman," "sheriff,"
 102 "deputy," "trooper," "highway patrol," "commission officer,"
 103 "Wildlife Officer," "Marine Patrol Officer," "marshal,"
 104 "constable," "agent," "state attorney," "public defender," ~~or~~

105 "bailiff," or "fire department," with the intent to mislead or
 106 cause another person to believe that he or she is a member of
 107 that agency or is authorized to wear or display such item ~~which~~
 108 ~~could deceive a reasonable person into believing that such item~~
 109 ~~is authorized by any of the agencies described above,~~ except for
 110 agency purchases or upon the presentation and recordation of
 111 both a driver's license and other identification showing any
 112 transferee to actually be a member of such criminal justice
 113 agency or unless the person is appointed by the Governor
 114 pursuant to chapter 354. A transferor of an item covered by this
 115 subsection is required to maintain for 2 years a written record
 116 of such transaction, including records showing compliance with
 117 this subsection, and if such transferor is a business, it shall
 118 make such records available during normal business hours for
 119 inspection by any law enforcement agency having jurisdiction in
 120 the area where the business is located.

121 (4) ~~Nothing in~~ This section does not ~~shall~~ prohibit a
 122 fraternal, benevolent, or labor organization or association, or
 123 their chapters or subsidiaries, from using the following words,
 124 in any manner or in any combination, if those words appear in
 125 the official name of the organization or association: "police,"
 126 "patrolman," "sheriff," "deputy," "trooper," "highway patrol,"
 127 "commission officer," "Wildlife Officer," "Marine Patrol
 128 Officer," "marshal," "constable," ~~or~~ "bailiff," or "fire
 129 department."

130 (5) Violation of any provision of this section is a

131 misdemeanor of the first degree, punishable as provided in s.
 132 775.082 or s. 775.083. This section is cumulative to any law now
 133 in force in the state.

134 Section 3. Paragraph (b) of subsection (3) of section
 135 921.0022, Florida Statutes, is amended to read:

136 921.0022 Criminal Punishment Code; offense severity
 137 ranking chart.—

138 (3) OFFENSE SEVERITY RANKING CHART

139 (b) LEVEL 2

140

Florida Statute	Felony Degree	Description
379.2431 (1) (e) 3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1) (e) 4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6) (c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic

141

142

143

			feet in volume or any quantity for commercial purposes, or hazardous waste.
144	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
145	590.28(1)	3rd	Intentional burning of lands.
146	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
147	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
148	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
149	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling;

			facilitating or furthering burglary.
150	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
151	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
152	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
153	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
154	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
155	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit,

			etc., credit card, value over \$300.
156	817.52(3)	3rd	Failure to redeliver hired vehicle.
157	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
158	817.60(5)	3rd	Dealing in credit cards of another.
159	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
160	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
161	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
162	831.01	3rd	Forgery.
163			

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

CS/HB 1215

2014

164	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
165	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
166	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
167	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
168	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
169	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
170	843.08	3rd	<u>False personation</u> Falsely impersonating an officer.

CS/HB 1215

2014

171 893.13(2)(a)2. 3rd Purchase of any s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4) drugs
other than cannabis.

172 893.147(2) 3rd Manufacture or delivery of drug
paraphernalia.

173 Section 4. This act shall take effect October 1, 2014.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1215 (2014)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
 2 Subcommittee

3 Representative Kerner offered the following:
 4

5 **Amendment (with title amendment)**

6 Remove line 23 and insert:

7 ~~officer of the Department of Transportation,~~ investigator with
 8 the Bureau of Fire and Arson Investigations within the office of
 9 the Chief Financial Officer, officer of the

10
 11 -----

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

13 Remove lines 3-4 and insert:

14 843.08, F.S.; revising who is prohibited from being falsely
 15 personated; revising terminology;

16