



Judiciary Committee

March 13, 2014

8:00 AM

404 HOB

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Thursday, March 13, 2014 08:00 am
End Date and Time: Thursday, March 13, 2014 10:00 am
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 23 Canned or Perishable Food Distributed Free of Charge by Rogers
CS/HB 405 Trusts by Civil Justice Subcommittee, Peters
CS/CS/HB 425 Condominiums by Business & Professional Regulation Subcommittee, Civil Justice Subcommittee, Rodríguez, J.
CS/HB 635 Guardianship by Civil Justice Subcommittee, Passidomo
HB 7039 Unlicensed Practice of Law by Civil Justice Subcommittee, Hill

Consideration of the following proposed committee bill(s):

PCB JDC 14-01 -- Renaming the Parole Commission

NOTICE FINALIZED on 03/11/2014 15:56 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 23 Canned or Perishable Food Distributed Free of Charge

SPONSOR(S): Rogers and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 160

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Ward	Bond
2) K-12 Subcommittee	13 Y, 0 N	Brink	Ahearn
3) Judiciary Committee		Ward <i>AW</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Current law protects donors who give food to a charitable organization from civil and criminal liability related to injury caused by such donated food. The term "donor" is defined in law. The bill adds a specific reference to public schools to the definition of "donor."

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A donor who donates canned or perishable food to a charity enjoys protection from criminal and civil liability.¹ A "donor" is defined as a person,² business, organization,³ or institution which owns, rents, leases, or operates:

- Any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure, that is maintained and operated as a place where food is regularly prepared, served, or sold for immediate consumption on or in the vicinity of the premises; or to be called for or taken out by customers; or to be delivered to factories, construction camps, airlines, locations where catered events are being held, and other similar locations for consumption at any place;
- Any public location with vending machines dispensing prepared meals; or
- Any retail grocery store.⁴

When food is apparently fit for human consumption and donated to a bona fide charitable or nonprofit organization, the donor is not subject to criminal penalties or civil damages arising from the condition of the food unless an injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor.^{5,6} Likewise, a nonprofit or charitable organization or a representative of such organization which distributes donated food is protected from criminal and civil penalties under the same conditions.

Public schools in Florida participate in school lunch and breakfast programs subsidized by the federal government. Federal law was amended in 2011 to include: "[e]ach school and local educational agency participating in the school lunch program under this chapter may donate any food not consumed under such program to eligible local food banks or charitable organizations."⁷ While public schools are presumably included under the current statutory definition of "donor," the express phrase "public schools" does not appear in the definition's language.

Effect of Proposed Changes

The bill expressly includes the phrase "public schools" within the statutory definition of "donor" as it relates to protection from criminal and civil liability for injuries caused by donated food.

B. SECTION DIRECTORY:

Section 1 amends s. 768.136, F.S., relating to liability for canned or perishable food distributed free of charge.

¹ Section 768.136, F.S.

² The term "person" is defined in statute to include "individuals, children, firms, associates, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. Section 1.01(3), F.S. This broad definition could be construed to include public schools.

³ The term "school" is defined as an "organization of students for instruction purposes of an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education." Section 1003.01, F.S. It thus appears that a public school may also fall under the current definition of "donor" as an organization.

⁴ Section 768.136(1), F.S.

⁵ Section 768.136(2), F.S.

⁶ Public school districts, as agencies of the state, enjoy sovereign immunity protection to the extent it has not been waived pursuant to s. 768.28, F.S. See *Orlando v. Broward County*, 950 So.2d 54 at 57 (Fla. 1st DCA 2005) ("Article X, section 13 of the Florida Constitution provides absolute sovereign immunity for the state and its agencies absent waiver by legislative enactment or constitutional amendment" (internal quotations omitted)).

⁷ 42 U.S.C. §1758(l)(1).

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 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, or 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

None.

1 A bill to be entitled
 2 An act relating to canned or perishable food
 3 distributed free of charge; amending s. 768.136, F.S.;
 4 limiting the liability of public schools with respect
 5 to the donation of canned or perishable food to
 6 charitable or nonprofit organizations; revising a
 7 definition; providing an effective date.

8

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

10

11 Section 1. Paragraph (a) of subsection (1) of section
 12 768.136, Florida Statutes, is amended to read:

13 768.136 Liability for canned or perishable food
 14 distributed free of charge.—

15 (1) As used in this section:

16 (a) "Donor" means a person, business, organization, or
 17 institution, including a public school, which owns, rents,
 18 leases, or operates:

19 1. Any building, vehicle, place, or structure, or any room
 20 or division in a building, vehicle, place, or structure, that is
 21 maintained and operated as a place where food is regularly
 22 prepared, served, or sold for immediate consumption on or in the
 23 vicinity of the premises; or to be called for or taken out by
 24 customers; or to be delivered to factories, construction camps,
 25 airlines, locations where catered events are being held, and
 26 other similar locations for consumption at any place;

27 2. Any public location with vending machines dispensing
 28 prepared meals; or

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29 | 3. Any retail grocery store.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 405 Trusts
SPONSOR(S): Civil Justice Subcommittee; Peters
TIED BILLS: None **IDEN./SIM. BILLS:** SB 826

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Ward	Bond
2) Judiciary Committee		Ward <i>AW</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Florida law governs the creation and administration of trusts. Florida trust documents may contain broad parameters for trust administration while the Trust Code provides default provisions for where the trust document is silent. The Trust Code also makes certain trust terms unenforceable.

Current Florida law provides for one cotrustee (called the "included trustee") to direct the actions of another cotrustee (called the "excluded trustee"). However, both cotrustees remain liable for the willful misconduct of the included cotrustee where the excluded cotrustee has actual knowledge of wrongdoing.

The bill allows creation of a trust that allows one cotrustee to direct the actions of another cotrustee without creating liability in the excluded cotrustee. The included cotrustee remains liable to the beneficiaries with respect to the exercise of the power as if the excluded cotrustee were not in office. The included trustee has the exclusive obligation to account to a beneficiary and to defend any action brought by a beneficiary with respect to the exercise of the power.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Trust Code

A trust is generally defined as, "a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. . ." ¹

A trust must have three interest holders - a settlor (also called a "grantor"), a trustee, and a beneficiary. The settlor is the party creating the trust. The trustee holds legal title to the property held in trust for the benefit of the beneficiary.² The beneficiary has an equitable interest in property subject to trust, enjoying the benefit of the administration of the trust by a trustee.³

The Trust Code⁴ is the portion of the Florida Statutes that pertains to the drafting and administration of trusts. The Trust Code provides default rules for trust drafting and administration. The terms of a trust document prevail over any provision of the Trust Code, with exceptions and mandatory rules as set out in the statute.⁵ One exception relates to a trust term relieving a trustee of liability for breach of trust.⁶ Clauses in a trust exonerating a trustee from liability are called "exculpatory terms."⁷

Exculpatory Terms

A trustee has a fiduciary duty to the beneficiary for proper administration of trust assets and is liable for any breach of that duty.⁸ Cotrustees are generally jointly and severally liable to the beneficiary for any breach of trust, without special trust terms changing their duties and liabilities.⁹ As a result, exculpatory terms in a trust document providing for the release of a trustee who breaches his fiduciary duty are strictly construed.¹⁰ They may also be unenforceable.¹¹ At the same time, settlors may require documents tailored to specific needs and the trustees may require special latitude to accomplish the settlor's purposes.

The expertise of a single trustee may be limited in respect to managing unique assets such as a family business, certain real estate or large blocks of stock that cannot be easily diversified. Management of such peculiar assets may require a unique skill or personal knowledge. For example, if a settlor funds a trust with stock in a closely-held corporation, he or she might want to continue to make decisions regarding the purchase, sale, and voting of such stock. Similarly, a

¹ 55A Fla.Jur.2d Trusts s.1; s. 731.201(38), F.S.

² 55A Fla.Jur.2d Trusts s.1.

³ *Id.*

⁴ Florida's Trust Code, ch. 736, F.S., is modeled on the Uniform Trust Code of 2000. The National Conference of Commissioners on Uniform State Laws adopted the Uniform Trust Code (UTC) in 2000 and it has been enacted in some form in 24 states and the District of Columbia. In Florida, the Ad Hoc Trust Code Revision Committee of the Florida Bar reviewed and revised the UTC to account for distinctions found in Florida statutory and case law. The product of the committee's work was the basis of the new Florida Trust Code adopted in 2006. See ch. 2006-217, L.O.F.

⁵ Section 736.0105(2), F.S.

⁶ Section 736.0105(2)(u), F.S.

⁷ Sections 736.1011 and 736.0105(2)(u), F.S.

⁸ Sections 736.1001 and 736.1002, F.S.

⁹ 55A Fla. Jur.2d Trusts s.155.

¹⁰ 55A Fla. Jur.2d Trusts s.154.

¹¹ Section 736.1011, F.S.

family having a long-standing relationship with a successful money manager might want him or her to continue to make trust investment decisions without appointing him or her as a sole trustee. A settlor might want someone other than the trustee to decide when to make income or principal distributions to beneficiaries. In these situations, the settlor wants to minimize a single trustee's involvement in decisions, and yet, without exculpatory trust terms, the trustee remains responsible to the beneficiaries for proper management of the trust assets. As a result, settlors seek to appoint a cotrustee for general administration while certain trust decisions are reserved to another cotrustee with particular expertise.

Cotrustees

Cotrustees are governed by the trust document and s. 736.0703(9), F.S. The statute provides that when the settlor appoints a cotrustee for particular purposes:

- An excluded trustee¹² must act in accordance with the exercise of the power given to the included trustee;¹³
- An excluded trustee is not liable, individually or as a fiduciary, for any consequence that results from compliance with the exercise of the power given to the included trustee, regardless of the information available to the excluded trustee, except in cases of willful misconduct on the part of the directed trustee of which the excluded trustee has actual knowledge;
- An excluded trustee is relieved from any obligation to review, inquire, investigate or make recommendations or evaluations with respect to the exercise of the power by the included trustee; and
- A trustee having the power to direct or prevent actions of the trustees is liable to the beneficiaries with respect to the exercise of the power as if the excluded trustees were not in office, and shall have the exclusive obligation to account to and to defend any action brought by the beneficiaries with respect to the exercise of the power.

However, an exoneration provision remains subject to another statute which makes the exculpation of a trustee unenforceable in certain circumstances.¹⁴ The current statutory scheme, therefore, poses problems for Florida drafters and clients who wish to fully exonerate an excluded cotrustee without concerns about whether the exoneration provision is unenforceable under s. 736.1011, F.S.

Florida settlors sometimes have the option to establish trusts in other jurisdictions where the law clearly permits the bifurcation of functions among cotrustees and is more flexible on the issue of exoneration of the excluded trustee.¹⁵ Likewise, excluded cotrustees express concern as to whether they have oversight or some other responsibility to ensure that the included cotrustee's direction is not an act of willful misconduct. Corporate trustees who have multiple employees deal with concerns about imputed knowledge. Excluded cotrustees with some residual responsibility are hesitant to make inquiry into family matters where such inquiries are viewed as unwelcome and unwarranted intrusions.

Effect of Proposed Changes

The bill amends s. 736.0703(9), F.S., to allow drafting of a trust document which fully exonerates an excluded trustee. The bill enhances the previously existing exoneration of an excluded cotrustee by fully removing any duty of inquiry. The excluded cotrustee is exonerated under the new provision even

¹² The "excluded trustee" is the trustee not assigned the specific power or purpose at issue.

¹³ The "included trustee" is the trustee assigned the specific power or purpose at issue.

¹⁴ Section 736.1011, F.S.

¹⁵ Cf. "The law of the jurisdiction designated in the terms of the trust, provided there is a sufficient nexus to the designated jurisdiction at the time of the creation of the trust. . ." s. 736.0107, F.S.

if he or she has actual knowledge of willful misconduct by the included cotrustee. The bill provides that the excluded cotrustee is exonerated from liability for following the direction of the included cotrustee, except in cases of its own willful misconduct.

The bill also amends s. 736.1011, F.S., to make the exculpation of a cotrustee parallel to the revised statute. The bill provides that the exonerated excluded cotrustees is not restricted by the mandatory trust drafting provision. Therefore, a provision in a trust that fully exonerates the excluded cotrustee prevails over the actual knowledge exception contained in the statute and is an enforceable provision under the Trust Code.

B. SECTION DIRECTORY:

Section 1 amends s. 736.0703, F.S., relating to cotrustees.

Section 2 amends s. 736.1011, F.S., relating to exculpation of trustee.

Section 3 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill 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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 5, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides clarification that the excluded trustee has no separate liability under s. 736.0808(2), F.S., which subjects the excluded trustee to liability if "the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust." This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to trusts; amending ss. 736.0703 and
 3 736.1011, F.S.; limiting the liability of excluded
 4 trustees; providing an exception; authorizing trusts
 5 to provide for exculpation of excluded trustees under
 6 certain circumstances; clarifying applicability of
 7 limitation of liability of excluded trustees in
 8 certain situations; providing an effective date.

9

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

11

12 Section 1. Subsection (9) of section 736.0703, Florida
 13 Statutes, is amended to read:

14 736.0703 Cotrustees.—

15 (9) If the terms of a trust ~~instrument~~ provide for the
 16 appointment of more than one trustee but confer upon one or more
 17 of the trustees, to the exclusion of the others, the power to
 18 direct or prevent specified actions of the trustees, the
 19 excluded trustees shall act in accordance with the exercise of
 20 the power. ~~Except in cases of willful misconduct on the part of~~
 21 ~~the trustee with the authority to direct or prevent actions of~~
 22 ~~the trustees of which the excluded trustee has actual knowledge,~~
 23 An excluded trustee is not liable, individually or as a
 24 fiduciary, for any consequence that results from compliance with
 25 the exercise of the power, regardless of the information
 26 available to the excluded trustee, unless with respect to the

27 exercise of such power the excluded trustee has actual knowledge
 28 of willful misconduct by the trustee entrusted with the power to
 29 direct or prevent actions of the excluded trustees. To the
 30 extent provided by terms of the trust, an excluded trustee may
 31 be exculpated from that liability even if the excluded trustee
 32 has actual knowledge of willful misconduct by the trustee
 33 entrusted with the power to direct or prevent actions of the
 34 excluded trustees. An excluded trustee has no duty or ~~trustees.~~
 35 ~~The excluded trustees are relieved of any~~ obligation to review,
 36 inquire, investigate, or make recommendations or evaluations
 37 with respect to the exercise of the power. The trustee entrusted
 38 with ~~or trustees having~~ the power to direct or prevent actions
 39 of the excluded trustees shall be liable to the beneficiaries
 40 with respect to the exercise of the power as if the excluded
 41 trustees were not in office and shall have the exclusive
 42 obligation to account to and to defend any action brought by the
 43 beneficiaries with respect to the exercise of the power. This
 44 subsection does not exculpate an excluded trustee from liability
 45 arising from his or her willful misconduct. Notwithstanding s.
 46 736.0808(2), only this subsection governs the liability of the
 47 excluded trustee when the person entrusted with the power to
 48 direct the actions of the excluded trustee is also a cotrustee.

49 Section 2. Subsection (3) is added to section 736.1011,
 50 Florida Statutes, to read:

51 736.1011 Exculpation of trustee.—

52 (3) This section does not apply to terms of a trust which

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53 | exculpate an excluded trustee from liability for any consequence
54 | that results from compliance with the exercise of a power
55 | described in s. 736.0703(9).

56 | Section 3. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (9) of section 736.0703, Florida Statutes, is amended to read:

736.0703 Cotrustees.—

(9) If the terms of a trust ~~instrument~~ provide for the appointment of more than one trustee but confer upon one or more of the trustees, to the exclusion of the others, the power to direct or prevent specified actions of the trustees, the excluded trustees shall act in accordance with the exercise of the power. Except in cases of willful misconduct on the part of the excluded trustee ~~with the authority to direct or prevent actions of the trustees of which the excluded trustee has actual knowledge~~, an excluded trustee is not liable, individually or as



Amendment No. 1

18 a fiduciary, for any consequence that results from compliance
 19 with the exercise of the power, ~~regardless of the information~~
 20 ~~available to the excluded trustees.~~ An The excluded trustee does
 21 not have a duty or an trustees are relieved of any obligation to
 22 review, inquire, investigate, or make recommendations or
 23 evaluations with respect to the exercise of the power. The
 24 trustee or trustees having the power to direct or prevent
 25 actions of the excluded trustees shall be liable to the
 26 beneficiaries with respect to the exercise of the power as if
 27 the excluded trustees were not in office and shall have the
 28 exclusive obligation to account to and to defend any action
 29 brought by the beneficiaries with respect to the exercise of the
 30 power. The provisions of s. 736.0808(2) do not apply if the
 31 person entrusted with the power to direct the actions of the
 32 excluded trustee is also a cotrustee.

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

34
35
36
37 -----
38 **T I T L E A M E N D M E N T**

39 Remove everything before the enacting clause and insert:
 40 An act relating to trusts; amending s. 736.0703, F.S.; limiting
 41 the liability of excluded trustees; providing that certain
 42 powers to direct the actions of a trustee are not applicable
 43 under certain circumstances; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 425 Condominiums

SPONSOR(S): Business & Professional Regulation Subcommittee; Civil Justice Subcommittee; Rodríguez

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 440

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Cary	Bond
2) Business & Professional Regulation Subcommittee	12 Y, 0 N, As CS	Brown-Blake	Luczynski
3) Judiciary Committee		Cary <i>JMC</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

A condominium is a form of ownership of real property created pursuant to Florida law that is comprised of units which are individually owned, but have an undivided share of access to common facilities. All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners which operates or maintains real property in which unit owners have use rights. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." Further, the association delineates condominium association bylaws, which governs the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.

The bill partially deregulates commercial (nonresidential) condominium associations by removing certain regulatory requirements. Areas of deregulation include board inquiries, proxy voting, board member qualifications, training and certification of board members, fire safety, mandatory nonbinding arbitration, hurricane shutters, and phase condominiums.

The bill also extends the bulk assignee and bulk buyer provisions for an additional year, from July 1, 2015, to July 1, 2016.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., which is comprised of units which are individually owned, but have an undivided share of access to common facilities.¹ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.² A declaration is similar to a constitution in that it governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.³

All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights.⁴ The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration."⁵

Further, the association enacts condominium association bylaws, which govern the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.⁶

A condominium association may be classified as residential, nonresidential (commercial), mixed-use, or timeshare.

- A residential condominium is defined as a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence. However, a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use.⁷
- A condominium which contains both commercial and residential units is a mixed-use condominium.
- A timeshare condominium association is one in which the majority of condominium units are used for timeshares.
- A nonresidential condominium is a condominium that is not included in any of the other categories of condominiums. Examples of nonresidential condominium associations include small office condominiums and small retail centers.

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ Section 718.104(5), F.S.

⁴ Section 718.103(2), F.S.

⁵ Section 718.103(4), F.S.

⁶ Section 718.112, F.S.

⁷ Section 718.103(23), F.S.

Effect of the Bill

Board Inquiries

Current law requires a condominium board to respond in writing within 30 days to a written inquiry that is sent by certified mail from a unit owner. The board's response must either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation (hereinafter "Division"). If the board requests advice from the Division, the board must provide a substantive response to the inquirer within 10 days of receiving the response from the Division.⁸

The bill amends s. 718.112(2)(a)2., F.S., to exempt a nonresidential condominium board from the requirement to either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the Division. The bill also exempts nonresidential condominium boards from the requirement to respond with a substantive response within 10 days of receiving a response from the Division. In effect, the bill exempts nonresidential condominium boards from any response requirement to an inquiry provided by a unit owner.

Proxy Voting

Current law generally does not allow condominium unit owners to vote by general proxy. However, general and limited proxies may be used to establish a quorum. Limited proxies may be used for a few specific purposes:

- To waive or reduce reserves;
- For votes taken to waive financial reporting requirements;
- For votes taken to amend the declaration;
- For votes taken to amend the articles of incorporation or bylaws; and
- For any other matter for which ch. 718 requires or allows.⁹

A proxy is only effective for the specific meeting for which it was given and is valid for only 90 days after the first meeting for which it was given. Proxies are revocable at any time by the unit owner.¹⁰

There is a general exemption for a timeshare condominium with respect to the proxy-voting limitations.¹¹ Furthermore, an association of 10 or fewer units may provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures, which in turn may provide for elections to be conducted by limited or general proxy.¹²

The bill amends s. 718.112(2)(b)2., F.S., to allow proxy voting in a nonresidential condominium association. The bill also amends s. 718.112(2)(d)10., F.S., to provide that a nonresidential condominium has the same exemption to proxy-voting limitations as a timeshare condominium.

Board of Directors

Current law generally requires a board member's term in office to expire at the annual meeting, however a condominium may allow for 2-year terms if allowed by the bylaws or articles of

⁸ Section 718.112(2)(a)2., F.S.

⁹ Section 718.112(2)(b)2., F.S.

¹⁰ Section 718.112(2)(b)3., F.S.

¹¹ Section 718.112(2)(d)10., F.S.

¹² Section 718.112(2)(d), F.S.

incorporation.¹³ Coowners of a unit may not both serve as members of the board at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election and must be eligible to serve on the board at the time of the deadline for submitting a notice of intent to run in order to be listed as a candidate.¹⁴

The bill amends s. 718.112(2)(d)2., F.S., to exempt nonresidential condominiums from the board membership term requirements. A board member in a nonresidential condominium may serve a term of longer than one year (or two years, if allowed by the bylaws or articles of incorporation), and the term is not required to expire at the annual meeting. The bill also allows coowners of a unit in a nonresidential condominium to serve simultaneously without restriction. Finally, a candidate for board membership in a nonresidential condominium would not need to be eligible to serve as a board member at the time of the deadline for submitting a notice of intent to run.

Training and Certification

Current law requires that with 90 days of being elected or appointed, a newly elected or appointed director of a condominium association must certify in writing that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. Alternatively, he or she may submit a certificate of having satisfactorily completed a Division-approved educational curriculum. A director who fails to timely file such certification is suspended from service on the board until he or she does so.¹⁵

The bill amends s. 718.112(2)(d)4.b., F.S., to exempt a newly-elected or newly-appointed director of a nonresidential condominium from the requirement to certify that he or she has completed the educational curriculum or that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members.

Arbitration

Current law requires that a condominium's bylaws must provide for mandatory nonbinding arbitration conducted by the Division as provided for in s. 718.1255, F.S.¹⁶ Arbitration requires a \$50 filing fee and must precede litigation.¹⁷ This mandatory arbitration in residential condominiums is generally used to settle disputes filed between residents of residential condominiums.

The bill amends s. 718.112(2)(k), F.S., to exempt a nonresidential condominium's bylaws from containing a provision for mandatory nonbinding arbitration. The bill also amends s. 718.1255, F.S., to exempt nonresidential condominiums from mandatory nonbinding arbitration.

Fire Safety

Current law requires bylaws to contain a provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the board as evidence of compliance of the

¹³ There are exceptions to the general rule when: (1) the condominium is a timeshare; (2) the board member is on a staggered term that does not expire until a later meeting; (3) if all the members' terms would expire but there are not candidates.

¹⁴ Section 718.112(2)(d)2., F.S.

¹⁵ Section 718.112(2)(d)4.b., F.S.

¹⁶ Section 718.112(2)(k), F.S.

¹⁷ Section 718.1255(4)(a), F.S.

condominium units with the applicable fire and life safety code. An association, condominium, or unit owner is not required to retrofit common elements, association property, or units of a residential condominium to meet current codes in a building that has been certified for occupancy by the applicable government entity if the unit owners vote to forego retrofitting by majority vote. Local governments may not require retrofitting with a fire sprinkler system before the end of 2019.¹⁸

The bill amends s. 718.112(2)(l), F.S., providing that an association, residential condominium, or unit owner is not required to retrofit the common elements, association property, or units of a residential condominium to meet current codes if the unit owners vote to forego the retrofitting by majority vote. The current law and the bill both only apply to residential condominiums; therefore, the amendment does not appear to change the meaning of the provision.

Additionally, s. 718.112(2)(l)4, F.S., is amended to provide that only residential condominiums may vote to forego the retrofitting of any improvements required by s. 553.509(2), F.S.

Hurricane Shutters

Current law requires each condominium board to adopt hurricane shutter specifications. Upon approval by a majority of voting interests, the board may also install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection.¹⁹

The bill amends s. 718.113(5), to only require hurricane shutter specifications in a residential condominium.

Phase Condominiums

Current law allows a developer to develop a condominium in phases if the original declaration of condominium, or an amendment to that declaration, provides for and describes in detail all anticipated phases and the impact that the completion of subsequent phases will have upon the initial phase. The time period for completion of the proposed phases cannot exceed seven years from the date of the recording of the declaration, unless unit owners vote to approve an extension of up to an additional three years. If the phases are not added within seven years from the date of the recording of the declaration, or up to 10 years if an extension has been approved, the right to add additional phases expires.²⁰

Current law also requires the declaration of condominium to describe the land which may become part of the condominium and the land on which each phase is to be built. The plot plan may be modified by the developer as to unit or building types to the extent that such modifications are described in the declaration.²¹

The declaration or amendment to the declaration must also include:

- The minimum and maximum numbers and general size of units to be included in each phase;²²
- Each unit's percentage of ownership in the common areas;²³
- The recreational areas and facilities which will be owned as common elements by all unit owners;²⁴

¹⁸ Section 718.112(2)(l), F.S.

¹⁹ Section 718.113(5), F.S.

²⁰ Section 718.403(1), F.S.

²¹ Section 718.403(2), F.S.

²² Section 718.403(2)(b), F.S.

²³ Section 718.403(2)(c), F.S.

²⁴ Section 718.403(2)(d), F.S.

- The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed;²⁵ and
- Whether timeshare estates will or may be created with respect to units in any phase and the attributes of such estates.²⁶

The bill reenacts s. 718.403(1), F.S., to resolve a conflict from the 2013 session, where two bills amended this section. The bill also amends s. 718.403(2), F.S., to only require residential condominiums to describe unit or building type changes to the plot plan in the declaration, and adds a new s. 718.403(9), F.S., to provide that a declaration of condominium for a nonresidential condominium does not need to describe:

- The minimum and maximum numbers and general size of units to be included in each phase;
- Each unit's percentage of ownership in the common areas;
- The recreational areas and facilities which will be owned as common elements by all unit owners;
- The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed; and
- Whether or not timeshare estates will or may be created with respect to units in any phase and the attributes of such estates.

Bulk Assignees and Bulk Buyer

In 2010, the Legislature passed the Distressed Condominium Relief Act in order to relieve developers, lenders, unit owners, and condominium associations from certain provisions of the Florida Condominium Act. The Act was intended to relieve specific parties from certain liabilities, so as to enable economic opportunities for successor purchasers of distressed condominiums.²⁷

Specifically, the Act created categories of "bulk buyers" and "bulk assignees." A bulk assignee is a person who acquires more than seven condominium parcels as provided in s. 718.703, F.S., and receives an assignment of some or all of the rights of the developer under specified recording documents.²⁸

Similarly, a bulk buyer is a person who acquires more than seven condominium parcels, but who does not receive an assignment of developer rights other than the right to: conduct sales, leasing, and marketing activities within the condominium; be exempt from payment of working capital contributions; and be exempt from rights of first refusal.²⁹

Because the Act was created in reaction to the "massive downturn in the condominium market which has occurred throughout the state," it was not intended to be open-ended. Rather, the intent of the Legislature was to enact the relief only for "a specific and defined period."³⁰

Originally, the time limitation for classification as a bulk assignee or bulk buyer was until July 1, 2012.³¹ In 2012, the Legislature extended the time limitation to July 1, 2015.³² This bill amends s. 718.707, F.S., to extend the Distressed Condominium Relief Act to July 1, 2016.

²⁵ Section 718.403(2)(e), F.S.

²⁶ Section 718.403(2)(f), F.S.

²⁷ Chapter 2010-174, L.O.F.

²⁸ Section 718.703(1), F.S.

²⁹ Section 718.703(2), F.S.

³⁰ Section 718.702, F.S.

³¹ Chapter 2010-174, L.O.F.

³² Chapter 2012-61, L.O.F.

B. SECTION DIRECTORY:

Section 1 amends s. 718.112, F.S., relating to bylaws of a condominium.

Section 2 amends s. 718.113, F.S., relating to maintenance, limitation upon improvement, display of flag, hurricane shutters and protection, and display of religious decorations.

Section 3 amends s. 718.1255, F.S., relating to alternative dispute resolution, voluntary mediation, mandatory nonbinding arbitration, and legislative findings.

Section 4 amends s. 718.403, F.S., relating to phase condominiums.

Section 5 amends s. 718.707, F.S., relating to time limitation for classification as bulk assignee or bulk buyer.

Section 6 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 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:

Not Applicable. 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

On February 5, 2014, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The first amendment reworded a provision for clarity but did not provide a substantive change. The second amendment reworded certain provisions for clarity and added new sections to exempt nonresidential condominiums from hurricane shutter requirements, mandatory nonbinding arbitration, insurance risk classification, and phase condominium requirements. The amendment also extends the Distressed Condominium Relief Act until July 1, 2016.

On February 18, 2014, the Business & Professional Regulation Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment deleted Section 4, which provided that only residential condominiums shall be classed as residential property for the purpose of property and casualty insurance risk classification.

This staff analysis is drafted to the committee substitute as passed by the Business & Professional Regulation Subcommittee.

27 the following:

28 (a) Administration.—

29 1. The form of administration of the association shall be
 30 described indicating the title of the officers and board of
 31 administration and specifying the powers, duties, manner of
 32 selection and removal, and compensation, if any, of officers and
 33 boards. In the absence of such a provision, the board of
 34 administration shall be composed of five members, except in the
 35 case of a condominium which has five or fewer units, in which
 36 case in a not-for-profit corporation the board shall consist of
 37 not fewer than three members. In the absence of provisions to
 38 the contrary in the bylaws, the board of administration shall
 39 have a president, a secretary, and a treasurer, who shall
 40 perform the duties of such officers customarily performed by
 41 officers of corporations. Unless prohibited in the bylaws, the
 42 board of administration may appoint other officers and grant
 43 them the duties it deems appropriate. Unless otherwise provided
 44 in the bylaws, the officers shall serve without compensation and
 45 at the pleasure of the board of administration. Unless otherwise
 46 provided in the bylaws, the members of the board shall serve
 47 without compensation.

48 2. When a unit owner of a residential condominium files a
 49 written inquiry by certified mail with the board of
 50 administration, the board shall respond in writing to the unit
 51 owner within 30 days after ~~of~~ receipt of the inquiry. The
 52 board's response shall either give a substantive response to the

53 inquirer, notify the inquirer that a legal opinion has been
 54 requested, or notify the inquirer that advice has been requested
 55 from the division. If the board requests advice from the
 56 division, the board shall, within 10 days after ~~of~~ its receipt
 57 of the advice, provide in writing a substantive response to the
 58 inquirer. If a legal opinion is requested, the board shall,
 59 within 60 days after the receipt of the inquiry, provide in
 60 writing a substantive response to the inquiry. The failure to
 61 provide a substantive response to the inquiry as provided herein
 62 precludes the board from recovering attorney ~~attorney's~~ fees and
 63 costs in any subsequent litigation, administrative proceeding,
 64 or arbitration arising out of the inquiry. The association may
 65 through its board of administration adopt reasonable rules and
 66 regulations regarding the frequency and manner of responding to
 67 unit owner inquiries, one of which may be that the association
 68 is only obligated to respond to one written inquiry per unit in
 69 any given 30-day period. In such a case, any additional inquiry
 70 or inquiries must be responded to in the subsequent 30-day
 71 period, or periods, as applicable.

72 (b) Quorum; voting requirements; proxies.—

73 1. Unless a lower number is provided in the bylaws, the
 74 percentage of voting interests required to constitute a quorum
 75 at a meeting of the members is a majority of the voting
 76 interests. Unless otherwise provided in this chapter or in the
 77 declaration, articles of incorporation, or bylaws, and except as
 78 provided in subparagraph (d)4., decisions shall be made by a

79 majority of the voting interests represented at a meeting at
 80 which a quorum is present.

81 2. Except as specifically otherwise provided herein, unit
 82 owners in a residential condominium may not vote by general
 83 proxy, but may vote by limited proxies substantially conforming
 84 to a limited proxy form adopted by the division. A voting
 85 interest or consent right allocated to a unit owned by the
 86 association may not be exercised or considered for any purpose,
 87 whether for a quorum, an election, or otherwise. Limited proxies
 88 and general proxies may be used to establish a quorum. Limited
 89 proxies shall be used for votes taken to waive or reduce
 90 reserves in accordance with subparagraph (f)2.; for votes taken
 91 to waive the financial reporting requirements of s. 718.111(13);
 92 for votes taken to amend the declaration pursuant to s. 718.110;
 93 for votes taken to amend the articles of incorporation or bylaws
 94 pursuant to this section; and for any other matter for which
 95 this chapter requires or permits a vote of the unit owners.
 96 Except as provided in paragraph (d), a proxy, limited or
 97 general, may not be used in the election of board members in a
 98 residential condominium. General proxies may be used for other
 99 matters for which limited proxies are not required, and may be
 100 used in voting for nonsubstantive changes to items for which a
 101 limited proxy is required and given. Notwithstanding this
 102 subparagraph, unit owners may vote in person at unit owner
 103 meetings. This subparagraph does not limit the use of general
 104 proxies or require the use of limited proxies for any agenda

105 item or election at any meeting of a timeshare condominium
 106 association or a nonresidential condominium association.

107 3. A ~~Any~~ proxy given is effective only for the specific
 108 meeting for which originally given and any lawfully adjourned
 109 meetings thereof. A proxy is not valid longer than 90 days after
 110 the date of the first meeting for which it was given. Each ~~Every~~
 111 proxy is revocable at any time at the pleasure of the unit owner
 112 executing it.

113 4. A member of the board of administration or a committee
 114 may submit in writing his or her agreement or disagreement with
 115 any action taken at a meeting that the member did not attend.
 116 This agreement or disagreement may not be used as a vote for or
 117 against the action taken or to create a quorum.

118 5. If any of the board or committee members meet by
 119 telephone conference, those board or committee members may be
 120 counted toward obtaining a quorum and may vote by telephone. A
 121 telephone speaker must be used so that the conversation of those
 122 members may be heard by the board or committee members attending
 123 in person as well as by any unit owners present at a meeting.

124 (d) Unit owner meetings.—

125 1. An annual meeting of the unit owners shall be held at
 126 the location provided in the association bylaws and, if the
 127 bylaws are silent as to the location, the meeting shall be held
 128 within 45 miles of the condominium property. However, such
 129 distance requirement does not apply to an association governing
 130 a timeshare condominium.

131 2. Unless the bylaws provide otherwise, a vacancy on the
 132 board caused by the expiration of a director's term shall be
 133 filled by electing a new board member, and the election must be
 134 by secret ballot. An election is not required if the number of
 135 vacancies equals or exceeds the number of candidates. For
 136 purposes of this paragraph, the term "candidate" means an
 137 eligible person who has timely submitted the written notice, as
 138 described in sub-subparagraph 4.a., of his or her intention to
 139 become a candidate. Except in a timeshare or nonresidential
 140 condominium, or if the staggered term of a board member does not
 141 expire until a later annual meeting, or if all members' terms
 142 would otherwise expire but there are no candidates, the terms of
 143 all board members expire at the annual meeting, and such members
 144 may stand for reelection unless prohibited by the bylaws. If the
 145 bylaws or articles of incorporation permit terms of no more than
 146 2 years, the association board members may serve 2-year terms.
 147 If the number of board members whose terms expire at the annual
 148 meeting equals or exceeds the number of candidates, the
 149 candidates become members of the board effective upon the
 150 adjournment of the annual meeting. Unless the bylaws provide
 151 otherwise, any remaining vacancies shall be filled by the
 152 affirmative vote of the majority of the directors making up the
 153 newly constituted board even if the directors constitute less
 154 than a quorum or there is only one director. In a residential
 155 condominium association of more than 10 units or in a
 156 residential condominium association that does not include

157 | timeshare units or timeshare interests, coowners of a unit may
 158 | not serve as members of the board of directors at the same time
 159 | unless they own more than one unit or unless there are not
 160 | enough eligible candidates to fill the vacancies on the board at
 161 | the time of the vacancy. A ~~Any~~ unit owner in a residential
 162 | condominium desiring to be a candidate for board membership must
 163 | comply with sub-subparagraph 4.a. and must be eligible to be a
 164 | candidate to serve on the board of directors at the time of the
 165 | deadline for submitting a notice of intent to run in order to
 166 | have his or her name listed as a proper candidate on the ballot
 167 | or to serve on the board. A person who has been suspended or
 168 | removed by the division under this chapter, or who is delinquent
 169 | in the payment of any monetary obligation due to the
 170 | association, is not eligible to be a candidate for board
 171 | membership and may not be listed on the ballot. A person who has
 172 | been convicted of any felony in this state or in a United States
 173 | District or Territorial Court, or who has been convicted of any
 174 | offense in another jurisdiction which would be considered a
 175 | felony if committed in this state, is not eligible for board
 176 | membership unless such felon's civil rights have been restored
 177 | for at least 5 years as of the date such person seeks election
 178 | to the board. The validity of an action by the board is not
 179 | affected if it is later determined that a board member is
 180 | ineligible for board membership due to having been convicted of
 181 | a felony. This subparagraph does not limit the term of a member
 182 | of the board of a nonresidential condominium.

183 3. The bylaws must provide the method of calling meetings
 184 of unit owners, including annual meetings. Written notice must
 185 include an agenda, must be mailed, hand delivered, or
 186 electronically transmitted to each unit owner at least 14 days
 187 before the annual meeting, and must be posted in a conspicuous
 188 place on the condominium property at least 14 continuous days
 189 before the annual meeting. Upon notice to the unit owners, the
 190 board shall, by duly adopted rule, designate a specific location
 191 on the condominium property or association property where all
 192 notices of unit owner meetings shall be posted. This requirement
 193 does not apply if there is no condominium property or
 194 association property for posting notices. In lieu of, or in
 195 addition to, the physical posting of meeting notices, the
 196 association may, by reasonable rule, adopt a procedure for
 197 conspicuously posting and repeatedly broadcasting the notice and
 198 the agenda on a closed-circuit cable television system serving
 199 the condominium association. However, if broadcast notice is
 200 used in lieu of a notice posted physically on the condominium
 201 property, the notice and agenda must be broadcast at least four
 202 times every broadcast hour of each day that a posted notice is
 203 otherwise required under this section. If broadcast notice is
 204 provided, the notice and agenda must be broadcast in a manner
 205 and for a sufficient continuous length of time so as to allow an
 206 average reader to observe the notice and read and comprehend the
 207 entire content of the notice and the agenda. Unless a unit owner
 208 waives in writing the right to receive notice of the annual

209 meeting, such notice must be hand delivered, mailed, or
 210 electronically transmitted to each unit owner. Notice for
 211 meetings and notice for all other purposes must be mailed to
 212 each unit owner at the address last furnished to the association
 213 by the unit owner, or hand delivered to each unit owner.
 214 However, if a unit is owned by more than one person, the
 215 association must provide notice to the address that the
 216 developer identifies for that purpose and thereafter as one or
 217 more of the owners of the unit advise the association in
 218 writing, or if no address is given or the owners of the unit do
 219 not agree, to the address provided on the deed of record. An
 220 officer of the association, or the manager or other person
 221 providing notice of the association meeting, must provide an
 222 affidavit or United States Postal Service certificate of
 223 mailing, to be included in the official records of the
 224 association affirming that the notice was mailed or hand
 225 delivered in accordance with this provision.

226 4. The members of the board of a residential condominium
 227 shall be elected by written ballot or voting machine. Proxies
 228 may not be used in electing the board in general elections or
 229 elections to fill vacancies caused by recall, resignation, or
 230 otherwise, unless otherwise provided in this chapter. This
 231 subparagraph does not apply to an association governing a
 232 timeshare condominium.

233 a. At least 60 days before a scheduled election, the
 234 association shall mail, deliver, or electronically transmit, by

235 separate association mailing or included in another association
 236 mailing, delivery, or transmission, including regularly
 237 published newsletters, to each unit owner entitled to a vote, a
 238 first notice of the date of the election. A ~~Any~~ unit owner or
 239 other eligible person desiring to be a candidate for the board
 240 must give written notice of his or her intent to be a candidate
 241 to the association at least 40 days before a scheduled election.
 242 Together with the written notice and agenda as set forth in
 243 subparagraph 3., the association shall mail, deliver, or
 244 electronically transmit a second notice of the election to all
 245 unit owners entitled to vote, together with a ballot that lists
 246 all candidates. Upon request of a candidate, an information
 247 sheet, no larger than 8 1/2 inches by 11 inches, which must be
 248 furnished by the candidate at least 35 days before the election,
 249 must be included with the mailing, delivery, or transmission of
 250 the ballot, with the costs of mailing, delivery, or electronic
 251 transmission and copying to be borne by the association. The
 252 association is not liable for the contents of the information
 253 sheets prepared by the candidates. In order to reduce costs, the
 254 association may print or duplicate the information sheets on
 255 both sides of the paper. The division shall by rule establish
 256 voting procedures consistent with this sub-subparagraph,
 257 including rules establishing procedures for giving notice by
 258 electronic transmission and rules providing for the secrecy of
 259 ballots. Elections shall be decided by a plurality of ballots
 260 cast. There is no quorum requirement; however, at least 20

261 percent of the eligible voters must cast a ballot in order to
 262 have a valid election. A unit owner may not permit any other
 263 person to vote his or her ballot, and any ballots improperly
 264 cast are invalid. A unit owner who violates this provision may
 265 be fined by the association in accordance with s. 718.303. A
 266 unit owner who needs assistance in casting the ballot for the
 267 reasons stated in s. 101.051 may obtain such assistance. The
 268 regular election must occur on the date of the annual meeting.
 269 Notwithstanding this sub-subparagraph, an election is not
 270 required unless more candidates file notices of intent to run or
 271 are nominated than board vacancies exist.

272 b. Within 90 days after being elected or appointed to the
 273 board of an association of a residential condominium, each newly
 274 elected or appointed director shall certify in writing to the
 275 secretary of the association that he or she has read the
 276 association's declaration of condominium, articles of
 277 incorporation, bylaws, and current written policies; that he or
 278 she will work to uphold such documents and policies to the best
 279 of his or her ability; and that he or she will faithfully
 280 discharge his or her fiduciary responsibility to the
 281 association's members. In lieu of this written certification,
 282 within 90 days after being elected or appointed to the board,
 283 the newly elected or appointed director may submit a certificate
 284 of having satisfactorily completed the educational curriculum
 285 administered by a division-approved condominium education
 286 provider within 1 year before or 90 days after the date of

287 | election or appointment. The written certification or
 288 | educational certificate is valid and does not have to be
 289 | resubmitted as long as the director serves on the board without
 290 | interruption. A director of an association of a residential
 291 | condominium who fails to timely file the written certification
 292 | or educational certificate is suspended from service on the
 293 | board until he or she complies with this sub-subparagraph. The
 294 | board may temporarily fill the vacancy during the period of
 295 | suspension. The secretary shall cause the association to retain
 296 | a director's written certification or educational certificate
 297 | for inspection by the members for 5 years after a director's
 298 | election or the duration of the director's uninterrupted tenure,
 299 | whichever is longer. Failure to have such written certification
 300 | or educational certificate on file does not affect the validity
 301 | of any board action.

302 | c. Any challenge to the election process must be commenced
 303 | within 60 days after the election results are announced.

304 | 5. Any approval by unit owners called for by this chapter
 305 | or the applicable declaration or bylaws, including, but not
 306 | limited to, the approval requirement in s. 718.111(8), must be
 307 | made at a duly noticed meeting of unit owners and is subject to
 308 | all requirements of this chapter or the applicable condominium
 309 | documents relating to unit owner decisionmaking, except that
 310 | unit owners may take action by written agreement, without
 311 | meetings, on matters for which action by written agreement
 312 | without meetings is expressly allowed by the applicable bylaws

313 or declaration or any law that provides for such action.

314 6. Unit owners may waive notice of specific meetings if
315 allowed by the applicable bylaws or declaration or any law. If
316 authorized by the bylaws, notice of meetings of the board of
317 administration, unit owner meetings, except unit owner meetings
318 called to recall board members under paragraph (j), and
319 committee meetings may be given by electronic transmission to
320 unit owners who consent to receive notice by electronic
321 transmission.

322 7. Unit owners have the right to participate in meetings
323 of unit owners with reference to all designated agenda items.
324 However, the association may adopt reasonable rules governing
325 the frequency, duration, and manner of unit owner participation.

326 8. A unit owner may tape record or videotape a meeting of
327 the unit owners subject to reasonable rules adopted by the
328 division.

329 9. Unless otherwise provided in the bylaws, any vacancy
330 occurring on the board before the expiration of a term may be
331 filled by the affirmative vote of the majority of the remaining
332 directors, even if the remaining directors constitute less than
333 a quorum, or by the sole remaining director. In the alternative,
334 a board may hold an election to fill the vacancy, in which case
335 the election procedures must conform to sub-subparagraph 4.a.
336 unless the association governs 10 units or fewer and has opted
337 out of the statutory election process, in which case the bylaws
338 of the association control. Unless otherwise provided in the

339 | bylaws, a board member appointed or elected under this section
 340 | shall fill the vacancy for the unexpired term of the seat being
 341 | filled. Filling vacancies created by recall is governed by
 342 | paragraph (j) and rules adopted by the division.

343 | 10. This chapter does not limit the use of general or
 344 | limited proxies, require the use of general or limited proxies,
 345 | or require the use of a written ballot or voting machine for any
 346 | agenda item or election at any meeting of a timeshare
 347 | condominium association or nonresidential condominium
 348 | association.

349 |
 350 | Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
 351 | association of 10 or fewer units may, by affirmative vote of a
 352 | majority of the total voting interests, provide for different
 353 | voting and election procedures in its bylaws, which may be by a
 354 | proxy specifically delineating the different voting and election
 355 | procedures. The different voting and election procedures may
 356 | provide for elections to be conducted by limited or general
 357 | proxy.

358 | (k) Arbitration.—There shall be a provision for mandatory
 359 | nonbinding arbitration as provided for in s. 718.1255 for any
 360 | residential condominium.

361 | (l) Certificate of compliance.— A provision that a
 362 | certificate of compliance from a licensed electrical contractor
 363 | or electrician may be accepted by the association's board as
 364 | evidence of compliance of the condominium units with the

365 applicable fire and life safety code must be included.
 366 Notwithstanding chapter 633 or of any other code, statute,
 367 ordinance, administrative rule, or regulation, or any
 368 interpretation of the foregoing, an association, residential
 369 condominium, or unit owner is not obligated to retrofit the
 370 common elements, association property, or units of a residential
 371 condominium with a fire sprinkler system in a building that has
 372 been certified for occupancy by the applicable governmental
 373 entity if the unit owners have voted to forego such retrofitting
 374 by the affirmative vote of a majority of all voting interests in
 375 the affected condominium. The local authority having
 376 jurisdiction may not require completion of retrofitting with a
 377 fire sprinkler system before January 1, 2020 ~~the end of 2019~~. By
 378 December 31, 2016, a residential condominium ~~an~~ association that
 379 is not in compliance with the requirements for a fire sprinkler
 380 system and has not voted to forego retrofitting of such a system
 381 must initiate an application for a building permit for the
 382 required installation with the local government having
 383 jurisdiction demonstrating that the association will become
 384 compliant by December 31, 2019.

385 1. A vote to forego retrofitting may be obtained by
 386 limited proxy or by a ballot personally cast at a duly called
 387 membership meeting, or by execution of a written consent by the
 388 member, and is effective upon recording a certificate attesting
 389 to such vote in the public records of the county where the
 390 condominium is located. The association shall mail or hand

391 deliver to each unit owner written notice at least 14 days
 392 before the membership meeting in which the vote to forego
 393 retrofitting of the required fire sprinkler system is to take
 394 place. Within 30 days after the association's opt-out vote,
 395 notice of the results of the opt-out vote must be mailed or hand
 396 delivered to all unit owners. Evidence of compliance with this
 397 notice requirement must be made by affidavit executed by the
 398 person providing the notice and filed among the official records
 399 of the association. After notice is provided to each owner, a
 400 copy must be provided by the current owner to a new owner before
 401 closing and by a unit owner to a renter before signing a lease.

402 2. If there has been a previous vote to forego
 403 retrofitting, a vote to require retrofitting may be obtained at
 404 a special meeting of the unit owners called by a petition of at
 405 least 10 percent of the voting interests. Such a vote may only
 406 be called once every 3 years. Notice shall be provided as
 407 required for any regularly called meeting of the unit owners,
 408 and must state the purpose of the meeting. Electronic
 409 transmission may not be used to provide notice of a meeting
 410 called in whole or in part for this purpose.

411 3. As part of the information collected annually from
 412 condominiums, the division shall require condominium
 413 associations to report the membership vote and recording of a
 414 certificate under this subsection and, if retrofitting has been
 415 undertaken, the per-unit cost of such work. The division shall
 416 annually report to the Division of State Fire Marshal of the

417 Department of Financial Services the number of condominiums that
 418 have elected to forego retrofitting.

419 4. Notwithstanding s. 553.509, a residential an
 420 association may not be obligated to, and may forego the
 421 retrofitting of, any improvements required by s. 553.509(2) upon
 422 an affirmative vote of a majority of the voting interests in the
 423 affected condominium.

424 Section 2. Subsection (5) of section 718.113, Florida
 425 Statutes, is amended to read:

426 718.113 Maintenance; limitation upon improvement; display
 427 of flag; hurricane shutters and protection; display of religious
 428 decorations.—

429 (5) Each board of administration of a residential
 430 condominium shall adopt hurricane shutter specifications for
 431 each building within each condominium operated by the
 432 association which shall include color, style, and other factors
 433 deemed relevant by the board. All specifications adopted by the
 434 board must comply with the applicable building code.

435 (a) The board may, subject to s. 718.3026 and the approval
 436 of a majority of voting interests of the residential
 437 condominium, install hurricane shutters, impact glass, code-
 438 compliant windows or doors, or other types of code-compliant
 439 hurricane protection that comply with or exceed the applicable
 440 building code. However, a vote of the owners is not required if
 441 the maintenance, repair, and replacement of hurricane shutters,
 442 impact glass, code-compliant windows or doors, or other types of

443 code-compliant hurricane protection are the responsibility of
 444 the association pursuant to the declaration of condominium. If
 445 hurricane protection or laminated glass or window film
 446 architecturally designed to function as hurricane protection
 447 that complies with or exceeds the current applicable building
 448 code has been previously installed, the board may not install
 449 hurricane shutters, impact glass, code-compliant windows or
 450 doors, or other types of code-compliant hurricane protection
 451 except upon approval by a majority vote of the voting interests.

452 (b) The association is responsible for the maintenance,
 453 repair, and replacement of the hurricane shutters, impact glass,
 454 code-compliant windows or doors, or other types of code-
 455 compliant hurricane protection authorized by this subsection if
 456 such property is the responsibility of the association pursuant
 457 to the declaration of condominium. If the hurricane shutters,
 458 impact glass, code-compliant windows or doors, or other types of
 459 code-compliant hurricane protection are the responsibility of
 460 the unit owners pursuant to the declaration of condominium, the
 461 maintenance, repair, and replacement of such items are the
 462 responsibility of the unit owner.

463 (c) The board may operate shutters, impact glass, code-
 464 compliant windows or doors, or other types of code-compliant
 465 hurricane protection installed pursuant to this subsection
 466 without permission of the unit owners only if such operation is
 467 necessary to preserve and protect the condominium property and
 468 association property. The installation, replacement, operation,

469 repair, and maintenance of such shutters, impact glass, code-
 470 compliant windows or doors, or other types of code-compliant
 471 hurricane protection in accordance with the procedures set forth
 472 in this paragraph are not a material alteration to the common
 473 elements or association property within the meaning of this
 474 section.

475 (d) Notwithstanding any other provision in the residential
 476 condominium documents, if approval is required by the documents,
 477 a board may not refuse to approve the installation or
 478 replacement of hurricane shutters, impact glass, code-compliant
 479 windows or doors, or other types of code-compliant hurricane
 480 protection by a unit owner conforming to the specifications
 481 adopted by the board.

482 Section 3. Subsection (6) is added to section 718.1255,
 483 Florida Statutes, to read:

484 718.1255 Alternative dispute resolution; voluntary
 485 mediation; mandatory nonbinding arbitration; legislative
 486 findings.-

487 (6) APPLICABILITY.-This section does not apply to a
 488 nonresidential condominium unless otherwise specifically
 489 provided for in the declaration of a nonresidential condominium.

491 Section 4. Subsection (1) of section 718.403, Florida
 492 Statutes, is reenacted, paragraph (a) of subsection (2) is
 493 amended, and subsection (9) is added to that section, to read:

494 718.403 Phase condominiums.-

495 (1) Notwithstanding the provisions of s. 718.110, a
 496 developer may develop a condominium in phases, if the original
 497 declaration of condominium submitting the initial phase to
 498 condominium ownership or an amendment to the declaration which
 499 has been approved by all of the unit owners and unit mortgagees
 500 provides for and describes in detail all anticipated phases; the
 501 impact, if any, which the completion of subsequent phases would
 502 have upon the initial phase; and the time period within which
 503 all phases must be added to the condominium and comply with the
 504 requirements of this section and at the end of which the right
 505 to add additional phases expires.

506 (a) All phases must be added to the condominium within 7
 507 years after the date of the recording of the certificate of a
 508 surveyor and mapper pursuant to s. 718.104(4)(e) or the
 509 recording of an instrument that transfers title to a unit in the
 510 condominium which is not accompanied by a recorded assignment of
 511 developer rights in favor of the grantee of such unit, whichever
 512 occurs first, unless the unit owners vote to approve an
 513 amendment extending the 7-year period pursuant to paragraph (b).

514 (b) An amendment to extend the 7-year period shall require
 515 the approval of the owners necessary to amend the declaration of
 516 condominium pursuant to s. 718.110(1)(a). An extension of the 7-
 517 year period may be submitted for approval only during the last 3
 518 years of the 7-year period.

519 (c) An amendment must describe the time period within
 520 which all phases must be added to the condominium, and such time

521 | period may not exceed 10 years from the date of the recording of
 522 | the certificate of a surveyor and mapper pursuant to s.
 523 | 718.104(4)(e) or the recording of an instrument that transfers
 524 | title to a unit in the condominium which is not accompanied by a
 525 | recorded assignment of developer rights in favor of the grantee
 526 | of such unit, whichever occurs first.

527 | (d) An amendment that extends the 7-year period pursuant
 528 | to this section is not subject to the requirements of s.
 529 | 718.110(4).

530 | (2) The original declaration of condominium, or an
 531 | amendment to the declaration, which amendment has been approved
 532 | by all unit owners and unit mortgagees and the developer, shall
 533 | describe:

534 | (a) The land which may become part of the condominium and
 535 | the land on which each phase is to be built. The descriptions
 536 | shall include metes and bounds or other legal descriptions of
 537 | the land for each phase, plot plans, and surveys. Plot plans,
 538 | attached as an exhibit, must show the approximate location of
 539 | all existing and proposed buildings and improvements that may
 540 | ultimately be contained within the condominium. The plot plan
 541 | may be modified by the developer as to unit or building types
 542 | but, in a residential condominium, to the extent that such
 543 | modifications must be ~~changes are~~ described in the declaration.
 544 | If provided in the declaration, the developer may make
 545 | nonmaterial changes in the legal description of a phase.

546 | (9) Paragraphs (2)(b)-(f) and subsection (8) do not apply

547 | to nonresidential condominiums.

548 | Section 5. Section 718.707, Florida Statutes, is amended
549 | to read:

550 | 718.707 Time limitation for classification as bulk
551 | assignee or bulk buyer.—A person acquiring condominium parcels
552 | may not be classified as a bulk assignee or bulk buyer unless
553 | the condominium parcels were acquired on or after July 1, 2010,
554 | but before July 1, 2016 ~~2015~~. The date of such acquisition shall
555 | be determined by the date of recording a deed or other
556 | instrument of conveyance for such parcels in the public records
557 | of the county in which the condominium is located, or by the
558 | date of issuing a certificate of title in a foreclosure
559 | proceeding with respect to such condominium parcels.

560 | Section 6. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 635 Guardianship
SPONSOR(S): Civil Justice Subcommittee; Passidomo and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 634

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 0 N, As CS	Ward	Bond
2) Judiciary Committee		Ward <i>JW</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

A guardian is a person who has been appointed by the court to act on behalf of a ward's person or property, or both. Guardians are appointed according to statutory criteria, and are deemed to be professional guardians if they manage the property of more than three wards. Professional guardians, among other requirements, must submit to a criminal background check and a credit history report. Every guardian of the property must file an annual guardianship report with the court, which report includes the annual accounting. The accounting is subject to review by the Clerk of the Court and the Court. The bill:

- Requires that nonprofessional guardians submit to a credit history and Level 2 background screening unless waived by the court;
- Authorizes nonprofessional guardians to petition the court for reimbursement for screening costs;
- Provides that a guardian may be removed for failure to submit guardianship records during the clerk's audit of the annual report;
- Provides that a proposed guardian may not deny or fail to acknowledge a sealed or expunged offense;
- Adds to the definition of the term, "audit," to include, "various practices that meet professional standards such as verifications, reviews of substantiating papers and accounts, interviews, inspections, and investigations;"
- Provides that the clerk may "request and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship;" and
- Provides that the clerk may, upon application to the court supported by affidavit, issue subpoenas upon nonparties to compel the production of books, papers, documents, and other evidence.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Guardians and Guardianship, In General

"A guardianship has been defined as a trust relationship of the most sacred character, in which one person, called a 'guardian,' acts for another, called the 'ward,' whom the law regards as incapable of managing his own affairs."¹

A "ward" is a "person for whom a guardian has been appointed."² "A 'guardian' is a person who has been appointed by the court to act on behalf of a ward's person or property, or both."³

The statutes recognize both professional⁴ and nonprofessional⁵ guardians. Potential professional guardians and their employees must submit to a "Level 2" criminal background⁶ and credit history checks.⁷

Nonprofessional guardians must complete a state and national criminal history check by submitting fingerprints to the Florida Department of Law Enforcement, which returns the results to the clerk of court. The clerk is directed to keep the results and make them known to the court.⁸ The court in its discretion may require an employment screening as described below of any nonprofessional guardian as well.⁹

Employment background screenings required by law¹⁰ are addressed in Chapter 435, F.S. A "Level 1" background screening includes but is not limited to checks of:

- Employment history;
- Statewide criminal history through the Department of Law Enforcement;
- The Dru Sjodin National Sex Offender Public Website; and
- Optional checks through local law enforcement agencies.¹¹

A Level 1 screening also eliminates any person with an arrest awaiting adjudication or a plea of nolo contendere to any felony listed in s. 435.04, F.S., or any history of domestic violence. A Level 2 screening¹² includes the above requirements, plus the submission of fingerprints, and national criminal history records check through the Federal Bureau of Investigation.¹³

Persons currently disqualified from acting as a guardian include those who have been convicted of or pled nolo contendere to any of the offenses listed in the Level 2 employment screening standards listed

¹ 28 Fla. Jur 2d Guardian and Ward s. 1.

² Section 744.102(22), F.S.

³ 28 Fla. Jur 2d Guardian and Ward s. 1, citing s. 744.102(9), F.S.

⁴ "Professional guardian" means any guardian who has at any time rendered services to three or more wards as their guardian." s. 744.102(17), F.S.

⁵ Section 744.3135(2), F.S.

⁶ Sections 744.1083(4), 744.1085(5), and 744.3135(4)(a), F.S.

⁷ Sections 744.1083(4), 744.1085(4), and 744.3151(1) and (5), F.S.,

⁸ Section 744.3135(2), F.S.

⁹ Section 744.3135(1), F.S. currently provides for a Level 1 screening pursuant to s. 435.03, F.S.

¹⁰ Section 435.01(1)(a), F.S.

¹¹ Section 435.03, F.S.

¹² Section 435.04, F.S.

¹³ Section 435.04(1)(a), F.S.

in s. 435.04, F.S., and persons convicted of committing abuse, abandonment or neglect of a child.¹⁴ Further, a guardian may be removed for a number of reasons as set out in s. 744.474, F.S., including abuse of his or her powers,¹⁵ embezzlement of the ward's property,¹⁶ conviction of a felony¹⁷ or having been found guilty of or pleading nolo contendere or guilty to any offense set out in the Level 1 employment screening statute,¹⁸ among other reasons.¹⁹ Proceedings for removal of a guardian may be instituted by the court or other interested person, including the ward.²⁰

When a guardian of the property resigns,²¹ is removed,²² or the guardianship terminates, the guardian is required to file a final accounting with the court.²³

Annual Accountings

An initial verified inventory as part of the initial guardianship plan is required of every guardian of the property within 60 days of appointment.²⁴ The inventory must include all assets and sources of income of the ward.²⁵ The initial inventory is audited by the clerk,²⁶ which receives a fee for the audit, according to the value of the assets.²⁷ Upon reasonable written request, the guardian must make substantiating information available to all persons entitled to inspect the inventory, which includes the clerk.²⁸ Interim records may also be requested by the clerk, the court, the attorney for the guardian, or the ward.²⁹ Interim judicial review of the guardianship may be requested by any interested party.³⁰

Annual accountings are required of all guardians of the property.³¹ Every guardian of the property must file an annual guardianship report with the court, which includes the annual accounting.³² Guardians not filing a timely report are subject to court sanctions, including contempt of court.³³ These accounting records are sealed from public view.³⁴

Audits

An "audit" is defined in the guardianship statute as, "a systematic review of financial and all other documents to ensure compliance with s. 744.368, rules of court, and local procedures using generally accepted accounting principles."³⁵ The Florida Probate Rules provide: "On the petition of an interested person, or on its own motion, the court may require any personal representative or guardian to produce satisfactory evidence that the assets of the estate are in the possession or under the control of the

¹⁴ Section 744.309(3), F.S.

¹⁵ Section 744.474(3), F.S.

¹⁶ Section 744.474(7), F.S.

¹⁷ Section 744.474(9), F.S.

¹⁸ Section 744.474(12).

¹⁹ See generally, s. 744.474, F.S., entitled "Reasons for removal of guardian."

²⁰ Section 744.477, F.S.

²¹ Section 744.467, F.S.

²² Section 744.511, F.S.

²³ Sections 744.521, 744.524, and 744.527, F.S.

²⁴ Section 744.362(1), F.S.

²⁵ Section 744.365, F.S.

²⁶ Section 744.368(1)(f), F.S.

²⁷ Section 744.365(6), F.S.

²⁸ Fla. R. Prob. 5.620; Section 744.3701(1), F.S.

²⁹ Fla. Prob. R. 5.696(c).

³⁰ Sections 744.3715(1) and 744.372, F.S.

³¹ Sections 744.367(3), and 744.3678(1), F.S.

³² *Id.*

³³ Section 744.3685, F.S.

³⁴ "Unless otherwise ordered by the court, any initial, annual, or final guardianship report or amendment thereto is subject to inspection only by the court, the clerk or the clerk's representative, the guardian and the guardian's attorney, . . ."

Section 744.3701(1), F.S.

³⁵ Section 744.102(2), F.S.

personal representative or guardian and may order production of the assets in the manner and for the purposes directed by the court."³⁶

Sealed or Expunged Records

Sections 943.0585 and 943.059, F.S., provide for the court ordered sealing or expunction³⁷ of certain criminal history records. One effect of a sealing or expunction is that the subject of a sealed or expunged history may lawfully deny or fail to acknowledge an arrest. There are numerous exceptions whereby the existence of a sealed or expunged record will be revealed by state authorities and accordingly the subject cannot lawfully deny the prior arrest.³⁸ Appointment as a guardian is not such an exception.

Effect of the Bill

Guardians and Guardianship, In General

The bill amends s. 744.3135, F.S., in respect to nonprofessional guardians to:

- Require that they submit to a credit history investigation and Level 2 background screening;³⁹
- Provide that they may petition the court to waive either or both; and
- Provide that they may petition the court for reimbursement of the reasonable expenses of the credit history investigation and background screening.

The bill adds to s. 744.3135, F.S. that at any time the court may order a guardian to undergo a Level 1 or a Level 2 employment background screening.

The bill adds to section 744.474, F.S., that a guardian may be removed for a "bad faith failure to submit guardianship records during the audit pursuant to s. 744.368." This provision creates grounds for removal of a guardian for failure to comply with the clerk's request for supporting documentation under the amendments to s. 744.368, F.S.

Annual Accountings and Audits

The bill expands the definition of the term "audit" in s. 744.102, F.S., to include, "various practices that meet professional standards such as verifications, reviews of substantiating papers and accounts, interviews, inspections, and investigations."

The bill amends s. 744.368, F.S., to provide that the clerk may, if further review is deemed appropriate, in the context of an audit, "request and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship." The bill also amends s. 744.3685, F.S., to provide the court with means to compel a guardian to produce records for audit.

The bill also provides that the clerk may, upon application to the court, supported by affidavit, issue and serve subpoenas on nonparties to compel the production of books, papers, documents, and other evidence. A nonparty, guardian or ward may object to production from a nonparty. Upon objection, the

³⁶ Fla. Prob. R. 5.160

³⁷ Sections 943.045(16) and 943.045(19), F.S.

³⁸ For instance, the subject of an expunged record must acknowledge the arrest if applying for a job with a criminal justice agency, is a defendant in a criminal prosecution, if applying for a subsequent sealing or expunction, applies for admission to the Florida Bar, is seeking employment or licensing where he or she will be in contact with children, disabled or elderly persons, or is seeking employment in a school or day care center. Section 943.0585(4)(a), F.S.

³⁹ Under s. 435.04, F.S.

nonparty is not required to comply with the subpoena until the court rules on the objection. A subpoena to a nonparty must give 10 days for objection unless the court, for cause, shortens the period.

Sealed or Expunged Criminal Records of Guardians

The bill provides that a proposed guardian may not deny or fail to acknowledge an offense which has been sealed or expunged pursuant to ss. 943.059 or 943.0585, F.S., respectively. Accordingly, a court appointing or investigating a guardian will have access to additional criminal records that the court may use as grounds to disqualify or remove a guardian.

The bill also includes grammatical and stylistic changes that do not affect the meaning of the statutes.

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

B. SECTION DIRECTORY:

Section 1 amends s. 744.102, F.S., relating to definitions.

Section 2 amends s. 744.3135, F.S., relating to credit and criminal investigation.

Section 3 amends s. 744.368, F.S., relating to responsibilities of the clerk of circuit court.

Section 4 amends s. 744.3685, F.S., relating to order requiring guardianship report; contempt.

Section 5 amends s. 744.474, F.S., relating to reasons for removal of a guardian.

Section 6 amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history.

Section 7 amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 8 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 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 revenues.

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 does not specify if reimbursement for the cost of background screening is a guardianship expense or if it is payable from another source.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2014, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed:

- The court may waive the background screening for a prospective nonprofessional guardian;
- A nonprofessional guardian may be reimbursed for costs of the background screening;
- A guardian's failure to produce additional documents to support the annual accounting upon request from the court subjects the guardian to contempt of court;
- The provisions for the issuance of subpoenas to nonparties for materials relating to guardianship assets were expanded and made similar to provisions in the Florida Rules of Civil Procedure;
- A bad faith failure to submit guardianship records to the clerk during the audit is grounds for removal of the guardian; and
- A prospective guardian with a criminal history that has been expunged may not deny the underlying arrest record.

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

27 relating to court-ordered expunction of criminal
 28 history records, to incorporate the amendments made to
 29 s. 943.0585, F.S., in a reference thereto; reenacting
 30 s. 943.059(4)(c), F.S., relating to court-ordered
 31 sealing of criminal history records, to incorporate
 32 the amendments made to s. 943.059, F.S., in a
 33 reference thereto; providing an effective date.
 34

35 Be It Enacted by the Legislature of the State of Florida:
 36

37 Section 1. Subsection (2) of section 744.102, Florida
 38 Statutes, is amended to read:

39 744.102 Definitions.—As used in this chapter, the term:

40 (2) "Audit" means a systematic review of financial and all
 41 other documents to ensure compliance with s. 744.368, rules of
 42 court, and local procedures using generally accepted accounting
 43 principles. The term includes various practices that meet
 44 professional standards, such as verifications, reviews of
 45 substantiating papers and accounts, interviews, inspections, and
 46 investigations.

47 Section 2. Subsection (1) of section 744.3135, Florida
 48 Statutes, is amended to read:

49 744.3135 Credit and criminal investigation.—

50 (1) The court shall require all guardians who are seeking
 51 appointment by the court, other than a corporate guardian as
 52 described in s. 744.309(4), ~~may require a nonprofessional~~

53 ~~guardian and shall require a professional or public guardian,~~
 54 and all employees of a professional guardian, other than a
 55 corporate guardian as described in s. 744.309(4), who have a
 56 fiduciary responsibility to a ward, to submit, at their own
 57 expense, to a an investigation of the guardian's credit history
 58 investigation and to undergo level 2 background screening as
 59 required under s. 435.04. On petition by any interested person
 60 or on the court's own motion, the court may waive the
 61 requirement of a credit history investigation or a level 2
 62 background screening, or both. If appointed, a nonprofessional
 63 guardian may petition the court for reimbursement of the
 64 reasonable expenses of the credit history investigation and
 65 background screening. ~~If a credit or criminal history record~~
 66 ~~check is required,~~ The court must consider the results of any
 67 investigation before appointing a guardian. At any time, the
 68 court may require a guardian or the guardian's employees to
 69 submit to an investigation of the person's credit history and
 70 complete a level 1 or level 2 background screening pursuant to
 71 ~~as set forth in~~ s. 435.03. The court shall consider the results
 72 of any investigation in determining whether to reappoint ~~when~~
 73 ~~reappointing~~ a guardian. The clerk of the court shall maintain a
 74 file on each guardian appointed by the court and retain in the
 75 file documentation of the result of any investigation conducted
 76 under this section. A professional guardian shall ~~must~~ pay the
 77 clerk of the court a fee of up to \$7.50 for handling and
 78 processing professional guardian files.

79 Section 3. Subsections (5) through (7) are added to
 80 section 744.368, Florida Statutes, to read:

81 744.368 Responsibilities of the clerk of the circuit
 82 court.—

83 (5) If the clerk has reason to believe further review is
 84 appropriate, the clerk may request and review records and
 85 documents that reasonably impact guardianship assets, including,
 86 but not limited to, the beginning inventory balance and any fees
 87 charged to the guardianship.

88 (6) If a guardian fails to produce records and documents
 89 to the clerk upon request, the clerk may request the court to
 90 enter an order pursuant to s. 744.3685(2) by filing an affidavit
 91 that identifies the records and documents requested and shows
 92 good cause as to why the documents and records requested are
 93 needed to complete the audit.

94 (7) Upon application to the court supported by an
 95 affidavit pursuant to subsection (6), the clerk may issue
 96 subpoenas to nonparties to compel production of books, papers,
 97 and other documentary evidence. Before issuance of a subpoena by
 98 affidavit, the clerk must serve notice on the guardian and the
 99 ward, unless the ward is a minor or totally incapacitated, of
 100 the intent to serve subpoenas to nonparties.

101 (a) The clerk must attach the affidavit and the proposed
 102 subpoena to the notice to the guardian and, if appropriate, to
 103 the ward, and must:

104 1. State the time, place, and method for production of the

105 documents or items, and the name and address of the person who
 106 is to produce the documents or items, if known, or, if not
 107 known, a general description sufficient to identify the person
 108 or the particular class or group to which the person belongs.

109 2. Include a designation of the items to be produced.

110 3. State that the person who will be asked to produce the
 111 documents or items has the right to object to the production
 112 under this section and that the person is not required to
 113 surrender the documents or items.

114 (b) A copy of the notice and proposed subpoena may not be
 115 furnished to the person upon whom the subpoena is to be served.

116 (c) If the guardian or ward serves an objection to
 117 production under this subsection within 10 days after service of
 118 the notice, the documents or items may not be required to be
 119 produced until resolution of the objection. If an objection is
 120 not made within 10 days after service of the notice, the clerk
 121 may issue the subpoena to the nonparty. The court may shorten
 122 the period within which a guardian or ward is required to file
 123 an objection upon a showing by the clerk by affidavit that the
 124 ward's property is in imminent danger of being wasted,
 125 misappropriated, or lost unless immediate action is taken.

126 Section 4. Section 744.3685, Florida Statutes, is amended
 127 to read:

128 744.3685 Order requiring guardianship report; contempt.—

129 (1) If ~~When~~ a guardian fails to file the guardianship
 130 report, the court shall order the guardian to file the report

131 within 15 days after the service of the order upon her or him or
 132 show cause why she or he may ~~should~~ not be compelled to do so.

133 (2) If a guardian fails to comply with the submission of
 134 records and documents requested by the clerk during the audit,
 135 upon a showing of good cause by affidavit of the clerk which
 136 shows the reasons the records must be produced, the court may
 137 order the guardian to produce the records and documents within a
 138 period specified by the court unless the guardian shows good
 139 cause as to why the guardian may not be compelled to do so
 140 before the deadline specified by the court. The affidavit of the
 141 clerk shall be served with the order.

142 (3) A copy of an ~~the~~ order entered pursuant to subsection
 143 (1) or subsection (2) shall be served on the guardian or on the
 144 guardian's resident agent. If the guardian fails to comply with
 145 the order ~~file her or his report~~ within the time specified by
 146 the order without good cause, the court may cite the guardian
 147 for contempt of court and may fine her or him. The fine may not
 148 be paid out of the ward's property.

149 Section 5. Subsection (21) is added to section 744.474,
 150 Florida Statutes, to read:

151 744.474 Reasons for removal of guardian.—A guardian may be
 152 removed for any of the following reasons, and the removal shall
 153 be in addition to any other penalties prescribed by law:

154 (21) A bad faith failure to submit guardianship records
 155 during the audit pursuant to s. 744.368.

156 Section 6. Paragraph (a) of subsection (4) of section

157 943.0585, Florida Statutes, is amended, and paragraph (c) of
 158 that subsection is reenacted, to read:

159 943.0585 Court-ordered expunction of criminal history
 160 records.—The courts of this state have jurisdiction over their
 161 own procedures, including the maintenance, expunction, and
 162 correction of judicial records containing criminal history
 163 information to the extent such procedures are not inconsistent
 164 with the conditions, responsibilities, and duties established by
 165 this section. Any court of competent jurisdiction may order a
 166 criminal justice agency to expunge the criminal history record
 167 of a minor or an adult who complies with the requirements of
 168 this section. The court shall not order a criminal justice
 169 agency to expunge a criminal history record until the person
 170 seeking to expunge a criminal history record has applied for and
 171 received a certificate of eligibility for expunction pursuant to
 172 subsection (2). A criminal history record that relates to a
 173 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 174 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
 175 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
 176 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
 177 any violation specified as a predicate offense for registration
 178 as a sexual predator pursuant to s. 775.21, without regard to
 179 whether that offense alone is sufficient to require such
 180 registration, or for registration as a sexual offender pursuant
 181 to s. 943.0435, may not be expunged, without regard to whether
 182 adjudication was withheld, if the defendant was found guilty of

183 or pled guilty or nolo contendere to the offense, or if the
 184 defendant, as a minor, was found to have committed, or pled
 185 guilty or nolo contendere to committing, the offense as a
 186 delinquent act. The court may only order expunction of a
 187 criminal history record pertaining to one arrest or one incident
 188 of alleged criminal activity, except as provided in this
 189 section. The court may, at its sole discretion, order the
 190 expunction of a criminal history record pertaining to more than
 191 one arrest if the additional arrests directly relate to the
 192 original arrest. If the court intends to order the expunction of
 193 records pertaining to such additional arrests, such intent must
 194 be specified in the order. A criminal justice agency may not
 195 expunge any record pertaining to such additional arrests if the
 196 order to expunge does not articulate the intention of the court
 197 to expunge a record pertaining to more than one arrest. This
 198 section does not prevent the court from ordering the expunction
 199 of only a portion of a criminal history record pertaining to one
 200 arrest or one incident of alleged criminal activity.
 201 Notwithstanding any law to the contrary, a criminal justice
 202 agency may comply with laws, court orders, and official requests
 203 of other jurisdictions relating to expunction, correction, or
 204 confidential handling of criminal history records or information
 205 derived therefrom. This section does not confer any right to the
 206 expunction of any criminal history record, and any request for
 207 expunction of a criminal history record may be denied at the
 208 sole discretion of the court.

209 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
 210 criminal history record of a minor or an adult which is ordered
 211 expunged by a court of competent jurisdiction pursuant to this
 212 section must be physically destroyed or obliterated by any
 213 criminal justice agency having custody of such record; except
 214 that any criminal history record in the custody of the
 215 department must be retained in all cases. A criminal history
 216 record ordered expunged that is retained by the department is
 217 confidential and exempt from the provisions of s. 119.07(1) and
 218 s. 24(a), Art. I of the State Constitution and not available to
 219 any person or entity except upon order of a court of competent
 220 jurisdiction. A criminal justice agency may retain a notation
 221 indicating compliance with an order to expunge.

222 (a) The person who is the subject of a criminal history
 223 record that is expunged under this section or under other
 224 provisions of law, including former s. 893.14, former s. 901.33,
 225 and former s. 943.058, may lawfully deny or fail to acknowledge
 226 the arrests covered by the expunged record, except when the
 227 subject of the record:

- 228 1. Is a candidate for employment with a criminal justice
 229 agency;
- 230 2. Is a defendant in a criminal prosecution;
- 231 3. Concurrently or subsequently petitions for relief under
 232 this section, s. 943.0583, or s. 943.059;
- 233 4. Is a candidate for admission to The Florida Bar;
- 234 5. Is seeking to be employed or licensed by or to contract

235 | with the Department of Children and Families, the Division of
 236 | Vocational Rehabilitation within the Department of Education,
 237 | the Agency for Health Care Administration, the Agency for
 238 | Persons with Disabilities, the Department of Health, the
 239 | Department of Elderly Affairs, or the Department of Juvenile
 240 | Justice or to be employed or used by such contractor or licensee
 241 | in a sensitive position having direct contact with children, the
 242 | disabled, or the elderly; ~~or~~

243 | 6. Is seeking to be employed or licensed by the Department
 244 | of Education, any district school board, any university
 245 | laboratory school, any charter school, any private or parochial
 246 | school, or any local governmental entity that licenses child
 247 | care facilities; or

248 | 7. Is seeking to be appointed as a guardian pursuant to s.
 249 | 744.3125.

250 | (c) Information relating to the existence of an expunged
 251 | criminal history record which is provided in accordance with
 252 | paragraph (a) is confidential and exempt from the provisions of
 253 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 254 | except that the department shall disclose the existence of a
 255 | criminal history record ordered expunged to the entities set
 256 | forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
 257 | respective licensing, access authorization, and employment
 258 | purposes, and to criminal justice agencies for their respective
 259 | criminal justice purposes. It is unlawful for any employee of an
 260 | entity set forth in subparagraph (a)1., subparagraph (a)4.,

261 | subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
 262 | disclose information relating to the existence of an expunged
 263 | criminal history record of a person seeking employment, access
 264 | authorization, or licensure with such entity or contractor,
 265 | except to the person to whom the criminal history record relates
 266 | or to persons having direct responsibility for employment,
 267 | access authorization, or licensure decisions. Any person who
 268 | violates this paragraph commits a misdemeanor of the first
 269 | degree, punishable as provided in s. 775.082 or s. 775.083.

270 | Section 7. Paragraph (a) of subsection (4) of section
 271 | 943.059, Florida Statutes, is amended, and paragraph (c) of that
 272 | subsection is reenacted, to read:

273 | 943.059 Court-ordered sealing of criminal history
 274 | records.—The courts of this state shall continue to have
 275 | jurisdiction over their own procedures, including the
 276 | maintenance, sealing, and correction of judicial records
 277 | containing criminal history information to the extent such
 278 | procedures are not inconsistent with the conditions,
 279 | responsibilities, and duties established by this section. Any
 280 | court of competent jurisdiction may order a criminal justice
 281 | agency to seal the criminal history record of a minor or an
 282 | adult who complies with the requirements of this section. The
 283 | court shall not order a criminal justice agency to seal a
 284 | criminal history record until the person seeking to seal a
 285 | criminal history record has applied for and received a
 286 | certificate of eligibility for sealing pursuant to subsection

287 (2). A criminal history record that relates to a violation of s.
 288 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 289 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
 290 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
 291 916.1075, a violation enumerated in s. 907.041, or any violation
 292 specified as a predicate offense for registration as a sexual
 293 predator pursuant to s. 775.21, without regard to whether that
 294 offense alone is sufficient to require such registration, or for
 295 registration as a sexual offender pursuant to s. 943.0435, may
 296 not be sealed, without regard to whether adjudication was
 297 withheld, if the defendant was found guilty of or pled guilty or
 298 nolo contendere to the offense, or if the defendant, as a minor,
 299 was found to have committed or pled guilty or nolo contendere to
 300 committing the offense as a delinquent act. The court may only
 301 order sealing of a criminal history record pertaining to one
 302 arrest or one incident of alleged criminal activity, except as
 303 provided in this section. The court may, at its sole discretion,
 304 order the sealing of a criminal history record pertaining to
 305 more than one arrest if the additional arrests directly relate
 306 to the original arrest. If the court intends to order the
 307 sealing of records pertaining to such additional arrests, such
 308 intent must be specified in the order. A criminal justice agency
 309 may not seal any record pertaining to such additional arrests if
 310 the order to seal does not articulate the intention of the court
 311 to seal records pertaining to more than one arrest. This section
 312 does not prevent the court from ordering the sealing of only a

313 | portion of a criminal history record pertaining to one arrest or
 314 | one incident of alleged criminal activity. Notwithstanding any
 315 | law to the contrary, a criminal justice agency may comply with
 316 | laws, court orders, and official requests of other jurisdictions
 317 | relating to sealing, correction, or confidential handling of
 318 | criminal history records or information derived therefrom. This
 319 | section does not confer any right to the sealing of any criminal
 320 | history record, and any request for sealing a criminal history
 321 | record may be denied at the sole discretion of the court.

322 | (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
 323 | history record of a minor or an adult which is ordered sealed by
 324 | a court of competent jurisdiction pursuant to this section is
 325 | confidential and exempt from the provisions of s. 119.07(1) and
 326 | s. 24(a), Art. I of the State Constitution and is available only
 327 | to the person who is the subject of the record, to the subject's
 328 | attorney, to criminal justice agencies for their respective
 329 | criminal justice purposes, which include conducting a criminal
 330 | history background check for approval of firearms purchases or
 331 | transfers as authorized by state or federal law, to judges in
 332 | the state courts system for the purpose of assisting them in
 333 | their case-related decisionmaking responsibilities, as set forth
 334 | in s. 943.053(5), or to those entities set forth in
 335 | subparagraphs (a)1., 4., 5., 6., and 8. for their respective
 336 | licensing, access authorization, and employment purposes.

337 | (a) The subject of a criminal history record sealed under
 338 | this section or under other provisions of law, including former

339 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 340 deny or fail to acknowledge the arrests covered by the sealed
 341 record, except when the subject of the record:

- 342 1. Is a candidate for employment with a criminal justice
 343 agency;
- 344 2. Is a defendant in a criminal prosecution;
- 345 3. Concurrently or subsequently petitions for relief under
 346 this section, s. 943.0583, or s. 943.0585;
- 347 4. Is a candidate for admission to The Florida Bar;
- 348 5. Is seeking to be employed or licensed by or to contract
 349 with the Department of Children and Families, the Division of
 350 Vocational Rehabilitation within the Department of Education,
 351 the Agency for Health Care Administration, the Agency for
 352 Persons with Disabilities, the Department of Health, the
 353 Department of Elderly Affairs, or the Department of Juvenile
 354 Justice or to be employed or used by such contractor or licensee
 355 in a sensitive position having direct contact with children, the
 356 disabled, or the elderly;
- 357 6. Is seeking to be employed or licensed by the Department
 358 of Education, any district school board, any university
 359 laboratory school, any charter school, any private or parochial
 360 school, or any local governmental entity that licenses child
 361 care facilities; ~~or~~
- 362 7. Is attempting to purchase a firearm from a licensed
 363 importer, licensed manufacturer, or licensed dealer and is
 364 subject to a criminal history check under state or federal law;

365 | or

366 | 8. Is seeking to be appointed as a guardian pursuant to s.
 367 | 744.3125.

368 | (c) Information relating to the existence of a sealed
 369 | criminal record provided in accordance with the provisions of
 370 | paragraph (a) is confidential and exempt from the provisions of
 371 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 372 | except that the department shall disclose the sealed criminal
 373 | history record to the entities set forth in subparagraphs (a)1.,
 374 | 4., 5., 6., and 8. for their respective licensing, access
 375 | authorization, and employment purposes. It is unlawful for any
 376 | employee of an entity set forth in subparagraph (a)1.,
 377 | subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
 378 | subparagraph (a)8. to disclose information relating to the
 379 | existence of a sealed criminal history record of a person
 380 | seeking employment, access authorization, or licensure with such
 381 | entity or contractor, except to the person to whom the criminal
 382 | history record relates or to persons having direct
 383 | responsibility for employment, access authorization, or
 384 | licensure decisions. Any person who violates the provisions of
 385 | this paragraph commits a misdemeanor of the first degree,
 386 | punishable as provided in s. 775.082 or s. 775.083.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7039 PCB CJS 14-03 Unlicensed Practice of Law
SPONSOR(S): Civil Justice Subcommittee; Hill
TIED BILLS: **IDEN./SIM. BILLS:** SB 1496

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	12 Y, 0 N	Cary	Bond
1) Judiciary Committee		Cary <i>JMV</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

The unlicensed practice of law is prohibited in Florida. There are two means for enforcement: civil action governed by court rules and a statutory third-degree felony criminal penalty.

The bill lists activities that are not considered a violation of the criminal statute regarding the unlicensed practice of law. Specifically, the list includes:

- Pro se representation;
- Serving as a mediator or arbitrator;
- Providing services under the supervision of a lawyer in compliance with the Rules of Professional Conduct of the Florida Bar;
- Providing services authorized by court rule;
- Acting within the lawful scope of practice of a business or profession regulated by the state;
- Giving legal notice in the form and manner required by law, except where such notice is required as part of a court proceeding or required by court rule; and
- Representation before a legislative body, committee, commission or board.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Constitution grants the Supreme Court the “exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.”¹ The Florida Supreme Court regulates the unlicensed practice of law (UPL) by court rule. Chapter 10 of the Rules Regulating the Florida Bar (Rules) governs the investigation and prosecution of UPL. According to the Court, “pursuant to the provisions of article V, section 15, of the Florida Constitution, the Supreme Court of Florida has inherent jurisdiction to prohibit the unlicensed practice of law.”² The Supreme Court has delegated to the Florida Bar “the duty of considering, investigating, and seeking the prohibition of matters pertaining to the unlicensed practice of law and the prosecution of alleged offenders.”³

Neither court rule nor statute specifically defines the practice of law. Similarly, neither lists in general what activities constitute the unlicensed practice of law, nor activities authorized. The definition of the practice of law has developed from case law and from the few advisory opinions that examine specific businesses or professions.⁴

The seminal case regarding what is the unlicensed practice of law in Florida dates back to 1950.⁵ Leading up to the decision, the Dade County Bar Association had obtained an injunction in the Circuit Court prohibiting real estate brokers or agents from drafting or filling in blank deeds, contracts, notes, leases, rental contracts, mortgages (or satisfaction of mortgages), options and other legal instruments used in the real estate business. The Supreme Court partially reversed the Circuit Court, holding that certain activities belong within the sphere of activity of a real estate broker or agent, even if that involves the broker drafting legal instruments. However, the Court also held that certain activities belong within the sphere of the lawyer, primarily the consummation of the sale through the exchange of permanent instruments. The opinion looked to the Florida Statutes in determining the scope of activities in which real estate brokers and agents may operate.⁶

Since 1950, through case law and advisory opinions, the Court has continued to define the boundaries of the unlicensed practice of law. Whether the activities of a nonlawyer are the unlicensed practice of law is not always apparent. Some examples of activities that have been decided are:

- A real estate agent may fill out the court-approved residential lease form on behalf of a landlord.⁷
- A non-lawyer property manager may prepare an eviction notice and an uncontested residential eviction on behalf of a landlord, but may not file a complaint for eviction or motion for default in the court.⁸

¹ FLA.CONST., Art. V, Sec. 15. This section originated from the 1956 amendment to Article V of the 1885 Constitution (Art. V, Sec. 23) and provided that the Supreme Court had exclusive jurisdiction over the admission and discipline of attorneys.

² Florida Bar Rule 10-1.1. See also *The Florida Bar v. Flowers*, 320 So.2d 809, 809 (Fla. 1975).

³ Florida Bar Rule 10-1.2.

⁴ There are 9 advisory opinions covering 8 professions, the first in 1988 and the last in 1997. There are 2 pending opinions, one related to Community Association Managers (CAMs) and the other related to Medicaid Planning Activities. See

<http://www.floridabar.org/tfb/TFBLawReg.nsf/9dad7bbda218afe885257002004833c5/34fac28eda9ca382852579ac006aff21!OpenDocument#FAORequestReMedicaidPlan> (last accessed on January 21, 2014).

⁵ *Keyes Co. v. Dade County Bar Ass'n*, 46 So.2d 605 (Fla. 1950).

⁶ *Id.* at 606.

⁷ *The Florida Bar re: Advisory Opinion – Nonlawyer Preparation of Residential Leases up to One Year in Duration*, 602 So.2d 914 (Fla. 1992).

- A non-lawyer may not prepare a living trust document,⁹ but a non-lawyer may prepare a pension plan.¹⁰
- A title insurance agent may prepare an abstract, deed, mortgage and other real property transfer documents.¹¹

Other areas not formally decided in case law include:

- Lenders prepare liens and mortgages.¹²
- Accountants advise persons on tax and business matters.¹³

In addition to the civil penalties created in the Rules, s. 454.23, F.S., is the statutory criminal offense for the unlicensed practice of law. It provides:

Any person not licensed or otherwise authorized to practice law in this state who practices law in this state or holds himself or herself out to the public as qualified to practice law in this state, or who willfully pretends to be, or willfully takes or uses any name, title, addition, or description implying that he or she is qualified, or recognized by law as qualified, to practice law in this state, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The offense is classified as a third-degree felony, which is punishable by up to five years imprisonment and a \$5,000 fine.¹⁴

Activities prohibited by this statute include taking a deposition¹⁵ and appearing pro se on behalf of a trust.¹⁶ According to a Florida appellate court, "the definition of the practice of law in Florida is not confined to the language in section 454.23, but, rather, is shaped by the decisional law and court rules as well as common understanding and practices."¹⁷

As of January 6, 2014, there have been 286 civil cases opened for fiscal year 2014 across the state by the Florida Bar for the unlicensed practice of law. In 2013, there were 550 cases; in 2012, there were 714 cases, and in 2011, there were 655 cases.¹⁸ While enforcement of the unlicensed practice of law by the Florida Bar is civil in nature, a court may find a person guilty of indirect criminal contempt, punishment for which is a fine of up to \$2500 and up to 5 months imprisonment, or both.¹⁹

There have been 14 people arrested in the last two years for the criminal unlicensed practice of law.²⁰

⁸ *The Florida Bar re Advisory Opinion – Nonlawyer Preparation of and Representation of Landlord in Uncontested Residential Evictions*, 627 So.2d 485 (Fla. 1993).

⁹ *The Florida Bar re Advisory Opinion – Nonlawyer Preparation of Living Trusts*, 613 So.2d 426 (Fla. 1992).

¹⁰ *The Florida Bar re Advisory Opinion – Nonlawyer Preparation of Pension Plans*, 571 So.2d 430 (Fla. 1990).

¹¹ *Cooperman v. West Coast Title Co.*, 75 So.2d 818, 821 (Fla. 1954)("So we decide that what the companies do to inform themselves about the advisability of issuing a commitment and what they do to accomplish a transfer of a title or interest of such kind that a policy of title insurance is warranted are not services the performance of which amount to unauthorized practice of law.").

¹² Whether this activity is the unlicensed practice of law is currently unresolved. See *Goldberg v. Merrill Lynch Credit Corp.*, 35 So.3d 905 (Fla. 2010).

¹³ There is no formal advisory opinion regarding the scope of practice of accountants and at what point an accountant may be engaging in the unlicensed practice of law.

¹⁴ Sections 775.082 and 775.083, F.S.

¹⁵ *State v. Foster*, 674 So.2d 747 (Fla. 1st DCA 1996).

¹⁶ *EHQF Trust v. S & A Capital Partners, Inc.*, 947 So.2d 606 (Fla. 1st DCA 2007).

¹⁷ *Foster* at 750-51.

¹⁸ Information provided by the Florida Bar by email to Civil Justice Committee staff. (On file with the Civil Justice Subcommittee.)

¹⁹ Florida Bar Rule 10-7.2.(f).

²⁰ Information provided by the Florida Department of Law Enforcement by email to Civil Justice Subcommittee staff. (On file with the Civil Justice Subcommittee.)

Effect of Proposed Changes:

The bill amends s. 454.23, F.S., to better define the offense of the unlicensed practice of law by listing activities that do not constitute the unlicensed practice of law. That list includes:

- Pro se representation;
- Serving as a mediator or arbitrator;
- Providing services under the supervision of a lawyer in compliance with the Rules of Professional Conduct of the Florida Bar;
- Providing services authorized by court rule;
- Acting within the lawful scope of practice of a business or profession regulated by the state;
- Giving legal notice in the form and manner required by law, except where such notice is required as part of a court proceeding or required by court rule; and
- Representation before a legislative body, committee, commission or board.

In general, these exceptions do not constitute a substantive change to existing law. Rather, this list of exceptions is a codification of existing rules, case law, and practice already recognized by the Court.

B. SECTION DIRECTORY:

Section 1 amends s. 454.23, F.S., relating to unlicensed practice of law, definitions, and penalties.

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 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:

A conviction under s. 454.23, F.S., may include a fine of up to \$5,000. There are very few convictions under this statute, and since the bill codifies existing court rules and/or case law, the bill is not expected to impact the number of arrests or convictions under this statute.

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:

Article V, s. 15 of the Florida Constitution provides:

The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.

The bill does not affect civil enforcement by the Florida Bar. It will only affect criminal prosecutions for the unlicensed practice of law.

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 February 5, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably. The amendment made grammatical and style changes to the text. This analysis is drafted to the bill as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to the unlicensed practice of law;
 3 amending s. 454.23, F.S.; exempting persons engaging
 4 in certain activities from criminal prosecution for
 5 the unlicensed practice of law; providing an effective
 6 date.

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

9
 10 Section 1. Section 454.23, Florida Statutes, is amended to
 11 read:

12 454.23 Unlicensed practice of law; prohibition; penalties;
 13 exceptions.—

14 (1) ~~A~~ Any person not licensed or otherwise authorized to
 15 practice law in this state who practices law in this state or
 16 holds himself or herself out to the public as qualified to
 17 practice law in this state, or who willfully pretends to be, or
 18 willfully takes or uses any name, title, addition, or
 19 description implying that he or she is qualified, or recognized
 20 by law as qualified, to practice law in this state, commits a
 21 felony of the third degree, punishable as provided in s.
 22 775.082, s. 775.083, or s. 775.084.

23 (2) Notwithstanding subsection (1), a person engaging in
 24 any of the following activities is exempt from criminal
 25 prosecution under this section:

26 (a) Pro se representation;

- 27 (b) Serving as a mediator or arbitrator;
- 28 (c) Providing services under the supervision of a lawyer
- 29 in compliance with The Florida Bar's Rules of Professional
- 30 Conduct;
- 31 (d) Providing services authorized by court rule;
- 32 (e) Acting within the lawful scope of practice of a
- 33 business or profession regulated by the state;
- 34 (f) The giving of a legal notice in the form and manner
- 35 required by law; however, this paragraph does not apply to
- 36 notice required as part of a court proceeding or as required by
- 37 court rule; or
- 38 (g) Representation before a legislative body, committee,
- 39 commission, or board.
- 40 Section 2. 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 Hill offered the following:

Amendment

Remove lines 37-39 and insert:

court rule;

(g) Representation before a legislative body, committee,
commission, or board; or

(h) Acting as a qualified representative before an
administrative body.

11

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JDC 14-01 Renaming the Parole Commission
SPONSOR(S): Judiciary Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1636

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Westcott	Havlicak

SUMMARY ANALYSIS

The Parole Commission (Commission) is a constitutionally authorized decision-making body that serves as a quasi-judicial body. The Florida Constitution provides that there may be created by law a parole and probation commission with the power to supervise persons on probation and grant paroles of conditional releases to persons under sentences for crime. In 1941, the Commission was created by law to administer parole. Since that time, the administration of conditional release, conditional medical release, control release, and addiction recovery has been placed under the Commission. The Commission also acts as the investigative arm of the Governor and Cabinet, sitting as the Board of Executive Clemency, in clemency matters.

The bill changes the name of the Parole Commission to the Florida Commission on Offender Review to more accurately reflect the roles of the commission.

The bill may have an insignificant negative impact on state expenditures, but according to the Parole Commission this impact will be absorbed by existing funds. The bill does not appear to have any impact on local government expenditures or revenues.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation:

The Parole Commission (Commission) is a constitutionally authorized decision-making body that serves as a quasi-judicial body.¹ The Florida Constitution² provides that there may be created by law a parole and probation commission with the power to supervise persons on probation and grant paroles of conditional releases to persons under sentences for crime.³ In 1941, the Commission was created by law to administer parole.⁴ Since that time, the administration of conditional release, conditional medical release, control release, and addiction recovery has been placed under the Commission.⁵ The Commission also acts as the investigative arm of the Governor and Cabinet, sitting as the Board of Executive Clemency, in clemency matters.⁶

Parole:

Parole is the release of an inmate, prior to the expiration of the inmate's court-imposed sentence, with a period of supervision to be successfully completed by compliance with the conditions and terms of the release agreement ordered by the Commission.⁷ The decision of the Commission to parole an inmate is considered an act of grace of the State and should not be considered a right.⁸ The Parole Commission administers parole.⁹ It allows an inmate who has been granted parole to serve the remainder of his or her prison sentence outside the confines of the institution.¹⁰ Once released, the parolee is subject to conditions of supervision, and if those conditions are violated, the Commission may return the parolee to prison.¹¹ Parole has experienced a number of changes over the years. In 1978, the Florida Legislature enacted "Objective Parole Guidelines," which required the Commission to develop and implement rules and criteria upon which parole decisions were to be made.¹² These criteria were based on risk assessment and combined historical Commission decision-making experience with individual case elements. The most significant change, however, came in 1983. In that year, sentencing guidelines were enacted, thereby effectively abolishing parole for those offenders who were sentenced for crimes committed on or after October 1, 1983.¹³

Currently, all inmates who committed a capital felony murder prior to May 25, 1994, and all inmates who committed all other capital felonies, including sexual battery prior to October 1, 1995, are also parole eligible.¹⁴ There are approximately 5,107 inmates who are still eligible for parole consideration and numerous offenders who are still under parole supervision.¹⁵

¹ *Annual Report Florida Parole Commission 2010-11*, Available at <https://fpc.state.fl.us/PDFs/FPCAnnualreport2001011.pdf> (Last visited March 3, 2014).

² FLA. CONST. art. IV, s. 8.

³ Section 20.32, F.S.

⁴ *Supra* note 1, at 17.

⁵ *Id.* at 17-19.

⁶ *Id.* at 29.

⁷ *Id.* at 80.

⁸ *Id.* at 76.

⁹ See chs. 947, 948, and 949, F.S.

¹⁰ *Supra* note 3, at 30.

¹¹ *Id.*

¹² *Id.* at 18.

¹³ *Id.* at 19.

¹⁴ *Id.* at 30.

¹⁵ *Florida Parole Commission Annual Report 2013*, Available at <https://fpc.state.fl.us/PDFs/FPCAnnualreport201213.pdf> (last visited Mar. 3, 2014).

Conditional Release

In 1988, the Florida Legislature created the Conditional Release Program and placed it under the administration of the Commission.¹⁶ Conditional Release requires mandatory post-prison supervision for inmates who are sentenced for certain violent crimes and who have served a prior felony commitment, or who are sentenced as a habitual offender, violent habitual offender, violent career criminal, or sexual predator. Unlike parole, conditional release is not discretionary release. Upon release from prison, inmates who are subject to conditional release are supervised for a period of time equal to the gain-time that they received in prison. These offenders are subject to strict conditions of supervision set by the Commission and this supervision can be revoked and the releasee returned to prison if the Commission determines that a violation of supervision has occurred.

Control Release

In 1989, the Florida Legislature created the Control Release Authority.¹⁷ This program was a prison population management system administered by the Commission to keep the prison population at its lawful capacity.¹⁸ The Commission does not currently review the inmate population for discretionary release under this authority as there are sufficient prison beds for the current prison population.¹⁹ There are, however, a small number of control releasees who are still under supervision.²⁰ The Commission is responsible for monitoring the progress of these releasees and conducting revocation hearings when alleged violations are reported.²¹

Conditional Medical Release

In 1992, the Florida Legislature created Conditional Medical Release.²² This is a discretionary release that allows the Commission to release inmates on supervision who are “terminally ill” or “permanently incapacitated” and who are not a danger to others.²³

Addiction Recovery Supervision Program

In 2001, the Legislature created the Addiction Recovery Supervision Program and placed it under the Commission’s administration.²⁴ This program requires mandatory post prison supervision for offenders who are released from a state correctional facility, were convicted of a crime committed on or after July 1, 2001, have a history of substance abuse or addiction or have participated in any drug treatment, and have not been convicted of a disqualifying offense.²⁵ The law requires the Commission to set the terms and conditions of supervision and to revoke that supervision if the offender fails to comply with them.²⁶ As of July 1, 2013, there were 295 parolees in this program.²⁷

Clemency

Clemency is a constitutionally authorized process that provides the means through which convicted felons may seek restoration of their civil rights and may be considered for relief from punishment.²⁸ The

¹⁶ *Id.* at 7; see also chs. 947, 948, and 960, F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 4.

²³ *Id.*

²⁴ *Id.* at 7.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

Office of Executive Clemency was created in 1975 to process applications for executive clemency requiring approval of the Governor and Cabinet who sit collectively as the Executive Clemency Board.²⁹

In addition to processing requests for restoration of civil rights, applications for alien status, full pardons, remission of fines, waiver requests, commutations of sentence and specific authority to own, possess or use firearms, the office also provides verification and/or certification of restoration of civil rights and other forms of clemency granted, to law enforcement agencies, state attorneys, public defenders, licensing agencies, and supervisors of elections.³⁰

Victim Services

The Victim Services' section provides direct, personal service to crime victims and their families.³¹ Staff attempt to locate all victims of parole eligible inmates and persons seeking clemency to inform them of their right to be heard and participate in the clemency or parole process.³² Victims are also informed of their right to be notified by the Department of Corrections of an inmate's movement within the prison system or escape.³³

Revocations

The Revocations Section reviews all violation reports, prepares arrest warrants, updates the National Crime Information Center/Florida Crime Information Center databases (NCIC/FCIC), responds to requests from law enforcement agencies, coordinates the extradition of violators, and performs functions relating to the docketing and processing of cases for Commission action involving review of supervision and violations of supervision.³⁴

The violation process begins when law enforcement or the Department of Corrections notifies the Commission that a releasee has violated one or more conditions of his/her supervision.³⁵ The Revocations Section is responsible for reviewing these reported violations and preparing a warrant for a Commissioner's signature.³⁶ The Commission may issue a warrant for the arrest of any offender when reasonable grounds exist to believe the releasee has violated any of the conditions of supervision.³⁷

The Parole Commission primarily processes clemency applications and reviews certain inmates under their purview. There is confusion over the role of the Parole Commission because its name does not depict the duties actually prescribed by law.

Using the responsibilities discussed above, the chart below reflects the commission's current workload.³⁸

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 6.

³² *Id.*

³³ *Id.*

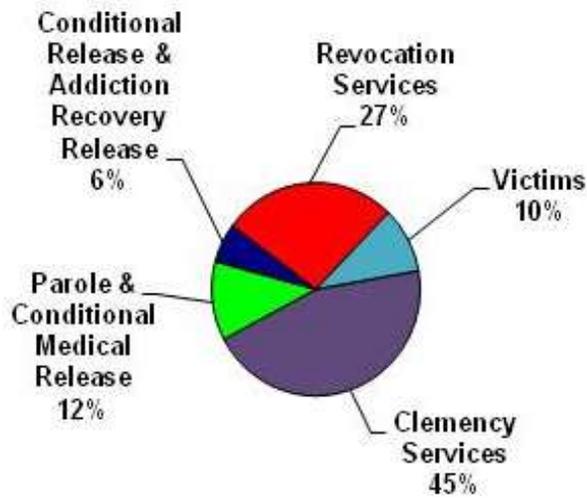
³⁴ Tena Pate, *Florida Parole Commission Annual Report, 2012*, Available at <https://fpc.state.fl.us/PDFs/FPCAnnualreport201112.pdf>.

³⁵ *Id.* at 28.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Pate, *Supra* note 15, at 9.



Effect of Bill

The bill renames the “Florida Parole Commission,” as the Florida Commission on Offender Review.” The name change more accurately reflects the commission’s current role.

B. SECTION DIRECTORY:

Section 1 provides legislative findings.

Section 2 directs the Division of Law Revision and Information to rename ch. 947, F.S.

Section 3 amends s. 20.315, F.S. relating to the Department of Corrections.

Section 4 amends s. 20.32, F.S., relating to Florida Parole Commission.

Section 5 amends s. 23.21, F.S., relating to definitions.

Section 6 amends s. 98.093 relating to duty of officials to furnish information relating to deceased persons, persons adjudicated mentally incapacitated, and persons convicted of a felony.

Section 7 amends s. 186.005, F.S., relating to designation of departmental planning officer.

Section 8 amends s. 255.502, F.S., relating to definitions.

Section 9 amends s. 322.16, F.S., relating to license restrictions.

Section 10 amends s. 394.926, F.S., relating to notice to victims of release of persons committed as sexually violent predators; notice to Department of Corrections and Florida Parole Commission.

Section 11 amends s. 394.927, F.S., relating to escape while in lawful custody; notice to victim; notice to the Department of Corrections and Parole Commission.

Section 12 amends s. 633.304, F.S., relating to fire suppression equipment; license to install or maintain.

Section 13 amends s. 775.089, F.S., relating to restitution.

Section 14 amends s. 775.16, F.S., relating to drug offenses; additional penalties.

Section 15 amends s. 784.07, F.S., relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers.

Section 16 amends s. 784.078, F.S., relating to battery of a facility employee by throwing, tossing, or expelling certain fluids or materials.

Section 17 amends s. 800.09, F.S., relating to lewd or lascivious exhibition in the presence of an employee.

Section 18 amends s. 843.01, F.S., relating to resisting an officer with violence to his or her person.

Section 19 amends s. 843.02, F.S., relating to resisting an officer without violence to his or her person.

Section 20 amends s. 843.08, F.S., relating to falsely personating an officer, etc.

Section 21 amends s. 893.11, F.S., relating to suspension, revocation, and reinstatement of business and professional licenses.

Section 22 amends s. 921.16, F.S., relating to when sentences to be concurrent and when consecutive.

Section 23 amends s. 921.20, F.S., relating to classification summary; Parole Commission.

Section 24 amends s. 921.21, F.S., relating to progress reports to Parole Commission.

Section 25 amends s. 921.22, F.S., relating to determination of exact period of imprisonment by Parole Commission.

Section 26 amends s. 940.03, F.S., relating to application for executive clemency.

Section 27 amends s. 940.05, F.S., relating to restoration of civil rights.

Section 28 amends s. 940.061, F.S., relating to informing persons about executive clemency and restoration of civil rights.

Section 29 amends s. 941.23, F.S., relating to application for issuance of requisition; by whom made; contents.

Section 30 amends s. 943.0311, F.S., relating to Chief of Domestic Security; duties of the department with respect to domestic security.

Section 31 amends s. 943.06, F.S., relating to Criminal and Juvenile Justice Information Systems Council.

Section 32 amends s. 944.012, F.S., relating to legislative intent.

Section 33 amends s. 944.02, F.S., relating to definitions.

Section 34 amends s. 944.171, F.S., relating to housing of inmates.

Section 35 amends s. 944.4731, F.S., relating to the Addiction-Recovery Supervision Program.

Section 36 amends s. 945.091, F.S., relating to extension of the limits of confinement; restitution by employed inmates.

Section 37 amends s. 945.10, F.S., relating to confidential information.

Section 38 amends s. 945.47, F.S., relating to discharge of inmate from mental health treatment.

Section 39 amends s. 945.73, F.S., relating to inmate training program operation.

Section 40 amends s. 947.005, F.S., relating to definitions.

Section 41 amends s. 947.01, F.S., relating to the Parole Commission; number of members.

Section 42 amends s. 947.02, F.S., relating to the Parole Commission, members, appointment.

Section 43 amends s. 947.021, F.S., relating to the Parole Commission; expedited appointments.

Section 44 amends s. 947.045, F.S., relating to Federal Grants Trust Fund.

Section 45 amends s. 947.141, F.S., relating to violations of conditional release, control release, or conditional medical release or addiction-recovery supervision.

Section 46 amends s. 947.146, F.S., relating to control release authority.

Section 47 amends s. 947.181, F.S., relating to fines, fees, restitution, or other costs ordered to be paid as a condition of parole.

Section 48 amends s. 947.185, F.S., relating to application for intellectual disability services as a condition of parole.

Section 49 amends s. 947.22, F.S., relating to authority to arrest parole violators with or without warrant.

Section 50 amends s. 948.09, F.S., relating to payment for cost of supervision and rehabilitation.

Section 51 amends s. 948.10, F.S., relating to community control programs.

Section 52 amends s. 949.05, F.S., relating to constitutionality.

Section 53 amends s. 951.29, F.S., relating to procedure for requesting restoration of civil rights of county prisoners convicted of felonies.

Section 54 amends s. 957.06, F.S., relating to powers and duties not delegable to contractor.

Section 55 amends s. 958.045, F.S., relating to youthful offender basic training program.

Section 56 amends s. 960.001, F.S., relating to guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.

Section 57 amends s. 960.17, F.S., relating to award constitutes debt owed to the state.

Section 58 amends s. 985.04, F.S., relating to oaths; records; confidential information.

Section 59 amends s. 985.045, F.S., relating to court records.

Section 60 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 may have an insignificant impact on state expenditures in the costs associated with changing signage, letterhead, rules, etc.

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 requires the commission to amend its rules to reflect the change in name. However, adequate rule-making authority exists under current law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to renaming the Parole Commission;
 3 providing legislative findings; renaming the Parole
 4 Commission as the Florida Commission on Offender
 5 Review; providing a directive to the Division of Law
 6 Revision and Information; amending ss. 20.315, 20.32,
 7 23.21, 98.093, 186.005, 255.502, 322.16, 394.926,
 8 394.927, 633.304, 775.089, 775.16, 784.07, 784.078,
 9 800.09, 843.01, 843.02, 843.08, 893.11, 921.16,
 10 921.20, 921.21, 921.22, 940.03, 940.05, 940.061,
 11 941.23, 943.0311, 943.06, 944.012, 944.02, 944.171,
 12 944.4731, 945.091, 945.10, 945.47, 945.73, 947.005,
 13 947.01, 947.02, 947.021, 947.045, 947.141, 947.146,
 14 947.181, 947.185, 947.22, 948.09, 948.10, 949.05,
 15 951.29, 957.06, 958.045, 960.001, 960.17, 985.04, and
 16 985.045, F.S.; conforming provisions to changes made
 17 by the act; making technical changes; providing an
 18 effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. The Legislature finds and recognizes the
 23 importance of the state's role in the transition of inmates from
 24 prison to the community in reducing recidivism rates. Therefore,
 25 the Parole Commission, authorized by s. 8(c), Article IV of the
 26 State Constitution, is renamed as the Florida Commission on

27 Offender Review.

28 Section 2. The Division of Law Revision and Information is
 29 directed to rename chapter 947, Florida Statutes, as "Florida
 30 Commission on Offender Review."

31 Section 3. Subsections (9) and (10) of section 20.315,
 32 Florida Statutes, are amended to read:

33 20.315 Department of Corrections.—There is created a
 34 Department of Corrections.

35 (9) FORM OF COMMITMENT; NOTICE OF PAROLE VIOLATION.—All
 36 commitments shall state the statutory authority therefor. The
 37 Secretary of Corrections shall have the authority to prescribe
 38 the form to be used for commitments. ~~Nothing in This act does~~
 39 not shall be construed to abridge the authority and
 40 responsibility of the Florida Parole Commission on Offender
 41 Review with respect to the granting and revocation of parole.
 42 The Department of Corrections shall notify the Florida Parole
 43 Commission on Offender Review of all violations of parole
 44 conditions and provide reports connected thereto as may be
 45 requested by the commission. The commission shall have the
 46 authority to issue orders dealing with supervision of specific
 47 parolees, and such orders shall be binding on all parties.

48 (10) SINGLE INFORMATION AND RECORDS SYSTEM.—Only one
 49 offender-based information and records computer system shall be
 50 maintained by the Department of Corrections for the joint use of
 51 the department and the Florida Parole Commission on Offender
 52 Review. The data system shall be managed through the

53 department's office of information technology. The department
 54 shall develop and maintain, in consultation with the Criminal
 55 and Juvenile Justice Information Systems Council under s.
 56 943.08, such offender-based information, including clemency
 57 administration information and other computer services to serve
 58 the needs of both the department and the Florida Parole
 59 Commission on Offender Review. The department shall notify the
 60 commission of all violations of parole and the circumstances
 61 thereof.

62 Section 4. Section 20.32, Florida Statutes, is amended to
 63 read:

64 20.32 Florida Parole Commission on Offender Review.—

65 (1) The Parole and Probation Commission, authorized by s.
 66 8(c), Art. IV, State Constitution of 1968, is continued and
 67 renamed the Florida Parole Commission on Offender Review. The
 68 commission retains its powers, duties, and functions with
 69 respect to the granting and revoking of parole and shall
 70 exercise powers, duties, and functions relating to
 71 investigations of applications for clemency as directed by the
 72 Governor and ~~the~~ Cabinet.

73 (2) All powers, duties, and functions relating to the
 74 appointment of the Florida Parole Commission on Offender Review
 75 as provided in s. 947.02 or s. 947.021 shall be exercised and
 76 performed by the Governor and ~~the~~ Cabinet. Except as provided in
 77 s. 947.021, each appointment shall be made from among the first
 78 three eligible persons on the list of the persons eligible for

79 said position.

80 (3) The commission may require any employee of the
 81 commission to give a bond for the faithful performance of his or
 82 her duties. The commission may determine the amount of the bond
 83 and must approve the bond. In determining the amount of the
 84 bond, the commission may consider the amount of money or
 85 property likely to be in custody of the officer or employee at
 86 any one time. The premiums for the bonds must be paid out of the
 87 funds of the commission.

88 Section 5. Subsection (1) of section 23.21, Florida
 89 Statutes, is amended to read:

90 23.21 Definitions.—For purposes of this part:

91 (1) "Department" means a principal administrative unit
 92 within the executive branch of state government, as defined in
 93 chapter 20, and includes the State Board of Administration, the
 94 Executive Office of the Governor, the Fish and Wildlife
 95 Conservation Commission, the Florida Parole Commission on
 96 Offender Review, the Agency for Health Care Administration, the
 97 State Board of Education, the Board of Governors of the State
 98 University System, the Justice Administrative Commission, the
 99 capital collateral regional counsel, and separate budget
 100 entities placed for administrative purposes within a department.

101 Section 6. Paragraph (e) of subsection (2) of section
 102 98.093, Florida Statutes, is amended to read:

103 98.093 Duty of officials to furnish information relating
 104 to deceased persons, persons adjudicated mentally incapacitated,

105 and persons convicted of a felony.—

106 (2) To the maximum extent feasible, state and local
 107 government agencies shall facilitate provision of information
 108 and access to data to the department, including, but not limited
 109 to, databases that contain reliable criminal records and records
 110 of deceased persons. State and local government agencies that
 111 provide such data shall do so without charge if the direct cost
 112 incurred by those agencies is not significant.

113 (e) The Florida ~~Parole~~ Commission on Offender Review shall
 114 furnish at least bimonthly to the department data, including the
 115 identity of those persons granted clemency in the preceding
 116 month or any updates to prior records which have occurred in the
 117 preceding month. The data shall contain the commission's case
 118 number and the person's name, address, date of birth, race,
 119 gender, Florida driver ~~driver's~~ license number, Florida
 120 identification card number, or the last four digits of the
 121 social security number, if available, and references to record
 122 identifiers assigned by the Department of Corrections and the
 123 Department of Law Enforcement, a unique identifier of each
 124 clemency case, and the effective date of clemency of each
 125 person.

126 Section 7. Subsection (1) of section 186.005, Florida
 127 Statutes, is amended to read:

128 186.005 Designation of departmental planning officer.—

129 (1) The head of each executive department and the Public
 130 Service Commission, the Fish and Wildlife Conservation

131 Commission, the Florida ~~Parele~~ Commission on Offender Review,
 132 and the Department of Military Affairs shall select from within
 133 such agency a person to be designated as the planning officer
 134 for such agency. The planning officer shall be responsible for
 135 coordinating with the Executive Office of the Governor and with
 136 the planning officers of other agencies all activities and
 137 responsibilities of such agency relating to planning.

138 Section 8. Subsection (3) of section 255.502, Florida
 139 Statutes, is amended to read:

140 255.502 Definitions; ss. 255.501-255.525.—As used in this
 141 act, the following words and terms shall have the following
 142 meanings unless the context otherwise requires:

143 (3) "Agency" means any department created by chapter 20,
 144 the Executive Office of the Governor, the Fish and Wildlife
 145 Conservation Commission, the Florida ~~Parele~~ Commission on
 146 Offender Review, the State Board of Administration, the
 147 Department of Military Affairs, or the Legislative Branch or the
 148 Judicial Branch of state government.

149 Section 9. Paragraph (c) of subsection (1) of section
 150 322.16, Florida Statutes, is amended to read:

151 322.16 License restrictions.—

152 (1)

153 (c) The department may further, at any time, impose other
 154 restrictions on the use of the license with respect to time and
 155 purpose of use or may impose any other condition or restriction
 156 upon recommendation of any court, of the Florida ~~Parele~~

157 Commission on Offender Review, or of the Department of
 158 Corrections with respect to any individual who is under the
 159 jurisdiction, supervision, or control of the entity that made
 160 the recommendation.

161 Section 10. Section 394.926, Florida Statutes, is amended
 162 to read:

163 394.926 Notice to victims of release of persons committed
 164 as sexually violent predators; notice to Department of
 165 Corrections and Florida Parole Commission on Offender Review.-

166 (1) As soon as is practicable, the department shall give
 167 written notice of the release of a person committed as a
 168 sexually violent predator to any victim of the committed person
 169 who is alive and whose address is known to the department or, if
 170 the victim is deceased, to the victim's family, if the family's
 171 address is known to the department. Failure to notify is not a
 172 reason for postponement of release. This section does not create
 173 a cause of action against the state or an employee of the state
 174 acting within the scope of the employee's employment as a result
 175 of the failure to notify pursuant to this part.

176 (2) If a sexually violent predator who has an active or
 177 pending term of probation, community control, parole,
 178 conditional release, or other court-ordered or postprison
 179 release supervision is released from custody, the department
 180 must immediately notify the Department of Corrections' Office of
 181 Community Corrections in Tallahassee. The Florida Parole
 182 Commission on Offender Review must also be immediately notified

183 of any releases of a sexually violent predator who has an active
 184 or pending term of parole, conditional release, or other
 185 postprison release supervision that is administered by the
 186 Florida Parole Commission on Offender Review.

187 Section 11. Section 394.927, Florida Statutes, is amended
 188 to read:

189 394.927 Escape while in lawful custody; notice to victim;
 190 notice to the Department of Corrections and Florida Parole
 191 Commission on Offender Review.-

192 (1) A person who is held in lawful custody pursuant to a
 193 judicial finding of probable cause under s. 394.915 or pursuant
 194 to a commitment as a sexually violent predator under s. 394.916
 195 and who escapes or attempts to escape while in such custody
 196 commits a felony of the second degree, punishable as provided in
 197 s. 775.082, s. 775.083, or s. 775.084.

198 (2) If a person who is held in custody pursuant to a
 199 finding of probable cause or commitment as a sexually violent
 200 predator escapes while in custody, the department shall
 201 immediately notify the victim in accordance with s. 394.926. The
 202 state attorney that filed the petition for civil commitment of
 203 the escapee must also be immediately notified by the department.
 204 If the escapee has an active or pending term of probation,
 205 community control, parole, conditional release, or other court-
 206 ordered or postprison release supervision, the department shall
 207 also immediately notify the Department of Corrections' Office of
 208 Community Corrections in Tallahassee. The Florida Parole

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209 Commission on Offender Review shall also be immediately notified
210 of an escape if the escapee has an active or pending term of
211 parole, conditional release, or other postprison release
212 supervision that is administered by the Florida Parole
213 Commission on Offender Review.

214 Section 12. Paragraph (d) of subsection (4) of section
215 633.304, Florida Statutes, is amended to read:

216 633.304 Fire suppression equipment; license to install or
217 maintain.—

218 (4)

219 (d) A license of any class may not be issued or renewed by
220 the division and a license of any class does not remain
221 operative unless:

222 1. The applicant has submitted to the State Fire Marshal
223 evidence of registration as a Florida corporation or evidence of
224 compliance with s. 865.09.

225 2. The State Fire Marshal or his or her designee has by
226 inspection determined that the applicant possesses the equipment
227 required for the class of license sought. The State Fire Marshal
228 shall give an applicant a reasonable opportunity to correct any
229 deficiencies discovered by inspection. To obtain such
230 inspection, an applicant with facilities located outside this
231 state must:

232 a. Provide a notarized statement from a professional
233 engineer licensed by the applicant's state of domicile
234 certifying that the applicant possesses the equipment required

235 for the class of license sought and that all such equipment is
 236 operable; or

237 b. Allow the State Fire Marshal or her or his designee to
 238 inspect the facility. All costs associated with the State Fire
 239 Marshal's inspection shall be paid by the applicant. The State
 240 Fire Marshal, in accordance with s. 120.54, may adopt rules to
 241 establish standards for the calculation and establishment of the
 242 amount of costs associated with any inspection conducted by the
 243 State Fire Marshal under this section. Such rules shall include
 244 procedures for invoicing and receiving funds in advance of the
 245 inspection.

246 3. The applicant has submitted to the State Fire Marshal
 247 proof of insurance providing coverage for comprehensive general
 248 liability for bodily injury and property damage, products
 249 liability, completed operations, and contractual liability. The
 250 State Fire Marshal shall adopt rules providing for the amounts
 251 of such coverage, but such amounts may ~~shall~~ not be less than
 252 \$300,000 for Class A or Class D licenses, \$200,000 for Class B
 253 licenses, and \$100,000 for Class C licenses; and the total
 254 coverage for any class of license held in conjunction with a
 255 Class D license may not be less than \$300,000. The State Fire
 256 Marshal may, at any time after the issuance of a license or its
 257 renewal, require upon demand, and in no event more than 30 days
 258 after notice of such demand, the licensee to provide proof of
 259 insurance, on a form provided by the State Fire Marshal,
 260 containing confirmation of insurance coverage as required by

261 this chapter. Failure, for any length of time, to provide proof
 262 of insurance coverage as required shall result in the immediate
 263 suspension of the license until proof of proper insurance is
 264 provided to the State Fire Marshal. An insurer which provides
 265 such coverage shall notify the State Fire Marshal of any change
 266 in coverage or of any termination, cancellation, or nonrenewal
 267 of any coverage.

268 4. The applicant applies to the State Fire Marshal,
 269 provides proof of experience, and successfully completes a
 270 prescribed training course offered by the State Fire College or
 271 an equivalent course approved by the State Fire Marshal. This
 272 subparagraph does not apply to any holder of or applicant for a
 273 permit under paragraph (g) or to a business organization or a
 274 governmental entity seeking initial licensure or renewal of an
 275 existing license solely for the purpose of inspecting,
 276 servicing, repairing, marking, recharging, and maintaining fire
 277 extinguishers used and located on the premises of and owned by
 278 such organization or entity.

279 5. The applicant has a current retestor identification
 280 number that is appropriate for the license for which the
 281 applicant is applying and that is listed with the United States
 282 Department of Transportation.

283 6. The applicant has passed, with a grade of at least 70
 284 percent, a written examination testing his or her knowledge of
 285 the rules and statutes governing the activities authorized by
 286 the license and demonstrating his or her knowledge and ability

287 to perform those tasks in a competent, lawful, and safe manner.
288 Such examination shall be developed and administered by the
289 State Fire Marshal, or his or her designee in accordance with
290 policies and procedures of the State Fire Marshal. An applicant
291 shall pay a nonrefundable examination fee of \$50 for each
292 examination or reexamination scheduled. A reexamination may not
293 be scheduled sooner than 30 days after any administration of an
294 examination to an applicant. An applicant may not be permitted
295 to take an examination for any level of license more than a
296 total of four times during 1 year, regardless of the number of
297 applications submitted. As a prerequisite to licensure of the
298 applicant, he or she:

299 a. Must be at least 18 years of age.

300 b. Must have 4 years of proven experience as a fire
301 equipment permittee at a level equal to or greater than the
302 level of license applied for or have a combination of education
303 and experience determined to be equivalent thereto by the State
304 Fire Marshal. Having held a permit at the appropriate level for
305 the required period constitutes the required experience.

306 c. Must not have been convicted of a felony or a crime
307 punishable by imprisonment of 1 year or more under the law of
308 the United States or of any state thereof or under the law of
309 any other country. "Convicted" means a finding of guilt or the
310 acceptance of a plea of guilty or nolo contendere in any federal
311 or state court or a court in any other country, without regard
312 to whether a judgment of conviction has been entered by the

313 court having jurisdiction of the case. If an applicant has been
 314 convicted of any such felony, the applicant shall be excluded
 315 from licensure for a period of 4 years after expiration of
 316 sentence or final release by the Florida Parole Commission on
 317 Offender Review unless the applicant, before the expiration of
 318 the 4-year period, has received a full pardon or has had her or
 319 his civil rights restored.

320
 321 This subparagraph does not apply to any holder of or applicant
 322 for a permit under paragraph (g) or to a business organization
 323 or a governmental entity seeking initial licensure or renewal of
 324 an existing license solely for the purpose of inspecting,
 325 servicing, repairing, marking, recharging, hydrotesting, and
 326 maintaining fire extinguishers used and located on the premises
 327 of and owned by such organization or entity.

328 Section 13. Subsection (4) of section 775.089, Florida
 329 Statutes, is amended to read:

330 775.089 Restitution.—

331 (4) If a defendant is placed on probation or paroled,
 332 complete satisfaction of any restitution ordered under this
 333 section shall be a condition of such probation or parole. The
 334 court may revoke probation, and the Florida Parole Commission on
 335 Offender Review may revoke parole, if the defendant fails to
 336 comply with such order.

337 Section 14. Section 775.16, Florida Statutes, is amended
 338 to read:

339 775.16 Drug offenses; additional penalties.—In addition to
 340 any other penalty provided by law, a person who has been
 341 convicted of sale of or trafficking in, or conspiracy to sell or
 342 traffic in, a controlled substance under chapter 893, if such
 343 offense is a felony, or who has been convicted of an offense
 344 under the laws of any state or country which, if committed in
 345 this state, would constitute the felony of selling or
 346 trafficking in, or conspiracy to sell or traffic in, a
 347 controlled substance under chapter 893, is:

348 (1) Disqualified from applying for employment by any
 349 agency of the state, unless:

350 (a) The person has completed all sentences of imprisonment
 351 or supervisory sanctions imposed by the court, by the Florida
 352 Parole Commission on Offender Review, or by law; or

353 (b) The person has complied with the conditions of
 354 subparagraphs 1. and 2. which shall be monitored by the
 355 Department of Corrections while the person is under any
 356 supervisory sanctions. The person under supervision may:

357 1. Seek evaluation and enrollment in, and once enrolled
 358 maintain enrollment in until completion, a drug treatment and
 359 rehabilitation program which is approved by the Department of
 360 Children and Families ~~Family Services~~, unless it is deemed by
 361 the program that the person does not have a substance abuse
 362 problem. The treatment and rehabilitation program may be
 363 specified by:

364 a. The court, in the case of court-ordered supervisory

365 sanctions;

366 b. The Florida Parole Commission on Offender Review, in
 367 the case of parole, control release, or conditional release; or

368 c. The Department of Corrections, in the case of
 369 imprisonment or any other supervision required by law.

370 2. Submit to periodic urine drug testing pursuant to
 371 procedures prescribed by the Department of Corrections. If the
 372 person is indigent, the costs shall be paid by the Department of
 373 Corrections.

374 (2) Disqualified from applying for a license, permit, or
 375 certificate required by any agency of the state to practice,
 376 pursue, or engage in any occupation, trade, vocation,
 377 profession, or business, unless:

378 (a) The person has completed all sentences of imprisonment
 379 or supervisory sanctions imposed by the court, by the Florida
 380 Parole Commission on Offender Review, or by law;

381 (b) The person has complied with the conditions of
 382 subparagraphs 1. and 2. which shall be monitored by the
 383 Department of Corrections while the person is under any
 384 supervisory sanction. If the person fails to comply with
 385 provisions of these subparagraphs by either failing to maintain
 386 treatment or by testing positive for drug use, the department
 387 shall notify the licensing, permitting, or certifying agency,
 388 which may refuse to reissue or reinstate such license, permit,
 389 or certification. The licensee, permittee, or certificateholder
 390 under supervision may:

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391 1. Seek evaluation and enrollment in, and once enrolled
392 maintain enrollment in until completion, a drug treatment and
393 rehabilitation program which is approved or regulated by the
394 Department of Children and Families ~~Family Services~~, unless it
395 is deemed by the program that the person does not have a
396 substance abuse problem. The treatment and rehabilitation
397 program may be specified by:

398 a. The court, in the case of court-ordered supervisory
399 sanctions;

400 b. The Florida ~~Parole~~ Commission on Offender Review, in
401 the case of parole, control release, or conditional release; or

402 c. The Department of Corrections, in the case of
403 imprisonment or any other supervision required by law.

404 2. Submit to periodic urine drug testing pursuant to
405 procedures prescribed by the Department of Corrections. If the
406 person is indigent, the costs shall be paid by the Department of
407 Corrections; or

408 (c) The person has successfully completed an appropriate
409 program under the Correctional Education Program.

410
411 The provisions of this section do not apply to any of the taxes,
412 fees, or permits regulated, controlled, or administered by the
413 Department of Revenue in accordance with the provisions of s.
414 213.05.

415 Section 15. Paragraph (d) of subsection (1) of section
416 784.07, Florida Statutes, is amended to read:

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

V

417 784.07 Assault or battery of law enforcement officers,
 418 firefighters, emergency medical care providers, public transit
 419 employees or agents, or other specified officers;
 420 reclassification of offenses; minimum sentences.-

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

422 (d) "Law enforcement officer" includes a law enforcement
 423 officer, a correctional officer, a correctional probation
 424 officer, a part-time law enforcement officer, a part-time
 425 correctional officer, an auxiliary law enforcement officer, and
 426 an auxiliary correctional officer, as those terms are
 427 respectively defined in s. 943.10, and any county probation
 428 officer; an employee or agent of the Department of Corrections
 429 who supervises or provides services to inmates; an officer of
 430 the Florida Parole Commission on Offender Review; a federal law
 431 enforcement officer as defined in s. 901.1505; and law
 432 enforcement personnel of the Fish and Wildlife Conservation
 433 Commission or the Department of Law Enforcement.

434 Section 16. Paragraph (b) of subsection (2) of section
 435 784.078, Florida Statutes, is amended to read:

436 784.078 Battery of facility employee by throwing, tossing,
 437 or expelling certain fluids or materials.-

438 (2)

439 (b) "Employee" includes any person who is a parole
 440 examiner with the Florida Parole Commission on Offender Review.

441 Section 17. Paragraph (a) of subsection (1) of section
 442 800.09, Florida Statutes, is amended to read:

443 800.09 Lewd or lascivious exhibition in the presence of an
 444 employee.—

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

446 (a) "Employee" means any person employed by or performing
 447 contractual services for a public or private entity operating a
 448 facility or any person employed by or performing contractual
 449 services for the corporation operating the prison industry
 450 enhancement programs or the correctional work programs under
 451 part II of chapter 946. The term also includes any person who is
 452 a parole examiner with the Florida Parole Commission on Offender
 453 Review.

454 Section 18. Section 843.01, Florida Statutes, is amended
 455 to read:

456 843.01 Resisting officer with violence to his or her
 457 person.—Whoever knowingly and willfully resists, obstructs, or
 458 opposes any officer as defined in s. 943.10(1), (2), (3), (6),
 459 (7), (8), or (9); member of the Florida Parole Commission on
 460 Offender Review or any administrative aide or supervisor
 461 employed by the commission; parole and probation supervisor;
 462 county probation officer; personnel or representative of the
 463 Department of Law Enforcement; or other person legally
 464 authorized to execute process in the execution of legal process
 465 or in the lawful execution of any legal duty, by offering or
 466 doing violence to the person of such officer or legally
 467 authorized person, is guilty of a felony of the third degree,
 468 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

469 Section 19. Section 843.02, Florida Statutes, is amended
 470 to read:

471 843.02 Resisting officer without violence to his or her
 472 person.—Whoever shall resist, obstruct, or oppose any officer as
 473 defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); member
 474 of the Florida Parole Commission on Offender Review or any
 475 administrative aide or supervisor employed by the commission;
 476 county probation officer; parole and probation supervisor;
 477 personnel or representative of the Department of Law
 478 Enforcement; or other person legally authorized to execute
 479 process in the execution of legal process or in the lawful
 480 execution of any legal duty, without offering or doing violence
 481 to the person of the officer, shall be guilty of a misdemeanor
 482 of the first degree, punishable as provided in s. 775.082 or s.
 483 775.083.

484 Section 20. Section 843.08, Florida Statutes, is amended
 485 to read:

486 843.08 Falsely personating officer, etc.—A person who
 487 falsely assumes or pretends to be a sheriff, officer of the
 488 Florida Highway Patrol, officer of the Fish and Wildlife
 489 Conservation Commission, officer of the Department of
 490 Transportation, officer of the Department of Financial Services,
 491 officer of the Department of Corrections, correctional probation
 492 officer, deputy sheriff, state attorney or assistant state
 493 attorney, statewide prosecutor or assistant statewide
 494 prosecutor, state attorney investigator, coroner, police

495 officer, lottery special agent or lottery investigator, beverage
 496 enforcement agent, or watchman, or any member of the Florida
 497 Parele Commission on Offender Review and any administrative aide
 498 or supervisor employed by the commission, or any personnel or
 499 representative of the Department of Law Enforcement, or a
 500 federal law enforcement officer as defined in s. 901.1505, and
 501 takes upon himself or herself to act as such, or to require any
 502 other person to aid or assist him or her in a matter pertaining
 503 to the duty of any such officer, commits a felony of the third
 504 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 505 775.084. However, a person who falsely personates any such
 506 officer during the course of the commission of a felony commits
 507 a felony of the second degree, punishable as provided in s.
 508 775.082, s. 775.083, or s. 775.084. If the commission of the
 509 felony results in the death or personal injury of another human
 510 being, the person commits a felony of the first degree,
 511 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

512 Section 21. Paragraph (a) of subsection (1) of section
 513 893.11, Florida Statutes, is amended to read:

514 893.11 Suspension, revocation, and reinstatement of
 515 business and professional licenses.—For the purposes of s.
 516 120.60(6), any conviction in any court reported to the
 517 Comprehensive Case Information System of the Florida Association
 518 of Court Clerks and Comptrollers, Inc., for the sale of, or
 519 trafficking in, a controlled substance or for conspiracy to
 520 sell, or traffic in, a controlled substance constitutes an

521 immediate serious danger to the public health, safety, or
522 welfare, and is grounds for disciplinary action by the licensing
523 state agency. A state agency shall initiate an immediate
524 emergency suspension of an individual professional license
525 issued by the agency, in compliance with the procedures for
526 summary suspensions in s. 120.60(6), upon the agency's findings
527 of the licensee's conviction in any court reported to the
528 Comprehensive Case Information System of the Florida Association
529 of Court Clerks and Comptrollers, Inc., for the sale of, or
530 trafficking in, a controlled substance, or for conspiracy to
531 sell, or traffic in, a controlled substance. Before renewing any
532 professional license, a state agency that issues a professional
533 license must use the Comprehensive Case Information System of
534 the Florida Association of Court Clerks and Comptrollers, Inc.,
535 to obtain information relating to any conviction for the sale
536 of, or trafficking in, a controlled substance or for conspiracy
537 to sell, or traffic in, a controlled substance. The clerk of
538 court shall provide electronic access to each state agency at no
539 cost and also provide certified copies of the judgment upon
540 request to the agency. Upon a showing by any such convicted
541 defendant whose professional license has been suspended or
542 revoked pursuant to this section that his or her civil rights
543 have been restored or upon a showing that the convicted
544 defendant meets the following criteria, the agency head may
545 reinstate or reactivate such license when:

546 (1) The person has complied with the conditions of

547 paragraphs (a) and (b) which shall be monitored by the
 548 Department of Corrections while the person is under any
 549 supervisory sanction. If the person fails to comply with
 550 provisions of these paragraphs by either failing to maintain
 551 treatment or by testing positive for drug use, the department
 552 shall notify the licensing agency, which shall revoke the
 553 license. The person under supervision may:

554 (a) Seek evaluation and enrollment in, and once enrolled
 555 maintain enrollment in until completion, a drug treatment and
 556 rehabilitation program which is approved or regulated by the
 557 Department of Children and Families ~~Family Services~~. The
 558 treatment and rehabilitation program shall be specified by:

559 1. The court, in the case of court-ordered supervisory
 560 sanctions;

561 2. The Florida Parole Commission on Offender Review, in
 562 the case of parole, control release, or conditional release; or

563 3. The Department of Corrections, in the case of
 564 imprisonment or any other supervision required by law.

565 Section 22. Subsection (2) of section 921.16, Florida
 566 Statutes, is amended to read:

567 921.16 When sentences to be concurrent and when
 568 consecutive.—

569 (2) A county court or circuit court of this state may
 570 direct that the sentence imposed by such court be served
 571 concurrently with a sentence imposed by a court of another state
 572 or of the United States or, for purposes of this section,

573 concurrently with a sentence to be imposed in another
 574 jurisdiction. In such case, the Department of Corrections may
 575 designate the correctional institution of the other jurisdiction
 576 as the place for reception and confinement of such person and
 577 may also designate the place in Florida for reception and
 578 confinement of such person in the event that confinement in the
 579 other jurisdiction terminates before the expiration of the
 580 Florida sentence. The sheriff shall forward commitment papers
 581 and other documents specified in s. 944.17 to the department.
 582 Upon imposing such a sentence, the court shall notify the
 583 Florida Parole Commission on Offender Review as to the
 584 jurisdiction in which the sentence is to be served. Any prisoner
 585 so released to another jurisdiction shall be eligible for
 586 consideration for parole by the Florida Parole Commission on
 587 Offender Review pursuant to ~~the provisions of~~ chapter 947,
 588 except that the commission shall determine the presumptive
 589 parole release date and the effective parole release date by
 590 requesting such person's file from the receiving jurisdiction.
 591 Upon receiving such records, the commission shall determine
 592 these release dates based on the relevant information in that
 593 file and shall give credit toward reduction of the Florida
 594 sentence for gain-time granted by the jurisdiction where the
 595 inmate is serving the sentence. The Florida Parole Commission on
 596 Offender Review may concur with the parole release decision of
 597 the jurisdiction granting parole and accepting supervision.

598 Section 23. Section 921.20, Florida Statutes, is amended

599 to read:

600 921.20 Classification summary; Florida Parole Commission
 601 on Offender Review.—As soon as possible after a prisoner has
 602 been placed in the custody of the Department of Corrections, the
 603 classification board shall furnish a classification summary to
 604 the Florida Parole Commission on Offender Review for use as
 605 provided in s. 945.25. The summary shall include the criminal,
 606 personal, social, and environmental background and other
 607 relevant factors considered in classifying the prisoner for a
 608 penal environment best suited for the prisoner's rapid
 609 rehabilitation.

610 Section 24. Section 921.21, Florida Statutes, is amended
 611 to read:

612 921.21 Progress reports to Florida Parole Commission on
 613 Offender Review.—From time to time the Department of Corrections
 614 shall submit to the Florida Parole Commission on Offender Review
 615 progress reports and recommendations regarding prisoners
 616 sentenced under s. 921.18. ~~If~~ When the classification board of
 617 the Department of Corrections determines that justice and the
 618 public welfare will best be served by paroling or discharging a
 619 prisoner, it shall transmit its finding to the Florida Parole
 620 Commission on Offender Review. The commission shall have the
 621 authority to place the prisoner on parole as provided by law or
 622 give the prisoner a full discharge from custody. The period of a
 623 parole granted by the Florida Parole Commission on Offender
 624 Review shall be in its discretion, but the parole period may

625 shall not exceed the maximum term for which the prisoner was
 626 sentenced.

627 Section 25. Section 921.22, Florida Statutes, is amended
 628 to read:

629 921.22 Determination of exact period of imprisonment by
 630 Florida Parole Commission on Offender Review.—Upon the
 631 recommendation of the Department of Corrections, the Florida
 632 Parole Commission on Offender Review shall have the authority to
 633 determine the exact period of imprisonment to be served by
 634 defendants sentenced under ~~the provisions of~~ s. 921.18, but a
 635 prisoner may ~~shall~~ not be held in custody longer than the
 636 maximum sentence provided for the offense.

637 Section 26. Section 940.03, Florida Statutes, is amended
 638 to read:

639 940.03 Application for executive clemency.—~~If a~~ When any
 640 person intends to apply for remission of any fine or forfeiture
 641 or the commutation of any punishment, or for pardon or
 642 restoration of civil rights, he or she shall request an
 643 application form from the Florida Parole Commission on Offender
 644 Review in compliance with such rules regarding application for
 645 executive clemency as are adopted by the Governor with the
 646 approval of two members of the Cabinet. Such application may
 647 require the submission of a certified copy of the applicant's
 648 indictment or information, the judgment adjudicating the
 649 applicant to be guilty, and the sentence, if sentence has been
 650 imposed, and may also require the applicant to send a copy of

651 the application to the judge and prosecuting attorney of the
 652 court in which the applicant was convicted, notifying them of
 653 the applicant's intent to apply for executive clemency. An
 654 application for executive clemency for a person who is sentenced
 655 to death must be filed within 1 year after the date the Supreme
 656 Court issues a mandate on a direct appeal or the United States
 657 Supreme Court denies a petition for certiorari, whichever is
 658 later.

659 Section 27. Section 940.05, Florida Statutes, is amended
 660 to read:

661 940.05 Restoration of civil rights.—Any person who has
 662 been convicted of a felony may be entitled to the restoration of
 663 all the rights of citizenship enjoyed by him or her before ~~prior~~
 664 ~~to~~ conviction if the person has:

- 665 (1) Received a full pardon from the Board of Executive
 666 Clemency;
- 667 (2) Served the maximum term of the sentence imposed upon
 668 him or her; or
- 669 (3) Been granted his or her final release by the Florida
 670 Parole Commission on Offender Review.

671 Section 28. Section 940.061, Florida Statutes, is amended
 672 to read:

673 940.061 Informing persons about executive clemency and
 674 restoration of civil rights.—The Department of Corrections shall
 675 inform and educate inmates and offenders on community
 676 supervision about the restoration of civil rights. Each month

677 the Department of Corrections shall send to the Florida Parole
 678 Commission on Offender Review by electronic means a list of the
 679 names of inmates who have been released from incarceration and
 680 offenders who have been terminated from supervision who may be
 681 eligible for restoration of civil rights.

682 Section 29. Subsections (2) and (3) of section 941.23,
 683 Florida Statutes, are amended to read:

684 941.23 Application for issuance of requisition; by whom
 685 made; contents.—

686 (2) When the return to this state is required of a person
 687 who has been convicted of a crime in this state and has escaped
 688 from confinement or broken the terms of his or her bail,
 689 probation, or parole, the state attorney of the county in which
 690 the offense was committed, the Florida Parole Commission on
 691 Offender Review, the Department of Corrections, or the warden of
 692 the institution or sheriff of the county, from which escape was
 693 made, shall present to the Governor a written application for a
 694 requisition for the return of such person, in which application
 695 shall be stated the name of the person, the crime of which the
 696 person was convicted, the circumstances of his or her escape
 697 from confinement or of the breach of the terms of his or her
 698 bail, probation, or parole, and the state in which the person is
 699 believed to be, including the location of the person therein at
 700 the time application is made.

701 (3) The application shall be verified by affidavit, shall
 702 be executed in duplicate, and shall be accompanied by two

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703 certified copies of the indictment returned or information and
704 affidavit filed or of the complaint made to the judge, stating
705 the offense with which the accused is charged, or of the
706 judgment of conviction or of the sentence. The prosecuting
707 officer, Florida Parole Commission on Offender Review,
708 Department of Corrections, warden, or sheriff may also attach
709 such further affidavits and other documents in duplicate as he
710 or she shall deem proper to be submitted with such application.
711 One copy of the application, with the action of the Governor
712 indicated by endorsement thereon, and one of the certified
713 copies of the indictment, complaint, information, and affidavits
714 or of the judgment of conviction or of the sentence shall be
715 filed in the office of the Department of State to remain of
716 record in that office. The other copies of all papers shall be
717 forwarded with the Governor's requisition.

718 Section 30. Subsection (7) of section 943.0311, Florida
719 Statutes, is amended to read:

720 943.0311 Chief of Domestic Security; duties of the
721 department with respect to domestic security.—

722 (7) As used in this section, the term "state agency"
723 includes the Agency for Health Care Administration, the
724 Department of Agriculture and Consumer Services, the Department
725 of Business and Professional Regulation, the Department of
726 Children and Families ~~Family Services~~, the Department of Citrus,
727 the Department of Economic Opportunity, the Department of
728 Corrections, the Department of Education, the Department of

729 Elderly Affairs, the Division of Emergency Management, the
 730 Department of Environmental Protection, the Department of
 731 Financial Services, the Department of Health, the Department of
 732 Highway Safety and Motor Vehicles, the Department of Juvenile
 733 Justice, the Department of Law Enforcement, the Department of
 734 Legal Affairs, the Department of Management Services, the
 735 Department of Military Affairs, the Department of Revenue, the
 736 Department of State, the Department of the Lottery, the
 737 Department of Transportation, the Department of Veterans'
 738 Affairs, the Fish and Wildlife Conservation Commission, the
 739 Florida Parole Commission on Offender Review, the State Board of
 740 Administration, and the Executive Office of the Governor.

741 Section 31. Subsection (1) of section 943.06, Florida
 742 Statutes, is amended to read:

743 943.06 Criminal and Juvenile Justice Information Systems
 744 Council.—There is created a Criminal and Juvenile Justice
 745 Information Systems Council within the department.

746 (1) The council shall be composed of 15 members,
 747 consisting of the Attorney General or a designated assistant;
 748 the executive director of the Department of Law Enforcement or a
 749 designated assistant; the secretary of the Department of
 750 Corrections or a designated assistant; the chair of the Florida
 751 Parole Commission on Offender Review or a designated assistant;
 752 the Secretary of Juvenile Justice or a designated assistant; the
 753 executive director of the Department of Highway Safety and Motor
 754 Vehicles or a designated assistant; the Secretary of Children

755 and Families ~~Family Services~~ or a designated assistant; the
 756 State Courts Administrator or a designated assistant; 1 public
 757 defender appointed by the Florida Public Defender Association,
 758 Inc.; 1 state attorney appointed by the Florida Prosecuting
 759 Attorneys Association, Inc.; and 5 members, to be appointed by
 760 the Governor, consisting of 2 sheriffs, 2 police chiefs, and 1
 761 clerk of the circuit court.

762 Section 32. Subsection (5) of section 944.012, Florida
 763 Statutes, is amended to read:

764 944.012 Legislative intent.—The Legislature hereby finds
 765 and declares that:

766 (5) In order to make the correctional system an efficient
 767 and effective mechanism, the various agencies involved in the
 768 correctional process must coordinate their efforts. Where
 769 possible, interagency offices should be physically located
 770 within major institutions and should include representatives of
 771 the public employment service, the vocational rehabilitation
 772 programs of the Department of Education, and the Florida Parole
 773 Commission on Offender Review. Duplicative and unnecessary
 774 methods of evaluating offenders must be eliminated and areas of
 775 responsibility consolidated in order to more economically use
 776 utilize present scarce resources.

777 Section 33. Subsection (1) of section 944.02, Florida
 778 Statutes, is amended to read:

779 944.02 Definitions.—The following words and phrases used
 780 in this chapter shall, unless the context clearly indicates

781 otherwise, have the following meanings:

782 (1) "Commission" means the Florida Parole Commission on
 783 Offender Review.

784 Section 34. Paragraph (c) of subsection (2) of section
 785 944.171, Florida Statutes, is amended to read:

786 944.171 Housing of inmates.—

787 (2) Notwithstanding s. 944.17, the department may enter
 788 into contracts with another state, a political subdivision of
 789 another state, or a correctional management services vendor in
 790 another state for the transfer and confinement in that state of
 791 inmates who have been committed to the custody of the
 792 department.

793 (c) The ~~Florida Parole Commission~~ Florida Parole Commission on Offender Review shall
 794 conduct any parole hearing for an inmate confined under a
 795 contract pursuant to this section according to the rules of the
 796 commission.

797 Section 35. Paragraph (b) of subsection (2) of section
 798 944.4731, Florida Statutes, is amended to read:

799 944.4731 Addiction-Recovery Supervision Program.—

800 (2)

801 (b) An offender released under addiction-recovery
 802 supervision shall be subject to specified terms and conditions,
 803 including payment of the costs of supervision under s. 948.09
 804 and any other court-ordered payments, such as child support and
 805 restitution. If an offender has received a term of probation or
 806 community control to be served after release from incarceration,

807 the period of probation or community control may not be
 808 substituted for addiction-recovery supervision and shall follow
 809 the term of addiction-recovery supervision. A panel of not fewer
 810 than two parole commissioners shall establish the terms and
 811 conditions of supervision, and the terms and conditions must be
 812 included in the supervision order. In setting the terms and
 813 conditions of supervision, the ~~parole~~ commission shall weigh
 814 heavily the program requirements, including, but not limited to,
 815 work at paid employment while participating in treatment and
 816 traveling restrictions. The commission shall also determine
 817 whether an offender violates the terms and conditions of
 818 supervision and whether a violation warrants revocation of
 819 addiction-recovery supervision pursuant to s. 947.141. The
 820 ~~parole~~ commission shall review the offender's record for the
 821 purpose of establishing the terms and conditions of supervision.
 822 The ~~parole~~ commission may impose any special conditions it
 823 considers warranted from its review of the record. The length of
 824 supervision may not exceed the maximum penalty imposed by the
 825 court.

826 Section 36. Paragraph (b) of subsection (1) and paragraph
 827 (b) of subsection (6) of section 945.091, Florida Statutes, are
 828 amended to read:

829 945.091 Extension of the limits of confinement;
 830 restitution by employed inmates.-

831 (1) The department may adopt rules permitting the
 832 extension of the limits of the place of confinement of an inmate

833 as to whom there is reasonable cause to believe that the inmate
 834 will honor his or her trust by authorizing the inmate, under
 835 prescribed conditions and following investigation and approval
 836 by the secretary, or the secretary's designee, who shall
 837 maintain a written record of such action, to leave the confines
 838 of that place unaccompanied by a custodial agent for a
 839 prescribed period of time to:

840 (b) Work at paid employment, participate in an education
 841 or a training program, or voluntarily serve a public or
 842 nonprofit agency or faith-based service group in the community,
 843 while continuing as an inmate of the institution or facility in
 844 which the inmate is confined, except during the hours of his or
 845 her employment, education, training, or service and traveling
 846 thereto and therefrom. An inmate may travel to and from his or
 847 her place of employment, education, or training only by means of
 848 walking, bicycling, or using public transportation or
 849 transportation that is provided by a family member or employer.
 850 Contingent upon specific appropriations, the department may
 851 transport an inmate in a state-owned vehicle if the inmate is
 852 unable to obtain other means of travel to his or her place of
 853 employment, education, or training.

854 1. An inmate may participate in paid employment only
 855 during the last 36 months of his or her confinement, unless
 856 sooner requested by the Florida Parole Commission on Offender
 857 Review or the Control Release Authority.

858 2. While working at paid employment and residing in the

859 facility, an inmate may apply for placement at a contracted
 860 substance abuse transition housing program. The transition
 861 assistance specialist shall inform the inmate of program
 862 availability and assess the inmate's need and suitability for
 863 transition housing assistance. If an inmate is approved for
 864 placement, the specialist shall assist the inmate. If an inmate
 865 requests and is approved for placement in a contracted faith-
 866 based substance abuse transition housing program, the specialist
 867 must consult with the chaplain before ~~prior to~~ such placement.
 868 The department shall ensure that an inmate's faith orientation,
 869 or lack thereof, will not be considered in determining admission
 870 to a faith-based program and that the program does not attempt
 871 to convert an inmate toward a particular faith or religious
 872 preference.

873 (6)

874 (b) An offender who is required to provide restitution or
 875 reparation may petition the circuit court to amend the amount of
 876 restitution or reparation required or to revise the schedule of
 877 repayment established by the department or the Florida Parole
 878 Commission on Offender Review.

879 Section 37. Paragraph (d) of subsection (1), paragraphs
 880 (a) and (b) of subsection (2), and subsection (5) of section
 881 945.10, Florida Statutes, are amended to read:

882 945.10 Confidential information.—

883 (1) Except as otherwise provided by law or in this
 884 section, the following records and information held by the

885 Department of Corrections are confidential and exempt from the
886 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
887 Constitution:

888 (d) Florida Parole Commission on Offender Review records
889 which are confidential or exempt from public disclosure by law.

890 (2) The records and information specified in paragraphs
891 (1)(a)-(h) may be released as follows unless expressly
892 prohibited by federal law:

893 (a) Information specified in paragraphs (1)(b), (d), and
894 (f) to the Office of the Governor, the Legislature, the Florida
895 Parole Commission on Offender Review, the Department of Children
896 and Families Family Services, a private correctional facility or
897 program that operates under a contract, the Department of Legal
898 Affairs, a state attorney, the court, or a law enforcement
899 agency. A request for records or information pursuant to this
900 paragraph need not be in writing.

901 (b) Information specified in paragraphs (1)(c), (e), and
902 (h) to the Office of the Governor, the Legislature, the Florida
903 Parole Commission on Offender Review, the Department of Children
904 and Families Family Services, a private correctional facility or
905 program that operates under contract, the Department of Legal
906 Affairs, a state attorney, the court, or a law enforcement
907 agency. A request for records or information pursuant to this
908 paragraph must be in writing and a statement provided
909 demonstrating a need for the records or information.

910

911 Records and information released under this subsection remain
 912 confidential and exempt from the provisions of s. 119.07(1) and
 913 s. 24(a), Art. I of the State Constitution when held by the
 914 receiving person or entity.

915 (5) The Department of Corrections and the Florida Parole
 916 Commission on Offender Review shall mutually cooperate with
 917 respect to maintaining the confidentiality of records that are
 918 exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I
 919 of the State Constitution.

920 Section 38. Subsection (2) of section 945.47, Florida
 921 Statutes, is amended to read:

922 945.47 Discharge of inmate from mental health treatment.—

923 (2) At any time that an inmate who has received mental
 924 health treatment while in the custody of the department becomes
 925 eligible for release under supervision or upon end of sentence,
 926 a record of the inmate's mental health treatment may be provided
 927 to the Florida Parole Commission on Offender Review and to the
 928 Department of Children and Families ~~Family Services~~ upon
 929 request. The record shall include, at a minimum, a summary of
 930 the inmate's diagnosis, length of stay in treatment, clinical
 931 history, prognosis, prescribed medication, treatment plan, and
 932 recommendations for aftercare services.

933 Section 39. Subsection (6) of section 945.73, Florida
 934 Statutes, is amended to read:

935 945.73 Inmate training program operation.—

936 (6) The department shall work cooperatively with the

937 Control Release Authority, the Florida ~~Parole~~ Commission on
 938 Offender Review, or such other authority as may exist or be
 939 established in the future which is empowered by law to effect
 940 the release of an inmate who has successfully completed the
 941 requirements established by ss. 945.71-945.74.

942 Section 40. Subsection (3) of section 947.005, Florida
 943 Statutes, is amended to read:

944 947.005 Definitions.—As used in this chapter, unless the
 945 context clearly indicates otherwise:

946 (3) "Commission" means the Florida Parole Commission on
 947 Offender Review.

948 Section 41. Section 947.01, Florida Statutes, is amended
 949 to read:

950 947.01 Florida Parole Commission on Offender Review;
 951 creation; number of members.—A Florida Parole Commission on
 952 Offender Review is created to consist of six members who are
 953 residents of the state. Effective July 1, 1996, the membership
 954 of the commission shall be three members.

955 Section 42. Section 947.02, Florida Statutes, is amended
 956 to read:

957 947.02 Florida Parole Commission on Offender Review;
 958 members, appointment.—

959 (1) Except as provided in s. 947.021, the members of the
 960 Florida Parole Commission on Offender Review shall be appointed
 961 by the Governor and Cabinet from a list of eligible applicants
 962 submitted by a parole qualifications committee. The appointments

963 of members of the commission shall be certified to the Senate by
964 the Governor and Cabinet for confirmation, and the membership of
965 the commission shall include representation from minority
966 persons as defined in s. 288.703.

967 (2) A parole qualifications committee shall consist of
968 five persons who are appointed by the Governor and Cabinet. One
969 member shall be designated as chair by the Governor and Cabinet.
970 The committee shall provide for statewide advertisement and the
971 receiving of applications for any position or positions on the
972 commission and shall devise a plan for the determination of the
973 qualifications of the applicants by investigations and
974 comprehensive evaluations, including, but not limited to,
975 investigation and evaluation of the character, habits, and
976 philosophy of each applicant. Each parole qualifications
977 committee shall exist for 2 years. If additional vacancies on
978 the commission occur during this 2-year period, the committee
979 may advertise and accept additional applications; however, all
980 previously submitted applications shall be considered along with
981 the new applications according to the previously established
982 plan for the evaluation of the qualifications of applicants.

983 (3) Within 90 days before an anticipated vacancy by
984 expiration of term pursuant to s. 947.03 or upon any other
985 vacancy, the Governor and Cabinet shall appoint a parole
986 qualifications committee if one has not been appointed during
987 the previous 2 years. The committee shall consider applications
988 for the commission seat, including the application of an

989 incumbent commissioner if he or she applies, according to the
 990 ~~provisions of~~ subsection (2). The committee shall submit a list
 991 of three eligible applicants, which may include the incumbent if
 992 the committee so decides, without recommendation, to the
 993 Governor and Cabinet for appointment to the commission. In the
 994 case of an unexpired term, the appointment must be for the
 995 remainder of the unexpired term and until a successor is
 996 appointed and qualified. If more than one seat is vacant, the
 997 committee shall submit a list of eligible applicants, without
 998 recommendation, containing a number of names equal to three
 999 times the number of vacant seats; however, the names submitted
 1000 ~~may shall~~ not be distinguished by seat, and each submitted
 1001 applicant shall be considered eligible for each vacancy.

1002 (4) Upon receiving a list of eligible persons from the
 1003 parole qualifications committee, the Governor and Cabinet may
 1004 reject the list. If the list is rejected, the committee shall
 1005 reinitiate the application and examination procedure according
 1006 to ~~the provisions of~~ subsection (2).

1007 (5) Section ~~The provisions of s.~~ 120.525 and chapters 119
 1008 and 286 apply to all activities and proceedings of a parole
 1009 qualifications committee.

1010 Section 43. Section 947.021, Florida Statutes, is amended
 1011 to read:

1012 947.021 Florida Parole Commission on Offender Review;
 1013 expedited appointments.—Whenever the Legislature decreases the
 1014 membership of the commission, all terms of office shall expire,

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1015 notwithstanding any law to the contrary. Under such
1016 circumstances, the Governor and Cabinet shall expedite the
1017 appointment of commissioners. Notwithstanding the parole
1018 qualifications committee procedure in s. 947.02, members shall
1019 be directly appointed by the Governor and Cabinet. Members
1020 appointed to the commission may be selected from incumbents.
1021 Members shall be certified to the Senate by the Governor and
1022 Cabinet for confirmation, and the membership of the commission
1023 shall include representation from minority persons as defined in
1024 s. 288.703.

1025 Section 44. Section 947.045, Florida Statutes, is amended
1026 to read:

1027 947.045 Federal Grants Trust Fund.—The Federal Grants
1028 Trust Fund is hereby created, to be administered by the Florida
1029 Parole Commission on Offender Review.

1030 (1) Funds to be credited to the trust fund shall consist
1031 of receipts from federal grants and shall be used for the
1032 various purposes for which the federal funds were intended.

1033 (2) Notwithstanding ~~the provisions of~~ s. 216.301 and
1034 pursuant to s. 216.351, any balance in the trust fund at the end
1035 of any fiscal year shall remain in the trust fund at the end of
1036 the year and shall be available for carrying out the purposes of
1037 the trust fund.

1038 Section 45. Subsection (3) of section 947.141, Florida
1039 Statutes, is amended to read:

1040 947.141 Violations of conditional release, control

1041 release, or conditional medical release or addiction-recovery
 1042 supervision.-

1043 (3) Within 45 days after notice to the Florida Parole
 1044 Commission on Offender Review of the arrest of a releasee
 1045 charged with a violation of the terms and conditions of
 1046 conditional release, control release, conditional medical
 1047 release, or addiction-recovery supervision, the releasee must be
 1048 afforded a hearing conducted by a commissioner or a duly
 1049 authorized representative thereof. If the releasee elects to
 1050 proceed with a hearing, the releasee must be informed orally and
 1051 in writing of the following:

1052 (a) The alleged violation with which the releasee is
 1053 charged.

1054 (b) The releasee's right to be represented by counsel.

1055 (c) The releasee's right to be heard in person.

1056 (d) The releasee's right to secure, present, and compel
 1057 the attendance of witnesses relevant to the proceeding.

1058 (e) The releasee's right to produce documents on the
 1059 releasee's own behalf.

1060 (f) The releasee's right of access to all evidence used
 1061 against the releasee and to confront and cross-examine adverse
 1062 witnesses.

1063 (g) The releasee's right to waive the hearing.

1064 Section 46. Subsection (1) of section 947.146, Florida
 1065 Statutes, is amended to read:

1066 947.146 Control Release Authority.-

1067 (1) There is created a Control Release Authority which
 1068 shall be composed of the members of the Florida Parole
 1069 Commission on Offender Review and which shall have the same
 1070 chair as the commission. The authority shall use utilize such
 1071 commission staff as it determines is necessary to carry out its
 1072 purposes.

1073 Section 47. Subsection (3) of section 947.181, Florida
 1074 Statutes, is amended to read:

1075 947.181 Fines, fees, restitution, or other costs ordered
 1076 to be paid as conditions of parole.—

1077 (3) If a defendant is paroled, any restitution ordered
 1078 under s. 775.089 shall be a condition of such parole. The
 1079 Florida Parole Commission on Offender Review may revoke parole
 1080 if the defendant fails to comply with such order.

1081 Section 48. Section 947.185, Florida Statutes, is amended
 1082 to read:

1083 947.185 Application for intellectual disability services
 1084 as condition of parole.—The Florida Parole Commission on
 1085 Offender Review may require as a condition of parole that any
 1086 inmate who has been diagnosed as having an intellectual
 1087 disability as defined in s. 393.063 shall, upon release, apply
 1088 for services from the Agency for Persons with Disabilities.

1089 Section 49. Subsection (2) of section 947.22, Florida
 1090 Statutes, is amended to read:

1091 947.22 Authority to arrest parole violators with or
 1092 without warrant.—

1093 (2) Any parole and probation officer, if ~~when~~ she or he
 1094 has reasonable ground to believe that a parolee, control
 1095 releasee, or conditional releasee has violated the terms and
 1096 conditions of her or his parole, control release, or conditional
 1097 release in a material respect, has the right to arrest the
 1098 releasee or parolee without warrant and bring her or him
 1099 forthwith before one or more commissioners or a duly authorized
 1100 representative of the Florida Parole Commission on Offender
 1101 Review or Control Release Authority; and proceedings shall
 1102 thereupon be had as provided herein when a warrant has been
 1103 issued by a member of the commission or authority or a duly
 1104 authorized representative of the commission or authority.

1105 Section 50. Paragraph (a) of subsection (1) and
 1106 subsections (3) and (6) of section 948.09, Florida Statutes, are
 1107 amended to read:

1108 948.09 Payment for cost of supervision and
 1109 rehabilitation.-

1110 (1)(a)1. Any person ordered by the court, the Department
 1111 of Corrections, or the Florida parole Commission on Offender
 1112 Review to be placed on probation, drug offender probation,
 1113 community control, parole, control release, provisional release
 1114 supervision, addiction-recovery supervision, or conditional
 1115 release supervision under chapter 944, chapter 945, chapter 947,
 1116 this chapter ~~948~~, or chapter 958, or in a pretrial intervention
 1117 program, must, as a condition of any placement, pay the
 1118 department a total sum of money equal to the total month or

1119 portion of a month of supervision times the court-ordered
 1120 amount, but not to exceed the actual per diem cost of the
 1121 supervision. The department shall adopt rules by which an
 1122 offender who pays in full and in advance of regular termination
 1123 of supervision may receive a reduction in the amount due. The
 1124 rules shall incorporate provisions by which the offender's
 1125 ability to pay is linked to an established written payment plan.
 1126 Funds collected from felony offenders may be used to offset
 1127 costs of the Department of Corrections associated with community
 1128 supervision programs, subject to appropriation by the
 1129 Legislature.

1130 2. In addition to any other contribution or surcharge
 1131 imposed by this section, each felony offender assessed under
 1132 this paragraph shall pay a \$2-per-month surcharge to the
 1133 department. The surcharge shall be deemed to be paid only after
 1134 the full amount of any monthly payment required by the
 1135 established written payment plan has been collected by the
 1136 department. These funds shall be used by the department to pay
 1137 for correctional probation officers' training and equipment,
 1138 including radios, and firearms training, firearms, and attendant
 1139 equipment necessary to train and equip officers who choose to
 1140 carry a concealed firearm while on duty. ~~Nothing in This~~
 1141 subparagraph does not ~~shall be construed to~~ limit the
 1142 department's authority to determine who shall be authorized to
 1143 carry a concealed firearm while on duty, or ~~to~~ limit the right
 1144 of a correctional probation officer to carry a personal firearm

1145 approved by the department.

1146 (3) Any failure to pay contribution as required under this
1147 section may constitute a ground for the revocation of probation
1148 by the court, the revocation of parole or conditional release by
1149 the Florida Parole Commission on Offender Review, the revocation
1150 of control release by the Control Release Authority, or removal
1151 from the pretrial intervention program by the state attorney.
1152 The Department of Corrections may exempt a person from the
1153 payment of all or any part of the contribution if it finds any
1154 of the following factors to exist:

1155 (a) The offender has diligently attempted, but has been
1156 unable, to obtain employment which provides him or her
1157 sufficient income to make such payments.

1158 (b) The offender is a student in a school, college,
1159 university, or course of career training designed to fit the
1160 student for gainful employment. Certification of such student
1161 status shall be supplied to the Secretary of Corrections by the
1162 educational institution in which the offender is enrolled.

1163 (c) The offender has an employment handicap, as determined
1164 by a physical, psychological, or psychiatric examination
1165 acceptable to, or ordered by, the secretary.

1166 (d) The offender's age prevents him or her from obtaining
1167 employment.

1168 (e) The offender is responsible for the support of
1169 dependents, and the payment of such contribution constitutes an
1170 undue hardship on the offender.

1171 (f) The offender has been transferred outside the state
 1172 under an interstate compact adopted pursuant to chapter 949.

1173 (g) There are other extenuating circumstances, as
 1174 determined by the secretary.

1175 (6) In addition to any other required contributions, the
 1176 department, at its discretion, may require offenders under any
 1177 form of supervision to submit to and pay for urinalysis testing
 1178 to identify drug usage as part of the rehabilitation program.
 1179 Any failure to make such payment, or participate, may be
 1180 considered a ground for revocation by the court, the Florida
 1181 Parole Commission on Offender Review, or the Control Release
 1182 Authority, or for removal from the pretrial intervention program
 1183 by the state attorney. The department may exempt a person from
 1184 such payment if it determines that any of the factors specified
 1185 in subsection (3) exist.

1186 Section 51. Subsection (1) of section 948.10, Florida
 1187 Statutes, is amended to read:

1188 948.10 Community control programs.—

1189 (1) The Department of Corrections shall develop and
 1190 administer a community control program. This complementary
 1191 program shall be rigidly structured and designed to accommodate
 1192 offenders who, in the absence of such a program, would have been
 1193 incarcerated. The program shall focus on the provision of
 1194 sanctions and consequences which are commensurate with the
 1195 seriousness of the crime. The program shall offer the courts and
 1196 the Florida Parole Commission on Offender Review an alternative,

1197 community-based method to punish an offender in lieu of
 1198 incarceration if ~~when~~ the offender is a member of one of the
 1199 following target groups:

1200 (a) Probation violators charged with technical violations
 1201 or misdemeanor violations.

1202 (b) Parole violators charged with technical violations or
 1203 misdemeanor violations.

1204 (c) Individuals found guilty of felonies, who, due to
 1205 their criminal backgrounds or the seriousness of the offenses,
 1206 would not be placed on regular probation.

1207 Section 52. Subsection (2) of section 949.05, Florida
 1208 Statutes, is amended to read:

1209 949.05 Constitutionality.—

1210 (2) If the method of selecting the commission members as
 1211 herein provided is found to be invalid by reason of the vesting
 1212 of the appointing power in the Governor and ~~the~~ Cabinet, the
 1213 members of the Florida Parole Commission on Offender Review
 1214 herein provided for shall be appointed by the Governor.

1215 Section 53. Subsection (1) of section 951.29, Florida
 1216 Statutes, is amended to read:

1217 951.29 Procedure for requesting restoration of civil
 1218 rights of county prisoners convicted of felonies.—

1219 (1) With respect to a person who has been convicted of a
 1220 felony and is serving a sentence in a county detention facility,
 1221 the administrator of the county detention facility shall provide
 1222 to the prisoner, at least 2 weeks before discharge, if possible,

1223 an application form obtained from the Florida Parole Commission
 1224 on Offender Review which the prisoner must complete in order to
 1225 begin the process of having his or her civil rights restored.

1226 Section 54. Subsection (6) of section 957.06, Florida
 1227 Statutes, is amended to read:

1228 957.06 Powers and duties not delegable to contractor.—A
 1229 contract entered into under this chapter does not authorize,
 1230 allow, or imply a delegation of authority to the contractor to:

1231 (6) Make recommendations to the Florida Parole Commission
 1232 on Offender Review with respect to the denial or granting of
 1233 parole, control release, conditional release, or conditional
 1234 medical release. However, the contractor may submit written
 1235 reports to the Florida Parole Commission on Offender Review and
 1236 must respond to a written request by the Florida Parole
 1237 Commission on Offender Review for information.

1238 Section 55. Paragraph (c) of subsection (8) of section
 1239 958.045, Florida Statutes, is amended to read:

1240 958.045 Youthful offender basic training program.—

1241 (8)

1242 (c) The department shall work cooperatively with the
 1243 Control Release Authority or the Florida Parole Commission on
 1244 Offender Review to effect the release of an offender who has
 1245 successfully completed the requirements of the basic training
 1246 program.

1247 Section 56. Subsection (1) of section 960.001, Florida
 1248 Statutes, is amended to read:

1249 960.001 Guidelines for fair treatment of victims and
 1250 witnesses in the criminal justice and juvenile justice systems.—

1251 (1) The Department of Legal Affairs, the state attorneys,
 1252 the Department of Corrections, the Department of Juvenile
 1253 Justice, the Florida Parole Commission on Offender Review, the
 1254 State Courts Administrator and circuit court administrators, the
 1255 Department of Law Enforcement, and every sheriff's department,
 1256 police department, or other law enforcement agency as defined in
 1257 s. 943.10(4) shall develop and implement guidelines for the use
 1258 of their respective agencies, which guidelines are consistent
 1259 with the purposes of this act and s. 16(b), Art. I of the State
 1260 Constitution and are designed to implement ~~the provisions of s.~~
 1261 16(b), Art. I of the State Constitution and to achieve the
 1262 following objectives:

1263 (a) *Information concerning services available to victims*
 1264 *of adult and juvenile crime.*—As provided in s. 27.0065, state
 1265 attorneys and public defenders shall gather information
 1266 regarding the following services in the geographic boundaries of
 1267 their respective circuits and shall provide such information to
 1268 each law enforcement agency with jurisdiction within such
 1269 geographic boundaries. Law enforcement personnel shall ensure,
 1270 through distribution of a victim's rights information card or
 1271 brochure at the crime scene, during the criminal investigation,
 1272 and in any other appropriate manner, that victims are given, as
 1273 a matter of course at the earliest possible time, information
 1274 about:

- 1275 1. The availability of crime victim compensation, if ~~when~~
 1276 applicable;
- 1277 2. Crisis intervention services, supportive or bereavement
 1278 counseling, social service support referrals, and community-
 1279 based victim treatment programs;
- 1280 3. The role of the victim in the criminal or juvenile
 1281 justice process, including what the victim may expect from the
 1282 system as well as what the system expects from the victim;
- 1283 4. The stages in the criminal or juvenile justice process
 1284 which are of significance to the victim and the manner in which
 1285 information about such stages can be obtained;
- 1286 5. The right of a victim, who is not incarcerated,
 1287 including the victim's parent or guardian if the victim is a
 1288 minor, the lawful representative of the victim or of the
 1289 victim's parent or guardian if the victim is a minor, and the
 1290 next of kin of a homicide victim, to be informed, to be present,
 1291 and to be heard when relevant, at all crucial stages of a
 1292 criminal or juvenile proceeding, to the extent that this right
 1293 does not interfere with constitutional rights of the accused, as
 1294 provided by s. 16(b), Art. I of the State Constitution;
- 1295 6. In the case of incarcerated victims, the right to be
 1296 informed and to submit written statements at all crucial stages
 1297 of the criminal proceedings, parole proceedings, or juvenile
 1298 proceedings; and
- 1299 7. The right of a victim to a prompt and timely
 1300 disposition of the case in order to minimize the period during

1301 which the victim must endure the responsibilities and stress
 1302 involved to the extent that this right does not interfere with
 1303 the constitutional rights of the accused.

1304 (b) *Information for purposes of notifying victim or*
 1305 *appropriate next of kin of victim or other designated contact of*
 1306 *victim.*—In the case of a homicide, pursuant to chapter 782; or a
 1307 sexual offense, pursuant to chapter 794; or an attempted murder
 1308 or sexual offense, pursuant to chapter 777; or stalking,
 1309 pursuant to s. 784.048; or domestic violence, pursuant to s.
 1310 25.385:

1311 1. The arresting law enforcement officer or personnel of
 1312 an organization that provides assistance to a victim or to the
 1313 appropriate next of kin of the victim or other designated
 1314 contact must request that the victim or appropriate next of kin
 1315 of the victim or other designated contact complete a victim
 1316 notification card. However, the victim or appropriate next of
 1317 kin of the victim or other designated contact may choose not to
 1318 complete the victim notification card.

1319 2. Unless the victim or the appropriate next of kin of the
 1320 victim or other designated contact waives the option to complete
 1321 the victim notification card, a copy of the victim notification
 1322 card must be filed with the incident report or warrant in the
 1323 sheriff's office of the jurisdiction in which the incident
 1324 report or warrant originated. The notification card shall, at a
 1325 minimum, consist of:

1326 a. The name, address, and phone number of the victim; or

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1327 b. The name, address, and phone number of the appropriate
1328 next of kin of the victim; or

1329 c. The name, address, and telephone ~~phone~~ number of a
1330 designated contact other than the victim or appropriate next of
1331 kin of the victim; and

1332 d. Any relevant identification or case numbers assigned to
1333 the case.

1334 3. The chief administrator, or a person designated by the
1335 chief administrator, of a county jail, municipal jail, juvenile
1336 detention facility, or residential commitment facility shall
1337 make a reasonable attempt to notify the alleged victim or
1338 appropriate next of kin of the alleged victim or other
1339 designated contact within 4 hours following the release of the
1340 defendant on bail or, in the case of a juvenile offender, upon
1341 the release from residential detention or commitment. If the
1342 chief administrator, or designee, is unable to contact the
1343 alleged victim or appropriate next of kin of the alleged victim
1344 or other designated contact by telephone, the chief
1345 administrator, or designee, must send to the alleged victim or
1346 appropriate next of kin of the alleged victim or other
1347 designated contact a written notification of the defendant's
1348 release.

1349 4. Unless otherwise requested by the victim or the
1350 appropriate next of kin of the victim or other designated
1351 contact, the information contained on the victim notification
1352 card must be sent by the chief administrator, or designee, of

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

V

1353 the appropriate facility to the subsequent correctional or
 1354 residential commitment facility following the sentencing and
 1355 incarceration of the defendant, and unless otherwise requested
 1356 by the victim or the appropriate next of kin of the victim or
 1357 other designated contact, he or she must be notified of the
 1358 release of the defendant from incarceration as provided by law.

1359 5. If the defendant was arrested pursuant to a warrant
 1360 issued or taken into custody pursuant to s. 985.101 in a
 1361 jurisdiction other than the jurisdiction in which the defendant
 1362 is being released, and the alleged victim or appropriate next of
 1363 kin of the alleged victim or other designated contact does not
 1364 waive the option for notification of release, the chief
 1365 correctional officer or chief administrator of the facility
 1366 releasing the defendant shall make a reasonable attempt to
 1367 immediately notify the chief correctional officer of the
 1368 jurisdiction in which the warrant was issued or the juvenile was
 1369 taken into custody pursuant to s. 985.101, and the chief
 1370 correctional officer of that jurisdiction shall make a
 1371 reasonable attempt to notify the alleged victim or appropriate
 1372 next of kin of the alleged victim or other designated contact,
 1373 as provided in this paragraph, that the defendant has been or
 1374 will be released.

1375 (c) *Information concerning protection available to victim*
 1376 *or witness.*—A victim or witness shall be furnished, as a matter
 1377 of course, with information on steps that are available to law
 1378 enforcement officers and state attorneys to protect victims and

1379 witnesses from intimidation. Victims of domestic violence shall
 1380 also be given information about the address confidentiality
 1381 program provided under s. 741.403.

1382 (d) *Notification of scheduling changes.*—Each victim or
 1383 witness who has been scheduled to attend a criminal or juvenile
 1384 justice proceeding shall be notified as soon as possible by the
 1385 agency scheduling his or her appearance of any change in
 1386 scheduling which will affect his or her appearance.

1387 (e) *Advance notification to victim or relative of victim*
 1388 *concerning judicial proceedings; right to be present.*—Any
 1389 victim, parent, guardian, or lawful representative of a minor
 1390 who is a victim, or relative of a homicide victim shall receive
 1391 from the appropriate agency, at the address found in the police
 1392 report or the victim notification card if such has been provided
 1393 to the agency, prompt advance notification, unless the agency
 1394 itself does not have advance notification, of judicial and
 1395 postjudicial proceedings relating to his or her case, including
 1396 all proceedings or hearings relating to:

- 1397 1. The arrest of an accused;
- 1398 2. The release of the accused pending judicial proceedings
 1399 or any modification of release conditions; and
- 1400 3. Proceedings in the prosecution or petition for
 1401 delinquency of the accused, including the filing of the
 1402 accusatory instrument, the arraignment, disposition of the
 1403 accusatory instrument, trial or adjudicatory hearing, sentencing
 1404 or disposition hearing, appellate review, subsequent

1405 modification of sentence, collateral attack of a judgment, and,
 1406 when a term of imprisonment, detention, or residential
 1407 commitment is imposed, the release of the defendant or juvenile
 1408 offender from such imprisonment, detention, or residential
 1409 commitment by expiration of sentence or parole and any meeting
 1410 held to consider such release.

1411
 1412 A victim, a victim's parent or guardian if the victim is a
 1413 minor, a lawful representative of the victim or of the victim's
 1414 parent or guardian if the victim is a minor, or a victim's next
 1415 of kin may not be excluded from any portion of any hearing,
 1416 trial, or proceeding pertaining to the offense based solely on
 1417 the fact that such person is subpoenaed to testify, unless, upon
 1418 motion, the court determines such person's presence to be
 1419 prejudicial. The appropriate agency with respect to notification
 1420 under subparagraph 1. is the arresting law enforcement agency,
 1421 and the appropriate agency with respect to notification under
 1422 subparagraphs 2. and 3. is the Attorney General or state
 1423 attorney, unless the notification relates to a hearing
 1424 concerning parole, in which case the appropriate agency is the
 1425 Florida Parole Commission on Offender Review. The Department of
 1426 Corrections, the Department of Juvenile Justice, or the sheriff
 1427 is the appropriate agency with respect to release by expiration
 1428 of sentence or any other release program provided by law. ~~A~~ ~~Any~~
 1429 victim may waive notification at any time, and such waiver shall
 1430 be noted in the agency's files.

1431 (f) Information concerning release from incarceration from
 1432 a county jail, municipal jail, juvenile detention facility, or
 1433 residential commitment facility.—The chief administrator, or a
 1434 person designated by the chief administrator, of a county jail,
 1435 municipal jail, juvenile detention facility, or residential
 1436 commitment facility shall, upon the request of the victim or the
 1437 appropriate next of kin of a victim or other designated contact
 1438 of the victim of any of the crimes specified in paragraph (b),
 1439 make a reasonable attempt to notify the victim or appropriate
 1440 next of kin of the victim or other designated contact before
 1441 ~~prior to~~ the defendant's or offender's release from
 1442 incarceration, detention, or residential commitment if the
 1443 victim notification card has been provided pursuant to paragraph
 1444 (b). If prior notification is not successful, a reasonable
 1445 attempt must be made to notify the victim or appropriate next of
 1446 kin of the victim or other designated contact within 4 hours
 1447 following the release of the defendant or offender from
 1448 incarceration, detention, or residential commitment. If the
 1449 defendant is released following sentencing, disposition, or
 1450 furlough, the chief administrator or designee shall make a
 1451 reasonable attempt to notify the victim or the appropriate next
 1452 of kin of the victim or other designated contact within 4 hours
 1453 following the release of the defendant. If the chief
 1454 administrator or designee is unable to contact the victim or
 1455 appropriate next of kin of the victim or other designated
 1456 contact by telephone, the chief administrator or designee must

1457 | send to the victim or appropriate next of kin of the victim or
 1458 | other designated contact a written notification of the
 1459 | defendant's or offender's release.

1460 | (g) *Consultation with victim or guardian or family of*
 1461 | *victim.*—

1462 | 1. In addition to being notified of ~~the provisions of s.~~
 1463 | 921.143, the victim of a felony involving physical or emotional
 1464 | injury or trauma or, in a case in which the victim is a minor
 1465 | child or in a homicide, the guardian or family of the victim
 1466 | shall be consulted by the state attorney in order to obtain the
 1467 | views of the victim or family about the disposition of any
 1468 | criminal or juvenile case brought as a result of such crime,
 1469 | including the views of the victim or family about:

1470 | a. The release of the accused pending judicial
 1471 | proceedings;

1472 | b. Plea agreements;

1473 | c. Participation in pretrial diversion programs; and

1474 | d. Sentencing of the accused.

1475 | 2. Upon request, the state attorney shall permit the
 1476 | victim, the victim's parent or guardian if the victim is a
 1477 | minor, the lawful representative of the victim or of the
 1478 | victim's parent or guardian if the victim is a minor, or the
 1479 | victim's next of kin in the case of a homicide to review a copy
 1480 | of the presentence investigation report before ~~prior to~~ the
 1481 | sentencing hearing if one was completed. Any confidential
 1482 | information that pertains to medical history, mental health, or

1483 substance abuse and any information that pertains to any other
 1484 victim shall be redacted from the copy of the report. Any person
 1485 who reviews the report pursuant to this paragraph must maintain
 1486 the confidentiality of the report and may ~~shall~~ not disclose its
 1487 contents to any person except statements made to the state
 1488 attorney or the court.

1489 3. If ~~When~~ an inmate has been approved for community work
 1490 release, the Department of Corrections shall, upon request and
 1491 as provided in s. 944.605, notify the victim, the victim's
 1492 parent or guardian if the victim is a minor, the lawful
 1493 representative of the victim or of the victim's parent or
 1494 guardian if the victim is a minor, or the victim's next of kin
 1495 if the victim is a homicide victim.

1496 (h) *Return of property to victim.*—Law enforcement agencies
 1497 and the state attorney shall promptly return a victim's property
 1498 held for evidentiary purposes unless there is a compelling law
 1499 enforcement reason for retaining it. The trial or juvenile court
 1500 exercising jurisdiction over the criminal or juvenile proceeding
 1501 may enter appropriate orders to implement ~~the provisions of~~ this
 1502 subsection, including allowing photographs of the victim's
 1503 property to be used as evidence at the criminal trial or the
 1504 juvenile proceeding in place of the victim's property if ~~when~~ no
 1505 substantial evidentiary issue related thereto is in dispute.

1506 (i) *Notification to employer and explanation to creditors*
 1507 *of victim or witness.*—A victim or witness who so requests shall
 1508 be assisted by law enforcement agencies and the state attorney

1509 in informing his or her employer that the need for victim and
 1510 witness cooperation in the prosecution of the case may
 1511 necessitate the absence of that victim or witness from work. A
 1512 victim or witness who, as a direct result of a crime or of his
 1513 or her cooperation with law enforcement agencies or a state
 1514 attorney, is subjected to serious financial strain shall be
 1515 assisted by such agencies and state attorney in explaining to
 1516 the creditors of such victim or witness the reason for such
 1517 serious financial strain.

1518 (j) *Notification of right to request restitution.*—Law
 1519 enforcement agencies and the state attorney shall inform the
 1520 victim of the victim's right to request and receive restitution
 1521 pursuant to s. 775.089 or s. 985.437, and of the victim's rights
 1522 of enforcement under ss. 775.089(6) and 985.0301 in the event an
 1523 offender does not comply with a restitution order. The state
 1524 attorney shall seek the assistance of the victim in the
 1525 documentation of the victim's losses for the purpose of
 1526 requesting and receiving restitution. In addition, the state
 1527 attorney shall inform the victim if and when restitution is
 1528 ordered. If an order of restitution is converted to a civil lien
 1529 or civil judgment against the defendant, the clerks shall make
 1530 available at their office, as well as on their website,
 1531 information provided by the Secretary of State, the court, or
 1532 The Florida Bar on enforcing the civil lien or judgment.

1533 (k) *Notification of right to submit impact statement.*—The
 1534 state attorney shall inform the victim of the victim's right to

1535 submit an oral or written impact statement pursuant to s.
 1536 921.143 and shall assist in the preparation of such statement if
 1537 necessary.

1538 (l) *Local witness coordination services.*—The requirements
 1539 for notification provided for in paragraphs (c), (d), and (i)
 1540 may be performed by the state attorney or public defender for
 1541 their own witnesses.

1542 (m) *Victim assistance education and training.*—Victim
 1543 assistance education and training shall be offered to persons
 1544 taking courses at law enforcement training facilities and to
 1545 state attorneys and assistant state attorneys so that victims
 1546 may be promptly, properly, and completely assisted.

1547 (n) *General victim assistance.*—Victims and witnesses shall
 1548 be provided with such other assistance, such as transportation,
 1549 parking, separate pretrial waiting areas, and translator
 1550 services in attending court, as is practicable.

1551 (o) *Victim's rights information card or brochure.*—A victim
 1552 of a crime shall be provided with a victim's rights information
 1553 card or brochure containing essential information concerning the
 1554 rights of a victim and services available to a victim as
 1555 required by state law.

1556 (p) *Information concerning escape from a state*
 1557 *correctional institution, county jail, juvenile detention*
 1558 *facility, or residential commitment facility.*—In any case where
 1559 an offender escapes from a state correctional institution,
 1560 private correctional facility, county jail, juvenile detention

1561 facility, or residential commitment facility, the institution of
 1562 confinement shall immediately notify the state attorney of the
 1563 jurisdiction where the criminal charge or petition for
 1564 delinquency arose and the judge who imposed the sentence of
 1565 incarceration. The state attorney shall thereupon make every
 1566 effort to notify the victim, material witness, parents or legal
 1567 guardian of a minor who is a victim or witness, or immediate
 1568 relatives of a homicide victim of the escapee. The state
 1569 attorney shall also notify the sheriff of the county where the
 1570 criminal charge or petition for delinquency arose. The sheriff
 1571 shall offer assistance upon request. When an escaped offender is
 1572 subsequently captured or is captured and returned to the
 1573 institution of confinement, the institution of confinement shall
 1574 again immediately notify the appropriate state attorney and
 1575 sentencing judge pursuant to this section.

1576 (q) *Presence of victim advocate during discovery*
 1577 *deposition; testimony of victim of a sexual offense.*—At the
 1578 request of the victim or the victim's parent, guardian, or
 1579 lawful representative, the victim advocate designated by state
 1580 attorney's office, sheriff's office, or municipal police
 1581 department, or one representative from a not-for-profit victim
 1582 services organization, including, but not limited to, rape
 1583 crisis centers, domestic violence advocacy groups, and alcohol
 1584 abuse or substance abuse groups shall be permitted to attend and
 1585 be present during any deposition of the victim. The victim of a
 1586 sexual offense shall be informed of the right to have the

1587 courtroom cleared of certain persons as provided in s. 918.16
 1588 when the victim is testifying concerning that offense.

1589 (r) *Implementing crime prevention in order to protect the*
 1590 *safety of persons and property, as prescribed in the State*
 1591 *Comprehensive Plan.*—By preventing crimes that create victims or
 1592 further harm former victims, crime prevention efforts are an
 1593 essential part of providing effective service for victims and
 1594 witnesses. Therefore, the agencies identified in this subsection
 1595 may participate in and expend funds for crime prevention, public
 1596 awareness, public participation, and educational activities
 1597 directly relating to, and in furtherance of, existing public
 1598 safety statutes. Furthermore, funds may not be expended for the
 1599 purpose of influencing public opinion on public policy issues
 1600 that have not been resolved by the Legislature or the
 1601 electorate.

1602 (s) *Attendance of victim at same school as defendant.*—If
 1603 ~~When~~ the victim of an offense committed by a juvenile is a
 1604 minor, the Department of Juvenile Justice shall request
 1605 information to determine if the victim, or any sibling of the
 1606 victim, attends or is eligible to attend the same school as the
 1607 offender. However, if the offender is subject to a presentence
 1608 investigation by the Department of Corrections, the Department
 1609 of Corrections shall make such request. If the victim or any
 1610 sibling of the victim attends or is eligible to attend the same
 1611 school as that of the offender, the appropriate agency shall
 1612 notify the victim's parent or legal guardian of the right to

1613 attend the sentencing or disposition of the offender and request
 1614 that the offender be required to attend a different school.

1615 (t) *Use of a polygraph examination or other truth-telling*
 1616 *device with victim.*—~~A~~ ~~No~~ law enforcement officer, prosecuting
 1617 attorney, or other government official may not ~~shall~~ ask or
 1618 require an adult, youth, or child victim of an alleged sexual
 1619 battery as defined in chapter 794 or other sexual offense to
 1620 submit to a polygraph examination or other truth-telling device
 1621 as a condition of proceeding with the investigation of such an
 1622 offense. The refusal of a victim to submit to such an
 1623 examination does ~~shall~~ not prevent the investigation, charging,
 1624 or prosecution of the offense.

1625 (u) *Presence of victim advocates during forensic medical*
 1626 *examination.*—At the request of the victim or the victim's
 1627 parent, guardian, or lawful representative, a victim advocate
 1628 from a certified rape crisis center shall be permitted to attend
 1629 any forensic medical examination.

1630 Section 57. Subsection (3) of section 960.17, Florida
 1631 Statutes, is amended to read:

1632 960.17 Award constitutes debt owed to state.—

1633 (3) The Florida Parole Commission on Offender Review shall
 1634 make the payment of the debt to the state a condition of parole
 1635 under chapter 947, unless the commission finds reasons to the
 1636 contrary. If the commission does not order payment, or orders
 1637 only partial payment, it shall state on the record the reasons
 1638 therefor.

1639 Section 58. Subsection (1) of section 985.04, Florida
 1640 Statutes, is amended to read:
 1641 985.04 Oaths; records; confidential information.—
 1642 (1) Except as provided in subsections (2), (3), (6), and
 1643 (7) and s. 943.053, all information obtained under this chapter
 1644 in the discharge of official duty by any judge, any employee of
 1645 the court, any authorized agent of the department, the Florida
 1646 ~~Parele~~ Commission on Offender Review, the Department of
 1647 Corrections, the juvenile justice circuit boards, any law
 1648 enforcement agent, or any licensed professional or licensed
 1649 community agency representative participating in the assessment
 1650 or treatment of a juvenile is confidential and may be disclosed
 1651 only to the authorized personnel of the court, the department
 1652 and its designees, the Department of Corrections, the Florida
 1653 ~~Parele~~ Commission on Offender Review, law enforcement agents,
 1654 school superintendents and their designees, any licensed
 1655 professional or licensed community agency representative
 1656 participating in the assessment or treatment of a juvenile, and
 1657 others entitled under this chapter to receive that information,
 1658 or upon order of the court. Within each county, the sheriff, the
 1659 chiefs of police, the district school superintendent, and the
 1660 department shall enter into an interagency agreement for the
 1661 purpose of sharing information about juvenile offenders among
 1662 all parties. The agreement must specify the conditions under
 1663 which summary criminal history information is to be made
 1664 available to appropriate school personnel, and the conditions

1665 under which school records are to be made available to
 1666 appropriate department personnel. Such agreement shall require
 1667 notification to any classroom teacher of assignment to the
 1668 teacher's classroom of a juvenile who has been placed in a
 1669 probation or commitment program for a felony offense. The
 1670 agencies entering into such agreement must comply with s.
 1671 943.0525, and must maintain the confidentiality of information
 1672 that is otherwise exempt from s. 119.07(1), as provided by law.

1673 Section 59. Subsection (2) of section 985.045, Florida
 1674 Statutes, is amended to read:

1675 985.045 Court records.—

1676 (2) The clerk shall keep all official records required by
 1677 this section separate from other records of the circuit court,
 1678 except those records pertaining to motor vehicle violations,
 1679 which shall be forwarded to the Department of Highway Safety and
 1680 Motor Vehicles. Except as provided in ss. 943.053 and
 1681 985.04(6)(b) and (7), official records required by this chapter
 1682 are not open to inspection by the public, but may be inspected
 1683 only upon order of the court by persons deemed by the court to
 1684 have a proper interest therein, except that a child and the
 1685 parents, guardians, or legal custodians of the child and their
 1686 attorneys, law enforcement agencies, the Department of Juvenile
 1687 Justice and its designees, the Florida Parole Commission on
 1688 Offender Review, the Department of Corrections, and the Justice
 1689 Administrative Commission shall always have the right to inspect
 1690 and copy any official record pertaining to the child. Public

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1691 defender offices shall have access to official records of
 1692 juveniles on whose behalf they are expected to appear in
 1693 detention or other hearings before an appointment of
 1694 representation. The court may permit authorized representatives
 1695 of recognized organizations compiling statistics for proper
 1696 purposes to inspect, and make abstracts from, official records
 1697 under whatever conditions upon the use and disposition of such
 1698 records the court may deem proper and may punish by contempt
 1699 proceedings any violation of those conditions.

1700 Section 60. This act shall take effect July 1, 2014.