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# **Judiciary Committee**

**February 20, 2014**

**12:00 PM**

**404 HOB**

**Meeting Packet**

**Will Weatherford  
Speaker**

**Dennis Baxley  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Judiciary Committee

**Start Date and Time:** Thursday, February 20, 2014 12:00 pm  
**End Date and Time:** Thursday, February 20, 2014 03:00 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 3.00 hrs

**Consideration of the following bill(s):**

CS/HB 73 Sexual Offenders by Criminal Justice Subcommittee, Edwards, Eagle  
CS/HB 89 Threatened Use of Force by Criminal Justice Subcommittee, Combee, Edwards  
HB 123 Fees and Costs in Guardianship Proceedings by Schwartz  
HB 161 Indecent Exposure by Hager, Harrell  
HB 171 Public Assistance Fraud by Diaz, J.  
HB 427 Traveling Across County Lines to Commit Felony Offenses by McBurney  
CS/HB 445 Time Limitations by Criminal Justice Subcommittee, Nuñez  
HB 463 Background Screening by Reed  
HB 7003 Court System by Civil Justice Subcommittee, Metz

**NOTICE FINALIZED on 02/13/2014 16:02 by Jones.Missy**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 73 Sexual Offenders  
**SPONSOR(S):** Criminal Justice Subcommittee; Edwards; Eagle and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N, As CS	Jones	Cunningham
2) Justice Appropriations Subcommittee	13 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee		Jones <i>yx</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Sections 948.30, and 947.1405, F.S., require the court or the Florida Parole Commission to impose certain conditions of supervision for probationers, community controllees, and conditional releasees convicted of specified sexual offenses (e.g., curfew, residency restrictions, employment restrictions, sex offender treatment, etc.). Currently, one of these conditions prohibits an offender from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services *that are relevant to the offender's deviant behavior pattern* (unless otherwise indicated in a treatment plan).

The bill amends ss. 948.30 and 947.1405, F.S., to prohibit probationers, community controllees, and conditional releases convicted of specified sexual offenses, whose crimes were committed on or after October 1, 2014, from possessing obscene, pornographic or sexually stimulating material, *regardless of its content* (unless otherwise indicated in a treatment plan).

The Criminal Justice Impact Conference met January 30, 2014, and determined the prison bed impact of the bill was indeterminate. However, because the bill imposes a new condition of supervision, it could result in more violations of supervision, which could have a negative prison and jail bed impact.

The bill is effective October 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

###### *Probation/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.<sup>1</sup> 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.<sup>2</sup> Conditional release, administered by the Florida Parole Commission (Commission), is a mandatory postrelease supervision required for certain violent inmates.<sup>3</sup> The Department of Corrections (DOC) supervises all probationers, community controllees, and conditional releasees sentenced in circuit court.<sup>4</sup>

Courts are required to impose the conditions of supervision found in s. 948.03, F.S., on probationers and community controllees.<sup>5</sup> Similarly, the Commission is required to impose conditions of supervision found in s. 947.1405, F.S., on conditional releasees.<sup>6</sup> In addition to these standard conditions of supervision, the court/Commission may add special conditions of supervision that it deems proper.<sup>7</sup>

###### *Sex Offender Supervision*

In addition to the standard conditions of supervision described above, ss. 948.30 and 947.1405, F.S., require the court/Commission to impose additional conditions of supervision for probationers, community controllees, and conditional releasees convicted of specified sexual offenses. For example, these offenders are subject to a curfew, residency restrictions, employment restrictions, and sex offender treatment.

Currently, ss. 948.30(1)(g), and 947.1405(7)(a)7., F.S., require the court/Commission to impose a condition prohibiting an offender convicted of a specified sexual offense<sup>8</sup> from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material<sup>9</sup> *that is relevant to the offender's deviant behavior pattern* (unless otherwise indicated in a treatment plan proscribed in the sexual offender treatment program).<sup>10</sup>

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<sup>1</sup> Section 948.001(8), F.S.

<sup>2</sup> Section 948.001(3), F.S.

<sup>3</sup> 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.

<sup>4</sup> Sections 948.001(1) and 947.1405, F.S.

<sup>5</sup> 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.).

<sup>6</sup> Section 947.1405(2), F.S.

<sup>7</sup> Sections 948.03(2) and 947.1405(6), F.S.

<sup>8</sup> These offenses include violations of ch. 794, F.S., relating to sexual battery; s. 800.04, F.S., relating to lewd or lascivious offenses; s. 827.071, F.S., relating to sexual performance by a child; s. 847.0135(5), F.S., relating to certain computer transmissions of pornography; and s. 847.0145, F.S., relating to buying and selling minors.

<sup>9</sup> This material includes telephone, electronic media, computer programs, or computer services.

<sup>10</sup> The condition applies to offenders whose crime was committed on or after October 1, 1995.

### **Effect of the Bill**

The bill amends ss. 948.30 and 947.1405, F.S., to require the court/Commission to impose a condition prohibiting probationers, community controllees, and conditional releasees from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, *regardless of its content* (unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program). Visual or auditory material includes, but is not limited to, telephone, electronic media, computer programs, and computer services.

The condition applies to offenders whose crime was committed on or after October 1, 2014, and who are placed on probation, community control, or conditional release for a violation of ch. 794, F.S. (sexual battery); s. 800.04, F.S. (lewd or lascivious offenses); s. 827.071, F.S. (sexual performance by a child); s. 847.0135(5), F.S. (computer transmissions of pornography); and s. 847.0145, F.S. (buying and selling minors).

As a result, these offenders will be prohibited from possessing obscene, pornographic or sexually stimulating material, regardless of its content.

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

Section 1. Amends s. 947.1405, F.S., relating to conditional release.

Section 2. Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.

Section 3. 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:**

- 3. The Criminal Justice Impact Conference met January 30, 2014, and found the prison bed impact of the bill was indeterminate. However, because the bill imposes a new condition of supervision, it could result in more violations of supervision, which could have a negative 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 imposes a new condition of supervision. This could result in more violations of supervision, which could have a negative jail bed impact.

### **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:

**Vagueness**

A statute or ordinance is void for vagueness when, because of its imprecision, it fails to give an adequate notice of what conduct is prohibited. Thus, it invites arbitrary and discriminatory enforcement.<sup>11</sup>

Courts throughout the country are split as to whether a general ban on pornographic materials is unconstitutionally vague. For example, in *McVey v. State*, the court found that the condition prohibiting possession of pornographic or sexually explicit materials was unconstitutionally vague because it failed to clearly inform the offender what conduct was prohibited.<sup>12</sup> Whereas in *Wilfong v. Commonwealth*, the court determined that a commonsense reading of "sexually arousing materials" does not render the phrase unconstitutionally vague.<sup>13</sup>

The bill prohibits persons subject to sex offender supervision from possessing obscene, pornographic or sexually stimulating material, regardless of its content. This language could be challenged as being unconstitutionally vague.

**Probationer Rights**

The Florida Supreme Court has found that "constitutional rights of probationers are limited by conditions of probation which are desirable for purposes of rehabilitation."<sup>14</sup> In other words, trial courts have broad discretion to impose various conditions of probation, but cannot impose a condition of probation that is not reasonably related to rehabilitation.<sup>15</sup> In determining whether a condition of probation is reasonably related to rehabilitation, courts look to whether the condition:

- Has a relationship to the crime of which the offender was convicted;
- Relates to conduct which is not in itself criminal; and
- Requires or forbids conduct which is not reasonably related to future criminality.<sup>16</sup>

The bill prohibits persons subject to sex offender supervision from possessing obscene, pornographic or sexually stimulating material, regardless of its content. This could be challenged as not being reasonably related to rehabilitation.

<sup>11</sup> *Sult v. State*, 906 So.2d 1013 (Fla. 2005).

<sup>12</sup> *McVey v. State*, 863 N.E.2d 434, 447 (Ind. Ct. App. 2007). See also *State v. Bahl*, 193 P.3d 678, 688 (Wash. 2008).

<sup>13</sup> *Wilfong v. Commonwealth*, 175 S.W.3d 84, 99 (Ky. Ct. App. 2004). See also *Belt v. State*, 127 S.W.3d 277, 281-82 (Tex. Ct. App. 2004) (condition prohibiting possession of "'sexually stimulating' or 'sexually oriented'" material was not unconstitutionally vague); *Commonwealth v. Perreault*, 930 A.2d 553, 560 (Pa. Super. Ct. 2007) (a condition is not unconstitutionally vague when statutes provide definitions of the terms).

<sup>14</sup> *Biller v. State*, 618 So.2d 734 (Fla. 1993).

<sup>15</sup> *Nank v. State*, 646 So.2d 762 (Fla. 2d DCA 1994).

<sup>16</sup> *Biller v. State*, 618 So.2d 734 (Fla. 1993).

## First Amendment

The First Amendment to the United States Constitution and Article I, Section 4, of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The constitutions protect not only speech and the written word, but also conduct intended to communicate. When lawmakers attempt to restrict or burden fundamental and basic rights such as these, the laws must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible. As the United States Supreme Court has noted, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."<sup>17</sup>

In *Miller v. California*, the Supreme Court of the United States found that obscene materials are not protected by the First Amendment.<sup>18</sup> However, materials not considered to be obscene do receive First Amendment protections.

The bill prohibits persons subject to sex offender supervision from possessing pornographic or sexually stimulating material. While offenders have diminished constitutional rights by virtue of being on supervision, this provision could be challenged as violating an offender's First Amendment rights.

### 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 a strike all amendment and reported the bill favorably as a committee substitute. The strike all amendment amends ss. 948.30 and 947.1405, F.S., to prohibit probationers, community controllees and conditional releasees, whose crimes were committed on or after October 1, 2014, and who are convicted of specified sexual offenses, from possessing obscene, pornographic or sexually stimulating material, regardless of its content, unless otherwise indicated in a treatment plan.

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

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<sup>17</sup> *NAACP v. Button*, 371 U.S. 415, 433 (1963).

<sup>18</sup> 413 U.S. 15 (1973).



A bill to be entitled

An act relating to sexual offenders; amending ss. 947.1405 and 948.30, F.S.; prohibiting certain conditional releasees, probationers, or community controllees from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating material; providing exceptions; providing an effective date.

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

Section 1. Subsection (13) is added to section 947.1405, Florida Statutes, to read:

947.1405 Conditional release program.—

(13) Effective for a releasee whose crime was committed on or after October 1, 2014, in violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, in addition to any other provision of this section, the commission must impose a condition prohibiting the releasee from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program. Visual or auditory material includes, but is not limited to, telephone, electronic media, computer programs, and computer services.

27 Section 2. Subsection (5) is added to section 948.30,  
 28 Florida Statutes, to read:

29 948.30 Additional terms and conditions of probation or  
 30 community control for certain sex offenses.—Conditions imposed  
 31 pursuant to this section do not require oral pronouncement at  
 32 the time of sentencing and shall be considered standard  
 33 conditions of probation or community control for offenders  
 34 specified in this section.

35 (5) Effective for a probationer or community controllee  
 36 whose crime was committed on or after October 1, 2014, and who  
 37 is placed on probation or community control for a violation of  
 38 chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s.  
 39 847.0145, in addition to all other conditions imposed, the court  
 40 must impose a condition prohibiting the probationer or community  
 41 controllee from viewing, accessing, owning, or possessing any  
 42 obscene, pornographic, or sexually stimulating visual or  
 43 auditory material unless otherwise indicated in the treatment  
 44 plan provided by a qualified practitioner in the sexual offender  
 45 treatment program. Visual or auditory material includes, but is  
 46 not limited to, telephone, electronic media, computer programs,  
 47 and computer services.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 89 Threatened Use of Force  
**SPONSOR(S):** Criminal Justice Subcommittee; Combee; Edwards and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N, As CS	Cunningham	Cunningham
2) Judiciary Committee		Cunningham <i>su</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

A person charged with a criminal offense in which force was used (e.g., battery, murder, etc.) may argue at trial that he or she did so in "self-defense." Chapter 776, F.S., contains a variety of provisions setting forth the instances in which a person may use force in self-defense. A close read of ch. 776, F.S., reflects that only a person's *actual* use of force is justifiable – not a person's *threatened* use of force. While some courts have recognized that a threatened use of force equates to an actual use of force, the statutes do not clearly indicate this.

In recent years, there have been cases in which persons have been convicted of aggravated assault for threatening to use force (e.g., displaying a firearm, firing a "warning shot," etc.) and have been sentenced to mandatory minimum terms of imprisonment pursuant to the 10-20-Life law. In some of these cases, the defendant unsuccessfully argued self-defense. Specifying that the justifications in ch. 776, F.S., apply to threatened uses of force will provide clarification.

The bill amends ch. 776, F.S., to specify that the justifications contained therein apply to threatened uses of force.

The bill also contains the following legislative findings and intent:

- The Legislature finds that persons have been criminally prosecuted and have been sentenced to mandatory minimum terms of imprisonment pursuant to s. 775.087, F.S., for threatening to use force in a manner and under circumstances that would have been justifiable under ch. 776, F.S., had force actually been used.
- The Legislature intends to:
  - Provide criminal and civil immunity to those who threaten to use force if the threat was made in a manner and under circumstances that would have been immune under ch. 776, F.S., had force actually been used;
  - Clarify that those who threaten to use force may claim self-defense if the threat was made in a manner and under circumstances that would have been justifiable under ch. 776, F.S., had force actually been used;
  - Ensure that those who threaten to use force in a manner and under circumstances that are justifiable under ch. 776, F.S., are not sentenced to a mandatory minimum term of imprisonment pursuant to s. 775.087, F.S.; and
  - Encourage those who have been sentenced to a mandatory minimum term of imprisonment pursuant to s. 775.087, F.S., for threatening to use force in a manner and under circumstances that are justifiable under ch. 776, F.S., to apply for executive clemency.

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

The bill is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### Aggravated Assault

Assault, a second degree misdemeanor,<sup>1</sup> is defined as an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.<sup>2</sup> Aggravated assault, a third degree felony,<sup>3</sup> is an assault:

- With a deadly weapon without intent to kill; or
- With an intent to commit a felony.<sup>4</sup>

##### 10-20-Life

Section 775.087, F.S., often referred to as the "10-20-Life" law, requires a judge to sentence a person convicted of specified offenses to a minimum term of imprisonment if, during the commission of the offense, the person possessed or discharged a firearm or destructive device.<sup>5</sup> Under the 10-20-Life law, a person convicted of aggravated assault must be sentenced to:

- A minimum term of imprisonment of 3 years if such person possessed a firearm or destructive device during the commission of the offense;
- A minimum term of imprisonment of 20 years if such person discharged a firearm or destructive device during the commission of the offense; and
- A minimum term of imprisonment of not less than 25 years and not more than life in prison if, during the course of the commission of the offense, the person discharged a firearm or destructive device and, as the result of the discharge, death or great bodily harm was inflicted upon any person.<sup>6</sup>

##### Justifiable Use of Force

A person charged with a criminal offense in which force was used (e.g., battery, murder, etc.) may argue at trial that he or she did so in "self-defense." Chapter 776, F.S., contains a variety of provisions setting forth the instances in which a person may use force in self-defense.

##### *Use of Force in Defense of Persons*

Section 776.012, F.S., provides that a person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat if:

- He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or
- Under those circumstances permitted pursuant to s. 776.013, F.S.

Section 776.013(3), F.S., also addresses use of force in defense of persons, by specifying that a person does not have a duty to retreat before using force, including deadly force, outside of one's home so long as the person:

- Was not engaged in an unlawful activity;
- Was in a place where he or she had a right to be; and

<sup>1</sup> 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.

<sup>2</sup> Section 784.011, F.S.

<sup>3</sup> 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.

<sup>4</sup> Section 784.021, F.S.

<sup>5</sup> The terms "firearm" and "destructive device" are defined in accordance with s. 790.001, F.S.

<sup>6</sup> Section 775.087(2)(a)1., 2., and 3., F.S.

- Reasonably believed that doing so was necessary to prevent death or great bodily harm or to prevent the commission of a forcible felony.

#### *Use of Force in Defense of Property*

Section 776.031, F.S., provides that a person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. A person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony. A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

#### *Instances When Use of Force is Not Justifiable*

Section 776.041, F.S., specifies that the above-described justifications are not available to a person who:

- Is attempting to commit, committing, or escaping after the commission of, a forcible felony; or
- Initially provokes the use of force against himself or herself, unless:
  - Such force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or
  - In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

Section 776.051, F.S., provides that a person is not justified in the use of force to resist an arrest by a law enforcement officer (LEO), or to resist an LEO who is engaged in the execution of a legal duty, if the LEO was acting in good faith and he or she is known, or reasonably appears, to be an LEO.

#### *Castle Doctrine Presumptions*

Florida has long recognized that there is no duty to retreat before using force when *in one's home* (a principle often referred to as the "Castle Doctrine").<sup>7</sup> Section 776.013, F.S., contains the following presumptions relating to the Castle Doctrine:

- A person has a reasonable fear of imminent peril or death or great bodily harm to themselves or another when using deadly force when:
  - The person against whom the deadly force was used was in the process of unlawfully entering or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and
  - The person using the deadly force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.
- A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

The first presumption listed above does not apply if the person:

- Against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person;
- Sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used;

<sup>7</sup> *Weiland v. State*, 732 So.2d 1044, 1049 (Fla. 1999).

- Who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or
- Against whom the defensive force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.<sup>8</sup>

### *Immunity*

Section 776.032, F.S., grants immunity from criminal prosecution<sup>9</sup> and civil action to a person who used force or deadly force, so long as the force was used in accordance with ss. 776.012, 776.013, or 776.031, F.S.<sup>10</sup> A law enforcement agency may use standard procedures for investigating the use of force, but the agency may not arrest the person for using force unless it determines that there is probable cause that the force used was unlawful.<sup>11</sup>

### Actual Use of Force v. Threatened Use of Force

A close read of the above-listed provisions of ch. 776, F.S., reflects that only a person's actual use of force is justifiable – not a person's *threatened* use of force. While some courts have recognized that a threatened use of force equates to an actual use of force,<sup>12</sup> the statutes do not clearly indicate this.

In recent years, there have been cases in which persons have been convicted of aggravated assault for threatening to use force (e.g., displaying a firearm, firing a “warning shot,” etc.) and have been sentenced to mandatory minimum terms of imprisonment pursuant to the 10-20-Life law.<sup>13</sup> In some of these cases, the defendant unsuccessfully argued self-defense.<sup>14</sup> Specifying that the justifications in ch. 776, F.S., apply to threatened uses of force will clarify the issue.

### **Effect of the Bill**

The bill amends each of the statutes in ch. 776, F.S., described above to include threatened uses of force. As a result, the criminal and civil immunity provisions apply to those who threaten to use force, so long as the threat was made in a manner and under circumstances that would have been immune under ch. 776, F.S., had force actually been used. Additionally, those who threaten to use force may claim self-defense if the threat was made in a manner and under circumstances that would have been justifiable under ch. 776, F.S., had force actually been used.

The bill also contains the following legislative findings and intent:

- The Legislature finds that persons have been criminally prosecuted and have been sentenced to mandatory minimum terms of imprisonment pursuant to s. 775.087, F.S., for threatening to use force in a manner and under circumstances that would have been justifiable under ch. 776, F.S., had force actually been used.

<sup>8</sup> Section 776.013(2), F.S.

<sup>9</sup> “Criminal prosecution” includes arresting, detaining in custody, and charging or prosecuting the defendant. Section 776.032(1), F.S.

<sup>10</sup> Immunity is not granted if the person against whom force was used was a law enforcement officer who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer. Section 776.032(1), F.S.

<sup>11</sup> Section 776.032(2), F.S.

<sup>12</sup> See, e.g., *Hosnedl v. State*, 2013 WL 5925402 (Fla. 4<sup>th</sup> DCA 2013)(quoting *State v. Moore*, 729 A.2d 1021, 1029 (N.J.1999)); *Stewart v. State*, 672 So.2d 865 (Fla. 2d DCA 1996)(the mere display of a gun without more constitutes non-deadly force); and *Miller v. State*, 613 So.2d 530 (Fla. 3d DCA 1993)(firing a firearm in the air, even as a so-called “warning shot,” constitutes as a matter of law the use of deadly force).

<sup>13</sup> For example, 53 year old Orville Wollard was charged with aggravated assault with a deadly weapon after firing a warning shot into a wall in response to his daughter’s boyfriend aggressive behavior towards his daughter (the boyfriend had physically attacked Wollard earlier that day and, upon returning to Wollard’s house, shoved Wollard’s daughter and punched a hole in the wall). Wollard claimed self-defense but was convicted and sentenced to 20 years pursuant to the 10-20-Life law. <http://famm.org/orville-lee-wollard/> (last visited on February 17, 2014); <http://www.theledger.com/article/20090619/NEWS/906195060> (last visited on February 17, 2014).

<sup>14</sup> *Id.*

- The Legislature intends to:
  - Provide criminal and civil immunity to those who threaten to use force if the threat was made in a manner and under circumstances that would have been immune under ch. 776, F.S., had force actually been used;
  - Clarify that those who threaten to use force may claim self-defense if the threat was made in a manner and under circumstances that would have been justifiable under ch. 776, F.S., had force actually been used;
  - Ensure that those who threaten to use force in a manner and under circumstances that are justifiable under ch. 776, F.S., are not sentenced to a mandatory minimum term of imprisonment pursuant to s. 775.087, F.S.; and
  - Encourage those who have been sentenced to a mandatory minimum term of imprisonment pursuant to s. 775.087, F.S., for threatening to use force in a manner and under circumstances that are justifiable under ch. 776, F.S., to apply for executive clemency.

## B. SECTION DIRECTORY:

Section 1. Provides legislative findings and intent.

Section 2. Amends s. 776.012, F.S., relating to use of force in defense of person.

Section 3. Amends s. 776.013, F.S., relating to home protection; use of deadly force; presumption of fear of death or great bodily harm.

Section 4. Amends s. 776.031, F.S., relating to use of force in defense of others.

Section 5. Amends s. 776.032, F.S., relating to immunity from criminal prosecution and civil action for justifiable use of force.

Section 6. Amends s. 776.041, F.S., relating to use of force by aggressor.

Section 7. Amends s. 776.051, F.S., relating to use of force in resisting arrest or making an arrest or in the execution of a legal duty; prohibition.

Section 8. Provides that the bill is effective upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have a fiscal impact on state government revenues.

#### 2. Expenditures:

The bill does not appear to have a fiscal impact on state government expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

The bill does not appear to have a fiscal 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:

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**

1                                   A bill to be entitled  
 2           An act relating to the threatened use of force;  
 3           providing legislative findings and intent; amending s.  
 4           776.012, F.S.; applying provisions relating to the use  
 5           of force in defense of persons to the threatened use  
 6           of force; amending s. 776.013, F.S.; applying  
 7           presumption relating to the use of deadly force to the  
 8           threatened use of deadly force in the defense of a  
 9           residence and similar circumstances; applying  
 10          provisions relating to such use of force to the  
 11          threatened use of force; amending s. 776.031, F.S.;  
 12          applying provisions relating to the use of force in  
 13          defense of property to the threatened use of force;  
 14          amending s. 776.032, F.S.; applying immunity  
 15          provisions that relate to the use of force to the  
 16          threatened use of force; amending s. 776.041, F.S.;  
 17          applying provisions relating to the use of force by an  
 18          aggressor to the threatened use of force; providing  
 19          exceptions; amending s. 776.051, F.S.; providing that  
 20          a person is not justified in the threatened use of  
 21          force to resist an arrest by a law enforcement  
 22          officer; providing an effective date.

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

25  
 26          Section 1.   (1)   The Legislature finds that persons have

27 been criminally prosecuted and have been sentenced to mandatory  
 28 minimum terms of imprisonment pursuant to s. 775.087, Florida  
 29 Statutes, for threatening to use force in a manner and under  
 30 circumstances that would have been justifiable under chapter  
 31 776, Florida Statutes, had force actually been used.

32 (2) The Legislature intends to:

33 (a) Provide criminal and civil immunity to those who  
 34 threaten to use force if the threat was made in a manner and  
 35 under circumstances that would have been immune under chapter  
 36 776, Florida Statutes, had force actually been used.

37 (b) Clarify that those who threaten to use force may claim  
 38 self-defense if the threat was made in a manner and under  
 39 circumstances that would have been justifiable under chapter  
 40 776, Florida Statutes, had force actually been used.

41 (c) Ensure that those who threaten to use force in a  
 42 manner and under circumstances that are justifiable under  
 43 chapter 776, Florida Statutes, are not sentenced to a mandatory  
 44 minimum term of imprisonment pursuant to s. 775.087, Florida  
 45 Statutes.

46 (d) Encourage those who have been sentenced to a mandatory  
 47 minimum term of imprisonment pursuant to s. 775.087, Florida  
 48 Statutes, for threatening to use force in a manner and under  
 49 circumstances that are justifiable under chapter 776, Florida  
 50 Statutes, to apply for executive clemency.

51 Section 2. Section 776.012, Florida Statutes, is amended  
 52 to read:

53           776.012 Use or threatened use of force in defense of  
 54 person.—A person is justified in using or threatening to use  
 55 force, except deadly force, against another when and to the  
 56 extent that the person reasonably believes that such conduct is  
 57 necessary to defend himself or herself or another against the  
 58 other's imminent use of unlawful force. However, a person is  
 59 justified in using or threatening to use ~~the use of~~ deadly force  
 60 and does not have a duty to retreat if:

61           (1) He or she reasonably believes that using or  
 62 threatening to use such force is necessary to prevent imminent  
 63 death or great bodily harm to himself or herself or another or  
 64 to prevent the imminent commission of a forcible felony; or

65           (2) Under those circumstances permitted pursuant to s.  
 66 776.013.

67           Section 3. Subsections (1), (2), and (3) of section  
 68 776.013, Florida Statutes, are amended to read:

69           776.013 Home protection; use or threatened use of deadly  
 70 force; presumption of fear of death or great bodily harm.—

71           (1) A person is presumed to have held a reasonable fear of  
 72 imminent peril of death or great bodily harm to himself or  
 73 herself or another when using or threatening to use defensive  
 74 force that is intended or likely to cause death or great bodily  
 75 harm to another if:

76           (a) The person against whom the defensive force was used  
 77 or threatened was in the process of unlawfully and forcefully  
 78 entering, or had unlawfully and forcibly entered, a dwelling,

79 residence, or occupied vehicle, or if that person had removed or  
 80 was attempting to remove another against that person's will from  
 81 the dwelling, residence, or occupied vehicle; and

82 (b) The person who uses or threatens to use defensive  
 83 force knew or had reason to believe that an unlawful and  
 84 forcible entry or unlawful and forcible act was occurring or had  
 85 occurred.

86 (2) The presumption set forth in subsection (1) does not  
 87 apply if:

88 (a) The person against whom the defensive force is used or  
 89 threatened has the right to be in or is a lawful resident of the  
 90 dwelling, residence, or vehicle, such as an owner, lessee, or  
 91 titleholder, and there is not an injunction for protection from  
 92 domestic violence or a written pretrial supervision order of no  
 93 contact against that person; or

94 (b) The person or persons sought to be removed is a child  
 95 or grandchild, or is otherwise in the lawful custody or under  
 96 the lawful guardianship of, the person against whom the  
 97 defensive force is used or threatened; or

98 (c) The person who uses or threatens to use defensive  
 99 force is engaged in an unlawful activity or is using the  
 100 dwelling, residence, or occupied vehicle to further an unlawful  
 101 activity; or

102 (d) The person against whom the defensive force is used or  
 103 threatened is a law enforcement officer, as defined in s.  
 104 943.10(14), who enters or attempts to enter a dwelling,

105 residence, or vehicle in the performance of his or her official  
 106 duties and the officer identified himself or herself in  
 107 accordance with any applicable law or the person using or  
 108 threatening to use force knew or reasonably should have known  
 109 that the person entering or attempting to enter was a law  
 110 enforcement officer.

111 (3) A person who is not engaged in an unlawful activity  
 112 and who is attacked in any other place where he or she has a  
 113 right to be has no duty to retreat and has the right to stand  
 114 his or her ground and use or threaten to use ~~meet force with~~  
 115 force, including deadly force if he or she reasonably believes  
 116 it is necessary to do so to prevent death or great bodily harm  
 117 to himself or herself or another or to prevent the commission of  
 118 a forcible felony.

119 Section 4. Section 776.031, Florida Statutes, is amended  
 120 to read:

121 776.031 Use or threatened use of force in defense of  
 122 property ~~others.~~—A person is justified in using or threatening  
 123 to use ~~the use of~~ force, except deadly force, against another  
 124 when and to the extent that the person reasonably believes that  
 125 such conduct is necessary to prevent or terminate the other's  
 126 trespass on, or other tortious or criminal interference with,  
 127 either real property other than a dwelling or personal property,  
 128 lawfully in his or her possession or in the possession of  
 129 another who is a member of his or her immediate family or  
 130 household or of a person whose property he or she has a legal

131 duty to protect. However, a ~~the~~ person is justified in using or  
 132 threatening to use ~~the use of~~ deadly force only if he or she  
 133 reasonably believes that such conduct ~~force~~ is necessary to  
 134 prevent the imminent commission of a forcible felony. A person  
 135 does not have a duty to retreat if the person is in a place  
 136 where he or she has a right to be.

137 Section 5. Subsections (1) and (2) of section 776.032,  
 138 Florida Statutes, are amended to read:

139 776.032 Immunity from criminal prosecution and civil  
 140 action for justifiable use or threatened use of force.—

141 (1) A person who uses or threatens to use force as  
 142 permitted in s. 776.012, s. 776.013, or s. 776.031 is justified  
 143 in ~~using~~ such conduct ~~force~~ and is immune from criminal  
 144 prosecution and civil action for the use or threatened use of  
 145 such force, unless the person against whom force was used or  
 146 threatened is a law enforcement officer, as defined in s.  
 147 943.10(14), who was acting in the performance of his or her  
 148 official duties and the officer identified himself or herself in  
 149 accordance with any applicable law or the person using or  
 150 threatening to use force knew or reasonably should have known  
 151 that the person was a law enforcement officer. As used in this  
 152 subsection, the term "criminal prosecution" includes arresting,  
 153 detaining in custody, and charging or prosecuting the defendant.

154 (2) A law enforcement agency may use standard procedures  
 155 for investigating the use or threatened use of force as  
 156 described in subsection (1), but the agency may not arrest the

157 | person for using or threatening to use force unless it  
 158 | determines that there is probable cause that the force that was  
 159 | used or threatened was unlawful.

160 | Section 6. Subsection (2) of section 776.041, Florida  
 161 | Statutes, is amended to read:

162 | 776.041 Use or threatened use of force by aggressor.—The  
 163 | justification described in the preceding sections of this  
 164 | chapter is not available to a person who:

165 | (2) Initially provokes the use or threatened use of force  
 166 | against himself or herself, unless:

167 | (a) Such force or threat of force is so great that the  
 168 | person reasonably believes that he or she is in imminent danger  
 169 | of death or great bodily harm and that he or she has exhausted  
 170 | every reasonable means to escape such danger other than the use  
 171 | or threatened use of force which is likely to cause death or  
 172 | great bodily harm to the assailant; or

173 | (b) In good faith, the person withdraws from physical  
 174 | contact with the assailant and indicates clearly to the  
 175 | assailant that he or she desires to withdraw and terminate the  
 176 | use or threatened use of force, but the assailant continues or  
 177 | resumes the use or threatened use of force.

178 | Section 7. Subsection (1) of section 776.051, Florida  
 179 | Statutes, is amended to read:

180 | 776.051 Use or threatened use of force in resisting arrest  
 181 | or making an arrest or in the execution of a legal duty;  
 182 | prohibition.—



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183 (1) A person is not justified in the use or threatened use  
184 of force to resist an arrest by a law enforcement officer, or to  
185 resist a law enforcement officer who is engaged in the execution  
186 of a legal duty, if the law enforcement officer was acting in  
187 good faith and he or she is known, or reasonably appears, to be  
188 a law enforcement officer.

189 Section 8. This act shall take effect upon becoming a law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

3  
 4 **Amendment (with title amendment)**

5 Between lines 50 and 51, insert:

6 Section 2. Paragraph (a) of subsection (2) and paragraph  
 7 (a) of subsection (3) of section 775.087, Florida Statutes, is  
 8 amended to read:

9 775.087 Possession or use of weapon; aggravated battery;  
 10 felony reclassification; minimum sentence.—

11 (2)(a)1. Any person who is convicted of a felony or an  
 12 attempt to commit a felony, regardless of whether the use of a  
 13 weapon is an element of the felony, and the conviction was for:

- 14 a. Murder;
- 15 b. Sexual battery;
- 16 c. Robbery;
- 17 d. Burglary;



## Amendment No. 1

- 18 e. Arson;
- 19 ~~f. Aggravated assault;~~
- 20 f. ~~g.~~ Aggravated battery;
- 21 g. ~~h.~~ Kidnapping;
- 22 h. ~~i.~~ Escape;
- 23 i. ~~j.~~ Aircraft piracy;
- 24 j. ~~k.~~ Aggravated child abuse;
- 25 k. ~~l.~~ Aggravated abuse of an elderly person or disabled
- 26 adult;
- 27 l. ~~m.~~ Unlawful throwing, placing, or discharging of a
- 28 destructive device or bomb;
- 29 m. ~~n.~~ Carjacking;
- 30 n. ~~o.~~ Home-invasion robbery;
- 31 o. ~~p.~~ Aggravated stalking;
- 32 p. ~~q.~~ Trafficking in cannabis, trafficking in cocaine,
- 33 capital importation of cocaine, trafficking in illegal drugs,
- 34 capital importation of illegal drugs, trafficking in
- 35 phencyclidine, capital importation of phencyclidine, trafficking
- 36 in methaqualone, capital importation of methaqualone,
- 37 trafficking in amphetamine, capital importation of amphetamine,
- 38 trafficking in flunitrazepam, trafficking in gamma-
- 39 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
- 40 trafficking in Phenethylamines, or other violation of s.
- 41 893.135(1); or
- 42 q. ~~r.~~ Possession of a firearm by a felon
- 43



Amendment No. 1

44 and during the commission of the offense, such person actually  
45 possessed a "firearm" or "destructive device" as those terms are  
46 defined in s. 790.001, shall be sentenced to a minimum term of  
47 imprisonment of 10 years, except that a person who is convicted  
48 for ~~aggravated assault~~, possession of a firearm by a felon, or  
49 burglary of a conveyance shall be sentenced to a minimum term of  
50 imprisonment of 3 years if such person possessed a "firearm" or  
51 "destructive device" during the commission of the offense.  
52 However, if an offender who is convicted of the offense of  
53 possession of a firearm by a felon has a previous conviction of  
54 committing or attempting to commit a felony listed in s.  
55 775.084(1)(b)1. and actually possessed a firearm or destructive  
56 device during the commission of the prior felony, the offender  
57 shall be sentenced to a minimum term of imprisonment of 10  
58 years.

59 2. Any person who is convicted of a felony or an attempt  
60 to commit a felony listed in sub-subparagraphs (a)1.a.-~~p.g.~~,  
61 regardless of whether the use of a weapon is an element of the  
62 felony, and during the course of the commission of the felony  
63 such person discharged a "firearm" or "destructive device" as  
64 defined in s. 790.001 shall be sentenced to a minimum term of  
65 imprisonment of 20 years.

66 3. Any person who is convicted of a felony or an attempt  
67 to commit a felony listed in sub-subparagraphs (a)1.a.-~~p.g.~~,  
68 regardless of whether the use of a weapon is an element of the  
69 felony, and during the course of the commission of the felony



## Amendment No. 1

70 such person discharged a "firearm" or "destructive device" as  
71 defined in s. 790.001 and, as the result of the discharge, death  
72 or great bodily harm was inflicted upon any person, the  
73 convicted person shall be sentenced to a minimum term of  
74 imprisonment of not less than 25 years and not more than a term  
75 of imprisonment of life in prison.

76 (3)(a)1. Any person who is convicted of a felony or an  
77 attempt to commit a felony, regardless of whether the use of a  
78 firearm is an element of the felony, and the conviction was for:

- 79 a. Murder;
- 80 b. Sexual battery;
- 81 c. Robbery;
- 82 d. Burglary;
- 83 e. Arson;
- 84 ~~f. Aggravated assault;~~
- 85 f. ~~g.~~ Aggravated battery;
- 86 g. ~~h.~~ Kidnapping;
- 87 h. ~~i.~~ Escape;
- 88 i. ~~j.~~ Sale, manufacture, delivery, or intent to sell,  
89 manufacture, or deliver any controlled substance;
- 90 j. ~~k.~~ Aircraft piracy;
- 91 k. ~~l.~~ Aggravated child abuse;
- 92 l. ~~m.~~ Aggravated abuse of an elderly person or disabled  
93 adult;
- 94 m. ~~n.~~ Unlawful throwing, placing, or discharging of a  
95 destructive device or bomb;



## Amendment No. 1

96        n. ~~o.~~ Carjacking;  
97        o. ~~p.~~ Home-invasion robbery;  
98        p. ~~q.~~ Aggravated stalking; or  
99        q. ~~r.~~ Trafficking in cannabis, trafficking in cocaine,  
100 capital importation of cocaine, trafficking in illegal drugs,  
101 capital importation of illegal drugs, trafficking in  
102 phencyclidine, capital importation of phencyclidine, trafficking  
103 in methaqualone, capital importation of methaqualone,  
104 trafficking in amphetamine, capital importation of amphetamine,  
105 trafficking in flunitrazepam, trafficking in gamma-  
106 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,  
107 trafficking in Phenethylamines, or other violation of s.  
108 893.135(1);

109  
110 and during the commission of the offense, such person possessed  
111 a semiautomatic firearm and its high-capacity detachable box  
112 magazine or a machine gun as defined in s. 790.001, shall be  
113 sentenced to a minimum term of imprisonment of 15 years.

114        2. Any person who is convicted of a felony or an attempt  
115 to commit a felony listed in subparagraph (a)1., regardless of  
116 whether the use of a weapon is an element of the felony, and  
117 during the course of the commission of the felony such person  
118 discharged a semiautomatic firearm and its high-capacity box  
119 magazine or a "machine gun" as defined in s. 790.001 shall be  
120 sentenced to a minimum term of imprisonment of 20 years.



Amendment No. 1

121           3. Any person who is convicted of a felony or an attempt  
122 to commit a felony listed in subparagraph (a)1., regardless of  
123 whether the use of a weapon is an element of the felony, and  
124 during the course of the commission of the felony such person  
125 discharged a semiautomatic firearm and its high-capacity box  
126 magazine or a "machine gun" as defined in s. 790.001 and, as the  
127 result of the discharge, death or great bodily harm was  
128 inflicted upon any person, the convicted person shall be  
129 sentenced to a minimum term of imprisonment of not less than 25  
130 years and not more than a term of imprisonment of life in  
131 prison.

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136

**T I T L E   A M E N D M E N T**

137

Remove line 3 and insert:

138

providing legislative findings and intent; amending s. 775.087,

139

F.S.; removing aggravated assault from the list of offenses that

140

qualify for certain minimum mandatory sentences; amending s.

141



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

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

**Amendment (with title amendment)**

Between lines 188 and 189, insert:

Section 8. Section 776.09, Florida Statutes, is created to read:

776.09 Notwithstanding the eligibility requirements pursuant to s. 943.0585(2), a person who has an information, indictment, or other charging document either not filed or dismissed by the state attorney, or dismissed by the court because it was found that the person acted in lawful self-defense pursuant to the provisions related to the justifiable use of force in ch. 776, is eligible to apply for and receive a certificate of eligibility for expunction under s. 943.0585. This section does not confer any right to the expunction of a criminal history record, and any request for expunction of a





## Amendment No. 2

18 criminal history record may be denied at the discretion of the  
19 court.

20 Section 9. Subsection (5) of section 943.0585, Florida  
21 Statutes, is renumbered as subsection (6), respectively, and  
22 subsection (5) is added to that section, to read:

23 943.0585 Court-ordered expunction of criminal history  
24 records.—The courts of this state have jurisdiction over their  
25 own procedures, including the maintenance, expunction, and  
26 correction of judicial records containing criminal history  
27 information to the extent such procedures are not inconsistent  
28 with the conditions, responsibilities, and duties established by  
29 this section. Any court of competent jurisdiction may order a  
30 criminal justice agency to expunge the criminal history record  
31 of a minor or an adult who complies with the requirements of  
32 this section. The court shall not order a criminal justice  
33 agency to expunge a criminal history record until the person  
34 seeking to expunge a criminal history record has applied for and  
35 received a certificate of eligibility for expunction pursuant to  
36 subsection (2). A criminal history record that relates to a  
37 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
38 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
39 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
40 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
41 any violation specified as a predicate offense for registration  
42 as a sexual predator pursuant to s. 775.21, without regard to  
43 whether that offense alone is sufficient to require such



Amendment No. 2

44 registration, or for registration as a sexual offender pursuant  
45 to s. 943.0435, may not be expunged, without regard to whether  
46 adjudication was withheld, if the defendant was found guilty of  
47 or pled guilty or nolo contendere to the offense, or if the  
48 defendant, as a minor, was found to have committed, or pled  
49 guilty or nolo contendere to committing, the offense as a  
50 delinquent act. The court may only order expunction of a  
51 criminal history record pertaining to one arrest or one incident  
52 of alleged criminal activity, except as provided in this  
53 section. The court may, at its sole discretion, order the  
54 expunction of a criminal history record pertaining to more than  
55 one arrest if the additional arrests directly relate to the  
56 original arrest. If the court intends to order the expunction of  
57 records pertaining to such additional arrests, such intent must  
58 be specified in the order. A criminal justice agency may not  
59 expunge any record pertaining to such additional arrests if the  
60 order to expunge does not articulate the intention of the court  
61 to expunge a record pertaining to more than one arrest. This  
62 section does not prevent the court from ordering the expunction  
63 of only a portion of a criminal history record pertaining to one  
64 arrest or one incident of alleged criminal activity.  
65 Notwithstanding any law to the contrary, a criminal justice  
66 agency may comply with laws, court orders, and official requests  
67 of other jurisdictions relating to expunction, correction, or  
68 confidential handling of criminal history records or information  
69 derived therefrom. This section does not confer any right to the



Amendment No. 2

70 expunction of any criminal history record, and any request for  
71 expunction of a criminal history record may be denied at the  
72 sole discretion of the court.

73 (5) Notwithstanding the eligibility requirements pursuant  
74 to s. 943.0585(2), a person who has an information, indictment,  
75 or other charging document either not filed or dismissed by the  
76 state attorney, or dismissed by the court because it was found  
77 that the person acted in lawful self-defense pursuant to the  
78 provisions related to the justifiable use of force in ch. 776,  
79 is eligible to apply for and receive a certificate of  
80 eligibility for expunction under s. 943.0585. This subsection  
81 does not confer any right to the expunction of a criminal  
82 history record, and any request for expunction of a criminal  
83 history record may be denied at the discretion of the court.

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**T I T L E   A M E N D M E N T**

89

Remove line 22 and insert:

90

officer; creating s. 776.09, F.S.; providing that a person is  
91 eligible to apply for and receive a certificate of eligibility  
92 for expunction, notwithstanding the eligibility requirements, if  
93 the charging document in the case is not filed or is dismissed  
94 because it is found that the person acted in lawful self-defense  
95 pursuant to the provisions related to the justifiable use of

91

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95



## Amendment No. 2

96 force in ch. 776; amending s. 943.0585, F.S.; providing that a  
97 person is eligible to apply for and receive a certificate of  
98 eligibility for expunction, notwithstanding the eligibility  
99 requirements, if the charging document in the case is not filed  
100 or is dismissed because it is found that the person acted in  
101 lawful self-defense pursuant to the provisions related to the  
102 justifiable use of force in ch. 776; providing an effective  
103 date.

104



Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

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

**Amendment (with title amendment)**

Between lines 50 and 51, insert:

Section 2. Subsection (6) is added to section 775.087,  
Florida Statutes, to read:

775.087 Possession or use of weapon; aggravated battery;  
felony reclassification; minimum sentence.-

(6) Notwithstanding subsections (2) and (3), when  
 sentencing a defendant convicted of a violation of s. 784.021,  
 the court may sentence the defendant pursuant to s. 775.082, s.  
 775.083, or 775.084, if the court makes written findings that:

(a) The defendant did not act in furtherance of any other  
 forcible felony;

(b) The defendant committed the offense with the intent to  
 defend themself or others from bodily harm; and



Amendment No. 3

18 (c) A minimum mandatory sentence required under this  
19 section is not necessary to protect the public.

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**T I T L E   A M E N D M E N T**

Remove line 4 and insert:

775.087, F.S.; authorizing a judge to deviate from a minimum  
mandatory sentence for aggravated assault if the court makes  
certain findings; amending s. 776.012, F.S.; applying provisions  
relating to the use



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 123 Fees and Costs in Guardianship Proceedings

**SPONSOR(S):** Schwartz

**TIED BILLS:** HB 125 **IDEN./SIM. BILLS:** SB 120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Ward	Bond
2) Healthy Families Subcommittee	11 Y, 0 N	McElroy	Brazzell
3) Judiciary Committee		Ward <i>210</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Guardianships may be established for both adults and minors:

- For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own estate. If the adult is mentally competent this can be accomplished voluntarily. However, in situations where an individual's mental competence is in question, an involuntary guardianship may be required. The involuntary guardianship is established through an adjudication of incompetence, which is based upon the determination of the examination committee.
- For a minor child, the parents are the natural guardians and can generally act on minor's behalf. There are however exceptions, including settlement of claims, which require the appointment of a guardian ad litem for the minor.

The bill:

- Allows a court to authorize payments to experts and professionals acting on behalf of the guardianship without the need for expert testimony regarding whether the billed amounts are reasonable.
- Requires the state to pay the fees of an examining committee in the event that the court finds that an adult is not incapacitated. In such case, if the court finds the petitioner acted in bad faith, the court may require the petitioner to reimburse these fees.
- Establishes the standard to be utilized by the court in its determination of the need for the appointment of a guardian ad litem for the settlement of a minor's claim.
- Makes technical, grammatical, clarifying and style changes to guardianship statutes.

The bill appears to have a minimal negative fiscal impact on state government. The bill does not appear to have a fiscal impact on local governments.

The bill takes effect upon becoming law and applies to all pending proceedings.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Guardianships may be established for both adults and minors. For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own estate. If the adult is mentally competent this can be accomplished voluntarily. However, in situations where an individual's mental competence is in question, an involuntary guardianship may be required. The involuntary guardianship is established through an adjudication of incompetence, which is based upon the determination of the examination committee. For a minor child, the parents are the natural guardians and can generally act on minor's behalf. There are however exceptions, including settlement of claims, which require the appointment of a guardian ad litem for the minor.

#### Costs and Fees Associated with Guardianship Administration

##### **Current Situation**

Section 744.108, F.S., governs awards of compensation to a guardian or attorney in connection with a guardianship. It provides that "a guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee for services rendered and reimbursement of costs incurred on behalf of the ward."<sup>1</sup> Similarly, s. 744.311(7), F.S.,<sup>2</sup> provides that any attorney appointed under s. 744.311(2), F.S., is entitled to a reasonable fee to be determined by the court.

Under s. 744.108(8), F.S., fees and costs incurred in determining compensation are part of the guardianship administration and are generally awardable from the guardianship estate, unless the court finds the requested compensation substantially unreasonable. It is unclear whether the scope of this subsection covers all requests for attorney fees or is limited to only fees for the guardian's attorney. Specifically, the statute does not address whether an attorney who has rendered services to a ward, such as court-appointed counsel for the ward, is entitled to recover attorney fees and costs associated with proceedings to review and determine compensation.

Further, it is unclear whether expert testimony is required to establish a reasonable fee for a guardian or an attorney. Section 744.108, F.S., is silent on the subject. Practitioners report that many attorneys and judges interpret the current law as requiring testimony from an expert witness to establish a reasonable attorney fee unless a statute dispenses with that requirement.<sup>3</sup> If this is a correct interpretation of existing law, then expert testimony is presently required in all guardianship proceedings for an award of attorney fees.

Cost considerations are a significant factor in many guardianships. Requiring expert testimony at every hearing for determination of interim guardian's fees or attorney fees adds a layer of costs that deplete the ward's estate. Practitioners report that the judiciary is capable of determining a reasonable fee without expert testimony in the vast majority of cases. In those cases where expert testimony would be necessary, the interested party may present such testimony.

##### **Effect of Proposed Changes**

The bill adds subsection (9) to s. 744.108, F.S., dispensing with any requirement for expert testimony to support an award of fees unless requested. Expert testimony may be offered at the option of either

<sup>1</sup> Section 744.108(1), F.S.

<sup>2</sup> This section provides that an attorney will be provided for the alleged incompetent.

<sup>3</sup> See, *Shwartz, Gold & Cohen, P.A. v. Streicher*, 549 So.2d 1044 (Fla. 4th DCA 1989); *Estate of Cordiner v. Evans*, 497 So.2d 920 (Fla. 2d DCA 1986); *Clark v. Squire, Sanders & Dempsey*, 495 So.2d 264 (Fla. 3d DCA 1986).

party after giving notice to interested parties. If expert testimony is offered, a reasonable expert witness fee must be awarded by the court and paid from the assets of the ward.<sup>4</sup>

The bill amends s. 744.108(8), F.S., to provide that the court may award attorney fees and costs associated with proceedings to determine the fees of a guardian or an attorney who has rendered services to a guardian or ward, including court-appointed counsel.

## **Claims of Minors**

### **Current Situation**

Pursuant to s. 744.3025(1)(a), F.S., the court may appoint a guardian ad litem before approving a settlement of a minor's claim in any case in which the gross settlement of the claim exceeds \$15,000.<sup>5</sup> The statute is silent as to the specific criteria to be utilized by the court in its determination of the need for the appointment of a guardian ad litem.

### **Effect of Proposed Changes**

The bill amends s. 744.3025(1)(a), F.S., to provide the standard to be utilized by the court in its determination of the need for the appointment of a guardian ad litem. Specifically, the bill provides that the court may appoint a guardian ad litem "if the court believes that a guardian ad litem is necessary to protect the minor's interest."

## **Costs and Fees Associated with Adjudication**

### **Current Situation**

When a petition for incapacity is filed, the court is required to appoint an examining committee consisting of three members, at least one of which must be a psychiatrist or other physician.<sup>6</sup> The remaining members must be either a psychologist or gerontologist, another psychiatrist or physician, a registered nurse, nurse practitioner, licensed social worker with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training or education may, in the court's discretion, "advise the court in the form of an expert opinion."<sup>7</sup>

Each member of the examining committee is charged with examining the alleged incapacitated person, making a comprehensive assessment, and rendering to the court a professional opinion as to a diagnosis, a prognosis and a recommended course of treatment. This evaluation includes an assessment of the capacity of the individual to exercise enumerated rights in s. 744.3215, F.S.

Compensation of examining committee members is governed by s. 744.331(7), F.S., which provides generally that the examining committee and any attorney appointed to represent the alleged incapacitated person are entitled to reasonable fees to be determined by the court. Under current law, the fees awarded are to be paid by the guardian from the property of the ward or if the ward is indigent, "by the state."<sup>8</sup> If the court finds the petition was brought in bad faith, the costs may be assessed against the petitioner.<sup>9</sup>

The statute is silent, however, with respect to how the examining committee members are to be compensated in the event the petition is dismissed and the court finds no bad faith in the filing of the

<sup>4</sup> This provision is derived from and similar to s. 733.6175(4), F.S., of the Florida Probate Code.

<sup>5</sup> Under current law, parents as natural guardians may settle a claim of less than \$15,000 without appointment of a guardian ad litem. Sections 744.301, 744.3025, F.S.

<sup>6</sup> Section 744.331(3)(a), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 744.331(7)(b), F.S.

<sup>9</sup> Section 744.331(7)(c), F.S.

petition to determine incapacity. Under such circumstances, no guardian is appointed and no property ever comes into the hands of a guardian or under the authority of the court. Likewise, there is no authority for assessing such fees against the petitioner or against the alleged incapacitated person.

This "gap" in s. 744.331(7), F.S., as to who is responsible for the payment of such fees has been recognized in several reported decisions, all of which have recognized the need for remedy by the Legislature.<sup>10</sup>

### **Effect of Proposed Changes**

This bill amends s. 744.331(7)(c), F.S., to provide that if the petition is dismissed, the fees of the examining committee are paid upon court order as "expert witness" fees under s. 29.004(6), F.S. This change implements the provisions of s. 29.004(6), F.S., which awards fees to court appointed experts generally, and provides a secure source of funding to insure that the members of the examining committee are reasonably compensated as contemplated by s. 744.331, F.S., without incentive to find incompetency.

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

Section 1 amends s. 744.108, F.S., regarding guardian's and attorney's fees and expenses.

Section 2 amends s. 744.3025, F.S., regarding claims of minors.

Section 3 amends s. 744.331, F.S., regarding procedures to determine incapacity.

Section 4 provides that the bill applies to all proceedings pending on the effective date of the act.

Section 5 provides an effective date upon becoming a law.

## **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 appears to create an unknown minimal negative fiscal impact. See Fiscal Comments.

#### **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.

<sup>10</sup> See, *Ehrlich v. Severinson*, 985 So.2d 639 (Fla. 4th DCA 2008); *Levine v. Levine*, 4 So.3d 730 (Fla. 5th DCA 2009); and *Faulkner v. Faulkner*, 65 So.3d 1167 (Fla. 1st DCA 2011).

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

The bill appears to lower the cost to individuals for maintenance of a guardianship case. In the majority of guardianship cases the cost of presenting expert testimony will be avoided and the situations where expert testimony is used will be minimized.

**D. FISCAL COMMENTS:**

The Real Property, Probate, and Trust Law Section of the Florida Bar reports that compensation awarded to an examining committee is modest, generally \$600 or less per appointment.

The Office of State Courts Administration (OSCA) reports an anticipated negative fiscal impact because the bill will require the State Courts System to pay examining committee fees in situations in which it is not currently required by statute to do so (i.e., when the petition is dismissed and there is no "ward," indigent or otherwise). Information from the circuits indicates that some currently pay examining committee fees only when the ward/alleged incapacitated person is indigent. Other circuits report that they also pay the fees in those situations in which the alleged incapacitated person is not indigent and a good faith petition is dismissed (e.g., to ensure that the examining committee members do not go uncompensated for their services). Thus, in some cases circuits are already paying the fees in situations contemplated by the bill.

The feedback from the circuits suggests that these situations arise infrequently. In addition, the bill requires the petitioner to reimburse the state if the court concludes that the petition was filed in bad faith. To the extent such reimbursements are indeed made, some of the fiscal impact will be reduced. OSCA does not expect the negative fiscal impact from the legislation to be significant.

**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.

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

A search for the word, 'confidential' throughout the whole of ch. 744, F.S., does not produce a definitive duty of confidentiality that would apply directly to the new provision in s. 744.3025(3), F.S, which provides, at lines 81 and 82, "Any settlement of a claim pursuant to this section is subject to the confidentiality provisions of this chapter." If the tied bill, HB 125 passes, this language will be rendered unnecessary.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1                   A bill to be entitled  
 2           An act relating to fees and costs incurred in  
 3           guardianship proceedings; amending s. 744.108, F.S.;  
 4           updating terminology; providing that fees and costs  
 5           incurred by an attorney who has rendered services to a  
 6           ward in compensation proceedings are payable from  
 7           guardianship assets; providing that expert testimony  
 8           is not required in proceedings to determine  
 9           compensation for an attorney or guardian; amending s.  
 10          744.3025, F.S.; providing that a court may appoint a  
 11          guardian ad litem to represent a minor if necessary to  
 12          protect the minor's interest in a settlement;  
 13          providing that a settlement of a minor's claim is  
 14          subject to certain confidentiality provisions;  
 15          amending s. 744.331, F.S.; requiring that the  
 16          examining committee be paid from state funds as court-  
 17          appointed expert witnesses if a petition for  
 18          incapacity is dismissed; requiring that a petitioner  
 19          reimburse the state for expert witness fees if the  
 20          court finds the petition to have been filed in bad  
 21          faith; providing applicability; providing an effective  
 22          date.

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

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 26               Section 1. Subsections (5) and (8) of section 744.108,

27 Florida Statutes, are amended, and subsection (9) is added to  
 28 that section, to read:

29 744.108 Guardian ~~Guardian's~~ and attorney ~~attorney's~~ fees  
 30 and expenses.—

31 (5) All petitions for guardian ~~guardian's~~ and attorney  
 32 ~~attorney's~~ fees and expenses must be accompanied by an itemized  
 33 description of the services performed for the fees and expenses  
 34 sought to be recovered.

35 (8) When court proceedings are instituted to review or  
 36 determine a guardian's or an attorney's fees under subsection  
 37 (2), such proceedings are part of the guardianship  
 38 administration process and the costs, including costs and  
 39 attorney fees for the guardian's attorney, an attorney appointed  
 40 under s. 744.331(2), or an attorney who has rendered services to  
 41 the ward, shall be determined by the court and paid from the  
 42 assets of the guardianship estate unless the court finds the  
 43 requested compensation under subsection (2) to be substantially  
 44 unreasonable.

45 (9) The court may determine reasonable compensation for  
 46 the guardian, the guardian's attorney, a person employed by the  
 47 guardian, an attorney appointed under s. 744.331(2), or an  
 48 attorney who has rendered services to the ward without receiving  
 49 expert testimony. Any person or party may offer expert testimony  
 50 after giving notice to interested persons. If expert testimony  
 51 is offered, a reasonable expert witness fee shall be awarded by  
 52 the court and paid from the assets of the guardianship estate.

53 Section 2. Section 744.3025, Florida Statutes, is amended  
 54 to read:

55 744.3025 Claims of minors.—

56 (1)(a) The court may appoint a guardian ad litem to  
 57 represent the minor's interest before approving a settlement of  
 58 the minor's portion of the claim in any case in which a minor  
 59 has a claim for personal injury, property damage, wrongful  
 60 death, or other cause of action in which the gross settlement of  
 61 the claim exceeds \$15,000 if the court believes a guardian ad  
 62 litem is necessary to protect the minor's interest.

63 (b) Except as provided in paragraph (e), the court shall  
 64 appoint a guardian ad litem to represent the minor's interest  
 65 before approving a settlement of the minor's claim in any case  
 66 in which the gross settlement involving a minor equals or  
 67 exceeds \$50,000.

68 (c) The appointment of the guardian ad litem must be  
 69 without the necessity of bond or notice.

70 (d) The duty of the guardian ad litem is to protect the  
 71 minor's interests as described in the Florida Probate Rules.

72 (e) A court need not appoint a guardian ad litem for the  
 73 minor if a guardian of the minor has previously been appointed  
 74 and that guardian has no potential adverse interest to the  
 75 minor. ~~A court may appoint a guardian ad litem if the court~~  
 76 ~~believes a guardian ad litem is necessary to protect the~~  
 77 ~~interests of the minor.~~

78 (2) Unless waived, the court shall award reasonable fees

79 and costs to the guardian ad litem to be paid out of the gross  
 80 proceeds of the settlement.

81 (3) Any settlement of a claim pursuant to this section is  
 82 subject to the confidentiality provisions of this chapter.

83 Section 3. Paragraph (c) of subsection (7) of section  
 84 744.331, Florida Statutes, is amended to read:

85 744.331 Procedures to determine incapacity.-

86 (7) FEES.-

87 (c) If the petition is dismissed:7

88 1. The fees of the examining committee shall be paid upon  
 89 court order as expert witness fees under s. 29.004(6).

90 2. Costs and attorney ~~attorney's~~ fees of the proceeding  
 91 may be assessed against the petitioner if the court finds the  
 92 petition to have been filed in bad faith. If the court finds bad  
 93 faith under this subparagraph, the petitioner shall reimburse  
 94 the state courts system for any amounts paid under subparagraph  
 95 1.

96 Section 4. The amendments made by this act to ss. 744.108,  
 97 744.3025, and 744.331, Florida Statutes, apply to all  
 98 proceedings pending on the effective date of this act.

99 Section 5. This act shall take effect upon becoming a law.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 161 Indecent Exposure  
**SPONSOR(S):** Hager; Harrell and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 254

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N	Cunningham	Cunningham
2) Justice Appropriations Subcommittee	13 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee		Cunningham <i>mc</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Section 800.03, F.S., makes it a first degree misdemeanor for a person to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose.

Section 901.15, F.S., sets forth the instances in which a law enforcement officer can arrest a person without a warrant. For misdemeanor offenses, the general rule is that law enforcement officers must witness the occurrence of the offense in order to make an arrest without a warrant. However, in certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to this rule.

The bill amends s. 800.03, F.S., to make second or subsequent violations a third degree felony. The bill also amends s. 901.15, F.S., to permit a law enforcement officer to arrest a person without a warrant if the officer has probable cause to believe the person violated s. 800.03, F.S.

The Criminal Justice Impact Conference met January 30, 2014, and determined the bill will have a insignificant impact on state prison beds. The bill may also result in an increase in the number of arrests for misdemeanor violations of s. 800.03, F.S., which would have a negative jail bed impact.

The bill is effective October 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Exposure of Sexual Organs**

Section 800.03, F.S., makes it a first degree misdemeanor<sup>1</sup> for a person to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose.

##### **Arrest without a Warrant**

Section 901.15, F.S., sets forth the instances in which a law enforcement officer (LEO) can arrest a person without a warrant. For misdemeanor offenses, the general rule is that LEOs must witness the occurrence of the offense in order to make an arrest without a warrant. If the officer does not witness the offense, the officer must obtain an arrest warrant.<sup>2</sup>

In certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to the above rule. Those crimes include:

- Violations of injunctions for protection in domestic violence and dating violence situations as well as violations of pretrial release conditions in domestic violence cases;
- Misdemeanor luring or enticing a child and child abuse;
- Assault upon a law enforcement officer, firefighter and other listed persons;
- Battery;
- Criminal mischief or graffiti-related offenses; and
- Violations of certain naval vessel protection zones or trespass in posted areas in airports.<sup>3</sup>

For the offenses listed above, an LEO does not have to witness the crime in order to make a warrantless arrest – they only need to have probable cause to believe the person committed the crime.<sup>4</sup>

##### **Effect of the Bill**

The bill amends s. 800.03, F.S., to make second or subsequent violations a third degree felony<sup>5</sup> (rather than a first degree misdemeanor).

The bill also amends s. 901.15, F.S., to permit a law enforcement officer to arrest a person without a warrant if the officer has probable cause to believe the person violated s. 800.03, F.S.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 800.03, F.S., relating to exposure of sexual organs.

Section 2. Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 3. Provides an effective date of October 1, 2014.

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<sup>1</sup> 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.

<sup>2</sup> Section 901.15, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> 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.

## 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 January 30, 2014, and determined the bill will have an insignificant impact on state prison beds.

### 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 permits an LEO to arrest a person without a warrant if the officer has probable cause to believe the person violated s. 800.03, F.S. This may result in an increase in the number of arrests for misdemeanor violations of s. 800.03, F.S., which would have a negative jail bed impact.

### 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

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A bill to be entitled  
 An act relating to indecent exposure; amending s.  
 800.03, F.S.; increasing the classification of second  
 and subsequent violations of the provision prohibiting  
 unlawful exposure of sexual organs; amending s.  
 901.15, F.S.; authorizing an arrest without a warrant  
 if there is probable cause to believe that a person  
 has committed unlawful exposure of sexual organs in  
 violation of specified provisions; providing an  
 effective date.

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

Section 1. Section 800.03, Florida Statutes, is amended to  
 read:

800.03 Exposure of sexual organs.—

(1) It is unlawful to expose or exhibit one's sexual  
 organs in public or on the private premises of another, or so  
 near thereto as to be seen from such private premises, in a  
 vulgar or indecent manner, or to be naked in public except in  
 any place provided or set apart for that purpose. ~~Violation of  
 this section is a misdemeanor of the first degree, punishable as  
 provided in s. 775.082 or s. 775.083.~~ A mother's breastfeeding  
 of her baby does not under any circumstance violate this  
 section.

(2) A person who violates this section commits:

27        (a) For a first offense, a misdemeanor of the first  
 28 degree, punishable as provided in s. 775.082 or s. 775.083.

29        (b) For a second or subsequent offense, a felony of the  
 30 third degree, punishable as provided in s. 775.082, s. 775.083,  
 31 or s. 775.084.

32        Section 2. Paragraph (d) is added to subsection (9) of  
 33 section 901.15, Florida Statutes, to read:

34        901.15 When arrest by officer without warrant is lawful.—A  
 35 law enforcement officer may arrest a person without a warrant  
 36 when:

37        (9) There is probable cause to believe that the person has  
 38 committed:

39        (d) Exposure of sexual organs in violation of s. 800.03.

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



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 171 Public Assistance Fraud  
**SPONSOR(S):** Diaz J. and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 308

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 2 N	Jones	Cunningham
2) Government Operations Appropriations Subcommittee	13 Y, 0 N	Keith	Topp
3) Judiciary Committee		Jones <i>JK</i>	Havlicak <i>RH</i>

**SUMMARY ANALYSIS**

The Division of Public Assistance Fraud (DPAF), housed within the Department of Financial Services (DFS), works to prevent, detect, and prosecute public assistance fraud. The Public Assistance Fraud unit currently is staffed with 63 non-sworn law enforcement positions assigned to investigate fraud in the following programs:

- Cash Assistance/Temporary Assistance for Needy Families (TANF); Supplemental Nutritional Assistance Program (SNAP) formerly known as Food Stamps; Medicaid Recipient Fraud; Trafficking in SNAP benefits; Subsidized Day Care; School Readiness Program; Voluntary Pre-K Program; Emergency Financial Assistance for Housing; Low Income Energy Assistance; Disaster Assistance/Emergency SNAP benefits; and Cooperative Disability Investigations (Social Security Disability, SNAP, and Medicaid Eligibility).

Currently, DPAF investigators do not have statutory authority to administer oaths and affirmations. In order to do so, they must be a Notary Public, which costs approximately \$120 per investigator, and must be renewed every 4 years. Additionally, DPAF investigators do not have statutory authority to issue subpoenas for business and education records that are frequently necessary for public assistance fraud investigations. In order to obtain such records, DPAF investigators must request state attorneys to issue the subpoenas on their behalf.

The bill amends s. 414.411, F.S., to allow DFS to do the following when conducting public assistance fraud investigations:

- Administer oaths and affirmations; and
- Issue and serve subpoenas for the attendance of witnesses or the production of business records, books, papers, correspondence, memoranda, and other records.

The bill allows the subpoenas to be served by representatives designated by DFS. If a person fails to obey the subpoena, the court may issue an order requiring compliance with the subpoena. Failure to obey the court order may be punished by the court as civil or criminal contempt. The person refusing the subpoena will be liable for costs incurred by DFS and reasonable attorney fees.

DFS indicates that reducing the need and costs for Notary Public commissions will result in a \$3,600 savings over a four-year period.

The bill is effective on July 1, 2014.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

The Division of Public Assistance Fraud (DPAF), housed within the Department of Financial Services (DFS), works to prevent, detect, and prosecute public assistance fraud. The Public Assistance Fraud unit currently is staffed with 63 non-sworn law enforcement positions assigned to nine field offices.<sup>1</sup>

DPAF investigates fraud in the following programs:

- Cash Assistance/Temporary Assistance for Needy Families (TANF);
- Supplemental Nutritional Assistance Program (SNAP) formerly known as Food Stamps;
- Medicaid Recipient Fraud;
- Trafficking in SNAP benefits;
- Subsidized Day Care;
- School Readiness Program;
- Voluntary Pre-K Program;
- Emergency Financial Assistance for Housing;
- Low Income Energy Assistance;
- Disaster Assistance/Emergency SNAP benefits; and
- Cooperative Disability Investigations (Social Security Disability, SNAP, and Medicaid Eligibility).<sup>2</sup>

Currently, DPAF investigators do not have statutory authority to administer oaths and affirmations. In order to do so, they must be a Notary Public,<sup>3</sup> which costs approximately \$120 per investigator, and must be renewed every 4 years.<sup>4</sup>

DFS does have statutory authority to issue subpoenas for:

- The enforcement of employer workers' compensation coverage requirements (s. 440.107(3)(f), F.S.);
- Investigations under the Insurance Code (s. 624.321(1)(b), F.S.);
- State Fire Marshal investigations under ch. 633, F.S. (s. 633.112, F.S.); and
- Disposition of unclaimed property investigations (s. 717.1301, F.S.).

Currently, DPAF investigators do not have statutory authority to issue subpoenas for business and education records that are frequently necessary for public assistance fraud investigations.<sup>5</sup> In order to obtain such records, DPAF investigators must request state attorneys to issue the subpoenas on their behalf.<sup>6</sup> This process is often time-consuming, particularly for the state attorneys and clerks of court.<sup>7</sup> Further, because not all of DPAF investigations are criminal in nature, state attorneys are limited in their ability to issue a subpoena for information necessary to complete a successful investigation.<sup>8</sup>

<sup>1</sup> <http://www.myfloridacfo.com/division/PAF/#.UtRFS6NOncs> (last visited on February 17, 2014).

<sup>2</sup> *Id.*

<sup>3</sup> DFS Bill Analysis, January 13, 2014 (on file with the Criminal Justice Subcommittee).

<sup>4</sup> *Id.* DPAF averages 10 renewals per year at a cost to DPAF of approximately \$1,200 per year.

<sup>5</sup> Section 414.411, F.S.

<sup>6</sup> DFS Bill Analysis, January 13, 2014.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

### **Effect of the Bill**

The bill amends s. 414.411, F.S., to allow DFS to do the following when conducting public assistance fraud investigations:

- Administer oaths and affirmations; and
- Issue and serve subpoenas for the attendance of witnesses or the production of business records, books, papers, correspondence, memoranda, and other records.

The bill allows the subpoenas to be served by representatives designated by DFS. If a person fails to obey the subpoena, the court that has jurisdiction in the geographical area where the inquiry is being carried out or in the area where the person who has refused the subpoena is found, resides, or transacts business may issue an order requiring compliance with the subpoena. Failure to obey the court order may be punished by the court as civil or criminal contempt. The person refusing the subpoena is liable for costs incurred by DFS and reasonable attorney fees.

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

Section 1. Amends s. 414.411, F.S., relating to public assistance fraud.

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:**

The bill has an insignificant positive impact on state expenditures. Currently 45 of 63 positions within the DPAF are investigators who are also commissioned Notaries Public. With passage of this legislation, the DPAF will only retain 10 Notary Public commissions for the 45 investigators. The cost of these Notary Public commissions will be \$1,200, rather than \$4,800, providing for a cost savings of \$3,600 over 4 years. In addition, the DFS indicates that there could be a potential insignificant cost associated with paying process servers to serve a subpoena in cases where department staff is unable to do so. However, the department indicates that any costs related to serving a subpoena are insignificant and can be absorbed within current resources.

#### **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.

#### **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.

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

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                    A bill to be entitled  
 2            An act relating to public assistance fraud; amending  
 3            s. 414.411, F.S.; authorizing the Department of  
 4            Financial Services to administer oaths and  
 5            affirmations and issue and serve subpoenas when  
 6            conducting investigations into public assistance  
 7            fraud; providing a penalty; providing for award of  
 8            attorney fees and costs; providing an effective date.

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

11  
 12            Section 1. Subsection (2) of section 414.411, Florida  
 13    Statutes, is amended to read:

14            414.411 Public assistance fraud.—

15            (2) When conducting an ~~In the conduct of such~~  
 16    investigation pursuant to this section, the Department of  
 17    Financial Services may:

18            (a) Employ persons who have ~~having such~~ qualifications  
 19    that ~~as~~ are useful in the performance of this duty.

20            (b) Administer oaths and affirmations.

21            (c) Issue and serve subpoenas for the attendance of  
 22    witnesses or the production of business records, books, papers,  
 23    correspondences, memoranda, and other records. Representatives  
 24    designated by the department may serve the subpoenas. If a  
 25    person refuses to obey a subpoena, the court that has  
 26    jurisdiction in the geographical area where the inquiry is

27 carried out or where the person who has refused the subpoena is  
 28 found, resides, or transacts business may issue an order  
 29 requiring compliance with the subpoena. Failure to obey the  
 30 court order may be punished, civilly or criminally, by the court  
 31 as contempt. The person refusing the subpoena is liable for  
 32 costs, including reasonable attorney fees, incurred by the  
 33 department to obtain an order granting, in whole or in part, a  
 34 petition to enforce the subpoena.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 427 Traveling Across County Lines to Commit Felony Offenses

**SPONSOR(S):** McBurney and others

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 550

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Jones	Cunningham
2) Justice Appropriations Subcommittee	13 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee		Jones <i>JD</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

In recent months, news outlets have reported on a "wave" of South Florida burglaries allegedly committed by individuals who intentionally traveled to a county other than their county of residence to commit the offense. According to law enforcement, traditional law enforcement methods, such as using local pawn shop databases, confidential informants, proactive police patrols, and targeted patrols, become less effective when investigating these types of crimes. Currently, there are no statutes that make it a crime for a person to travel to another county with the intent to commit a crime.

The bill creates s. 843.22, F.S., which makes it a third degree felony for a person who resides in Florida to:

- Travel any distance and cross a Florida county boundary;
- With the intent to commit a felony offense in a Florida county that is not their county of residence.

"County of residence" is defined as the county in which a person resides within this state. Evidence of county of residence may include, but is not limited to:

- The address on the person's driver license or state identification card;
- Records of real property or mobile home ownership;
- Records of a lease agreement for residential property;
- The county in which the person's motor vehicle is registered;
- The county in which the person is enrolled in a school, college, or university; or
- The county in which the person is employed.

"Felony offense" is defined as a felony violation, or an attempt, solicitation, or conspiracy to commit a felony violation, of sexual battery, lewdness, prostitution, stalking, battery, carjacking, home invasion robbery, burglary, arson, robbery, kidnapping, theft, racketeering, or trafficking in a controlled substance.

The bill also prohibits those charged with s. 843.22, F.S. (traveling across county lines with the intent to commit a felony), from being released on bail until first appearance to ensure the full participation of the prosecutor and the protection of the public.

The Criminal Justice Impact Conference met January 30, 2014, and determined the bill will have an insignificant impact on state prison beds. The bill may also have a negative jail bed impact because it prohibits persons charged under s. 843.22, F.S., from being released on bail until first appearance. However, since first appearance must occur within 24 hours of arrest, the impact on local jails will likely be insignificant.

The bill is effective October 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Traveling Across County Lines to Commit Felonies**

In recent months, news outlets have reported on a "wave" of burglaries that have occurred in South Florida.<sup>1</sup> These burglaries are allegedly committed by individuals who intentionally travel to a county other than their county of residence to commit the offense. William Snyder, Sheriff of Martin County, states that "traditional law enforcement methods," such as using local pawn shop databases, confidential informants, proactive police patrols, and targeted patrols, "become less effective" with these crimes.<sup>2</sup> According to Sheriff Snyder, it's difficult for law enforcement officials to establish a pattern and track criminals when they travel from their home county into neighboring counties to commit crimes.<sup>3</sup>

Currently, there are no statutes that make it a crime for a person to travel to another county with the intent to commit a crime.

##### Effect of the Bill

The bill creates s. 843.22, F.S., which makes it a third degree felony<sup>4</sup> for a person who resides in Florida to:

- Travel any distance and cross a Florida county boundary;
- With the intent to commit a felony offense in a Florida county that is not their county of residence.

The bill provides the following definitions:

- "County of residence" means the county in which a person resides within this state. Evidence of county of residence may include, but is not limited to:
  - The address on the person's driver license or state identification card;
  - Records of real property or mobile home ownership;
  - Records of a lease agreement for residential property;
  - The county in which the person's motor vehicle is registered;
  - The county in which the person is enrolled in a school, college, or university; and
  - The county in which the person is employed.
- "Felony offense" means a felony violation, or an attempt, solicitation, or conspiracy to commit a felony violation, of sexual battery, lewdness, prostitution, stalking, battery, carjacking, home invasion robbery, burglary, arson, robbery, kidnapping, theft, racketeering, or trafficking in a controlled substance.

##### **Bail Determinations**

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.<sup>5</sup> Generally, pretrial release is granted by

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<sup>1</sup> *Lawmakers file bills pushed by Martin County sheriff to combat 'pillowcase' burglaries*, Jonathan Mattise, December 23, 2013. <https://www.tcpalm.com/news/2013/dec/23/lawmakers-file-bills-pushed-by-martin-county-to/> (last visited on January 9, 2014); *Sheriff Enlists Legislative Help To Crack Down On Growing Problem: 'Pillowcase Burglars'*, Sascha Cordner, December 18, 2013. <http://news.wfsu.org/post/sheriff-enlists-legislative-help-crack-down-growing-problem-pillowcase-burglars> (last visited on January 9, 2014).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> 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.

<sup>5</sup> Report No. 10-08, *"Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed,"* Office of Program Policy Analysis & Government Accountability, January 2010 (on file with the Criminal Justice Subcommittee).



releasing a defendant on their own recognizance, by requiring the defendant to post bail, and/or by requiring the defendant to participate in a pretrial release program.<sup>6</sup>

Bail requires an accused to pay a set sum of money to the sheriff to secure his or her release. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. The purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger.<sup>7</sup> Courts must consider certain things when determining whether to release a defendant on bail, and what that bail should be (e.g., the nature and circumstances of the offense charged, the weight of the evidence against the defendant, the defendant's family ties, length of residence in the community, employment history, financial resources, mental condition, etc.).<sup>8</sup>

In certain instances, a person is required to be held without bail until his or her first appearance to ensure the full participation of the prosecutor and the protection of the public. Section 903.046(l), F.S., requires this if the crime charged is a violation of ch. 874, F.S.,<sup>9</sup> or alleged to be subject to enhanced punishment under ch. 874, F.S.

#### Effect of the Bill

The bill amends s. 903.046(l), F.S., to prohibit those charged with s. 843.22, F.S. (traveling across county lines with the intent to commit a felony), from being released on bail until first appearance to ensure the full participation of the prosecutor and the protection of the public.

#### B. SECTION DIRECTORY:

Section 1. Creates s. 843.22, F.S., relating to traveling across county lines to commit a felony offense.

Section 2. Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.

Section 3. 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 January 30, 2014, and determined the bill will have an insignificant impact on state prison beds.

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

##### 1. Revenues:

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

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<sup>6</sup> *Id.*

<sup>7</sup> Section 903.046, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Chapter 874, F.S., relates to criminal gang enforcement and prevention.

2. Expenditures:

The bill prohibits persons charged under s. 843.22, F.S., from being released on bail until first appearance, which may have a negative jail bed impact. However, since first appearance must occur within 24 hours of arrest, the impact on local jails will likely be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

1                                   A bill to be entitled  
 2           An act relating to traveling across county lines to  
 3           commit felony offenses; creating s. 843.22, F.S.;  
 4           providing definitions; prohibiting a person who  
 5           resides in this state from crossing a county boundary  
 6           with the intent to commit certain felony offenses in a  
 7           county other than that of his or her residence;  
 8           providing criminal penalties; amending s. 903.046,  
 9           F.S.; providing that such an alleged violation may be  
 10          considered as a factor in determining whether to  
 11          release a defendant on bail or other conditions;  
 12          providing an effective date.

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

15  
 16           Section 1. Section 843.22, Florida Statutes, is created to  
 17 read:

18           843.22 Traveling across county lines to commit a felony  
 19 offense.—

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

21           (a) "County of residence" means the county in which a  
 22 person resides within this state. Evidence of county of  
 23 residence may include, but is not limited to:

24           1. The address on the person's driver license or state  
 25 identification card.

26           2. Records of real property or mobile home ownership.

27           3. Records of a lease agreement for residential property.

28           4. The county in which the person's motor vehicle is  
 29 registered.

30           5. The county in which the person is enrolled in a school,  
 31 college, or university.

32           6. The county in which the person is employed.

33           (b) "Felony offense" means a felony violation, or an  
 34 attempt, solicitation, or conspiracy to commit a felony  
 35 violation, of sexual battery, lewdness, prostitution, stalking,  
 36 battery, carjacking, home invasion robbery, burglary, arson,  
 37 robbery, kidnapping, theft, racketeering, or trafficking in a  
 38 controlled substance.

39           (2) A person who resides in this state, travels any  
 40 distance, and crosses a county boundary in this state with the  
 41 intent to commit a felony offense in a county in this state  
 42 other than the person's county of residence commits a felony of  
 43 the third degree, punishable as provided in s. 775.082, s.  
 44 775.083, or s. 775.084.

45           Section 2. Paragraph (1) of subsection (2) of section  
 46 903.046, Florida Statutes, is amended to read:

47           903.046 Purpose of and criteria for bail determination.—

48           (2) When determining whether to release a defendant on  
 49 bail or other conditions, and what that bail or those conditions  
 50 may be, the court shall consider:

51           (1) Whether the crime charged is a violation of s. 843.22  
 52 or chapter 874 or alleged to be subject to enhanced punishment

53 | under chapter 874. If any such violation is charged against a  
54 | defendant or if the defendant is charged with a crime that is  
55 | alleged to be subject to such enhancement, he or she shall not  
56 | be eligible for release on bail or surety bond until the first  
57 | appearance on the case in order to ensure the full participation  
58 | of the prosecutor and the protection of the public.

59 |       Section 3. This act shall take effect October 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 445 Time Limitations  
**SPONSOR(S):** Criminal Justice Subcommittee; Nuñez and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 2 N, As CS	Cunningham	Cunningham
2) Justice Appropriations Subcommittee	13 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee		Cunningham	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Section 800.04, F.S., provides criminal penalties for various lewd and lascivious offenses committed upon or in the presence of a person less than 16 years of age. These offenses, which range from life felonies to third degree felonies, include:

- Lewd or lascivious battery;
- Lewd or lascivious molestation;
- Lewd or lascivious conduct; and
- Lewd or lascivious exhibition.

Section 95.11, F.S., sets forth statutes of limitation for commencing civil actions. Currently, a civil claim for a violation of s. 800.04, F.S., must commence within four years from the date when the cause of action accrues

Similarly, s. 775.15, F.S., sets forth the following general statutes of limitation 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.

Currently, the general time limitations described above apply to violations of s. 800.04, F.S., but may be extended or their onset delayed in specified circumstances (e.g., if DNA evidence establishes the identity of the accused).

The bill amends ss. 95.11 and 775.15, F.S., to remove the statutes of limitation for civil and criminal actions relating to a lewd or lascivious offense where the victim was under 16. The bill applies the new statutes of limitation to all actions except those which would have been time barred on or before October 1, 2014.

The Criminal Justice Impact Conference met January 30, 2014, and found the prison bed impact of the bill was indeterminate. However, the bill may have a negative prison bed impact in that it allows prosecutions for violations of s. 800.04, F.S., to be commenced at any time.

The bill is effective October 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Lewd or Lascivious Offenses**

Section 800.04, F.S., provides criminal penalties for the following lewd or lascivious offenses committed upon or in the presence of a person less than 16 years of age.<sup>1</sup>

##### Lewd or Lascivious Battery

Lewd or lascivious battery, a second degree felony,<sup>2</sup> occurs when a person:

- Engages in sexual activity<sup>3</sup> with a person 12 years of age or older but less than 16; or
- Encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.<sup>4</sup>

##### Lewd or Lascivious Molestation

A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.<sup>5</sup>

The penalties for lewd or lascivious molestation are as follows:

- An offender 18 years of age or older who commits lewd or lascivious molestation against a victim less than 12 years of age commits a life felony.<sup>6</sup>
- An offender less than 18 years of age who commits lewd or lascivious molestation against a victim less than 12 years of age commits a second degree felony.
- An offender 18 years of age or older who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a second degree felony.
- An offender less than 18 years of age who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a third degree felony.<sup>7</sup>

##### Lewd or Lascivious Conduct

Lewd or lascivious conduct occurs when a person:

- Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or
- Solicits a person under 16 years of age to commit a lewd or lascivious act.<sup>8</sup>

An offender 18 years of age or older who commits lewd or lascivious conduct commits a second degree felony. An offender less than 18 years of age who commits lewd or lascivious conduct commits a third degree felony.

<sup>1</sup> Neither the victim's lack of chastity nor the victim's consent is a defense. Section 800.04(2), F.S.

<sup>2</sup> 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.

<sup>3</sup> Section 800.04(1)(a), F.S., defines the term "sexual activity" as the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

<sup>4</sup> Section 800.04(4), F.S.

<sup>5</sup> Section 800.04(5), F.S.

<sup>6</sup> A life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), F.S., is punishable by a term of imprisonment for life; or a split sentence that is a term of not less than 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4), F.S. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), F.S., by a term of imprisonment for life. Section 775.082(3)(a)4., F.S.

<sup>7</sup> 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.

<sup>8</sup> Section 800.04(6), F.S.



### Lewd or Lascivious Exhibition

A person who commits any of the following acts in the presence of a victim who is less than 16 years of age, commits lewd or lascivious exhibition:

- Intentionally masturbates;
- Intentionally exposes the genitals in a lewd or lascivious manner; or
- Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.<sup>9</sup>

An offender 18 years of age or older who commits a lewd or lascivious exhibition commits a second degree felony. An offender less than 18 years of age who commits a lewd or lascivious exhibition commits a third degree felony.

### **Statute of Limitations**

#### Background

Statutes of limitations sets forth time limitations for commencing criminal prosecutions and civil actions. In *State v. Hickman*,<sup>10</sup> 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.”<sup>11</sup>

#### Civil Cases

Section 95.11, F.S., sets forth statutes of limitation for commencing civil actions in Florida, which range from 30 days to 20 years. The time for commencing civil actions starts to run from the time the cause of action accrues, which occurs when the last element constituting the cause of action occurs.<sup>12</sup>

Currently, a civil claim for a violation of s. 800.04, F.S., must commence within four years from the date when the cause of action accrues.<sup>13</sup>

#### Criminal Cases

Section 775.15, F.S., sets forth statutes of limitation for commencing criminal prosecutions. For example:

- 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.

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<sup>9</sup> Section 800.04(7), F.S.

<sup>10</sup> 189 So.2d 254, 262 (Fla. 2d DCA 1966).

<sup>11</sup> 453 So.2d 905, 906 (Fla. 4th DCA 1984)(citing *State v. Hickman*, 189 So.2d 254 (Fla. 2d DCA 1966)).

<sup>12</sup> Section 95.031(1), F.S.

<sup>13</sup> Section 95.11(3)(n), F.S.

The general time limitations described above currently apply to the lewd or lascivious offenses in s. 800.04, F.S. However, these limitations may be extended or their onset delayed in specified circumstances. For example:

- A prosecution for a lewd or lascivious offense under s. 800.04, F.S., committed between July 1, 2004 and June 30, 2006, may be commenced within 1 year after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of DNA evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused.<sup>14</sup>
- A prosecution for a lewd or lascivious offense under s. 800.04, F.S., committed on or after July 1, 2006, may be commenced at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of DNA evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused.<sup>15</sup>

It should also be noted that for violations of s. 800.04, F.S., the applicable period of limitation does not begin to run until the victim has reached the age of 18 or the violation is reported to a law enforcement agency or other governmental agency, whichever occurs earlier (generally, the time for prosecution of a criminal case starts to run on the day after the offense is committed).<sup>16</sup>

### **Effect of the Bill**

The bill amends s. 95.11, F.S., to provide that there is no time limitation for a civil cause of action of a violation of s. 800.04, F.S., involving a victim under the age of 16 at the time of the offense. The bill applies to all actions except those which would have been time barred on or before October 1, 2014.

The bill amends s. 775.15, F.S., to provide there is no time limitation for the criminal prosecution of a violation of s. 800.04, F.S., involving a victim under the age of 16 at the time of the offense. The bill applies to all offenses except those offenses barred by prosecution on or after October 1, 2014.

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 2. Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

Section 3. 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 January 30, 2014, and found the prison bed impact of the bill was indeterminate. However, the bill may have a negative prison bed impact in that it allows prosecutions for violations of s. 800.04, F.S., to be commenced at any time.

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<sup>14</sup> Section 775.15(15), F.S.

<sup>15</sup> Section 775.15(16), F.S.

<sup>16</sup> Section 775.15(13)(a), F.S.

**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.

**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 a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removes the statutes of limitation for civil and criminal actions relating to a lewd or lascivious offense where the victim was under 16; and
- Applies the new statutes of limitation to all actions except those which would have been time barred on or before October 1, 2014.

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 time limitations; amending ss.  
 3           95.11 and 775.15, F.S.; eliminating statutes of  
 4           limitations on the commencement of civil or criminal  
 5           actions relating to lewd and lascivious offenses if  
 6           the victim was under 16 at the time of the offense;  
 7           providing applicability; providing an effective date.

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

10  
 11           Section 1. Subsection (9) of section 95.11, Florida  
 12           Statutes, is amended to read:

13           95.11 Limitations other than for the recovery of real  
 14           property.—Actions other than for recovery of real property shall  
 15           be commenced as follows:

16           (9) ~~SEXUAL BATTERY~~ OFFENSES ON VICTIMS UNDER AGE 16.—

17           (a) An action related to an act constituting a violation  
 18           of s. 794.011 involving a victim who was under the age of 16 at  
 19           the time of the act may be commenced at any time. This  
 20           subsection applies to any such action other than one which would  
 21           have been time barred on or before July 1, 2010.

22           (b) An action related to an act constituting a violation  
 23           of s. 800.04 involving a victim who was under the age of 16 at  
 24           the time of the act may be commenced at any time. This  
 25           subsection applies to any such action other than one that would  
 26           have been time barred on or before October 1, 2014.

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

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27           Section 2. Subsection (18) is added to section 775.15,  
28 Florida Statutes, to read:

29           775.15 Time limitations; general time limitations;  
30 exceptions.-

31           (18) If the offense is a violation of s. 800.04 and the  
32 victim was under 16 years of age at the time the offense was  
33 committed, a prosecution of the offense may be commenced at any  
34 time. This subsection applies to an offense that is not  
35 otherwise barred from prosecution on or after October 1, 2014.

36           Section 3. This act shall take effect October 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: Judiciary Committee  
 2 Representative Nuñez offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Subsection (9) of section 95.11, Florida

Statutes, is amended to read:

95.11 Limitations other than for the recovery of real  
property.—Actions other than for recovery of real property shall  
be commenced as follows:

(9) SEXUAL BATTERY OFFENSES ON VICTIMS UNDER AGE 16.—

(a) An action related to an act constituting a violation  
of s. 794.011 involving a victim who was under the age of 16 at  
the time of the act may be commenced at any time. This  
subsection applies to any such action other than one which would  
have been time barred on or before July 1, 2010.



Amendment No. 1

17 (b) An action related to an act constituting a violation  
18 of s. 800.04(4) or (5) involving a victim who was under the age  
19 of 16 at the time of the act may be commenced at any time,  
20 unless, at the time of the offense, the offender is less than 18  
21 years of age and is no more than 4 years older than the victim.  
22 This subsection applies to any such action other than one that  
23 would have been time barred on or before October 1, 2014.

24 Section 2. Subsection (18) is added to section 775.15,  
25 Florida Statutes, to read:

26 775.15 Time limitations; general time limitations;  
27 exceptions.-

28 (18) If the offense is a violation of s. 800.04(4) or (5)  
29 and the victim was under 16 years of age at the time the offense  
30 was committed, a prosecution of the offense may be commenced at  
31 any time, unless, at the time of the offense, the offender is  
32 less than 18 years of age and is no more than 4 years older than  
33 the victim. This subsection applies to an offense that is not  
34 otherwise barred from prosecution on or before October 1, 2014.

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

36  
37  
38

39 -----

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

41 Remove everything before the enacting clause and insert:



Amendment No. 1

42 | An act relating to time limitations; amending ss. 95.11 and  
43 | 775.15, F.S.; eliminating statutes of limitations on the  
44 | commencement of civil or criminal actions relating to specified  
45 | lewd and lascivious offenses if the victim was under 16 at the  
46 | time of the offense; providing an exception; providing  
47 | applicability; providing an effective date.

48





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 463 Background Screening  
**SPONSOR(S):** Reed  
**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 674

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	11 Y, 0 N	Guzzo	Shaw
2) Judiciary Committee		Ham-Warren	Havlicak <i>RH</i>
3) Health & Human Services Committee			

**SUMMARY ANALYSIS**

In 2012, the Legislature created the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single program of screening individuals for criminal background checks prior to employment in certain health related service positions. The Clearinghouse is created under the Agency for Health Care Administration (AHCA), and was implemented by AHCA on January 1, 2013. There are six state agencies designated to participate in the Clearinghouse, including, AHCA, the Department of Health (DOH), the Department of Children and Families, the Department of Elder Affairs, the Agency for Persons with Disabilities, and the Division of Vocational Rehabilitation (DVR) within the Department of Education. The bill makes several changes to the provisions of the Clearinghouse, to clarify what is required of participating agencies and applicants.

Specifically, the bill:

- Clarifies that employers must perform the registration and initiation of all criminal history background checks made through the Clearinghouse;
- Requires vendors who submit fingerprints on behalf of employers to include specific identifying information of the person screened;
- Makes the requirement to submit a photo at the time of screening only to the Clearinghouse;
- Allows the Department of Highway Safety and Motor Vehicles to share driver's license photographs with DOH, and AHCA's Background Screening Unit through an interagency agreement; and
- Specifies demographic information that must be submitted with a request for a criminal background check to verify proper identity as required for a federal check.

The bill also:

- Eliminates the three-year waiting period to apply for an exemption from disqualification for a criminal offense for individuals who have completed all monetary sanctions for a felony disqualifying offense, as long as all sanctions are paid or completed before eligibility for an exemption;
- Updates the disqualifying offenses in chapter 435, F.S., to include criminal offenses involving theft that are similar to existing disqualifying offenses; and
- Revises applicability of background screening requirements for certain service providers who must register with DVR.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Florida has one of the largest vulnerable populations in the country with over 25% of the state's population over the age of 65, and many more children and disabled adults. These vulnerable populations require special care because they are at an increased risk of abuse.

In 1995, the Legislature created standard procedures for criminal history background screening of prospective employees, owners, operators, contractors, and volunteers. Chapter 435, F.S., outlines the screening requirements. In 2010, the Legislature substantially rewrote the requirements and procedures for background screening.<sup>1</sup> Major changes made by the 2010 legislation include:

- No person who is required to be screened may begin work until the screening has been completed.
- All Level 1<sup>2</sup> screenings were increased to Level 2<sup>3</sup> screenings.
- By July 1, 2012, all fingerprints submitted to the Florida Department of Law Enforcement (FDLE) must be submitted electronically.
- Certain personnel that were not being screened were required to begin Level 2 screening.
- The addition of serious crimes that disqualify an individual from employment working with vulnerable populations.
- Authorization for agencies to request the retention of fingerprints by FDLE.
- That an exemption for a disqualifying felony may not be granted until at least three years after the completion of all sentencing sanctions for that felony.
- That all exemptions from disqualification may be granted only by the agency head.

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 the specified agencies. Designated agencies include the Agency for Health Care Administration (AHCA), the Department of Health, 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 was required by October 1, 2013. The Clearinghouse was initially implemented by AHCA on January 1, 2013.

##### Current Background Screening Law

Florida licensure laws require providers licensed by AHCA to conduct Level 2 criminal background screening for:<sup>4</sup>

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<sup>1</sup> Chapter 2010-114, L.O.F.

<sup>2</sup> Section 435.03, F.S. Level 1 screenings are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. A person undergoing a Level 1 screening must not have been found guilty of any of the listed offenses.

<sup>3</sup> 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 any of the listed offenses.

<sup>4</sup> Section 408.809, F.S.

- 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.

Current background screening standards in ch. 435, F.S., and s. 408.809, F.S., include various disqualifying offenses pertaining, but not limited to, domestic violence, patient brokering, criminal use of personal identification information, fraudulent use of credit cards, forgery, and possession/sale of illegal drugs.

There are some criminal offenses, not presently listed as disqualifying offenses, that are substantially similar to current disqualifying offenses. For example, s. 408.809(4)(k), F.S., states that fraudulent use of credit cards, if the offense was a felony, as described in s. 817.61, F.S., is a disqualifying offense. Under current background screening standards, obtaining goods by use of a false or expired credit, if the offense was a felony, as described in s. 817.841, F.S., is not considered a disqualifying offense.

The Department of Highway Safety and Motor Vehicles (DHSMV) has the authority to maintain a record of driver license photographs together with other data required for identification and retrieval.<sup>5</sup> The DHSMV also has the authority to share those photographs, through interagency agreements, with specific state agencies.<sup>6</sup>

Collecting photographs at the time of screening is an important part of implementing the Clearinghouse. The requirement to submit a photograph was added to law during the 2012 Legislative Session. However, instead of being in the Clearinghouse statute of s. 435.12, F.S., the requirement currently exists in the general Level 2 screening standards of s. 435.04(1)(e), F.S.

Designated agencies have the authority to grant exemptions from disqualification.<sup>7</sup> The exemptions enable people who have been convicted of a disqualifying criminal offense to present information as to why they should not be excluded from working with vulnerable individuals. The information includes specifics of the offense, how long ago the offense occurred, work history, and rehabilitation. Current law states that an applicant who applies for an exemption for a felony offense must have had at least three years elapse since completion of any sentence or have been lawfully released from confinement, supervision, or sanction for the disqualifying felony.<sup>8</sup> The three-year waiting period would include even the smallest sanction, such as an unpaid balance of a fine. The requirement is similar for disqualifying misdemeanors, except that there is no specific time frame mandated post completion of being lawfully released from confinement, supervision, or sanction.

The term "sanction" does not currently have a formal definition in chapter 435, F.S. Numerous state agencies are bound by chapter 435, F.S., and the interpretation of the term "sanction" varies widely among the agencies.<sup>9</sup>

Employers of individuals subject to screening by a specified agency are required to register with the Clearinghouse and maintain the employment status of all employees with the Clearinghouse for screenings conducted after the date the state agency begins participation in the Clearinghouse. Initial

<sup>5</sup> Section 322.142(4), F.S.

<sup>6</sup> Section 322.142(4), F.S., provides that DHSMV may provide reproductions of the file or digital record to the Department of Business and Professional Regulation, the Department of State, the Department of Revenue, the Department of Children and Families, the Department of Financial Services, or to district medical examiners.

<sup>7</sup> Section 435.07, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> HB 1021 (2013) Bill Analysis and Economic Impact Statement, Agency for Health Care Administration, at page 4, March 13, 2013 (on file with the Health Innovation Subcommittee).

employment status and any change in status must be reported by the employer within 10 business days.<sup>10</sup> Currently, it is not a requirement that screenings be initiated through the Clearinghouse.

### **Effect of Proposed Changes**

The bill amends s. 322.142, F.S., to authorize DHSMV to make available to DOH and AHCA a record of driver's license photographs for the purpose of verifying photographs in the Clearinghouse.

The bill amends ss. 408.809 and 435.04, F.S., to provide additional disqualifying offenses. The criminal offenses added include obtaining goods by use of false or expired credit cards or other credit device, if the offense was a felony (s. 817.481, F.S.), fraudulently obtaining goods or services from a health care provider (s. 817.50, F.S.), racketeering (s. 895.03, F.S.), violating the Florida Money Laundering Act (s. 896.101, F.S.), and criminal offenses that involve attempts, solicitation, and conspiracy to commit an offense (s. 777.04, F.S.) that is one of the listed disqualifying offenses.

The bill amends s. 413.208, F.S., to revise the applicability of background screening requirements for certain Division of Vocational Rehabilitation providers, to apply only to registrations entered into or renewed after the Clearinghouse becomes operational and retains background screening results pursuant to s. 435.12, F.S.

The bill relocates language from s. 435.04(1)(e)2, F.S., to s. 435.12(2)(d), F.S. As a result, the submission of a photograph will be a requirement of the Clearinghouse, and not a requirement for all screenings conducted pursuant to chapter 435, F.S. This change will allow the agency to enter into an agreement with the DHSMV, to verify photographs of individuals that have been background screened through the Clearinghouse by comparing the submitted photograph to the driver's license photograph.

The bill amends s. 435.04(1)(e), F.S., to require vendors who submit fingerprints on behalf of employers to submit specific identifying information for the person screened, including the applicant's:

- Full first name, middle initial, and last name;
- Social security number;
- Date of birth;
- Mailing address;
- Sex; and
- Race.

The bill modifies requirements relating to exemptions from disqualification. Some applicants who are otherwise qualified for an exemption are unaware of outstanding monetary sanctions related to their disqualifying offense until being notified by the agency. In some cases, the applicant's criminal case may have been closed for over a decade but the applicant may still have an outstanding monetary sanction related to the disqualifying offense. Once the outstanding monetary sanction has been paid, the applicant would not be eligible to be granted an exemption from disqualification for a period of three years post completion of the sanction.

The bill amends s. 435.07, F.S., to delete the term "sanction", and replace it with "nonmonetary condition imposed by the court" to eliminate differing interpretations of the term sanction. Court ordered nonmonetary sanctions could include various types of community service and rehabilitation courses, such as anger management, theft prevention courses, and drug rehabilitation. Monetary sanctions that are court ordered could include any fee, fine, fund, lien, civil judgment, application, and costs of prosecution, trust or restitution. The bill would eliminate the three-year waiting period for individuals that have completed all monetary sanctions for a felony disqualifying offense. The three-year waiting period would still apply for any felony disqualifying offense where, confinement, supervision, or nonmonetary condition is involved. As a result, well qualified and rehabilitated

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<sup>10</sup> Section 435.12(2)(c), F.S.  
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employees will have an opportunity to gain lawful employment in the healthcare facilities licensed by AHCA.<sup>11</sup>

Finally, the bill requires screenings to be initiated and registered by the employer through the Clearinghouse prior to referring an employee or potential employee for electronic fingerprint submission. The bill requires the registration to include the same information as required by s. 435.04, F.S., as amended. In addition, the bill requires an individual taxpayer identification number to be included for registration of individuals that cannot legally obtain a social security number. AHCA will be able to obtain information on the initiating facility and allow screening tracking updates to be sent to the initiating facility as the information becomes available.<sup>12</sup> Providers will be able to obtain screening results much faster than screenings not initiated through the Clearinghouse.<sup>13</sup>

**B. SECTION DIRECTORY:**

- Section 1:** Amends s. 322.142, F.S., relating to color photographic or digital imaged licenses.
- Section 2:** Amends s. 408.809, F.S., relating to background screening; prohibited offenses.
- Section 3:** Amends s. 413.208, F.S., relating to service providers; quality assurance; fitness for responsibilities; background screening.
- Section 4:** Repeals s. 7 of chapter 2012-73, Laws of Florida, relating to background screening requirements for registrants of the Division of Vocational Rehabilitation.
- Section 5:** Amends s. 435.04, F.S., relating to level 2 screening standards.
- Section 6:** Amends s. 435.07, F.S., relating to exemptions from disqualification.
- Section 7:** Amends s. 435.12, F.S., relating to the Care Provider Background Screening Clearinghouse.
- Section 8:** 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:  
None.

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

- 1. Revenues:  
None.
- 2. Expenditures:  
None.

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

None.

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<sup>11</sup> See *supra* at FN 9.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

D. FISCAL COMMENTS:

None.

**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**

1                                   A bill to be entitled  
2       An act relating to background screening; amending s.  
3       322.142, F.S.; authorizing the Department of Highway  
4       Safety and Motor Vehicles to share reproductions of  
5       driver license images with the Department of Health  
6       and the Agency for Health Care Administration for  
7       specified purposes; amending s. 408.809, F.S.; adding  
8       additional qualifying offenses to background screening  
9       requirements; amending s. 413.208, F.S., and repealing  
10      s. 7, chapter 2012-73, Laws of Florida; revising the  
11      applicability of background screening requirements for  
12      certain service providers who must register with the  
13      Division of Vocational Rehabilitation of the  
14      Department of Education; amending s. 435.04, F.S.;  
15      revising information required for vendors submitting  
16      employee fingerprints; adding additional qualifying  
17      offenses to background screening requirements;  
18      amending s. 435.07, F.S.; revising criteria for an  
19      exemption from disqualification for an employee under  
20      certain conditions; amending s. 435.12, F.S.;  
21      requiring simultaneous submission of a photographic  
22      image and electronic fingerprints to the Care Provider  
23      Background Screening Clearinghouse; requiring an  
24      employer to follow certain criminal history checks  
25      procedures and include specified information regarding  
26      referral and registration of an employee for



27 | electronic fingerprinting with the clearinghouse;  
 28 | providing an effective date.

29 |

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

31 |

32 | Section 1. Subsection (4) of section 322.142, Florida  
 33 | Statutes, is amended to read:

34 | 322.142 Color photographic or digital imaged licenses.—

35 | (4) The department may maintain a film negative or print  
 36 | file. The department shall maintain a record of the digital  
 37 | image and signature of the licensees, together with other data  
 38 | required by the department for identification and retrieval.  
 39 | Reproductions from the file or digital record are exempt from  
 40 | the provisions of s. 119.07(1) and may ~~shall~~ be made and issued  
 41 | only:

42 | (a) For departmental administrative purposes;

43 | (b) For the issuance of duplicate licenses;

44 | (c) In response to law enforcement agency requests;

45 | (d) To the Department of Business and Professional  
 46 | Regulation and the Department of Health pursuant to an  
 47 | interagency agreement for the purpose of accessing digital  
 48 | images for reproduction of licenses issued by the Department of  
 49 | Business and Professional Regulation or the Department of  
 50 | Health;

51 | (e) To the Department of State pursuant to an interagency  
 52 | agreement to facilitate determinations of eligibility of voter

53 registration applicants and registered voters in accordance with  
 54 ss. 98.045 and 98.075;

55 (f) To the Department of Revenue pursuant to an  
 56 interagency agreement for use in establishing paternity and  
 57 establishing, modifying, or enforcing support obligations in  
 58 Title IV-D cases;

59 (g) To the Department of Children and Families pursuant to  
 60 an interagency agreement to conduct protective investigations  
 61 under part III of chapter 39 and chapter 415;

62 (h) To the Department of Children and Families pursuant to  
 63 an interagency agreement specifying the number of employees in  
 64 each of that department's regions to be granted access to the  
 65 records for use as verification of identity to expedite the  
 66 determination of eligibility for public assistance and for use  
 67 in public assistance fraud investigations;

68 (i) To the Agency for Health Care Administration pursuant  
 69 to an interagency agreement for the purpose of verifying  
 70 photographs in the Care Provider Background Screening  
 71 Clearinghouse authorized in s. 435.12;

72 ~~(j)(i)~~ To the Department of Financial Services pursuant to  
 73 an interagency agreement to facilitate the location of owners of  
 74 unclaimed property, the validation of unclaimed property claims,  
 75 and the identification of fraudulent or false claims;

76 ~~(k)(j)~~ To district medical examiners pursuant to an  
 77 interagency agreement for the purpose of identifying a deceased  
 78 individual, determining cause of death, and notifying next of

79 kin of any investigations, including autopsies and other  
 80 laboratory examinations, authorized in s. 406.11; or

81 (1)~~(k)~~ To the following persons for the purpose of  
 82 identifying a person as part of the official work of a court:

- 83 1. A justice or judge of this state;
- 84 2. An employee of the state courts system who works in a  
 85 position that is designated in writing for access by the Chief  
 86 Justice of the Supreme Court or a chief judge of a district or  
 87 circuit court, or by his or her designee; or
- 88 3. A government employee who performs functions on behalf  
 89 of the state courts system in a position that is designated in  
 90 writing for access by the Chief Justice or a chief judge, or by  
 91 his or her designee.

92 Section 2. Paragraphs (f) and (g) and (h) through (q) of  
 93 subsection (4) of section 408.809, Florida Statutes, are  
 94 redesignated as paragraphs (g) and (h) and (k) through (t),  
 95 respectively, and new paragraphs (f), (i), (j), (u), and (v) are  
 96 added to that subsection to read:

97 408.809 Background screening; prohibited offenses.—

98 (4) In addition to the offenses listed in s. 435.04, all  
 99 persons required to undergo background screening pursuant to  
 100 this part or authorizing statutes must not have an arrest  
 101 awaiting final disposition for, must not have been found guilty  
 102 of, regardless of adjudication, or entered a plea of nolo  
 103 contendere or guilty to, and must not have been adjudicated  
 104 delinquent and the record not have been sealed or expunged for

105 any of the following offenses or any similar offense of another  
 106 jurisdiction:

107 (f) Section 777.04, relating to attempts, solicitation,  
 108 and conspiracy to commit an offense listed in this subsection.

109 (i) Section 817.481, relating to obtaining goods by using  
 110 a false or expired credit card or other credit device, if the  
 111 offense was a felony.

112 (j) Section 817.50, relating to fraudulently obtaining  
 113 goods or services from a health care provider.

114 (u) Section 895.03, relating to racketeering and  
 115 collection of unlawful debts.

116 (v) Section 896.101, relating to the Florida Money  
 117 Laundering Act.

118 Section 3. Subsection (5) is added to section 413.208,  
 119 Florida Statutes, to read:

120 413.208 Service providers; quality assurance; fitness for  
 121 responsibilities; background screening.—

122 (5) The background screening requirements of this section  
 123 apply only to registrations entered into or renewed with the  
 124 division after the Care Provider Background Screening  
 125 Clearinghouse becomes operational and retains the background  
 126 screening results in the clearinghouse pursuant to s. 435.12.

127 Section 4. Section 7 of chapter 2012-73, Laws of Florida,  
 128 is repealed.

129 Section 5. Paragraphs (d) through (yy) of subsection (2)  
 130 of section 435.04, Florida Statutes, are redesignated as

131 paragraphs (e) through (zz), respectively, paragraph (e) of  
 132 subsection (1) is amended, and a new paragraph (d) is added to  
 133 subsection (2) of that section, to read:

134 435.04 Level 2 screening standards.—

135 (1)

136 (e) Vendors who submit fingerprints on behalf of employers  
 137 must:

- 138 1. Meet the requirements of s. 943.053; and
- 139 2. Have the ability to communicate electronically with the  
 140 state agency accepting screening results from the Department of  
 141 Law Enforcement and provide the applicant's full first name,  
 142 middle initial, and last name, social security number, date of  
 143 birth, mailing address, sex, and race ~~a photograph of the~~  
 144 ~~applicant taken at the time the fingerprints are submitted.~~

145 (2) The security background investigations under this  
 146 section must ensure that no persons subject to the provisions of  
 147 this section have been arrested for and are awaiting final  
 148 disposition of, have been found guilty of, regardless of  
 149 adjudication, or entered a plea of nolo contendere or guilty to,  
 150 or have been adjudicated delinquent and the record has not been  
 151 sealed or expunged for, any offense prohibited under any of the  
 152 following provisions of state law or similar law of another  
 153 jurisdiction:

154 (d) Section 777.04, relating to attempts, solicitation,  
 155 and conspiracy to commit an offense listed in this subsection.

156 Section 6. Subsections (1) and (2) of section 435.07,

157 Florida Statutes, are amended to read:

158 435.07 Exemptions from disqualification.—Unless otherwise  
 159 provided by law, the provisions of this section apply to  
 160 exemptions from disqualification for disqualifying offenses  
 161 revealed pursuant to background screenings required under this  
 162 chapter, regardless of whether those disqualifying offenses are  
 163 listed in this chapter or other laws.

164 (1) (a) The head of the appropriate agency may grant to any  
 165 employee otherwise disqualified from employment an exemption  
 166 from disqualification for:

167 1.(a) Felonies for which at least 3 years have elapsed  
 168 since the applicant for the exemption has completed or been  
 169 lawfully released from confinement, supervision, or nonmonetary  
 170 condition imposed by the court ~~sanction~~ for the disqualifying  
 171 felony;

172 2.(b) Misdemeanors prohibited under any of the statutes  
 173 cited in this chapter or under similar statutes of other  
 174 jurisdictions for which the applicant for the exemption has  
 175 completed or been lawfully released from confinement,  
 176 supervision, or nonmonetary condition imposed by the court  
 177 ~~sanction~~;

178 3.(c) Offenses that were felonies when committed but that  
 179 are now misdemeanors and for which the applicant for the  
 180 exemption has completed or been lawfully released from  
 181 confinement, supervision, or nonmonetary condition imposed by  
 182 the court ~~sanction~~; or

183           4.~~(d)~~ Findings of delinquency. For offenses that would be  
 184 felonies if committed by an adult and the record has not been  
 185 sealed or expunged, the exemption may not be granted until at  
 186 least 3 years have elapsed since the applicant for the exemption  
 187 has completed or been lawfully released from confinement,  
 188 supervision, or nonmonetary condition imposed by the court  
 189 ~~sanction~~ for the disqualifying offense.

190           (b) A person applying for an exemption who was ordered to  
 191 pay any amount for any fee, fine, fund, lien, civil judgment,  
 192 application, costs of prosecution, trust, or restitution as part  
 193 of the judgment and sentence for any disqualifying felony or  
 194 misdemeanor must have paid the court-ordered amount in full  
 195 before being eligible for the exemption.

196  
 197 For the purposes of this subsection, the term "felonies" means  
 198 both felonies prohibited under any of the statutes cited in this  
 199 chapter or under similar statutes of other jurisdictions.

200           (2) Persons employed, or applicants for employment, by  
 201 treatment providers who treat adolescents 13 years of age and  
 202 older who are disqualified from employment solely because of  
 203 crimes under s. 817.563, s. 893.13, or s. 893.147 may be  
 204 exempted from disqualification from employment pursuant to this  
 205 chapter without application of the waiting period in  
 206 subparagraph (1)(a)1 paragraph (1)(a).

207           Section 7. Paragraph (a) of subsection (2) of section  
 208 435.12, Florida Statutes, is amended, and paragraph (d) is added

209 to that subsection, to read:

210 435.12 Care Provider Background Screening Clearinghouse.—

211 (2)(a) To ensure that the information in the clearinghouse  
 212 is current, the fingerprints of an employee required to be  
 213 screened by a specified agency and included in the clearinghouse  
 214 must be:

215 1. Retained by the Department of Law Enforcement pursuant  
 216 to s. 943.05(2)(g) and (h) and (3), and the Department of Law  
 217 Enforcement must report the results of searching those  
 218 fingerprints against state incoming arrest fingerprint  
 219 submissions to the Agency for Health Care Administration for  
 220 inclusion in the clearinghouse.

221 2. Resubmitted for a Federal Bureau of Investigation  
 222 national criminal history check every 5 years until such time as  
 223 the fingerprints are retained by the Federal Bureau of  
 224 Investigation.

225 3. Subject to retention on a 5-year renewal basis with  
 226 fees collected at the time of initial submission or resubmission  
 227 of fingerprints.

228 4. Submitted with a photograph of the person taken at the  
 229 time the fingerprints are submitted.

230 (d) An employer must register with and initiate all  
 231 criminal history checks through the clearinghouse before  
 232 referring an employee or potential employee for electronic  
 233 fingerprint submission to the Department of Law Enforcement. The  
 234 registration must include the employee's full first name, middle



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235 | initial, and last name, social security number, date of birth,  
 236 | mailing address, sex, and race. Individuals, persons,  
 237 | applicants, and controlling interests that cannot legally obtain  
 238 | a social security number must provide an individual taxpayer  
 239 | identification number.

240 |       Section 8. This act shall take effect July 1, 2014.



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COMMITTEE/SUBCOMMITTEE ACTION

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

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

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Subsection (4) of section 322.142, Florida Statutes, is amended to read:

322.142 Color photographic or digital imaged licenses.—

(4) The department may maintain a film negative or print file. The department shall maintain a record of the digital image and signature of the licensees, together with other data required by the department for identification and retrieval. Reproductions from the file or digital record are exempt from the provisions of s. 119.07(1) and may ~~shall~~ be made and issued only:

(a) For departmental administrative purposes;



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- 18 (b) For the issuance of duplicate licenses;
- 19 (c) In response to law enforcement agency requests;
- 20 (d) To the Department of Business and Professional  
21 Regulation and the Department of Health pursuant to an  
22 interagency agreement for the purpose of accessing digital  
23 images for reproduction of licenses issued by the Department of  
24 Business and Professional Regulation or the Department of  
25 Health;
- 26 (e) To the Department of State pursuant to an interagency  
27 agreement to facilitate determinations of eligibility of voter  
28 registration applicants and registered voters in accordance with  
29 ss. 98.045 and 98.075;
- 30 (f) To the Department of Revenue pursuant to an  
31 interagency agreement for use in establishing paternity and  
32 establishing, modifying, or enforcing support obligations in  
33 Title IV-D cases;
- 34 (g) To the Department of Children and Families pursuant to  
35 an interagency agreement to conduct protective investigations  
36 under part III of chapter 39 and chapter 415;
- 37 (h) To the Department of Children and Families pursuant to  
38 an interagency agreement specifying the number of employees in  
39 each of that department's regions to be granted access to the  
40 records for use as verification of identity to expedite the  
41 determination of eligibility for public assistance and for use  
42 in public assistance fraud investigations;



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43        (i) To the Agency for Health Care Administration pursuant  
44 to an interagency agreement for the purpose of authorized  
45 agencies verifying photographs in the Care Provider Background  
46 Screening Clearinghouse authorized under s. 435.12;

47        (j)~~(i)~~ To the Department of Financial Services pursuant to  
48 an interagency agreement to facilitate the location of owners of  
49 unclaimed property, the validation of unclaimed property claims,  
50 and the identification of fraudulent or false claims;

51        (k)~~(j)~~ To district medical examiners pursuant to an  
52 interagency agreement for the purpose of identifying a deceased  
53 individual, determining cause of death, and notifying next of  
54 kin of any investigations, including autopsies and other  
55 laboratory examinations, authorized in s. 406.11; or

56        (l)~~(k)~~ To the following persons for the purpose of  
57 identifying a person as part of the official work of a court:

- 58            1. A justice or judge of this state;
- 59            2. An employee of the state courts system who works in a  
60 position that is designated in writing for access by the Chief  
61 Justice of the Supreme Court or a chief judge of a district or  
62 circuit court, or by his or her designee; or
- 63            3. A government employee who performs functions on behalf  
64 of the state courts system in a position that is designated in  
65 writing for access by the Chief Justice or a chief judge, or by  
66 his or her designee.

67        Section 2. Subsections (1) and (8) of section 408.806,  
68 Florida Statutes, are amended to read:

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69 408.806 License application process.-

70 (1) An application for licensure must be made to the  
71 agency on forms furnished by the agency, submitted under oath or  
72 attestation, and accompanied by the appropriate fee in order to  
73 be accepted and considered timely. The application must contain  
74 information required by authorizing statutes and applicable  
75 rules and must include:

76 (a) The name, address, and social security number, or  
77 individual taxpayer identification number if a social security  
78 number cannot legally be obtained, of:

- 79 1. The applicant;
- 80 2. The administrator or a similarly titled person who is  
81 responsible for the day-to-day operation of the provider;
- 82 3. The financial officer or similarly titled person who is  
83 responsible for the financial operation of the licensee or  
84 provider; and
- 85 4. Each controlling interest if the applicant or  
86 controlling interest is an individual.

87 (b) The name, address, and federal employer identification  
88 number or taxpayer identification number of the applicant and  
89 each controlling interest if the applicant or controlling  
90 interest is not an individual.

91 (c) The name by which the provider is to be known.

92 (d) The total number of beds or capacity requested, as  
93 applicable.



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94 (e) The name of the person or persons under whose  
95 management or supervision the provider will operate and the name  
96 of the administrator, if required.

97 (f) If the applicant offers continuing care agreements as  
98 defined in chapter 651, proof shall be furnished that the  
99 applicant has obtained a certificate of authority as required  
100 for operation under chapter 651.

101 (g) Other information, including satisfactory inspection  
102 results, that the agency finds necessary to determine the  
103 ability of the applicant to carry out its responsibilities under  
104 this part, authorizing statutes, and applicable rules.

105 (h) An attestation affidavit, under penalty of perjury, as  
106 required in s. 435.05(3), stating compliance with the provisions  
107 of this section and chapter 435.

108 (8) The agency may establish procedures for the electronic  
109 notification and submission of required information, including,  
110 but not limited to:

111 (a) Licensure applications.

112 (b) Required signatures.

113 (c) Payment of fees.

114 (d) Notarization or attestation of applications.

115  
116 Requirements for electronic submission of any documents required  
117 by this part or authorizing statutes may be established by rule.  
118 As an alternative to sending documents as required by



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119 authorizing statutes, the agency may provide electronic access  
120 to information or documents.

121 Section 3. Subsections (2) and (4) of section 408.809,  
122 Florida Statutes, are amended to read:

123 408.809 Background screening; prohibited offenses.—

124 (2) Every 5 years following his or her licensure,  
125 employment, or entry into a contract in a capacity that under  
126 subsection (1) would require level 2 background screening under  
127 chapter 435, each such person must submit to level 2 background  
128 rescreening as a condition of retaining such license or  
129 continuing in such employment or contractual status. For any  
130 such rescreening, the agency shall request the Department of Law  
131 Enforcement to forward the person's fingerprints to the Federal  
132 Bureau of Investigation for a national criminal history record  
133 check unless the person's fingerprints are enrolled in the  
134 Federal Bureau of Investigation's national retained print arrest  
135 notification program. If the fingerprints of such a person are  
136 not retained by the Department of Law Enforcement under s.  
137 943.05(2)(g) and (h), the person must submit fingerprints  
138 electronically ~~file a complete set of fingerprints with the~~  
139 ~~agency and the agency shall forward the fingerprints to the~~  
140 Department of Law Enforcement for state processing, and the  
141 Department of Law Enforcement shall forward the fingerprints to  
142 the Federal Bureau of Investigation for a national criminal  
143 history record check. The fingerprints shall ~~may~~ be retained by  
144 the Department of Law Enforcement under s. 943.05(2)(g) and (h)

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145 and enrolled in the national retained print arrest notification  
146 program when the Department of Law Enforcement begins  
147 participation in the program. The cost of the state and national  
148 criminal history records checks required by level 2 screening  
149 may be borne by the licensee or the person fingerprinted. Until  
150 a specified agency is fully implemented ~~the person's background~~  
151 ~~screening results are retained~~ in the clearinghouse created  
152 under s. 435.12, the agency may accept as satisfying the  
153 requirements of this section proof of compliance with level 2  
154 screening standards submitted within the previous 5 years to  
155 meet any provider or professional licensure requirements of the  
156 agency, the Department of Health, the Department of Elderly  
157 Affairs, the Agency for Persons with Disabilities, the  
158 Department of Children and Families ~~Family Services~~, or the  
159 Department of Financial Services for an applicant for a  
160 certificate of authority or provisional certificate of authority  
161 to operate a continuing care retirement community under chapter  
162 651, provided that:

163 (a) The screening standards and disqualifying offenses for  
164 the prior screening are equivalent to those specified in s.  
165 435.04 and this section;

166 (b) The person subject to screening has not had a break in  
167 service from a position that requires level 2 screening for more  
168 than 90 days; and





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169 (c) Such proof is accompanied, under penalty of perjury,  
170 by an attestation affidavit of compliance with ~~the provisions of~~  
171 chapter 435 and this section using forms provided by the agency.

172 (4) In addition to the offenses listed in s. 435.04, all  
173 persons required to undergo background screening pursuant to  
174 this part or authorizing statutes must not have an arrest  
175 awaiting final disposition for, must not have been found guilty  
176 of, regardless of adjudication, or entered a plea of nolo  
177 contendere or guilty to, and must not have been adjudicated  
178 delinquent and the record not have been sealed or expunged for  
179 any of the following offenses or any similar offense of another  
180 jurisdiction:

181 (a) Any authorizing statutes, if the offense was a felony.

182 (b) This chapter, if the offense was a felony.

183 (c) Section 409.920, relating to Medicaid provider fraud.

184 (d) Section 409.9201, relating to Medicaid fraud.

185 (e) Section 741.28, relating to domestic violence.

186 (f) Section 777.04, relating to attempts, solicitation,  
187 and conspiracy to commit an offense listed in this subsection.

188 (g) ~~(f)~~ Section 817.034, relating to fraudulent acts  
189 through mail, wire, radio, electromagnetic, photoelectronic, or  
190 photooptical systems.

191 (h) ~~(g)~~ Section 817.234, relating to false and fraudulent  
192 insurance claims.



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193        (i) Section 817.481, relating to obtaining goods by using  
194 a false or expired credit card or other credit device, if the  
195 offense was a felony.

196        (j) Section 817.50, relating to fraudulently obtaining  
197 goods or services from a health care provider.

198        (k)~~(h)~~ Section 817.505, relating to patient brokering.

199        (l)~~(i)~~ Section 817.568, relating to criminal use of  
200 personal identification information.

201        (m)~~(j)~~ Section 817.60, relating to obtaining a credit card  
202 through fraudulent means.

203        (n)~~(k)~~ Section 817.61, relating to fraudulent use of  
204 credit cards, if the offense was a felony.

205        (o)~~(l)~~ Section 831.01, relating to forgery.

206        (p)~~(m)~~ Section 831.02, relating to uttering forged  
207 instruments.

208        (q)~~(n)~~ Section 831.07, relating to forging bank bills,  
209 checks, drafts, or promissory notes.

210        (r)~~(o)~~ Section 831.09, relating to uttering forged bank  
211 bills, checks, drafts, or promissory notes.

212        (s)~~(p)~~ Section 831.30, relating to fraud in obtaining  
213 medicinal drugs.

214        (t)~~(q)~~ Section 831.31, relating to the sale, manufacture,  
215 delivery, or possession with the intent to sell, manufacture, or  
216 deliver any counterfeit controlled substance, if the offense was  
217 a felony.



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218 (u) Section 895.03, relating to racketeering and  
219 collection of unlawful debts.

220 (v) Section 896.101, relating to the Florida Money  
221 Laundering Act.

222 Section 4. Subsection (5) is added to section 413.208,  
223 Florida Statutes, to read:

224 413.208 Service providers; quality assurance; fitness for  
225 responsibilities; background screening.—

226 (5) The background screening requirements of this section  
227 apply only to registrations entered into or renewed with the  
228 division after the Care Provider Background Screening  
229 Clearinghouse becomes operational and retains the background  
230 screening results in the clearinghouse under s. 435.12.

231 Section 5. Section 7 of chapter 2012-73, Laws of Florida,  
232 is repealed.

233 Section 6. Paragraph (e) of subsection (1) of section  
234 435.04, Florida Statutes, is amended, present paragraphs (d)  
235 through (yy) of subsection (2) are redesignated as paragraphs  
236 (e) through (zz), respectively, and a new paragraph (d) is added  
237 to that subsection, to read:

238 435.04 Level 2 screening standards.—

239 (1)

240 (e) Vendors who submit fingerprints on behalf of employers  
241 must:

242 1. Meet the requirements of s. 943.053; and



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243           2. Have the ability to communicate electronically with the  
244 state agency accepting screening results from the Department of  
245 Law Enforcement and provide the applicant's full first name,  
246 middle initial, and last name; social security number or  
247 individual taxpayer identification number; date of birth;  
248 mailing address; sex; and race ~~a photograph of the applicant~~  
249 ~~taken at the time the fingerprints are submitted.~~

250           (2) The security background investigations under this  
251 section must ensure that no persons subject to the provisions of  
252 this section have been arrested for and are awaiting final  
253 disposition of, have been found guilty of, regardless of  
254 adjudication, or entered a plea of nolo contendere or guilty to,  
255 or have been adjudicated delinquent and the record has not been  
256 sealed or expunged for, any offense prohibited under any of the  
257 following provisions of state law or similar law of another  
258 jurisdiction:

259           (d) Section 777.04, relating to attempts, solicitation,  
260 and conspiracy to commit an offense listed in this subsection.

261           Section 7. Subsection (3) of section 435.05, Florida  
262 Statutes, is amended to read:

263           435.05 Requirements for covered employees and employers.—  
264 Except as otherwise provided by law, the following requirements  
265 apply to covered employees and employers:

266           (3) Each employer licensed or registered with an agency  
267 must conduct level 2 background screening and must submit to the  
268 agency annually or at the time of license renewal, under penalty



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269 of perjury, a signed attestation affidavit attesting to  
270 compliance with the provisions of this chapter.

271 Section 8. Subsections (1) and (2) of section 435.07,  
272 Florida Statutes, are amended to read:

273 435.07 Exemptions from disqualification.—Unless otherwise  
274 provided by law, the provisions of this section apply to  
275 exemptions from disqualification for disqualifying offenses  
276 revealed pursuant to background screenings required under this  
277 chapter, regardless of whether those disqualifying offenses are  
278 listed in this chapter or other laws.

279 (1) (a) The head of the appropriate agency may grant to any  
280 employee otherwise disqualified from employment an exemption  
281 from disqualification for:

282 1.(a) Felonies for which at least 3 years have elapsed  
283 since the applicant for the exemption has completed or been  
284 lawfully released from confinement, supervision, or nonmonetary  
285 condition imposed by the court ~~sanction~~ for the disqualifying  
286 felony;

287 2.(b) Misdemeanors prohibited under any of the statutes  
288 cited in this chapter or under similar statutes of other  
289 jurisdictions for which the applicant for the exemption has  
290 completed or been lawfully released from confinement,  
291 supervision, or nonmonetary condition imposed by the court  
292 ~~sanction~~;

293 3.(e) Offenses that were felonies when committed but that  
294 are now misdemeanors and for which the applicant for the



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295 exemption has completed or been lawfully released from  
296 confinement, supervision, or nonmonetary condition imposed by  
297 the court ~~sanction~~; or

298 4.(d) Findings of delinquency. For offenses that would be  
299 felonies if committed by an adult and the record has not been  
300 sealed or expunged, the exemption may not be granted until at  
301 least 3 years have elapsed since the applicant for the exemption  
302 has completed or been lawfully released from confinement,  
303 supervision, or nonmonetary condition imposed by the court  
304 ~~sanction~~ for the disqualifying offense.

305 (b) A person applying for an exemption who was ordered to  
306 pay any amount for any fee, fine, fund, lien, civil judgment,  
307 application, costs of prosecution, trust, or restitution as part  
308 of the judgment and sentence for any disqualifying felony or  
309 misdemeanor must have paid the court-ordered amount in full  
310 before being eligible for the exemption.

311  
312 For the purposes of this subsection, the term "felonies" means  
313 both felonies prohibited under any of the statutes cited in this  
314 chapter or under similar statutes of other jurisdictions.

315 (2) Persons employed, or applicants for employment, by  
316 treatment providers who treat adolescents 13 years of age and  
317 older who are disqualified from employment solely because of  
318 crimes under s. 817.563, s. 893.13, or s. 893.147 may be  
319 exempted from disqualification from employment pursuant to this



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320 chapter without application of the waiting period in  
321 subparagraph (1) (a) 1 ~~paragraph (1) (a)~~.

322 Section 9. Subsection (2) of section 435.12, Florida  
323 Statutes, is amended to read:

324 435.12 Care Provider Background Screening Clearinghouse.—

325 (2) (a) To ensure that the information in the clearinghouse  
326 is current, the fingerprints of an employee required to be  
327 screened by a specified agency and included in the clearinghouse  
328 must be:

329 1. Retained by the Department of Law Enforcement pursuant  
330 to s. 943.05(2) (g) and (h) and (3), and the Department of Law  
331 Enforcement must report the results of searching those  
332 fingerprints against state incoming arrest fingerprint  
333 submissions to the Agency for Health Care Administration for  
334 inclusion in the clearinghouse.

335 2. Retained by the Federal Bureau of Investigation in the  
336 national retained print arrest notification program as soon as  
337 the Department of Law Enforcement begins participation in such  
338 program. Arrest prints will be searched against retained prints  
339 at the Federal Bureau of Investigation and notification of  
340 arrests will be forwarded to the Department of Law Enforcement  
341 and reported to the Agency for Health Care Administration for  
342 inclusion in the clearinghouse.

343 3.2. Resubmitted for a Federal Bureau of Investigation  
344 national criminal history check every 5 years until such time as



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345 the fingerprints are retained by the Federal Bureau of  
346 Investigation.

347 ~~4.3-~~ Subject to retention on a 5-year renewal basis with  
348 fees collected at the time of initial submission or resubmission  
349 of fingerprints.

350 5. Submitted with a photograph of the person taken at the  
351 time the fingerprints are submitted.

352 (b) Until such time as the fingerprints are enrolled in  
353 the national retained print arrest notification program ~~retained~~  
354 at the Federal Bureau of Investigation, an employee with a break  
355 in service of more than 90 days from a position that requires  
356 screening by a specified agency must submit to a national  
357 screening if the person returns to a position that requires  
358 screening by a specified agency.

359 (c) An employer of persons subject to screening by a  
360 specified agency must register with the clearinghouse and  
361 maintain the employment status of all employees within the  
362 clearinghouse. Initial employment status and any changes in  
363 status must be reported within 10 business days.

364 (d) An employer must register with and initiate all  
365 criminal history checks through the clearinghouse before  
366 referring an employee or potential employee for electronic  
367 fingerprint submission to the Department of Law Enforcement. The  
368 registration must include the employee's full first name, middle  
369 initial, and last name; social security number; date of birth;  
370 mailing address; sex; and race. Individuals, persons,





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371 applicants, and controlling interests that cannot legally obtain  
372 a social security number must provide an individual taxpayer  
373 identification number.

374 Section 10. This act shall take effect July 1, 2014.

375

376

377 -----

378

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

379

Remove everything before the enacting clause and insert:

380

An act relating to background screening; amending s.

381

322.142, F.S.; authorizing the Department of Highway Safety and

382

Motor Vehicles to share reproductions of driver license images

383

with the Department of Health and the Agency for Health Care

384

Administration for specified purposes; amending s. 408.806,

385

F.S.; revising the requirements for licensure; revising a

386

provision requiring an affidavit; amending s. 408.809, F.S.;

387

exempting a person whose fingerprints are already enrolled in a

388

certain Federal Bureau of Investigation program from the

389

requirement that such fingerprints be forwarded to the bureau;

390

requiring certain persons to submit their fingerprints

391

electronically; requiring the Department of Law Enforcement to

392

retain fingerprints when the department begins participation in

393

a certain program; revising requirements for proof of compliance

394

with level 2 screening standards; revising terminology; adding

395

additional disqualifying offenses to background screening

396

requirements; amending s. 413.208, F.S.; providing applicability

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397 for background screening requirements for certain registrants;  
398 repealing s. 7 of chapter 2012-73, Laws of Florida, relating to  
399 background screening requirements; amending s. 435.04, F.S.;  
400 revising information to be required for vendors submitting  
401 employee fingerprints; adding an additional disqualifying  
402 offense to background screening requirements; amending s.  
403 435.05, F.S.; revising a provision requiring the annual  
404 submission of an affidavit; amending s. 435.07, F.S.; revising  
405 criteria for an exemption from disqualification for an employee  
406 under certain conditions; amending s. 435.12, F.S.; requiring  
407 the fingerprints of an employee required to be screened by a  
408 specified agency and included in the clearinghouse also to be  
409 retained in the national retained print arrest notification  
410 program at a specified time; requiring simultaneous submission  
411 of a photographic image and electronic fingerprints to the Care  
412 Provider Background Screening Clearinghouse; requiring an  
413 employer to follow certain criminal history check procedures and  
414 include specified information regarding referral and  
415 registration of an employee for electronic fingerprinting with  
416 the clearinghouse; providing an effective date.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7003 PCB CJS 14-01 Court System

SPONSOR(S): Civil Justice Subcommittee, Metz

TIED BILLS: IDEN./SIM. BILLS: SB 828

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	13 Y, 0 N	Bond	Bond
1) Judiciary Committee		Bond <i>MB</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

In general, this bill repeals or modifies outdated provisions in the Florida Statutes related to the court system. Specifically:

- Statutes that repeat provisions in the state constitution are repealed as unnecessary.
- Statutes that create additional criteria for judicial office are repealed as such requirements are likely to be found to conflict with constitutional qualifications for office.
- Statutes are amended or repealed to reflect current practices or to eliminate outdated or unnecessary provisions.

This bill does not appear to have a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

In general, this bill repeals or modifies outdated provisions of the Florida Statutes related to the court system. Specifically:

Section 25.151, F.S., prohibits a retired justice from engaging in the practice of law. The statute is not currently enforced, and similar statutes have been found unconstitutional.<sup>1</sup> The bill repeals the statute.

Art. V, s. 3(c), Fla.Const., requires the Supreme Court to appoint a clerk. Section 25.191, F.S., requires the Supreme Court to appoint a clerk. The bill repeals the statutory requirement, which repeal will have no effect as the same requirement remains in the state constitution.

Art. V, s. 3(c), Fla.Const., requires the Clerk of the Supreme Court to "perform such duties as the court directs." Section 25.231, F.S., provides that the Clerk of the Supreme Court must perform duties as directed by the Supreme Court. The bill repeals the statutory requirement, which will have no effect as the same requirement remains in the state constitution.

Sections 25.241(1), and 25.281, F.S., provide that the Clerk and Marshall of the Supreme Court are to be paid a salary. Art. V, s. 3(c), Fla.Const., requires that the Clerk and Marshall of the Supreme Court must be paid. The bill repeals the statutory requirement, which will have no effect as the state constitution requires payment of the salaries and because state employees are paid for performing their duties. See also s. 29.23, F.S., created by this bill.

Section 25.351, F.S., allows the library of the Supreme Court to purchase books and to trade them with other libraries. It is unclear why this needs to be in statute. The bill repeals the statutory regarding books, which repeal is unlikely to have any practical effect.

Article V, s. 1, Fla.Const., requires that the state be divided into judicial circuits that follow county lines. Section 26.01, F.S., simply provides that there will be 20 judicial circuits. Section 26.021, F.S. provides which counties are in each circuit. The bill repeals s. 26.01, F.S., merging it into s. 26.021, F.S., for simplicity.

Section 26.021, F.S., divides the state into judicial circuits, as required by the state constitution. The statute lists the counties in each judicial circuit. Three of the 20 judicial circuits have special statutory residency requirements. Article V, s. 8, Fla.Const., sets the constitutional requirements for eligibility to serve as a justice of judge. The courts have ruled that no additional requirement for judicial office may be created by statute.<sup>2</sup> The bill adds the language from s. 26.01, F.S., and repeals the special residential requirements for certain judicial offices at the circuit court level.

Section 26.51, F.S., requires that the salaries of circuit judges be paid "in equal monthly installments." The language first appeared in a 1925 statute setting the salaries of a number of state officials.<sup>3</sup> At the time, salaries were in the general statutes. The practice since 1969 has been for the salaries of these state officials to be a part of the General Appropriations Act rather than in the compiled Florida Statutes. All of the other state officials, including county judges, appellate judges, and Supreme Court

<sup>1</sup> See *In re The Florida Bar-Code of Judicial Conduct*, 281 So.2d 21 (Fla. 1973); see also, art. V, s. 15, Fla.Const. (Supreme Court's exclusive jurisdiction over the practice of law).

<sup>2</sup> See *Miller v. Mendez*, 804 So.2d 1243 (Fla. 2001)(cannot require residency within circuit at time of qualifying when constitution only requires residency at time of taking office); *Levey v. Dijols*, 990 So.2d 688, 692 (Fla. 4th DCA 2008) ("Any statute that restricts eligibility beyond the requirements of the Florida Constitution is invalid."), rev. denied, 994 So.2d 304.

<sup>3</sup> Chapter 11335, L.O.F., s. 1 (1925).

justices, are paid monthly without statutory direction. It is unclear why this clause, only applicable to one class of state officials (circuit judges), has remained in statute. The bill repeals the statutory requirement that circuit judges be paid in equal monthly installments. The bill should have no impact on judicial salaries or when they are paid.

Section 26.55, F.S., creates the Conference of Circuit Court Judges. The bill amends the section at the request of the Conference to:

- Specify that a retired judge who is actively engaged in the practice of law is excluded from automatic membership.
- Provide that membership in the Conference, and operation of the Conference, are as set forth in court rule.
- Eliminate the annual report requirement.
- Make grammatical and technical changes.

Section 27.50, F.S., provides the qualifications for office of a public defender. Article V, s. 18, Fla.Const., provides the same qualifications for office. The bill repeals the statutory qualifications, which will have no effect as the state constitution contains the same requirements.<sup>4</sup>

Section 27.55, F.S., provides for the compensation of a public defender and the payment of expenses of a public defender should the state create a new judicial circuit. There are no current known plans for creation of a new judicial circuit, and, if there were, the payment of salaries and expenses relating to such creation would normally be a part of the law creating such circuit or would be in the General Appropriations Act for that legislative session. The bill repeals the statute regarding such expenses, which should have no impact.

The state constitution requires that certain employees of the court system are to be paid an annual salary. The requirement related to some of those employees is repeated in various statutes repealed by this bill. The practice since 1969 has been for the salaries of constitutional state officials, including those in the judicial branch, to be a part of the General Appropriations Act rather than in the compiled Florida Statutes. This bill creates s. 29.23, F.S., to consolidate all of the constitutional salary provisions into one statute reflecting current practices. The section provides that salaries of justices and judges must be part of the General Appropriations Act, and salaries of appellate marshals and clerks are determined in accordance with s. 25.382, F.S. (current law regarding court system budgeting). The newly created statute reflects long-standing policies.

Article V, s. 2(c), Fla.Const., provides for selection of a chief judge in each district court of appeal. Section 35.12, F.S., also provides for selection of a chief judge in each district court of appeal. The bill repeals the statutory provision, which repeal would have no practical effect.

Article V, s. 4(a), Fla.Const., requires that 3 judges hear a case before a district court of appeal, and that the "concurrence of two" is required for a decision. Section 35.13, F.S., requires the same. The bill repeals the statutory provision, which repeal will have no effect as the same provision remains in the state constitution.

Article V, s. 14(a), Fla.Const., provides that the salaries of justices and judges are to be set by general law. Section 35.19, F.S., provides that the salaries of judges of the district courts of appeal are to be set by law. The bill repeals the statutory provision, which repeal will have no effect as the same provision remains in the state constitution. See also s. 29.23, F.S., created by this bill.

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<sup>4</sup> If the statute had different or additional requirements, it perhaps would be found invalid. See *Miller v. Mendez*, 804 So.2d 1243 (Fla. 2001)(cannot require residency within circuit at time of qualifying when constitutional only requires residency at time of taking office); *Levey v. Dijols*, 990 So.2d 688, 692 (Fla. 4th DCA 2008) ("Any statute that restricts eligibility beyond the requirements of the Florida Constitution is invalid."), rev. denied, 994 So.2d 304.

Article V, s. 4(c), Fla.Const., requires each district court of appeal to appoint a clerk to serve at the pleasure of the court. Section 35.21, F.S., also requires each district court of appeal to appoint a clerk to serve at the pleasure of the court. The bill repeals the statutory provision, which repeal will have no effect as the same provision remains in the state constitution.

Article V, s. 4(c), Fla.Const., provides that the salary of a clerk of a district court of appeal is to be set by general law. Section 35.22(1), F.S., provides that the compensation of the clerk of a district court of appeal is to be set by law. The bill repeals the statutory provision, which repeal will have no effect as the same provision remains in the state constitution. See also s. 29.23, F.S., created by this bill.

Section 35.25, F.S., provides that the duties of the clerk of a district court of appeal "shall be as prescribed by the rules of the court." No rules have been promulgated to prescribe the specific duties of a clerk of a district court of appeal. Article V, s. 4(c), Fla.Const., requires the clerk to "perform such duties as the court directs." Because a clerk of a district court of appeal serves at the pleasure of the court, formal rulemaking is unnecessary. The adoption of internal operating procedures, both formal and informal, is sufficient to govern the conduct of a clerk (or any other employee who serves at the pleasure of an appointing body). The bill repeals the statute, which repeal is anticipated to have no effect on appellate court clerks or their operation.

Article V, s. 4(c), Fla.Const., provides that the salary of a marshal of a district court of appeal is to be set by general law. Section 35.27, F.S., provides that the compensation of the marshal of a district court of appeal is to be set by law. The bill repeals the statutory provision, which repeal will have no effect as the same provision remains in the state constitution. See also s. 29.23, F.S., created by this bill.

Section 38.13, F.S., provides for the appointment of a judge ad litem in a particular civil case. The law, first enacted in 1887, provides that, where the trial judge is disqualified, the parties to the action may agree on an attorney at law to act as the judge for that particular case. The statute was helpful at a time when most rural judicial circuits had only one judge, but it is outdated today. The need for the statute has been superseded by art. V, s. 2(b), Fla.Const. (power of the Chief Justice to appoint a judge to another court), Fla.Jud.Admin.R. 2.330 (disqualification of a judge), and the concept of arbitration in general. The bill repeals the statute allowing the appointment of a judge ad litem.

The Judicial Qualifications Commission is created by art. V, s. 12, Fla.Const. Section 43.20, F.S., recognizes the Judicial Qualifications Commission in statute. A 1996 constitutional amendment increased the membership of the commission from 13 to 15 members. This bill amends s. 43.20, F.S., to conform to the change from 13 to 15 members.

Section 57.101, F.S., provides that a party to an appeal before the Supreme Court cannot be made to pay for copies made by the Clerk of the Supreme Court that the party did not order. It is unclear how or why copies would be made by the Clerk except where actually ordered by a party, and thus the statute has no apparent meaning. The bill repeals the statute.

Section 92.15, F.S., provides that a receipt of a receiver of a United States Land Office shall in all cases be prima facie evidence that the title to the land covered by the receipt has passed from the United States to the person named in the receipt as having paid for the land. Federal law in the 1800's recognized that certain settlers of land who paid a nominal registration fee would be given a receipt that was evidence of the payment of the fee giving the settlor the right to possess the land. That receipt was not a title document like a deed, and so "the statute was passed with a view to obviating the inconvenience that ensued from the delays so frequently occurring in the issuance from Washington of the letters patent, and in recognition of the fact that the full equitable title had passed from the government to the [settlor]."<sup>5</sup> The last appellate case under the statute was decided in 1914,<sup>6</sup> and the

<sup>5</sup> *Boley v. Wynn*, 67 So. 117 (Fla. 1914). See also, generally, *Yellow River R. Co. v. Harris*, 17 So. 568 (Fla. 1895).

<sup>6</sup> *Boley v. Wynn*, 67 So. 117 (Fla. 1914).

records of the Florida land grant office show that it closed in 1933.<sup>7</sup> All land grant properties should have had numerous recorded title transactions since then, and reference to such receipts appears outdated and unnecessary. See generally, ch. 712, F.S. (the Marketable Record Title Act). The bill repeals the statute.

## B. SECTION DIRECTORY:

Section 1 repeals s. 25.151, F.S., relating to the practice of law by a retired justice.

Section 2 repeals ss. 25.191 and 25.231, F.S., relating to the Clerk of the Supreme Court.

Section 3 repeals a subsection in s. 25.241, F.S., relating to compensation of the Clerk of the Supreme Court.

Section 4 repeals s. 25.281, F.S., relating to compensation of the Marshal of the Supreme Court.

Section 5 repeals s. 25.351, F.S., relating to acquisition of books by the Supreme Court library.

Section 6 repeals s. 26.01, F.S., relating to judicial circuits.

Section 7 amends s. 26.021, F.S., relating to judicial circuits.

Section 8 repeals s. 26.51, F.S., relating to salaries of circuit judges.

Section 9 amends s. 26.55, F.S., relating to the Conference of Circuit Court Judges.

Section 10 repeals ss. 27.50 and 27.55, F.S., relating to the qualifications for office of public defender and to the compensation and expenses of a public defender in a newly created judicial circuit.

Section 11 creates s. 29.23, F.S., relating to the salaries of certain positions in the judicial branch.

Section 12 repeals ss. 35.12, 35.13, 35.19 and 35.21, F.S., relating to district courts of appeal.

Section 13 amends s. 35.22, F.S., relating to the salary of the clerk of a district court of appeal.

Section 14 repeals ss. 35.25 and 35.27, F.S., relating to the duties of the clerk of a district court of appeal and the compensation of the marshal of a district court of appeal.

Section 15 repeals s. 38.13, F.S., relating to appointment of a judge ad litem in a circuit or county court.

Section 16 amends s. 43.20, F.S., relating to the Judicial Qualifications Commission.

Section 17 repeals s. 57.101, F.S., relating to costs in the Supreme Court.

Section 18 repeals s. 92.15, F.S., relating to federal land office receipts in evidence.

Section 19 provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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<sup>7</sup> Click on 49.9.7 at <http://www.archives.gov/research/guide-fed-records/groups/049.html> (last accessed on February 17, 2014).



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

2. Expenditures:

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

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 does not appear to have any direct economic impact on the private sector.

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill should either include repeal of s. 27.01, F.S., or remove the repeal of s. 27.50, F.S., to be consistent.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 5, 2013, the Civil Justice Subcommittee adopted one amendment and reported the PCB favorably. The amendment:

- Removed repeals of ss. 25.211, F.S. (office of the Clerk of the Supreme Court), s. 34.131, F.S. (county courts are open for voluntary pleas of guilty), and s. 86.01, F.S. (court in a declaratory judgment action may award costs).
- Added new s. 29.23, F.S., regarding certain court system salaries, and added a repeal of s. 35.22(1), F.S. (salary of the clerk of a district court of appeal).

- Made grammatical and technical changes.

This analysis is drafted to the bill as amended by the Civil Justice Subcommittee.



27 expenditures of public defenders; creating s. 29.23,  
 28 F.S.; providing for certain judicial branch salaries;  
 29 repealing ss. 35.12, 35.13, 35.19, and 35.21, F.S.;  
 30 relating to the chief judge, quorum, compensation of  
 31 judges, and clerk, respectively, of the district  
 32 courts of appeal; amending s. 35.22, F.S.; deleting a  
 33 requirement for the appointment and salary of a clerk  
 34 for each district court of appeal; repealing ss. 35.25  
 35 and 35.27, F.S., relating to duties of the clerk and  
 36 compensation of the marshal, respectively, of the  
 37 district courts of appeal; repealing s. 38.13, F.S.,  
 38 relating to replacement of disqualified judges of the  
 39 district courts of appeal; amending s. 43.20, F.S.;  
 40 revising the number of members of the Judicial  
 41 Qualifications Commission, to conform to requirements  
 42 of the State Constitution; repealing s. 57.101, F.S.,  
 43 relating to the charging of costs against the losing  
 44 party for certain copies of records in the Supreme  
 45 Court; repealing s. 92.15, F.S., relating to an  
 46 evidentiary rule regarding evidence of title to land  
 47 passing from the United States; providing an effective  
 48 date.

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

51  
 52 Section 1. Section 25.151, Florida Statutes, is repealed.

53 Section 2. Sections 25.191 and 25.231, Florida Statutes,  
 54 are repealed.

55 Section 3. Subsection (1) of section 25.241, Florida  
 56 Statutes, is amended to read:

57 25.241 Clerk of Supreme Court; compensation; assistants;  
 58 filing fees, etc.-

59 ~~(1) The Clerk of the Supreme Court shall be paid an annual~~  
 60 ~~salary to be determined in accordance with s. 25.382.~~

61 Section 4. Section 25.281, Florida Statutes, is repealed.

62 Section 5. Section 25.351, Florida Statutes, is repealed.

63 Section 6. Section 26.01, Florida Statutes, is repealed.

64 Section 7. Section 26.021, Florida Statutes, is amended to  
 65 read:

66 26.021 Judicial circuits; judges.-The state is divided  
 67 into 20 judicial circuits:

68 (1) The first circuit is composed of Escambia, Okaloosa,  
 69 Santa Rosa, and Walton Counties.

70 (2) The second circuit is composed of Leon, Gadsden,  
 71 Jefferson, Wakulla, Liberty, and Franklin Counties.

72 (3) The third circuit is composed of Columbia, Dixie,  
 73 Hamilton, Lafayette, Madison, Suwannee, and Taylor Counties.

74 (4) The fourth circuit is composed of Clay, Duval, and  
 75 Nassau Counties.

76 (5) The fifth circuit is composed of Citrus, Hernando,  
 77 Lake, Marion, and Sumter Counties. ~~Two of the circuit judges~~  
 78 ~~authorized for the fifth circuit shall reside in either Citrus,~~

79 ~~Hernando, or Sumter County, and neither of such two judges shall~~  
 80 ~~reside in the same county.~~

81 (6) The sixth circuit is composed of Pasco and Pinellas  
 82 Counties.

83 (7) The seventh circuit is composed of Flagler, Putnam,  
 84 St. Johns, and Volusia Counties. ~~One judge shall reside in~~  
 85 ~~Flagler County; two judges shall reside in Putnam County; two~~  
 86 ~~judges shall reside in St. Johns County; and three judges shall~~  
 87 ~~reside in Volusia County. There shall be no residency~~  
 88 ~~requirement for any other judges in the circuit.~~

89 (8) The eighth circuit is composed of Alachua, Baker,  
 90 Bradford, Gilchrist, Levy, and Union Counties.

91 (9) The ninth circuit is composed of Orange and Osceola  
 92 Counties.

93 (10) The tenth circuit is composed of Hardee, Highlands,  
 94 and Polk Counties.

95 (11) The eleventh circuit is composed of Miami-Dade  
 96 County.

97 (12) The twelfth circuit is composed of Manatee, Sarasota,  
 98 and DeSoto Counties.

99 (13) The thirteenth circuit is composed of Hillsborough  
 100 County.

101 (14) The fourteenth circuit is composed of Bay, Calhoun,  
 102 Gulf, Holmes, Jackson, and Washington Counties.

103 (15) The fifteenth circuit is composed of Palm Beach  
 104 County.

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105 (16) The sixteenth circuit is composed of Monroe County.  
 106 ~~One judge in the circuit shall reside in the middle or upper~~  
 107 ~~Keys. There shall be no residency requirement for any other~~  
 108 ~~judge in the circuit.~~

109 (17) The seventeenth circuit is composed of Broward  
 110 County.

111 (18) The eighteenth circuit is composed of Brevard and  
 112 Seminole Counties.

113 (19) The nineteenth circuit is composed of Indian River,  
 114 Martin, Okeechobee, and St. Lucie Counties.

115 (20) The twentieth circuit is composed of Charlotte,  
 116 Collier, Glades, Hendry, and Lee Counties.

117 (21) Notwithstanding subsections (1)-(20), the territorial  
 118 jurisdiction of a circuit court may be expanded as provided for  
 119 in s. 910.03(3).  
 120

121 The judicial nominating commission of each circuit, in  
 122 submitting nominations for any vacancy in a judgeship, and the  
 123 Governor, in filling any vacancy for a judgeship, shall consider  
 124 whether the existing judges within the circuit, together with  
 125 potential nominees or appointees, reflect the geographic  
 126 distribution of the population within the circuit, the  
 127 geographic distribution of the caseload within the circuit, the  
 128 racial and ethnic diversity of the population within the  
 129 circuit, and the geographic distribution of the racial and  
 130 ethnic minority population within the circuit.

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131           Section 8. Section 26.51, Florida Statutes, is repealed.

132           Section 9. Section 26.55, Florida Statutes, is amended to  
133 read:

134           26.55 Conference of Circuit Judges of Florida; duties and  
135 reports.—

136           (1) There is created and established the Conference of  
137 Circuit Judges of Florida. The conference shall consist of the  
138 active and retired circuit judges of the several judicial  
139 circuits of the state, excluding retired judges practicing law.

140           (2) The conference shall annually elect a chair, whose  
141 duty it shall be to call all meetings and to appoint committees  
142 to effectuate the purposes of the conference. ~~It is declared to~~  
143 ~~be an official function of each circuit judge to attend the~~  
144 ~~meetings of the conference. It is also an official function of~~  
145 ~~each circuit judge to participate in the activity of each~~  
146 ~~committee to the membership of which such judge is appointed.~~

147           (3)(a) It is declared to be the responsibility of the  
148 conference to operate according to the Rules of Judicial  
149 Administration adopted by the Supreme Court, which  
150 responsibilities include:

151           (a)1. Considering and making ~~Consider and make~~  
152 recommendations concerning the betterment of the judicial system  
153 of the state and its various parts;

154           (b)2. Considering and making ~~Consider and make~~  
155 recommendations concerning the improvement of rules and methods  
156 of procedure and practice in the several courts; ~~and~~



157 (c)3. Reporting Report to the Supreme Court such findings  
 158 and recommendations as the conference may have with reference  
 159 thereto; and-

160 (d)(b) Providing Not less than 60 days before the  
 161 convening of the regular session of the Legislature with, the  
 162 chair of the conference shall report to the President of the  
 163 Senate and the Speaker of the House such recommendations as the  
 164 conference may have concerning defects in the laws of this state  
 165 and such amendments or additional legislation as the conference  
 166 may deem necessary regarding the administration of justice.

167 Section 10. Sections 27.50 and 27.55, Florida Statutes,  
 168 are repealed.

169 Section 11. Section 29.23, Florida Statutes, is created to  
 170 read:

171 29.23 Salaries of certain positions in the judicial  
 172 branch.-

173 (1) The salaries of justices, judges of the district  
 174 courts of appeal, circuit judges, and county judges shall be  
 175 fixed annually in the General Appropriations Act.

176 (2) The clerk and marshal of the Supreme Court or a clerk  
 177 or a marshal of a district court of appeal shall be paid an  
 178 annual salary to be determined in accordance with s. 25.382.

179 Section 12. Sections 35.12, 35.13, 35.19, and 35.21,  
 180 Florida Statutes, are repealed.

181 Section 13. Subsection (1) of section 35.22, Florida  
 182 Statutes, is amended to read:

183 35.22 Clerk of district court; appointment; compensation;  
 184 assistants; filing fees; teleconferencing.-

185 ~~(1) Each district court of appeal shall appoint a clerk~~  
 186 ~~who shall be paid an annual salary to be determined in~~  
 187 ~~accordance with s. 25.382.~~

188 Section 14. Sections 35.25 and 35.27, Florida Statutes,  
 189 are repealed.

190 Section 15. Section 38.13, Florida Statutes, is repealed.

191 Section 16. Subsection (2) of section 43.20, Florida  
 192 Statutes, is amended to read:

193 43.20 Judicial Qualifications Commission.-

194 (2) MEMBERSHIP; TERMS.-The commission shall consist of 15  
 195 ~~13~~ members. The members of the commission shall serve for terms  
 196 of 6 years.

197 Section 17. Section 57.101, Florida Statutes, is repealed.

198 Section 18. Section 92.15, Florida Statutes, is repealed.

199 Section 19. 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: Judiciary Committee  
 2 Representative Metz offered the following:

3  
 4 **Amendment (with title amendment)**

5 Remove lines 70-187 and insert:

6 (2) The second circuit is composed of Franklin Leon,  
 7 Gadsden, Jefferson, Leon, Liberty, and Wakulla, ~~Liberty, and~~  
 8 ~~Franklin~~ Counties.

9 (3) The third circuit is composed of Columbia, Dixie,  
 10 Hamilton, Lafayette, Madison, Suwannee, and Taylor Counties.

11 (4) The fourth circuit is composed of Clay, Duval, and  
 12 Nassau Counties.

13 (5) The fifth circuit is composed of Citrus, Hernando,  
 14 Lake, Marion, and Sumter Counties. ~~Two of the circuit judges~~  
 15 ~~authorized for the fifth circuit shall reside in either Citrus,~~  
 16 ~~Hernando, or Sumter County, and neither of such two judges shall~~  
 17 ~~reside in the same county.~~



## Amendment No. 1

18 (6) The sixth circuit is composed of Pasco and Pinellas  
19 Counties.

20 (7) The seventh circuit is composed of Flagler, Putnam,  
21 St. Johns, and Volusia Counties. ~~One judge shall reside in~~  
22 ~~Flagler County; two judges shall reside in Putnam County; two~~  
23 ~~judges shall reside in St. Johns County; and three judges shall~~  
24 ~~reside in Volusia County. There shall be no residency~~  
25 ~~requirement for any other judges in the circuit.~~

26 (8) The eighth circuit is composed of Alachua, Baker,  
27 Bradford, Gilchrist, Levy, and Union Counties.

28 (9) The ninth circuit is composed of Orange and Osceola  
29 Counties.

30 (10) The tenth circuit is composed of Hardee, Highlands,  
31 and Polk Counties.

32 (11) The eleventh circuit is composed of Miami-Dade  
33 County.

34 (12) The twelfth circuit is composed of Desoto, Manatee,  
35 and Sarasota, ~~and DeSoto~~ Counties.

36 (13) The thirteenth circuit is composed of Hillsborough  
37 County.

38 (14) The fourteenth circuit is composed of Bay, Calhoun,  
39 Gulf, Holmes, Jackson, and Washington Counties.

40 (15) The fifteenth circuit is composed of Palm Beach  
41 County.

42 (16) The sixteenth circuit is composed of Monroe County.  
43 ~~One judge in the circuit shall reside in the middle or upper~~



Amendment No. 1

44 ~~Keys. There shall be no residency requirement for any other~~  
45 ~~judge in the circuit.~~

46 (17) The seventeenth circuit is composed of Broward  
47 County.

48 (18) The eighteenth circuit is composed of Brevard and  
49 Seminole Counties.

50 (19) The nineteenth circuit is composed of Indian River,  
51 Martin, Okeechobee, and St. Lucie Counties.

52 (20) The twentieth circuit is composed of Charlotte,  
53 Collier, Glades, Hendry, and Lee Counties.

54 (21) Notwithstanding subsections (1)-(20), the territorial  
55 jurisdiction of a circuit court may be expanded as provided for  
56 in s. 910.03(3).

57

58 The judicial nominating commission of each circuit, in  
59 submitting nominations for any vacancy in a judgeship, and the  
60 Governor, in filling any vacancy for a judgeship, shall consider  
61 whether the existing judges within the circuit, together with  
62 potential nominees or appointees, reflect the geographic  
63 distribution of the population within the circuit, the  
64 geographic distribution of the caseload within the circuit, the  
65 racial and ethnic diversity of the population within the  
66 circuit, and the geographic distribution of the racial and  
67 ethnic minority population within the circuit.

68 Section 8. Section 26.51, Florida Statutes, is repealed.



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69 Section 9. Section 26.55, Florida Statutes, is amended to  
70 read:

71 26.55 Conference of Circuit Judges of Florida; duties and  
72 reports.—

73 (1) There is created and established the Conference of  
74 Circuit Judges of Florida. The conference consists ~~shall consist~~  
75 of the active and retired circuit judges of the several judicial  
76 circuits of the state, excluding retired judges practicing law.

77 (2) The conference shall annually elect a chair. The  
78 chair, ~~whose duty it shall be to~~ call all meetings and to  
79 appoint committees to effectuate the purposes of the conference.  
80 ~~It is declared to be an official function of each circuit judge~~  
81 ~~to attend the meetings of the conference. It is also an official~~  
82 ~~function of each circuit judge to participate in the activity of~~  
83 ~~each committee to the membership of which such judge is~~  
84 ~~appointed.~~

85 (3) ~~(a) It is declared to be the responsibility of The~~  
86 ~~conference~~ shall operate according to the Rules of Judicial  
87 Administration adopted by the Supreme Court. The  
88 responsibilities of the conference include ~~to:~~

89 (a)1. Considering and making ~~Consider and make~~  
90 recommendations concerning the betterment of the judicial system  
91 of the state and its various parts;

92 (b)2. Considering and making ~~Consider and make~~  
93 recommendations concerning the improvement of rules and methods  
94 of procedure and practice in the several courts; ~~and~~



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95 (c)3- Reporting Report to the Supreme Court its such  
96 findings and recommendations under this subsection; and as the  
97 conference may have with reference thereto.

98 (d)(b) Providing Not less than 60 days before the  
99 convening of the regular session of the Legislature with, the  
100 chair of the conference shall report to the President of the  
101 Senate and the Speaker of the House such recommendations as the  
102 conference may have concerning defects in the laws of this state  
103 and such amendments or additional legislation as the conference  
104 may deem necessary regarding the administration of justice.

105 Section 10. Section 27.55, Florida Statutes, is repealed.

106 Section 11. Section 29.23, Florida Statutes, is created to  
107 read:

108 29.23 Salaries of certain positions in the judicial  
109 branch.-

110 (1) The salaries of justices, judges of the district  
111 courts of appeal, circuit judges, and county judges shall be  
112 fixed annually in the General Appropriations Act.

113 (2) The clerk and the marshal of the Supreme Court, and  
114 the clerk and the marshal of a district court of appeal, shall  
115 be paid an annual salary to be determined in accordance with s.  
116 25.382(3).

117 Section 12. Sections 35.12, 35.13, 35.19, and 35.21,  
118 Florida Statutes, are repealed.

119 Section 13. Subsection (1) of section 35.22, Florida  
120 Statutes, is amended to read:



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121 35.22 Clerk of district court; ~~appointment~~; compensation;  
122 assistants; filing fees; teleconferencing.-

123 ~~(1) Each district court of appeal shall appoint a clerk~~  
124 ~~who shall be paid an annual salary to be determined in~~  
125 ~~accordance with s. 25.382.~~

126 (1)(2) The clerk may ~~is authorized to~~ employ such deputies  
127 and clerical assistants as may be necessary. Their number and  
128 compensation shall be approved by the court, and paid from the  
129 annual appropriation for the district courts of appeal.

130 (2)(3)(a) The clerk, upon the filing of a certified copy  
131 of a notice of appeal or petition, shall charge and collect a  
132 filing fee of \$300 for each case docketed, and service charges  
133 as provided in s. 28.24 for copying, certifying or furnishing  
134 opinions, records, papers or other instruments and for other  
135 services. The state ~~of Florida~~ or its agencies, when appearing  
136 as appellant or petitioner, is exempt from the filing fee  
137 required in this subsection. ~~From each attorney appearance pro~~  
138 ~~hae vice,~~ The clerk shall collect from each attorney appearance  
139 pro hac vice a fee of \$100 for deposit as provided in this  
140 section.

141 (b) Upon the filing of a notice of cross-appeal, or a  
142 notice of joinder or motion to intervene as an appellant, cross-  
143 appellant, or petitioner, the clerk shall charge and collect a  
144 filing fee of \$295. The clerk shall remit the fee to the  
145 Department of Revenue for deposit into the General Revenue Fund.





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146 The state and its agencies are exempt from the filing fee  
147 required by this paragraph.

148 ~~(3)~~(4) The opinions of the district court of appeal may  
149 ~~shall~~ not be recorded, but the original as filed shall be  
150 preserved with the record in each case.

151 ~~(4)~~(5) The clerk may ~~is authorized~~ immediately, after a  
152 case is disposed of, ~~to~~ supply the judge who tried the case and  
153 from whose order, judgment, or decree, appeal or other review is  
154 taken, a copy of all opinions, orders, or judgments filed in  
155 such case. Copies of opinions, orders, and decrees shall be  
156 furnished in all cases to each attorney of record and for  
157 publication in Florida reports to the authorized publisher  
158 without charge, and copies furnished to other law book  
159 publishers at one-half the regular statutory fee.

160 ~~(5)~~(6) The clerk of each district court of appeal shall ~~is~~  
161 ~~required to~~ deposit all fees collected in the State Treasury to  
162 the credit of the General Revenue Fund, except that \$50 of each  
163 \$300 filing fee collected shall be deposited into the State  
164 Courts Revenue Trust Fund to fund court operations as authorized  
165 in the General Appropriations Act. The clerk shall retain an  
166 accounting of each such remittance.

167 ~~(6)~~(7) The clerk of the district court of appeal may ~~is~~  
168 ~~authorized to~~ collect a fee from the parties to an appeal  
169 reflecting the actual cost of conducting the proceeding through  
170 teleconferencing if ~~where~~ the parties have requested that an  
171 oral argument or mediation be conducted through



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172 | teleconferencing. The fee collected for this purpose shall be  
173 | used to offset the expenses associated with scheduling the  
174 | teleconference and shall be deposited in the State Courts  
175 | Revenue Trust Fund.

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**T I T L E   A M E N D M E N T**

181

Remove lines 25-26 and insert:

182

s. 27.55, F.S., relating to certain

183