

Judiciary Committee

April 11, 2014

8:00 AM

404 HOB

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Friday, April 11, 2014 08:00 am
End Date and Time: Friday, April 11, 2014 12:00 pm
Location: Sumner Hall (404 HOB)
Duration: 4.00 hrs

Consideration of the following bill(s):

CS/CS/HB 41 Florida Law Enforcement Officers' Hall of Fame by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Campbell, Kerner
CS/HB 105 Florida Civil Rights Act by Civil Justice Subcommittee, Berman
CS/HB 455 Restitution for Juvenile Offenses by Criminal Justice Subcommittee, Eagle
CS/HB 561 Attorneys for Dependent Children with Disabilities by Civil Justice Subcommittee, Fresen
CS/CS/HB 753 School Safety by Justice Appropriations Subcommittee, K-12 Subcommittee, Steube
CS/CS/HB 797 Clerks of Court by Finance & Tax Subcommittee, Civil Justice Subcommittee, Pilon
HB 903 Application of Foreign Law in Certain Cases by Combee
CS/HB 1017 Human Trafficking by Criminal Justice Subcommittee, Spano, Kerner
CS/HB 1021 Pub. Rec./Human Trafficking Victims by Criminal Justice Subcommittee, Spano
CS/CS/HB 1105 Sexual Predator & Sexual Offender Absconders by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Adkins
CS/HB 1135 Limitation of Civil Liability for Farmers by Agriculture & Natural Resources Subcommittee, Rader
CS/CS/HB 1215 False Personation by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Watson, B.
HB 1279 Marriage of Minors by Stafford

NOTICE FINALIZED on 04/09/2014 16:17 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

The bill will have an insignificant fiscal impact on DMS to maintain the area where the Hall of Fame is located. FDLE reports they will need one FTE, at a cost of \$63,142 to develop the guidelines that will govern the implementation of the Hall of Fame, and to solicit, review, and vet the applications prior to processing the names submitted for consideration. The bill provides an appropriation of \$63,142 in recurring general revenue funds to FDLE.

The bill is effective on October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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

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

Effect of the Bill

The bill provides the following legislative intent language:

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

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

The bill requires FDLE to annually accept recommendations of law enforcement officers from the Florida Police Chiefs' Association, the Florida Sheriffs' Association, Police Benevolent Association, the Fraternal Order of Police and State Law Enforcement Chiefs Association. Each association may submit a maximum of three nominations in any given year. FDLE may establish criteria and time periods for accepting and selecting recommendations.

After receiving nominee recommendations, FDLE must choose 10 nominees and submit them to the Governor and Cabinet. The Governor and Cabinet must then select five of the nominees to be inducted into the Hall of Fame. In making recommendations to the Governor and Cabinet, FDLE must give preference to law enforcement officers who were born in Florida or have adopted Florida as their home state.

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

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

² The American Police Hall of Fame, <http://www.aphf.org/> (last visited on April 8, 2014).

³ The Florida State Law Enforcement Officers Memorial, <http://www.floridastatefop.org/flmemorial.asp> (last visited on April 8, 2014).

⁴ The National Law Enforcement Officer Memorial, <http://www.nleomf.org/memorial/> (last visited on April 8, 2014).

B. SECTION DIRECTORY:

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

Section 2. Provides an appropriation.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

DMS

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

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

FDLE

The bill requires FDLE to handle the acceptance of potential nominees, and gives them ability to create criteria for nominee selection. FDLE reports that in order to implement these requirements, they will need one FTE, at a cost of \$63,142 to develop the guidelines that will govern the implementation, and to solicit, review, and vet the applications prior to processing the names submitted for consideration.⁷

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

The bill provides an appropriation of \$63,142 in recurring general revenue funds to FDLE.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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

⁶ *Id.*

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

⁸ *Id.*

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

On April 2, 2014, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorable as a committee substitute. The amendment removed the provision of the bill that the Hall of Fame would operate without appropriation of state funds. The amendment provides an appropriation of \$63,142 in recurring general revenue funds to FDLE to accept recommendations of persons to be considered for induction, choose nominees from among the recommendations submitted, and transmit the names to the Governor and Cabinet.

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

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

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

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

14 265.004 Florida Law Enforcement Officers' Hall of Fame.—

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

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

23 (a) The Department of Management Services shall set aside
 24 an appropriate public area on the Plaza Level of the Capitol
 25 Building for the Florida Law Enforcement Officers' Hall of Fame
 26 and shall consult with the Department of Law Enforcement

27 regarding the design and theme of the area.

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

34 (3)(a) The Department of Law Enforcement shall annually
 35 accept nominations of law enforcement officers to be considered
 36 for induction into the Florida Law Enforcement Officers' Hall of
 37 Fame from the Florida Police Chiefs Association, the Florida
 38 Sheriffs Association, the Florida Police Benevolent Association,
 39 the Fraternal Order of Police, and the State Law Enforcement
 40 Chiefs' Association. Each association may submit a maximum of
 41 three nominations annually. The department shall transmit a list
 42 of no more than ten nominees to the Governor and Cabinet, who
 43 will select up to five nominees to be inducted.

44 (b) In providing recommendations to the Governor and
 45 Cabinet, the Department of Law Enforcement shall give preference
 46 to law enforcement officers who were born in Florida or adopted
 47 Florida as their home state.

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

51 Section 2. For the 2014-2015 fiscal year, the sum of
 52 \$63,142 in recurring funds is appropriated from the General

CS/CS/HB 41

2014

53 Revenue Fund to the Department of Law Enforcement for the
54 purpose of implementing this act.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 50 and 51, insert:

6 (5) The Department of Law Enforcement shall adopt rules to
 7 implement the requirements of this section.

11 -----
 12 **T I T L E A M E N D M E N T**

13 Remove line 7 and insert:
 14 providing for rulemaking authority; providing an appropriation;
 15 providing an effective

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 105 Florida Civil Rights Act
SPONSOR(S): Civil Justice Subcommittee; Berman and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 220

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 1 N, As CS	Ward	Bond
2) State Affairs Committee	15 Y, 1 N	Stramski	Camechis
3) Judiciary Committee		Ward <i>Ward</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin. Title VII was amended in 1978 to specifically include discrimination based on pregnancy, childbirth, and related medical conditions as prohibited forms of sex discrimination.

The Florida Civil Rights Act of 1992 was enacted to "secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status..." Similar to federal law, the Florida Civil Rights Act prohibits a number of actions by employers as unlawful employment practices. For example, it is unlawful to discharge or fail to hire an individual or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment based on that individual's race, color, religion, sex, national origin, age, handicap, or marital status. However, unlike Title VII of the Civil Rights Act of 1964, the Florida Civil Rights Act has not been amended to specifically include a prohibition against pregnancy discrimination. State and federal courts in Florida to consider the issue have reached different conclusions as to whether the Florida Civil Rights Act prohibits discrimination based on pregnancy.

The bill specifically prohibits pregnancy discrimination in:

- Public lodging or food service establishments;
- Hiring for employment;
- Compensation for employment;
- Professional licensing; and
- Terms, conditions, benefits, or privileges of employment, including participation in labor organizations and labor-management committees.

The bill does not appear to have a fiscal impact on the state or local governments; however, it could have an indeterminate direct economic impact on the private sector.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Title VII of the Civil Rights Act of 1964¹

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination in employment on the basis of race, color, religion, national origin, or sex. Title VII covers employers with 15 or more employees and outlines a number of unlawful employment practices. For example, Title VII makes it unlawful for an employer to refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, based on race, color, religion, national origin, or sex.

Pregnancy Discrimination Act²

In 1976, the United States Supreme Court ruled in *General Electric Co. v. Gilbert*³ that Title VII did not include pregnancy discrimination as a form of sex discrimination under its prohibition against unlawful employment practices. The Pregnancy Discrimination Act (PDA), passed in 1978, amended Title VII to define the terms "because of sex" or "on the basis of sex," to prohibit discrimination against a woman due to pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.⁴ Under the PDA, an employer cannot discriminate against a woman on the basis of pregnancy in hiring, fringe benefits (such as health insurance), pregnancy and maternity leave, harassment, or any other term or condition of employment.⁵

Florida Civil Rights Act of 1992

The Florida Civil Rights Act of 1992 (FCRA) was enacted to "secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status..."⁶ The FCRA provides protection from discrimination in employment and public accommodations.

Similar to Title VII, the FCRA specifically provides a number of actions that, if undertaken by an employer, would be considered unlawful employment practices.⁷ For example, it is unlawful to discharge or fail to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment based on an individual's race, color, religion, sex, national origin, age, handicap, or marital status. Unlike Title VII, the FCRA has not been amended to specifically include a prohibition against pregnancy discrimination, although the question of

¹ 42 U.S.C. s. 2000e. *et seq.*

² Pub. L. No. 95-555, 95th Cong. (Oct. 31, 1978), codified as 42 U.S.C. s. 2000e(k).

³ 429 U.S. 125, 145 (1976).

⁴ The PDA defines the terms "because of sex" or "on the basis of sex" to include pregnancy, childbirth, or related conditions and women who are affected by pregnancy, childbirth, or related conditions. It further states that these individuals must be treated the same for employment purposes, including the receipt of benefits, as any other person who is not so affected but has similar ability or inability to work.

⁵ For more information, see U.S. Equal Employment Opportunity Commission, Facts about Pregnancy Discrimination, <http://www.eeoc.gov/facts/fs-preg.html> (last visited February 18, 2014).

⁶ Section 760.01, F.S.

⁷ Section 760.10, F.S. Note that this section does not apply to a religious corporation, association, educational institution, or society which conditions employment opportunities to members of that religious corporation, association, educational institution, or society.

whether the FCRA impliedly covers pregnancy discrimination is currently pending before the Florida Supreme Court.⁸

Pregnancy Discrimination in Florida

Although Title VII expressly includes pregnancy status as a component of sex discrimination, the FCRA does not. The fact that the FCRA is patterned after Title VII but has not been amended to include this provision has caused division among both federal and state courts as to whether the Florida Legislature intended to provide protection from discrimination on the basis of pregnancy under state law. Since the Florida Supreme Court has not yet decided the issue, the ability to bring a claim based on pregnancy discrimination varies among the jurisdictions.

The earliest case to address the issue of pregnancy discrimination under Florida law was *O'Laughlin v. Pinchback*.⁹ In this case, the plaintiff alleged that she was terminated from her position as a correctional officer based on pregnancy. The First District Court of Appeal held that the Florida Human Rights Act was preempted by Title VII, as amended, as it stood as "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress by not recognizing that discrimination against pregnant employees is sex based discrimination."¹⁰ By finding the Florida Human Relations Act¹¹ to be preempted by federal law, the court did not reach the question of whether the Florida law on its own prohibits pregnancy discrimination. However, the court did note that Florida law had not been amended to include a prohibition against pregnancy-based discrimination.

The Fourth District Court of Appeal in *Carsillo v. City of Lake Worth*¹² found that since the FCRA is patterned after Title VII, which considers pregnancy discrimination to be sex discrimination, the FCRA also bars such discrimination. The court recognized that the Florida statute had never been amended, but concluded that since Congress' original intent, as expressed by the PDA, was to prohibit this type of discrimination it was unnecessary for Florida to amend its statute to import the intent of the law after which it was patterned.

In contrast, the Third District Court of Appeal in *Delva v. Continental Group, Inc.*¹³ held that the FCRA does not prohibit pregnancy discrimination based on the *O'Laughlin* court's analysis that the FCRA had not been amended to include pregnancy status. The issue before the court was narrowly defined to whether the FCRA prohibited discrimination in employment on the basis of pregnancy; therefore, it did not address the preemption holding in *O'Laughlin*. The court certified the conflict with the *Carsillo* case to the Florida Supreme Court, where the case has been fully briefed and argued before the Court.¹⁴ A decision in the case has not been issued.

Federal courts interpreting the FCRA have similarly wrestled with whether pregnancy status is covered by its provisions.¹⁵ Like the state courts, the federal courts that have found that the FCRA does provide a cause of action based on pregnancy discrimination did so because the FCRA is patterned after Title VII, which bars pregnancy discrimination. The courts finding that the FCRA does not prohibit pregnancy

⁸ *Delva v. The Continental Group, Inc.*, Fla.Sup.Ct. Case No. SC12-2315. Oral argument was held Nov. 7, 2013.

⁹ 579 So.2d 788 (Fla. 1st DCA 1991). This case was brought under the Florida Human Rights Act of 1977, which was the predecessor to the Florida Civil Rights Act of 1992, and was also patterned after Title VII.

¹⁰ *Id.* at 792.

¹¹ The Florida Human Relations Act was the precursor to FCRA. Chs. 69-287, 72-48, and 77-341, L.O.F.

¹² 995 So.2d 1118 (Fla. 4th DCA 2008), *rev. denied*, 20 So.3d 848 (Fla. 2009).

¹³ 96 So.3d 956 (Fla. 3d DCA 2012), *reh'g denied*.

¹⁴ The case was filed with the Florida Supreme Court on October 16, 2012, and assigned case number SC12-2315.

¹⁵ Federal courts finding that the FCRA does not include a prohibition against pregnancy discrimination include: *Frazier v. T-Mobile USA, Inc.*, 495 F.Supp.2d 1185 (M.D. Fla. 2003), *Boone v. Total Renal Laboratories, Inc.*, 565 F.Supp.2d 1323 (M.D. Fla. 2008), and *DuChateau v. Camp Dresser & McKee, Inc.*, 822 F.Supp.2d 1325 (S.D. Fla. 2011). Federal courts finding that FCRA does provide protection against pregnancy discrimination include *Jolley v. Phillips Educ. Grp. of Cent. Fla., Inc.*, 1996 WL 529202 (M.D. Fla. 1996), *Terry v. Real Talent, Inc.*, 2009 WL 3494476 (M.D. Fla. 2009), and *Constable v. Agilysys, Inc.*, 2011 WL 2446605 (M.D. Fla. 2011).

discrimination primarily did so because the Legislature has not amended the FCRA to specifically protect pregnancy status.

Most recently, a Florida federal court concluded that the Florida Legislature intended to include pregnancy in its definition of 'sex,' and therefore discrimination based on pregnancy is an unlawful employment practice under the FCRA.¹⁶

Procedures for Filing Claims under Title VII and the FCRA

A Florida employee may file a charge of an unlawful employment practice with either the federal Equal Employment Opportunity Commission (EEOC) or the Florida Commission on Human Relations (FCHR).

A person who wishes to file a complaint with the EEOC must do so within 300 days of a violation in a jurisdiction with a fair employment practices agency (such as Florida, which has the FCHR), or within 180 days in a jurisdiction with no such agency.¹⁷

The EEOC may then investigate the charge of discrimination, or refer it to a local fair employment practices agency.¹⁸ The EEOC may also refer the charge for mediation. If within 180 days of the claim the EEOC dismisses a charge under Title VII, or if the EEOC has not conciliated a charge or filed suit within that time, the EEOC may issue upon request a notice to the complainant that the complainant may file suit against the alleged offending party. If the EEOC finds reasonable cause to believe that a violation of Title VII occurred, it may likewise issue a right to sue notice to the complainant if the claim cannot be resolved informally. The suit must then be filed within 90 days of the notice.¹⁹

A person who wishes to file a complaint with the FCHR must do so within 365 days of a violation. If a complaint is filed with the FCHR, the FCHR has 180 days to conciliate the claim or determine whether there is reasonable cause to conclude that a discriminatory practice prohibited by FCRA took place, at which point it must notify the complainant and respondent of its determination.²⁰ If the FCHR concludes that there is reasonable cause to conclude that a violation took place, or if it fails to make any determination as required, the aggrieved person may either bring a civil action in an appropriate court, which may be filed within one year of the determination of reasonable cause, or request an administrative hearing under sections 120.569 and 120.57, Fla. Stat., within 35 days of the determination of reasonable cause.²¹

If the FCHR determines that there is no reasonable cause to believe a violation of the FCRA occurred, a complainant may only request an administrative proceeding under sections 120.569 and 120.57, F.S. If the complainant prevails, a final order from the FCHR may be entered requiring affirmative relief, including back pay. The complainant then has one year to accept the affirmative relief offered, or to bring a civil action in state court as if there had originally been a determination of reasonable cause.²²

Remedies under Title VII and the FCRA

Remedies available to persons who bring employment discrimination claims differ depending on whether the claim is brought under Title VII or under the FCRA. If a plaintiff prevails under Title VII or the FCRA in an employment discrimination case, the plaintiff might be entitled to an order prohibiting

¹⁶ *Glass v. Captain Katanna's, Inc.*, 950 F.Supp.2d 1235 (M.D. Fla. 2013).

¹⁷ EEOC Compliance Manual, Chapter 2-IV. The enforcement procedures referenced in this paper do not apply to individuals affected by federal agencies, who have a separate process. 29 C.F.R. part 1614.

¹⁸ 29 C.F.R. s. 1601.70.

¹⁹ 42 U.S.C. s. 2000e-5(f)(1); 42 U.S.C. s. 12117.

²⁰ Section 760.11(3), F.S.

²¹ Section 760.11(6), F.S.

²² Section 760.11(7), F.S.

the discriminatory practice, as well as reinstatement or hiring, with or without back pay.²³ The amount of additional damages available, however, differs under the FCRA and Title VII.

A claimant who prevails in a discrimination claim against a private entity under the FCRA may recover up to \$100,000 in punitive damages.²⁴ Compensatory damages against private entities, such as damages for mental anguish, loss of dignity, and other intangible injuries, are not limited under the FCRA. However, the total recovery, including back pay, for a claimant who brings a discrimination claim against the state or its subdivisions is limited under the FCRA to \$300,000.²⁵

By contrast, the total amount of punitive and compensatory damages available to a prevailing plaintiff under Title VII depends on the size of the offending employer as follows: for employers with between 15 and 100 employees, the cap on compensatory and punitive damages is \$50,000; for employers with between 101 and 200 employees, the cap is \$100,000; for employers with between 201 and 500 employees, the cap is \$200,000; and for employers with more than 500 employees, the cap is \$300,000.²⁶ Unlike the FCRA, there apparently is no limitation on total recovery, including back pay, for a claimant who brings suit against the state or its subdivisions under Title VII, though the caps on compensatory and punitive damages would apply.

Effect of the Bill

The bill provides that pregnancy discrimination in employment and in public lodging and food service establishments is unlawful. The bill prohibits discrimination based on pregnancy in:

- Public lodging or food service accommodations;
- Hiring for employment;
- Compensation for employment;
- Professional licensing;
- Terms, conditions, benefits, or privileges of employment, including participation in labor organizations, employment agencies, and labor-management committees.

The bill also adds "benefits" to the existing list of employment perquisites that may not be used to discriminate for any of the prohibited reasons. The addition of the term "benefits" (line 102) may have no practical effect since courts routinely use the term "benefits" interchangeably with the existing statutory language "terms, conditions, or privileges of employment."²⁷ Courts have awarded employment "benefits" as damages without finding the word in the statute.²⁸ The term "benefits" is not included in the federal equivalent to this statute,²⁹ but is included in the federal provision which includes pregnancy in the definition of "sex."³⁰

Title VII provides that discrimination on the basis of sex includes "pregnancy, childbirth, or related medical conditions."³¹ This bill does not include a definition of pregnancy. As a result, it is unclear if the

²³ Section 760.11(5), F.S.; 42 U.S.C. s. 2000e-5(g).

²⁴ Section 760.11(5), F.S.

²⁵ Section 760.11(5), F.S., referring to the limited waiver of sovereign immunity in section 768.28, F.S.

²⁶ 42 U.S.C. s. 1981a(b).

²⁷ See, e.g., *Sunbeam Television Corp. v. Mitzel*, 83 So.3d 865 (Fla. 3d DCA 2012) and *Duchateau v. Camp, Dresser & McKee, Inc.*, 713 F.3d 1298,1300 (11th Cir. 2013) ("... a position that did not affect her compensation, benefits, or the terms of her employment.").

²⁸ *Sunbeam Television Corp. v. Mitzel*, 83 So.3d 865 (Fla. 3d DCA 2012).

²⁹ See 42 U.S.C. s. 2000e-2, which provides, "It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. . ."

³⁰ 42 U.S.C. s. 2000e (k).

³¹ 42 U.S.C. s. 2000e.

prohibition against pregnancy discrimination under this bill would prohibit discrimination against, or require accommodation for, women with certain conditions that are related to pregnancy.³²

B. SECTION DIRECTORY:

Section 1 amends s. 509.092, F.S., relating to public lodging establishments and public food service establishments.

Section 2 amends s. 760.01, F.S., revising the general purpose of the FCRA.

Section 3 amends s. 760.05, F.S., relating to functions of the Florida Commission on Human Relations.

Section 4 amends s. 760.07, F.S., providing civil and administrative remedies for pregnancy discrimination.

Section 5 amends s. 760.08, F.S., prohibiting discrimination on the basis of pregnancy in places of public accommodation.

Section 6 amends s. 760.10, F.S., prohibiting discrimination on the basis of pregnancy in employment and employment related matters.

Section 7 reenacts s. 760.11, F.S., to incorporate pregnancy discrimination into provisions relating to administrative and civil remedies for violations of the FCRA.

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 expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate economic impact on some private entities in those jurisdictions where courts interpret the FCRA as not covering claims of pregnancy discrimination. Private entities in those jurisdictions may be subject to increased liability for pregnancy discrimination as a result of this

³² For example, an adverse employment action against an employee because she was lactating was held to violate Title VII's prohibition on sex discrimination, as the lactation was a "related medical condition" of pregnancy and childbirth. *EEOC v. Houston Funding II, Ltd.*, 717 F.3d 425 (5th. Cir. 2013).

bill, due to the potential for higher compensatory damages awards under the FCRA than those available under Title VII. Additionally, some potential pregnancy discrimination claimants may have more time to file suit under state law as a result of this bill, as a claimant who receives a right to sue under state law has one year to file suit after receiving a right to sue notice, while a claimant who receives a right to sue notice from the federal EEOC under federal law must file suit within 90 days.

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:

Other Comments: Scope of the Prohibition of Discrimination on the Basis of Pregnancy

Title VII provides that discrimination on the basis of sex includes "pregnancy, childbirth, or related medical conditions."³³ This bill does not include a definition of pregnancy. As a result, it is unclear if the prohibition against pregnancy discrimination under this bill would prohibit discrimination against, or require accommodation for, women with certain conditions that are related to pregnancy.³⁴

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 13, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the definition of pregnancy.

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

³³ 42 U.S.C. s. 2000e.

³⁴ See *supra*, fn. 32.

27 reference thereto; providing an effective date.

28

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

30

31 Section 1. Section 509.092, Florida Statutes, is amended
32 to read:

33 509.092 Public lodging establishments and public food
34 service establishments; rights as private enterprises.—Public
35 lodging establishments and public food service establishments
36 are private enterprises, and the operator has the right to
37 refuse accommodations or service to any person who is
38 objectionable or undesirable to the operator, but such refusal
39 may not be based upon race, creed, color, sex, pregnancy,
40 physical disability, or national origin. A person aggrieved by a
41 violation of this section or a violation of a rule adopted under
42 this section has a right of action pursuant to s. 760.11.

43 Section 2. Subsection (2) of section 760.01, Florida
44 Statutes, is amended to read:

45 760.01 Purposes; construction; title.—

46 (2) The general purposes of the Florida Civil Rights Act
47 of 1992 are to secure for all individuals within the state
48 freedom from discrimination because of race, color, religion,
49 sex, pregnancy, national origin, age, handicap, or marital
50 status and thereby to protect their interest in personal
51 dignity, to make available to the state their full productive
52 capacities, to secure the state against domestic strife and

53 | unrest, to preserve the public safety, health, and general
 54 | welfare, and to promote the interests, rights, and privileges of
 55 | individuals within the state.

56 | Section 3. Section 760.05, Florida Statutes, is amended to
 57 | read:

58 | 760.05 Functions of the commission.—The commission shall
 59 | promote and encourage fair treatment and equal opportunity for
 60 | all persons regardless of race, color, religion, sex, pregnancy,
 61 | national origin, age, handicap, or marital status and mutual
 62 | understanding and respect among all members of all economic,
 63 | social, racial, religious, and ethnic groups; and shall endeavor
 64 | to eliminate discrimination against, and antagonism between,
 65 | religious, racial, and ethnic groups and their members.

66 | Section 4. Section 760.07, Florida Statutes, is amended to
 67 | read:

68 | 760.07 Remedies for unlawful discrimination.—Any violation
 69 | of any Florida statute making unlawful discrimination because of
 70 | race, color, religion, gender, pregnancy, national origin, age,
 71 | handicap, or marital status in the areas of education,
 72 | employment, housing, or public accommodations gives rise to a
 73 | cause of action for all relief and damages described in s.
 74 | 760.11(5), unless greater damages are expressly provided for. If
 75 | the statute prohibiting unlawful discrimination provides an
 76 | administrative remedy, the action for equitable relief and
 77 | damages provided for in this section may be initiated only after
 78 | the plaintiff has exhausted his or her administrative remedy.

79 The term "public accommodations" does not include lodge halls or
 80 other similar facilities of private organizations which are made
 81 available for public use occasionally or periodically. The right
 82 to trial by jury is preserved in any case in which the plaintiff
 83 is seeking actual or punitive damages.

84 Section 5. Section 760.08, Florida Statutes, is amended to
 85 read:

86 760.08 Discrimination in places of public accommodation.—
 87 All persons are ~~shall be~~ entitled to the full and equal
 88 enjoyment of the goods, services, facilities, privileges,
 89 advantages, and accommodations of any place of public
 90 accommodation, ~~as defined in this chapter,~~ without
 91 discrimination or segregation on the ground of race, color,
 92 national origin, sex, pregnancy, handicap, familial status, or
 93 religion.

94 Section 6. Subsections (1) and (2), paragraphs (a) and (b)
 95 of subsection (3), subsections (4) through (6), and paragraph
 96 (a) of subsection (8) of section 760.10, Florida Statutes, are
 97 amended to read:

98 760.10 Unlawful employment practices.—

99 (1) It is an unlawful employment practice for an employer:

100 (a) To discharge or to fail or refuse to hire any
 101 individual, or otherwise to discriminate against any individual
 102 with respect to compensation, benefits, terms, conditions, or
 103 privileges of employment, because of such individual's race,
 104 color, religion, sex, pregnancy, national origin, age, handicap,

105 or marital status.

106 (b) To limit, segregate, or classify employees or
 107 applicants for employment in any way which would deprive or tend
 108 to deprive any individual of employment opportunities, or
 109 adversely affect any individual's status as an employee, because
 110 of such individual's race, color, religion, sex, pregnancy,
 111 national origin, age, handicap, or marital status.

112 (2) It is an unlawful employment practice for an
 113 employment agency to fail or refuse to refer for employment, or
 114 otherwise to discriminate against, any individual because of
 115 race, color, religion, sex, pregnancy, national origin, age,
 116 handicap, or marital status or to classify or refer for
 117 employment any individual on the basis of race, color, religion,
 118 sex, pregnancy, national origin, age, handicap, or marital
 119 status.

120 (3) It is an unlawful employment practice for a labor
 121 organization:

122 (a) To exclude or to expel from its membership, or
 123 otherwise to discriminate against, any individual because of
 124 race, color, religion, sex, pregnancy, national origin, age,
 125 handicap, or marital status.

126 (b) To limit, segregate, or classify its membership or
 127 applicants for membership, or to classify or fail or refuse to
 128 refer for employment any individual, in any way which would
 129 deprive or tend to deprive any individual of employment
 130 opportunities, or adversely affect any individual's status as an

131 employee or as an applicant for employment, because of such
 132 individual's race, color, religion, sex, pregnancy, national
 133 origin, age, handicap, or marital status.

134 (4) It is an unlawful employment practice for any
 135 employer, labor organization, or joint labor-management
 136 committee controlling apprenticeship or other training or
 137 retraining, including on-the-job training programs, to
 138 discriminate against any individual because of race, color,
 139 religion, sex, pregnancy, national origin, age, handicap, or
 140 marital status in admission to, or employment in, any program
 141 established to provide apprenticeship or other training.

142 (5) Whenever, in order to engage in a profession,
 143 occupation, or trade, it is required that a person receive a
 144 license, certification, or other credential, become a member or
 145 an associate of any club, association, or other organization, or
 146 pass any examination, it is an unlawful employment practice for
 147 any person to discriminate against any other person seeking such
 148 license, certification, or other credential, seeking to become a
 149 member or associate of such club, association, or other
 150 organization, or seeking to take or pass such examination,
 151 because of such other person's race, color, religion, sex,
 152 pregnancy, national origin, age, handicap, or marital status.

153 (6) It is an unlawful employment practice for an employer,
 154 labor organization, employment agency, or joint labor-management
 155 committee to print, or cause to be printed or published, any
 156 notice or advertisement relating to employment, membership,

157 classification, referral for employment, or apprenticeship or
 158 other training, indicating any preference, limitation,
 159 specification, or discrimination, based on race, color,
 160 religion, sex, pregnancy, national origin, age, absence of
 161 handicap, or marital status.

162 (8) Notwithstanding any other provision of this section,
 163 it is not an unlawful employment practice under ss. 760.01-
 164 760.10 for an employer, employment agency, labor organization,
 165 or joint labor-management committee to:

166 (a) Take or fail to take any action on the basis of
 167 religion, sex, pregnancy, national origin, age, handicap, or
 168 marital status in those certain instances in which religion,
 169 sex, condition of pregnancy, national origin, age, absence of a
 170 particular handicap, or marital status is a bona fide
 171 occupational qualification reasonably necessary for the
 172 performance of the particular employment to which such action or
 173 inaction is related.

174 Section 7. For the purpose of incorporating the amendment
 175 made by this act to section 760.10(5), Florida Statutes, in a
 176 reference thereto, subsection (1) of section 760.11, Florida
 177 Statutes, is reenacted to read:

178 760.11 Administrative and civil remedies; construction.-

179 (1) Any person aggrieved by a violation of ss. 760.01-
 180 760.10 may file a complaint with the commission within 365 days
 181 of the alleged violation, naming the employer, employment
 182 agency, labor organization, or joint labor-management committee,

183 or, in the case of an alleged violation of s. 760.10(5), the
 184 person responsible for the violation and describing the
 185 violation. Any person aggrieved by a violation of s. 509.092 may
 186 file a complaint with the commission within 365 days of the
 187 alleged violation naming the person responsible for the
 188 violation and describing the violation. The commission, a
 189 commissioner, or the Attorney General may in like manner file
 190 such a complaint. On the same day the complaint is filed with
 191 the commission, the commission shall clearly stamp on the face
 192 of the complaint the date the complaint was filed with the
 193 commission. In lieu of filing the complaint with the commission,
 194 a complaint under this section may be filed with the federal
 195 Equal Employment Opportunity Commission or with any unit of
 196 government of the state which is a fair-employment-practice
 197 agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the
 198 complaint is filed is clearly stamped on the face of the
 199 complaint, that date is the date of filing. The date the
 200 complaint is filed with the commission for purposes of this
 201 section is the earliest date of filing with the Equal Employment
 202 Opportunity Commission, the fair-employment-practice agency, or
 203 the commission. The complaint shall contain a short and plain
 204 statement of the facts describing the violation and the relief
 205 sought. The commission may require additional information to be
 206 in the complaint. The commission, within 5 days of the complaint
 207 being filed, shall by registered mail send a copy of the
 208 complaint to the person who allegedly committed the violation.

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209 | The person who allegedly committed the violation may file an
 210 | answer to the complaint within 25 days of the date the complaint
 211 | was filed with the commission. Any answer filed shall be mailed
 212 | to the aggrieved person by the person filing the answer. Both
 213 | the complaint and the answer shall be verified.
 214 | Section 8. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 173 and 174, insert:

Section 7. Subsection (8) of section 760.11, Florida Statutes, is amended to read:

760.11 Administrative and civil remedies; construction.-

(8) In the event that the commission fails to conciliate or determine whether there is reasonable cause on any complaint under this section within 180 days of the filing of the complaint, an aggrieved person may proceed under subsection (4), as if the commission determined that there was reasonable cause. Should the aggrieved person elect to file a civil action under paragraph (4)(a), such action must be filed within one year after the expiration of the 180 day reasonable cause determination period under subsection (3).



Amendment No. 1

18 Section 8. An aggrieved person affected by the amendments
19 to s. 760.11(8), Florida Statutes, in this act has until June
20 30, 2015, to file a civil action pursuant to s. 760.11, Florida
21 Statutes. If a claim is filed before June 30, 2015, the claim
22 shall be determined without regard to such amendments.

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

Remove line 23 and insert:
pregnancy; amending s. 760.11, F.S.; limiting the time for
filing a civil action in certain circumstances; providing a
period for making a claim in court to file a civil action that
would otherwise be barred by the amendments made by this act;
reenacting s. 760.11(1), F.S., relating to

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 455 Restitution for Juvenile Offenses
SPONSOR(S): Criminal Justice Subcommittee; Eagle and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1040

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cox	Cunningham
2) Health & Human Services Committee	16 Y, 0 N	Poche	Calamas
3) Justice Appropriations Subcommittee	10 Y, 2 N	deNagy	Lloyd
4) Judiciary Committee		Cox <i>Yaa</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

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

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Restitution in Juvenile Criminal Cases

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

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

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

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

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

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

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

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

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

⁴ Section 985.35(4) and (5), F.S.

⁵ Section 985.35(4)(a), F.S.

⁶ Section 985.437(2), F.S.

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

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

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

¹⁰ Section 985.437(2), F.S.

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

¹² Section 985.437(4), F.S.

¹³ Section 985.437(5), F.S.

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

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

Failing to Pay Restitution Order

Section 985.0301(h), F.S., states that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089, F.S. Section 775.089, F.S., provides that a restitution order may be enforced in the same manner as a judgment in a civil lien. Thus, if a child or parent fails to pay court-ordered restitution, a civil lien may be placed upon the parent or child's real property.¹⁵ The court may transfer a restitution order to a collection court or a private collection agency to collect unpaid restitution.¹⁶

Effect of the Bill

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

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

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

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

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

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

B. SECTION DIRECTORY:

Section 1: Amends s. 985.35, F.S., relating to adjudicatory hearings; withheld adjudications; orders of adjudication.

Section 2: Amends s. 985.437, F.S., relating to restitution.

¹⁴ Section 985.513(1)(b), F.S.

¹⁵ Section 775.089(5), F.S.

¹⁶ Section 985.045, F.S., also states that this is allowed in a case where the circuit court has retained jurisdiction over the child and the child's parent or legal guardian.

Section 3: Amends s. 985.513, F.S., relating to powers of the court over parent or guardian at disposition.

Section 4: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

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

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A bill to be entitled
 An act relating to restitution for juvenile offenses;
 amending s. 985.35, F.S.; conforming provisions to
 changes made by the act; amending s. 985.437, F.S.;
 requiring a child's parent or guardian, in addition to
 the child, to make restitution for damage or loss
 caused by the child's offense; providing for payment
 plans in certain circumstances; authorizing the parent
 or guardian to be absolved of liability for
 restitution in certain circumstances; authorizing the
 court to order both parents or guardians liable for
 the child's restitution regardless of one parent
 having sole parental responsibility; specifying that
 the Department of Children and Families, foster
 parents, and specified agencies contracted with the
 department are not guardians for purposes of
 restitution; amending s. 985.513, F.S.; removing
 duplicative provisions authorizing the court to
 require a parent or guardian to be responsible for any
 restitution ordered against the child; providing an
 effective date.

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

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

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

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

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

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

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

51 985.437 Restitution.—

52 (1) Regardless of whether adjudication is imposed or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 561 Attorneys for Dependent Children with Disabilities

SPONSOR(S): Civil Justice Subcommittee; Fresen

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 972

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 0 N, As CS	Ward	Bond
2) Justice Appropriations Subcommittee	12 Y, 0 N	deNagy	Lloyd
3) Judiciary Committee		Ward <i>DW</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

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

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Dependent Children

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

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

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

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

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

¹ Section 39.001(1)(a), F.S.

² Section 39.01(15), F.S.

³ Section 39.502(1), F.S.

⁴ Section 39.01(15), F.S.

⁵ Section 39.301(1), F.S.

⁶ *Id.*

⁷ Section 39.501(3)(c), F.S.

⁸ Section 39.402(1), F.S.

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

¹⁰ Section 39.822(1), F.S.

¹¹ Section 39.4085(20), F.S.

¹² Section 39.507, F.S.

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

¹⁴ Section 39.01(11), F.S.

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

¹⁶ Section 39.521(1)(c), F.S.

¹⁷ Section 39.621(1), F.S.

Dependent Children in Nursing Homes

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

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

Representation in Dependency Cases

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

Effect of the Bill

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

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

The bill provides legislative findings that:

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

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

¹⁹ Section 39.822, F.S.

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

The bill provides that:

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

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

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

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

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

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

²⁰ Department of Children and Families, 2014 Agency Legislative Bill Analysis on HB 561
 STORAGE NAME: h0561d.JDC.DOCX
 DATE: 4/3/2014

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

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

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

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

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

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

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

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

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

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

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

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

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

53 pro bono attorney to appear on behalf of a child.

54 (2) An attorney shall be appointed for a dependent child
 55 with disabilities who meets one or more of the following
 56 criteria:

57 (a) A dependent child who is medically dependent or
 58 technologically dependent, who because of a medical condition
 59 requires continuous therapeutic interventions or skilled
 60 interventions, and who resides in a skilled nursing facility or
 61 is being considered for placement in a skilled nursing facility;

62 (b) A dependent child who is prescribed a psychotropic
 63 medication and refuses to take the psychotropic medication;

64 (c) A dependent child with a suspected or known diagnosis
 65 of developmental disability as defined in s. 393.063;

66 (d) A dependent child being placed in a residential
 67 treatment center or being considered for placement in a
 68 residential treatment center; or

69 (e) A dependent child who has been a victim of sexual
 70 abuse or human trafficking and who is suspected to be in need of
 71 mental health treatment.

72 (3) A court order appointing an attorney under this
 73 section must be in writing. The appointment continues in effect
 74 until the attorney is allowed to withdraw, the attorney is
 75 discharged by the court, or the case is dismissed. An attorney
 76 who is appointed to represent the child shall provide the
 77 complete range of legal services from removal from the home or
 78 initial appointment through all available appellate proceedings.

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

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

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

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

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



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 Fresen offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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

39.01305 Appointment of an attorney for a dependent child
with certain special needs.-

(1) (a) The Legislature finds that:

1. All children in proceedings under chapter 39, Florida
Statutes, have important interests at stake, such as health,
safety, and well-being and the need to obtain permanency.

2. A dependent child who has certain special needs has a
particular need for an attorney to represent the dependent child
in proceedings under chapter 39, Florida Statutes, as well as in
fair hearings and appellate proceedings, so that the attorney



Amendment No. 1

18 may address the child's medical and related needs and the
19 services and supports necessary for the child to live
20 successfully in the community.

21 (b) The Legislature recognizes the existence of
22 organizations that provide attorney representation to children
23 in certain jurisdictions throughout the state. Further, the
24 statewide guardian ad litem program provides best interest
25 representation for dependent children in every jurisdiction in
26 accordance with state and federal law. The Legislature,
27 therefore, does not intend that funding provided for
28 representation under this act supplant proven and existing
29 organizations representing children. Instead, the Legislature
30 intends that funding provided for representation under this act
31 be an additional resource for the representation of more
32 children in these jurisdictions, to the extent necessary to meet
33 the requirements of chapter 39, Florida Statutes, with the
34 cooperation of existing local organizations or through the
35 expansion of those organizations. The Legislature encourages the
36 expansion of pro bono representation for children. This act is
37 not intended to limit the ability of a pro bono attorney to
38 appear on behalf of a child.

39 (2) An attorney shall be appointed for a dependent child
40 who:

41 (a) Resides in a skilled nursing facility or is being
42 considered for placement in a skilled nursing home;



Amendment No. 1

43 (b) Is prescribed a psychotropic medication but declines
44 to assent to the psychotropic medication;

45 (c) Has a diagnosis of developmental disability as defined
46 in s. 393.063;

47 (d) Is being placed in a residential treatment center or
48 being considered for placement in a residential treatment
49 center; or

50 (e) Is a victim of human trafficking as defined in s.
51 787.06(2)(d).

52 (3)(a) Before a court may appoint an attorney who may be
53 compensated pursuant to this section, the court must request a
54 recommendation from the statewide guardian ad litem office for
55 an attorney who is willing to represent a child without
56 additional compensation. If such an attorney is available within
57 15 days after the court's request, the court must appoint that
58 attorney. However, the court may appoint a compensated attorney
59 within the 15-day period if the statewide guardian ad litem
60 office informs the court that it will not be able to recommend
61 an attorney in that time period.

62 (b) After an attorney is appointed, the appointment
63 continues in effect until the attorney is allowed to withdraw or
64 is discharged by the court or until the case is dismissed. An
65 attorney who is appointed under this section to represent the
66 child shall provide the complete range of legal services, from
67 the removal from home or from the initial appointment through
68 all available appellate proceedings. With the permission of the

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Amendment No. 1

69 court, the attorney for the dependent child may arrange for
70 supplemental or separate counsel to represent the child in
71 appellate proceedings. A court order appointing an attorney
72 under this section must be in writing.

73 (4) Except if the attorney has agreed to provide pro bono
74 services, an appointed attorney or organization must be
75 adequately compensated and provided with access to funding for
76 expert witnesses, depositions, and other costs of litigation.
77 Payment to an attorney is subject to appropriations and subject
78 to review by the Justice Administrative Commission for
79 reasonableness. The Justice Administrative Commission shall
80 contract with attorneys appointed by the court. Attorney fees
81 may not exceed \$3,000 per child per year.

82 (5) The department shall develop procedures to identify a
83 dependent child who has a special need specified under
84 subsection (1) and to request that a court appoint an attorney
85 for the child. The department may adopt rules to administer this
86 section.

87 (6) This section does not limit the authority of the court
88 to appoint an attorney for a dependent child in a proceeding
89 under this chapter.

90 (7) Implementation of this section is subject to
91 appropriations expressly made for that purpose.

92
93 Section 2. This act shall take effect July 1, 2014.
94



Amendment No. 1

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

Remove everything before the enacting clause and insert:
An act relating to attorneys for dependent children with special needs; providing legislative findings and intent; creating s. 39.01305, F.S.; requiring appointment of an attorney to represent a dependent child who meets one or more specified criteria; requiring that, if one is available, an attorney who is willing to represent a child without additional compensation be appointed; requiring that the appointment be in writing; requiring that the appointment continue in effect until the attorney is allowed to withdraw or is discharged by the court or until the case is dismissed; requiring that an attorney not acting in a pro bono capacity be adequately compensated for his or her services and have access to funding for certain costs; providing for financial oversight by the Justice Administrative Commission; providing a limit on attorney fees; requiring the Department of Children and Families to develop procedures to identify dependent children who qualify for an attorney; authorizing the department to adopt rules; providing applicability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 753 School Safety

SPONSOR(S): Justice Appropriations Subcommittee; K-12 Subcommittee and Steube

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 968

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	9 Y, 4 N, As CS	Brink	Ahearn
2) Justice Appropriations Subcommittee	8 Y, 4 N, As CS	McAuliffe	Lloyd
3) Judiciary Committee		Aziz <i>PA</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

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

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

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

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

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

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

The bill specifies that the required training will be created and defined by the Criminal Justice Standards and Training Commission which is administered by the Florida Department of Law Enforcement (FDLE). According to FDLE, the cost to develop and implement the training required by this bill would be \$157,927. This bill provides an appropriation of \$157,927 nonrecurring general revenue funds.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Gun Free School Zones

Federal Law

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

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

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

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

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

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

² 18 U.S.C. s. 922(q)(2)(B).

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

⁴ 18 U.S.C. s. 922(q)(3)(B).

⁵ 18 U.S.C. s. 927.

Florida Law

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

- Exhibition of a weapon⁷ or firearm in the presence of another in a rude, careless, angry, or threatening manner on school property or a school bus, at a school bus stop or school-sponsored event, or within 1,000 feet⁸ of a K-12 public or private school, during school hours or at the time of a school activity.⁹ Such exhibition is a third degree felony,¹⁰ unless it is made in lawful self-defense.¹¹
- Possession of a weapon¹² or firearm, "except as authorized in support of school-sanctioned activities, at a school-sponsored event or on the property of any school, school bus, or school bus stop."¹³ Penalties for such possession vary, as follows:
 - A person who willfully and knowingly possesses a firearm unlawfully on school property or a school bus or at a school bus stop or school-sponsored activity or event commits a third degree felony.¹⁴
 - A person who fails to securely store a firearm, enabling a minor to access it who then unlawfully possesses it on school property or a school bus or at a school bus stop or school-sponsored activity or event, commits a second degree misdemeanor.¹⁵
 - A person who discharges a firearm while unlawfully possessing it on school property or a school bus or at a school bus stop or school-sponsored activity or event, commits a second degree felony,¹⁶ unless discharged for lawful defense of self or others or for a lawful purpose.¹⁷

The penalties for unlawful exhibition or possession of a firearm or weapon differ for licensed concealed weapons permit holders. Violations by such individuals constitute a second degree misdemeanor.¹⁸

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

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

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

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

⁹ Section 790.115(1), F.S.

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

¹¹ Section 790.115(1), F.S.

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

¹³ Section 790.115(2)(a), F.S.

¹⁴ Section 790.115(2)(c)1, F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹⁵ Section 790.115(2)(c)2, F.S. This does not apply if the firearm was securely stored and the minor obtains the firearm as a result of an unlawful entry by any person or to members of the Armed Forces, National Guard, State Militia, or law enforcement officers, with respect to firearm possession by a minor which occurs during or incidental to the performance of their official duties. A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

¹⁶ A second degree felony is punishable by a term of imprisonment not exceeding 15 years and a fine not exceeding \$10,000.

¹⁷ Section 790.115(2)(d), F.S.

¹⁸ Sections 790.115(2)(e) and 790.06(12)(a) and (d), F.S.

- In a case to a school-approved firearms program;
- In a case to a career center having a firearms training range; or
- In a vehicle by a person who is at least 18 years of age and the firearm is securely encased or not readily accessible for immediate use.¹⁹

School districts may adopt policies waiving the vehicle exception for purposes of student and campus parking privileges.²⁰

Concealed Weapons Permits

Florida law authorizes the Department of Agriculture and Consumer Services (DACS) to issue a concealed weapons permit (CWP) to individuals who meet statutory qualifications. Among other criteria, CWP applicants must pass a fingerprint-based criminal background check and complete a CWP training class. The CWP is a photo identification that enables the holder to carry a concealed weapon or firearm in public, except for specified locations, e.g., school or college athletic events; elementary, secondary, and postsecondary schools; and career centers.²¹

School Safety

Emergency Policies

Florida law requires each district school board to formulate policies and procedures for emergency response drills and actual emergencies. These policies must include procedures for responding to various emergencies, such as fires, natural disasters, and bomb threats. Commonly used alarm system responses for specific types of emergencies must be incorporated into such policies.²²

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

- Develop a district-wide plan for potential attacks against school sites;
- Develop a checklist with step-by-step emergency procedures for use in every classroom which includes, among other things, procedures for weapons and hostage situations; and
- Share emergency plans and procedures with designated school and school district personnel, identify training for all types of school staff and staff that require specialized training, and incorporate such training into the Master Plan for In-Service Training.²³

Each district school superintendent must make recommendations to the school board for improving emergency response policies based upon the self-assessment results. The self-assessment results and superintendent's recommendations must be addressed in a publicly noticed school board meeting. The results of the self-assessment and any school board action on the superintendent's recommendations must be reported to the Commissioner of Education within 30 days after the school board meeting.²⁴

¹⁹ Section 790.115(2)(a), F.S.

²⁰ *Id.*; see, e.g., Policies 1217, 3217, 4217, 5772, and 7217, Leon County School Board, <http://www.neola.com/leon-fl/> (last visited April 3, 2014).

²¹ Section 790.06(12)(a), F.S.

²² Section 1006.07(4)(a), F.S. Additionally, district school boards must establish model emergency management and preparedness procedures for weapon-use and hostage situations; hazardous materials or toxic chemical spills; weather emergencies, including hurricanes, tornadoes, and severe storms; and exposure resulting from man-made emergencies. Section 1006.07(4)(b), F.S.

²³ Section 1006.07(6), F.S.; Florida Department of Education, *District Safety and Security Best Practices*, <http://www.fldoe.org/EM/security-practices.asp> (last visited Feb. 28, 2014). The self-assessment is developed by the Office of Program Policy Analysis and Government Accountability. *Id.*

²⁴ Section 1006.07(6), F.S.

School Safety Officers

School safety officers are certified law enforcement officers who are employed by either a law enforcement agency or a district school board. A school safety officer has the authority to carry firearms or other weapons when performing official duties.²⁵ School boards are authorized, but not required, to commission and assign to schools school safety officers for the protection of school personnel, property, and students within the school district. School boards may enter into mutual aid agreements with one or more law enforcement agencies. A school safety officer's salary may be paid jointly by the school board and the law enforcement agency, if mutually agreed to.²⁶

Background Screening

Florida law requires school district employees to undergo a fingerprint-based background screening as a condition of employment.²⁷ Instructional and noninstructional personnel²⁸ and noninstructional school district employees and contracted personnel²⁹ must undergo Level 2 background screening.³⁰ Level 2 background screening requires individuals to be screened against a statutorily prescribed list of 51 criminal offenses.³¹ Such employees must be rescreened every five years.³²

Available Firearms and Security Training

Individuals seeking a Class "D" license as a private security officer must complete at least 40 hours of professional training by a provider licensed by DACS.³³ The training addresses legal liability issues and court procedures; personal security; traffic and crowd control; fire detection and life safety; crime and accident prevention; terrorism awareness; first aid; emergency response procedures; ethics; and patrol, communication, observation, report writing, and interviewing techniques.³⁴

Individuals holding a Class "G" statewide firearm license must annually complete four hours of firearms recertification training taught by a licensed firearms instructor as a condition of license renewal.³⁵ Such training includes a review of legal aspects of firearms use and when to use a gun, operational firearms safety and mechanical training, and range-based firearms requalification.³⁶ In lieu of proof of statewide firearms recertification training, such individuals may submit:

- Proof of current certification as a law enforcement officer or correctional officer and completion of law enforcement firearms requalification training annually during the previous two years of the licensure period;
- Proof of current certification as a federal law enforcement officer and receipt of law enforcement firearms training administered by a federal law enforcement agency annually during the

²⁵ Section 1006.12(2)(a) and (c), F.S.

²⁶ Section 1006.12(2)(b) and (d), F.S.

²⁷ Sections 1012.32, 1012.465, and 1012.467, F.S. Private schools participating in educational choice scholarship programs must also submit fingerprints of employees and contracted personnel with direct student contact to the Florida Department of Law Enforcement. See ss. 943.0542 and 1002.421(2)(i), F.S.

²⁸ Instructional and non-instructional personnel are individuals who are hired or contracted to fill positions that require direct contact with students in any public school. Section 1012.32(2), F.S.

²⁹ Non-instructional school district employees and contracted personnel are individuals who are permitted access to school grounds when students are present; who have direct contact with students; or who have access to, or control of, school funds. Section 1012.465(1), F.S.

³⁰ Sections 1012.32(1)-(2), 1012.465(2), and 1012.56(10), F.S.

³¹ See ss. 435.04, 1012.32(2), 1012.465(1), and 1012.56(10), F.S.

³² Sections 1012.465(2) and 1012.56(10)(b), F.S.

³³ Section 493.6303(4)(a), F.S.

³⁴ Florida Department of Agriculture and Consumer Services, *Security Officer Training Curriculum Guide* (July 2010)(on file with House Judiciary Committee)[hereinafter *Security Officer Training*].

³⁵ Section 493.6113(b), F.S.

³⁶ *Security Officer Training*, *supra* note 33.

- previous two years of the licensure period; or
- A Florida Criminal Justice Standards and Training Commission Instructor Certificate, National Rifle Association Private Security Firearm Instructor Certificate, or a firearms instructor certificate issued by a federal law enforcement agency and proof of having completed requalification training during the previous two years of the licensure period.³⁷

Effect of Proposed Changes

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

The bill requires designated personnel to submit to the authorizing principal or superintendent proof of completion of a minimum of 40 hours of a school safety program and to annually complete eight hours of active shooter training and four hours of firearm proficiency training. The bill specifies that the required training is created and defined by the Criminal Justice Standards and Training Commission and that the training programs are administered by the State of Florida Criminal Justice Training Centers.³⁸ The bill is silent regarding whether the designee or school district is to pay the cost of training, if any. Accordingly, each district can decide how expenses for designee training are to be borne.

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

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

The bill requires designees who are volunteers to undergo a level 2 background screening and provides principals and superintendents the authority to require additional screening for all designees. The bill specifies that the state and national fingerprint processing and retention fees will be borne by the designee or the school. The bill also requires the school to notify the Department of Law Enforcement regarding any person whose fingerprints have been retained but who are no longer a designee.

The bill requires district school board policies and procedures for emergencies and emergency drills to include active shooter and hostage situations. The bill requires each district school board to address active shooter situations in the board's model emergency management and emergency preparedness

³⁷ Section 493.6113(3)(b), F.S.

³⁸ The Commission is comprised of 19 members including various law enforcement and correctional personnel, the attorney general or a proxy, and a Florida resident who is not a law enforcement or correctional personnel. The Commission establishes various training standards and training programs and requirements and performs other duties. Florida Department of Law Enforcement, *Criminal Justice Standards & Training Commission*, <http://www.fdle.state.fl.us/content/getdoc/91a75023-5a74-40ef-814d-8e7e5b622d4d/cjstc-home-page.aspx> (last visited March 12, 2014). The Criminal Justice Professionalism Division of the Florida Department of Law Enforcement provides staff support to the Commission. Florida Department of Law Enforcement, *Criminal Justice Professionalism Division*, <https://www.fdle.state.fl.us/Content/getdoc/05c013ca-a32e-48a1-aca8-df7f06854d49/CJP-Home-Page.aspx> (last visited March 12, 2014). A list of State of Florida Criminal Justice Training Centers can be found at <https://www.fdle.state.fl.us/Content/getdoc/f1431117-7788-4e70-bb0a-86d4f7717558/Training-Centers.aspx> (last visited March 12, 2014).

procedures. The training for each school must be conducted by the law enforcement agency or agencies that are designated as first responders to the school's campus.

The bill requires each district school superintendent to provide recommendations to improve school safety and security to the local law enforcement agencies that are first responders to the district's school campuses. Currently, these recommendations are only provided to the district school board.³⁹

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

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

B. SECTION DIRECTORY:

Section 1. Provides a statement of legislative intent.

Section 2. Amends s. 790.115, F.S., relating to possessing or discharging weapons at a school-sponsored event or on school property prohibited; penalties; exceptions.

Section 3. Amends s. 1006.07, F.S., relating to district school board duties relating to student discipline and school safety.

Section 4. Amends s. 1006.12, F.S., relating to school resource officers and school safety officers.

Section 5. Amends s. 435.04, F.S., relating to Level 2 screening standards.

Section 6. Amends s. 790.251, F.S., relating to protection of the right to keep and bear arms in motor vehicles for self-defense and other lawful purposes.

Section 7. Amends s. 921.0022, F.S., relating to Criminal Punishment Code.

Section 8. Amends s. 1012.315, F.S., relating to disqualification from employment.

Section 9. Provides an appropriation.

Section 10. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill specifies that the required training will be created and defined by the Criminal Justice Standards and Training Commission which is administered by the Florida Department of Law Enforcement (FDLE). According to FDLE, School Safety Officer, Firearms Proficiency, and Active

³⁹ Section 1006.07(6), F.S.
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DATE: 4/9/2014

Shooter training would be required for school safety designees as provided in this bill. The Firearms Proficiency Course and Active Shooter Course can be developed using existing materials. The School Safety Officer Course for Civilians, however, is unique and must take into consideration all Florida statutes governing the school safety officer's authority to act. Also, the safety of the school safety officer must be addressed in the training as well as limited first responder activity, officer survival, tactical operations, and environmental considerations.

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

This bill provides a nonrecurring appropriation of \$157,927 in general revenue funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that s. 790.115, F.S., does not apply to designees in the conduct of official school duties.⁴⁰ Among other things, this appears to exempt designees, when performing official school duties, from penalties for failure to securely store a firearm, enabling a minor to access it who then unlawfully possesses it on school property or a school bus or at a school bus stop or school-sponsored activity or event.

⁴⁰ This could be construed to mean that no provisions of the section, including the provisions of this bill, would apply to designees.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

On April 2, 2014, the Justice Appropriations Subcommittee adopted two amendments and reported the bill favorable as a committee substitute. Amendment one clarifies that the state and national fingerprint processing and retention fees will be borne by the designee or the school. The bill also requires the school to notify the Department of Law Enforcement regarding any person whose fingerprints have been retained but who are no longer a designee. Amendment two provides a nonrecurring appropriation of \$157,927 in general revenue funds.

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

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

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

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

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

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

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

~~(2)(1)~~ A person who exhibits any sword, sword cane, firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade, box cutter, or common pocketknife, except as authorized in support of school-sanctioned activities, in the presence of one

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

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

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

79 duties.

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

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

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

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

104 d. A school district employee or volunteer as otherwise

105 provided in this subsection.

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

118 (c) The designee's fingerprints must be submitted by the
 119 school, or an entity or vendor as authorized by s. 943.053(13).
 120 The fingerprints shall be forwarded to the Department of Law
 121 Enforcement for state processing, and the Department of Law
 122 Enforcement shall forward the fingerprints to the Federal Bureau
 123 of Investigation for national processing.

124 (d) All fingerprints submitted to the Department of Law
 125 Enforcement as required under this subsection shall be retained
 126 by the Department of Law Enforcement as provided under s.
 127 943.05(2)(g) and (h) and enrolled in the Federal Bureau of
 128 Investigation's national retained print arrest notification
 129 program. Fingerprints shall be enrolled in the national retained
 130 print arrest notification program when the Department of Law

131 Enforcement begins participation with the Federal Bureau of
 132 Investigation. Arrest fingerprints will be searched against the
 133 retained prints by the Department of Law Enforcement and the
 134 Federal Bureau of Investigation, and any arrest record that is
 135 identified shall be reported to the school by the Department of
 136 Law Enforcement.

137 (e) The fees for state and national fingerprint
 138 processing, along with the fingerprint retention fees, shall be
 139 borne by the designee or school. The state shall pay the cost
 140 for fingerprint processing as authorized in s. 943.053(3)(b) for
 141 records provided to persons or entities other than those
 142 specified as exceptions therein.

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

147 (g) The school shall screen background results to
 148 determine if a designee meets level 2 background screening
 149 requirements under s. 435.04.

150 (4)(2)(a) A person shall not possess any firearm, electric
 151 weapon or device, destructive device, or other weapon as defined
 152 in s. 790.001(13), including a razor blade or box cutter, except
 153 as authorized in support of school-sanctioned activities, at a
 154 school-sponsored event or on the property of any school, school
 155 bus, or school bus stop; however, a person may carry a firearm:
 156 1. In a case to a firearms program, class or function

157 | which has been approved in advance by the principal or chief
 158 | administrative officer of the school as a program or class to
 159 | which firearms could be carried;

160 | 2. In a case to a career center having a firearms training
 161 | range; or

162 | 3. In a vehicle pursuant to s. 790.25(5); except that
 163 | school districts may adopt written and published policies that
 164 | waive the exception in this subparagraph for purposes of student
 165 | and campus parking privileges.

166 |

167 | ~~For the purposes of this section, "school" means any preschool,~~
 168 | ~~elementary school, middle school, junior high school, secondary~~
 169 | ~~school, career center, or postsecondary school, whether public~~
 170 | ~~or nonpublic.~~

171 | (b) A person who willfully and knowingly possesses any
 172 | electric weapon or device, destructive device, or other weapon
 173 | as defined in s. 790.001(13), including a razor blade or box
 174 | cutter, except as authorized in support of school-sanctioned
 175 | activities, in violation of this subsection commits a felony of
 176 | the third degree, punishable as provided in s. 775.082, s.
 177 | 775.083, or s. 775.084.

178 | (c)1. A person who willfully and knowingly possesses any
 179 | firearm in violation of this subsection commits a felony of the
 180 | third degree, punishable as provided in s. 775.082, s. 775.083,
 181 | or s. 775.084.

182 | 2. A person who stores or leaves a loaded firearm within

183 the reach or easy access of a minor who obtains the firearm and
 184 commits a violation of subparagraph 1. commits a misdemeanor of
 185 the second degree, punishable as provided in s. 775.082 or s.
 186 775.083; except that this does not apply if the firearm was
 187 stored or left in a securely locked box or container or in a
 188 location which a reasonable person would have believed to be
 189 secure, or was securely locked with a firearm-mounted push-
 190 button combination lock or a trigger lock; if the minor obtains
 191 the firearm as a result of an unlawful entry by any person; or
 192 to members of the Armed Forces, National Guard, or State
 193 Militia, or to police or other law enforcement officers, with
 194 respect to firearm possession by a minor which occurs during or
 195 incidental to the performance of their official duties.

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

201 (e) The penalties of this subsection shall not apply to
 202 persons licensed under s. 790.06. Persons licensed under s.
 203 790.06 shall be punished as provided in s. 790.06(12), except
 204 that a licenseholder who unlawfully discharges a weapon or
 205 firearm on school property as prohibited by this subsection
 206 commits a felony of the second degree, punishable as provided in
 207 s. 775.082, s. 775.083, or s. 775.084.

208 (5)~~(3)~~ This section does not apply to any law enforcement

209 officer as defined in s. 943.10(1), (2), (3), (4), (6), (7),
 210 (8), (9), or (14).

211 ~~(6)~~~~(4)~~ Notwithstanding s. 985.24, s. 985.245, or s.
 212 985.25(1), any minor under 18 years of age who is charged under
 213 this section with possessing or discharging a firearm on school
 214 property shall be detained in secure detention, unless the state
 215 attorney authorizes the release of the minor, and shall be given
 216 a probable cause hearing within 24 hours after being taken into
 217 custody. At the hearing, the court may order that the minor
 218 continue to be held in secure detention for a period of 21 days,
 219 during which time the minor shall receive medical, psychiatric,
 220 psychological, or substance abuse examinations pursuant to s.
 221 985.18, and a written report shall be completed.

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

225 1006.07 District school board duties relating to student
 226 discipline and school safety.—The district school board shall
 227 provide for the proper accounting for all students, for the
 228 attendance and control of students at school, and for proper
 229 attention to health, safety, and other matters relating to the
 230 welfare of students, including:

231 (4) EMERGENCY DRILLS; EMERGENCY PROCEDURES.—

232 (a) Formulate and prescribe policies and procedures for
 233 emergency drills and for actual emergencies, including, but not
 234 limited to, fires, natural disasters, active shooters, hostage

235 situations, and bomb threats, for all the public schools of the
 236 district which comprise grades K-12. District school board
 237 policies shall include commonly used alarm system responses for
 238 specific types of emergencies and verification by each school
 239 that drills have been provided as required by law and fire
 240 protection codes. The emergency response agency that is
 241 responsible for notifying the school district for each type of
 242 emergency must be listed in the district's emergency response
 243 policy.

244 (b) Establish model emergency management and emergency
 245 preparedness procedures, including emergency notification
 246 procedures pursuant to paragraph (a), for the following life-
 247 threatening emergencies:

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

252 2. Hazardous materials or toxic chemical spills.

253 3. Weather emergencies, including hurricanes, tornadoes,
 254 and severe storms.

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

256 (6) SAFETY AND SECURITY BEST PRACTICES.—Use the Safety and
 257 Security Best Practices developed by the Office of Program
 258 Policy Analysis and Government Accountability to conduct a self-
 259 assessment of the school districts' current safety and security
 260 practices. Based on these self-assessment findings, the district

261 school superintendent shall provide recommendations to the
 262 district school board and local law enforcement agencies that
 263 are first responders to the district campuses which identify
 264 strategies and activities that the district school board should
 265 implement in order to improve school safety and security.
 266 Annually each district school board must receive the self-
 267 assessment results at a publicly noticed district school board
 268 meeting to provide the public an opportunity to hear the
 269 district school board members discuss and take action on the
 270 report findings. Each district school superintendent shall
 271 report the self-assessment results and school board action to
 272 the commissioner within 30 days after the district school board
 273 meeting.

274 (7) SAFETY IN CONSTRUCTION AND PLANNING.—A district school
 275 board or private school principal or governing board must allow
 276 local law enforcement agencies that are first responders to the
 277 schools to tour the school campuses once every 3 years. Any
 278 changes related to school safety and emergency issues
 279 recommended by a law enforcement agency based on a campus tour
 280 must be documented by the district school board or the private
 281 school principal or governing board.

282 Section 4. Paragraph (b) of subsection (2) of section
 283 1006.12, Florida Statutes, is amended to read:

284 1006.12 School resource officers and school safety
 285 officers.—

286 (2)

287 (b) A district school board may commission one or more
 288 school safety officers for the protection and safety of school
 289 personnel, property, and students on each school campus within
 290 the school district. The district school superintendent may
 291 recommend and the district school board may appoint the ~~one or~~
 292 ~~more~~ school safety officers.

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

295 435.04 Level 2 screening standards.—

296 (2) The security background investigations under this
 297 section must ensure that no persons subject to the provisions of
 298 this section have been arrested for and are awaiting final
 299 disposition of, have been found guilty of, regardless of
 300 adjudication, or entered a plea of nolo contendere or guilty to,
 301 or have been adjudicated delinquent and the record has not been
 302 sealed or expunged for, any offense prohibited under any of the
 303 following provisions of state law or similar law of another
 304 jurisdiction:

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

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

310 Section 6. Paragraph (a) of subsection (7) of section
 311 790.251, Florida Statutes, is amended to read:

312 790.251 Protection of the right to keep and bear arms in

313 motor vehicles for self-defense and other lawful purposes;
 314 prohibited acts; duty of public and private employers; immunity
 315 from liability; enforcement.-

316 (7) EXCEPTIONS.-The prohibitions in subsection (4) do not
 317 apply to:

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

320 Section 7. Paragraphs (d) and (f) of subsection (3) of
 321 section 921.0022, Florida Statutes, are amended to read:

322 921.0022 Criminal Punishment Code; offense severity
 323 ranking chart.-

324 (3) OFFENSE SEVERITY RANKING CHART

325 (d) LEVEL 4

326

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

328

499.0051(1) 3rd Failure to maintain or deliver

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			pedigree papers.
329	499.0051(2)	3rd	Failure to authenticate pedigree papers.
330	499.0051(6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
331	517.07(1)	3rd	Failure to register securities.
332	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
333	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
334	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
335	784.075	3rd	Battery on detention or commitment facility staff.
336	784.078	3rd	Battery of facility employee by

			throwing, tossing, or expelling certain fluids or materials.
337	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
338	784.081(3)	3rd	Battery on specified official or employee.
339	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
340	784.083(3)	3rd	Battery on code inspector.
341	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
342	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
343	787.04(2)	3rd	Take, entice, or remove child beyond state limits with

			criminal intent pending custody proceedings.
344	787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
345	787.07	3rd	Human smuggling.
346	<u>790.115(2)</u> 790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
347	<u>790.115(4)(b)</u> 790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
348	<u>790.115(4)(c)</u> 790.115(2)(c)	3rd	Possessing firearm on school property.
349	800.04 (7) (c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
350			

351	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
352	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
353	810.06	3rd	Burglary; possession of tools.
354	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
355	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
356	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property

			stolen \$300 or more.
357	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
358	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
359	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
360	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
361	837.02(1)	3rd	Perjury in official proceedings.
362	837.021(1)	3rd	Make contradictory statements in official proceedings.
363	838.022	3rd	Official misconduct.
364			

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365	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
366	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Family Services.
367	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
368	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
369	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
370	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.

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371	874.05 (1) (a)	3rd	Encouraging or recruiting another to join a criminal gang.
372	893.13 (2) (a) 1.	2nd	Purchase of cocaine (or other s. 893.03 (1) (a), (b), or (d), (2) (a), (2) (b), or (2) (c) 4. drugs).
373	914.14 (2)	3rd	Witnesses accepting bribes.
374	914.22 (1)	3rd	Force, threaten, etc., witness, victim, or informant.
375	914.23 (2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
376	918.12	3rd	Tampering with jurors.
377	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
378	(f) LEVEL 6		
379			

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	Florida Statute	Felony Degree	Description
380	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
381	499.0051(3)	2nd	Knowing forgery of pedigree papers.
382	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
383	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
384	775.0875(1)	3rd	Taking firearm from law enforcement officer.
385	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
386	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
387			

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388	784.041	3rd	Felony battery; domestic battery by strangulation.
389	784.048 (3)	3rd	Aggravated stalking; credible threat.
390	784.048 (5)	3rd	Aggravated stalking of person under 16.
391	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
392	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
393	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
394	784.081 (2)	2nd	Aggravated assault on specified official or employee.
395	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.

396	784.083(2)	2nd	Aggravated assault on code inspector.
397	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
398	<u>790.115(4)(d)</u> 790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
399	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
400	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
401	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
	794.011(8)(a)	3rd	Solicitation of minor to

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			participate in sexual activity by custodial adult.
402	794.05(1)	2nd	Unlawful sexual activity with specified minor.
403	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
404	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
405	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
406	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
407	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
408			

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409	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
410	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
411	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
412	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
413	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
414	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
415	825.102(1)	3rd	Abuse of an elderly person or disabled adult.

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416	825.102 (3) (c)	3rd	Neglect of an elderly person or disabled adult.
417	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
418	825.103(2) (c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
419	827.03(2) (c)	3rd	Abuse of a child.
420	827.03(2) (d)	3rd	Neglect of a child.
421	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
422	836.05	2nd	Threats; extortion.
423	836.10	2nd	Written threats to kill or do bodily injury.
	843.12	3rd	Aids or assists person to

424			escape.
	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
425			
	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
426			
	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
427			
	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
428			
	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
429			

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430 944.40 2nd Escapes.

431 944.46 3rd Harboring, concealing, aiding
escaped prisoners.

432 944.47(1)(a)5. 2nd Introduction of contraband
(firearm, weapon, or explosive)
into correctional facility.

433 951.22(1) 3rd Intoxicating drug, firearm, or
weapon introduced into county
facility.

434 Section 8. Paragraphs (n) and (o) of subsection (1) of
435 section 1012.315, Florida Statutes, are amended to read:
436 1012.315 Disqualification from employment.—A person is
437 ineligible for educator certification, and instructional
438 personnel and school administrators, as defined in s. 1012.01,
439 are ineligible for employment in any position that requires
440 direct contact with students in a district school system,
441 charter school, or private school that accepts scholarship
442 students under s. 1002.39 or s. 1002.395, if the person,
443 instructional personnel, or school administrator has been
444 convicted of:
445 (1) Any felony offense prohibited under any of the
446 following statutes:

447 (n) Section 790.115(2) ~~790.115(1)~~, relating to exhibiting
 448 firearms or weapons at a school-sponsored event, on school
 449 property, or within 1,000 feet of a school.

450 (o) Section 790.115(4)(b) ~~790.115(2)(b)~~, relating to
 451 possessing an electric weapon or device, destructive device, or
 452 other weapon at a school-sponsored event or on school property.

453 Section 9. For the 2014-2015 fiscal year, the sum of
 454 \$157,927 in nonrecurring funds is appropriated from the General
 455 Revenue Fund to the Department of Law Enforcement for the
 456 Criminal Justice Standards and Training Commission to develop
 457 the training curriculum as required by this act.

458 Section 10. 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 Steube offered the following:

Amendment (with title amendment)

Remove lines 30-281 and insert:

6 Section 1. It is the intent of the Legislature to prevent
 7 violent crimes from occurring on school grounds. The Legislature
 8 acknowledges that the safekeeping of our students, teachers, and
 9 campuses is imperative. In addition, the Legislature's intent is
 10 not to mandate that a school have one or more designees as
 11 described in the amendments made by this act to s. 790.115,
 12 Florida Statutes; rather, the intent of the amendments is to
 13 allow a local school board to develop policies consistent with
 14 chapter 790, Florida Statutes.

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



Amendment No. 1

17 790.115 Possessing or discharging weapons or firearms at a
18 school-sponsored event or on school property prohibited;
19 penalties; exceptions.-

20 (1) For purposes of this section, "school" means a
21 preschool, elementary school, middle school, junior high school,
22 secondary school, adult education facility, career center, or
23 postsecondary school, whether public or nonpublic, or a facility
24 that combines any of these.

25 (2) A person who exhibits any sword, sword cane, firearm,
26 electric weapon or device, destructive device, or other weapon
27 as defined in s. 790.001(13), including a razor blade, box
28 cutter, or common pocketknife, except as authorized in support
29 of school-sanctioned activities, in the presence of one or more
30 persons in a rude, careless, angry, or threatening manner and
31 not in lawful self-defense, at a school-sponsored event or on
32 the grounds or facilities of any school, school bus, or school
33 bus stop, or within 1,000 feet of the real property that
34 comprises a public or private elementary school, middle school,
35 or secondary school, during school hours or during the time of a
36 sanctioned school activity, commits a felony of the third
37 degree, punishable as provided in s. 775.082, s. 775.083, or s.
38 775.084. This subsection does not apply to the exhibition of a
39 firearm or weapon on private real property within 1,000 feet of
40 a school by the owner of such property or by a person whose
41 presence on such property has been authorized, licensed, or
42 invited by the owner.

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Amendment No. 1

43 (3) (a) A school superintendent, with approval of the
44 school board, may authorize a school safety designee to carry a
45 concealed weapon or firearm on school property. For purposes of
46 this subsection, a school safety designee is an individual who
47 is a school district employee or volunteer who is licensed to
48 carry a concealed weapon or firearm pursuant to s. 790.06 and
49 who is:

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

53 2. An active duty member of the military, the National
54 Guard, or military reserves who has not been found to have
55 committed a firearms-related disciplinary infraction during his
56 or her service; or

57 3. An active law enforcement officer in good standing or a
58 law enforcement officer who retired or terminated employment in
59 good standing and did not retire or terminate employment during
60 the course of an internal affairs investigation.

61 (b) A school safety designee authorized to carry a
62 concealed weapon or firearm on school property under this
63 subsection may only carry such weapon or firearm in a concealed
64 manner. The weapon or firearm must be carried on the school
65 safety designee's person at all times while the school safety
66 designee is performing his or her official school duties or, if
67 the school safety designee is a volunteer, while performing his
68 or her official school duties under this program.



Amendment No. 1

69 (c) A school board that approves the use of a school
70 safety designee shall develop policies consistent with this
71 section to incorporate in its overall school safety plan. A
72 school principal may recommend school safety designees to the
73 school superintendent under this subsection. The school
74 superintendent may designate individuals to serve as school
75 safety designees who agree to accept the designation. If a
76 superintendent designates one or more individuals pursuant to
77 this section, the school district shall coordinate with each
78 local law enforcement agency that may potentially respond to an
79 emergency at a school in which a school safety designee is
80 employed or volunteers to develop best practices and to allow
81 the responding law enforcement agency to easily identify a
82 school safety designee in a case of emergency. In the case of an
83 emergency, a school safety designee shall be under the direction
84 of the assigned school resource officer, if any. Upon the
85 arrival of the local responding law enforcement agency, the
86 school safety designee shall be under the direction of the
87 responding law enforcement agency.

88 (d) Each school safety designee must submit to the school
89 superintendent proof of completion of a school safety
90 program. The school safety program shall be created and defined
91 by the Criminal Justice Standards and Training Commission and
92 may include, but is not limited to active shooter training,
93 firearm proficiency, school resource officer training, crisis
94 intervention training, weapons retention training and continuing



Amendment No. 1

95 education and training. The school safety program shall be
96 developed and created by January 1, 2015. The school safety
97 program shall be administered by State of Florida Criminal
98 Justice Training Centers. Each state-operated criminal justice
99 training center who administers the school safety program must
100 certify and provide proof of completion of the program in a
101 manner prescribed by the Criminal Justice Standards and Training
102 Commission.

103 (e) School property at which a school safety designee may
104 carry a concealed weapon or firearm under this subsection may be
105 indicated with signage that reads: "Authorized Armed Defense
106 Present and Permitted."

107 (f) Subsection (4) does not apply to school safety
108 designees who are working or volunteering at the school they are
109 assigned to be the school safety designee. A school safety
110 designee who stores or leaves a weapon or firearm within the
111 reach or easy access of a minor who obtains the firearm commits
112 a misdemeanor of the second degree, punishable as provided in s.
113 775.082 or s. 775.083.

114 (g)1. If the school safety designee has not previously
115 been level 2 background screened pursuant to s. 435.04 by the
116 school board, then the school superintendent must require the
117 school safety designee to undergo level 2 background screening
118 pursuant to s. 435.04 every 5 years. The school superintendent
119 may require additional screenings at any time.



Amendment No. 1

120 2. If the school safety designee is screened pursuant to
121 subparagraph 1., the school safety designee's fingerprints must
122 be submitted by the school or an entity or vendor as authorized
123 by s. 943.053(13). The fingerprints shall be forwarded to the
124 Department of Law Enforcement for state processing, and the
125 Department of Law Enforcement shall forward the fingerprints to
126 the Federal Bureau of Investigation for national processing.

127 3. All fingerprints submitted to the Department of Law
128 Enforcement as required under this subsection shall be retained
129 by the Department of Law Enforcement as provided under s.
130 943.05(2)(g) and (h) and enrolled in the Federal Bureau of
131 Investigation's national retained print arrest notification
132 program. Fingerprints shall be enrolled in the national retained
133 print arrest notification program when the Department of Law
134 Enforcement begins participation with the Federal Bureau of
135 Investigation. Arrest fingerprints shall be searched against the
136 retained prints by the Department of Law Enforcement and the
137 Federal Bureau of Investigation, and any arrest record that is
138 identified shall be reported to the school by the Department of
139 Law Enforcement.

140 4. The fees for state and national fingerprint processing,
141 along with the fingerprint retention fees, shall be borne by the
142 school safety designee or school. The state shall pay the cost
143 for fingerprint processing as authorized in s. 943.053(3)(b) for
144 records provided to persons or entities other than those
145 specified as exceptions therein.

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Amendment No. 1

146 5. A school superintendent shall notify the Department of
147 Law Enforcement regarding any person whose fingerprints have
148 been retained but who is no longer a school safety designee.

149 ~~(4)~~(2)(a) A person shall not possess any firearm, electric
150 weapon or device, destructive device, or other weapon as defined
151 in s. 790.001(13), including a razor blade or box cutter, except
152 as authorized in support of school-sanctioned activities, at a
153 school-sponsored event or on the property of any school, school
154 bus, or school bus stop; however, a person may carry a firearm:

155 1. In a case to a firearms program, class or function
156 which has been approved in advance by the principal or chief
157 administrative officer of the school as a program or class to
158 which firearms could be carried;

159 2. In a case to a career center having a firearms training
160 range; or

161 3. In a vehicle pursuant to s. 790.25(5); except that
162 school districts may adopt written and published policies that
163 waive the exception in this subparagraph for purposes of student
164 and campus parking privileges.

165

166 For the purposes of this section, "school" means any preschool,
167 elementary school, middle school, junior high school, secondary
168 school, career center, or postsecondary school, whether public
169 or nonpublic.

170 (b) A person who willfully and knowingly possesses any
171 electric weapon or device, destructive device, or other weapon



Amendment No. 1

172 as defined in s. 790.001(13), including a razor blade or box
173 cutter, except as authorized in support of school-sanctioned
174 activities, in violation of this subsection commits a felony of
175 the third degree, punishable as provided in s. 775.082, s.
176 775.083, or s. 775.084.

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

181 2. A person who stores or leaves a loaded firearm within
182 the reach or easy access of a minor who obtains the firearm and
183 commits a violation of subparagraph 1. commits a misdemeanor of
184 the second degree, punishable as provided in s. 775.082 or s.
185 775.083; except that this does not apply if the firearm was
186 stored or left in a securely locked box or container or in a
187 location which a reasonable person would have believed to be
188 secure, or was securely locked with a firearm-mounted push-
189 button combination lock or a trigger lock; if the minor obtains
190 the firearm as a result of an unlawful entry by any person; or
191 to members of the Armed Forces, National Guard, or State
192 Militia, or to police or other law enforcement officers, with
193 respect to firearm possession by a minor which occurs during or
194 incidental to the performance of their official duties.

195 (d) A person who discharges any weapon or firearm while in
196 violation of paragraph (a), unless discharged for lawful defense
197 of himself or herself or another or for a lawful purpose,



Amendment No. 1

198 commits a felony of the second degree, punishable as provided in
199 s. 775.082, s. 775.083, or s. 775.084.

200 (e) The penalties of this subsection shall not apply to
201 persons licensed under s. 790.06. Persons licensed under s.
202 790.06 shall be punished as provided in s. 790.06(12), except
203 that a licenseholder who unlawfully discharges a weapon or
204 firearm on school property as prohibited by this subsection
205 commits a felony of the second degree, punishable as provided in
206 s. 775.082, s. 775.083, or s. 775.084.

207 ~~(5)(3)~~ This section does not apply to any law enforcement
208 officer as defined in s. 943.10(1), (2), (3), (4), (6), (7),
209 (8), (9), or (14).

210 ~~(6)(4)~~ Notwithstanding s. 985.24, s. 985.245, or s.
211 985.25(1), any minor under 18 years of age who is charged under
212 this section with possessing or discharging a firearm on school
213 property shall be detained in secure detention, unless the state
214 attorney authorizes the release of the minor, and shall be given
215 a probable cause hearing within 24 hours after being taken into
216 custody. At the hearing, the court may order that the minor
217 continue to be held in secure detention for a period of 21 days,
218 during which time the minor shall receive medical, psychiatric,
219 psychological, or substance abuse examinations pursuant to s.
220 985.18, and a written report shall be completed.

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



Amendment No. 1

224 1006.07 District school board duties relating to student
225 discipline and school safety.—The district school board shall
226 provide for the proper accounting for all students, for the
227 attendance and control of students at school, and for proper
228 attention to health, safety, and other matters relating to the
229 welfare of students, including:

230 (4) EMERGENCY DRILLS; EMERGENCY PROCEDURES.—

231 (a) Formulate and prescribe policies and procedures for
232 emergency drills and for actual emergencies, including, but not
233 limited to, fires, natural disasters, active shooters, hostage
234 situations, and bomb threats, for all the public schools of the
235 district which comprise grades K-12. District school board
236 policies shall include commonly used alarm system responses for
237 specific types of emergencies and verification by each school
238 that drills have been provided as required by law and fire
239 protection codes. The emergency response agency that is
240 responsible for notifying the school district for each type of
241 emergency must be listed in the district's emergency response
242 policy.

243 (b) Establish model emergency management and emergency
244 preparedness procedures, including emergency notification
245 procedures pursuant to paragraph (a), for the following life-
246 threatening emergencies:

247 1. Weapon-use, and hostage, and active shooter situations.
248 The active shooter situation procedures for each school shall be
249 developed in consultation with a local law enforcement agency.



Amendment No. 1

250 2. Hazardous materials or toxic chemical spills.

251 3. Weather emergencies, including hurricanes, tornadoes,
252 and severe storms.

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

254 (6) SAFETY AND SECURITY BEST PRACTICES.-Use the Safety and
255 Security Best Practices developed by the Office of Program
256 Policy Analysis and Government Accountability to conduct a self-
257 assessment of the school districts' current safety and security
258 practices. Based on these self-assessment findings, the district
259 school superintendent shall provide recommendations to the
260 district school board and local law enforcement agencies that
261 are first responders to the district campuses which identify
262 strategies and activities that the district school board should
263 implement in order to improve school safety and security.
264 Annually each district school board must receive the self-
265 assessment results at a publicly noticed district school board
266 meeting to provide the public an opportunity to hear the
267 district school board members discuss and take action on the
268 report findings. Each district school superintendent shall
269 report the self-assessment results and school board action to
270 the commissioner within 30 days after the district school board
271 meeting.

272 (7) SAFETY IN CONSTRUCTION AND PLANNING.-A district school
273 board or private school principal or governing board must allow
274 local law enforcement agencies that are first responders to the
275 schools to tour the school campuses at least once every 3 years.



Amendment No. 1

276 Any changes related to school safety and emergency issues
277 recommended by a law enforcement agency based on a campus tour
278 must be documented by the district school board or the private
279 school principal or governing board.

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

Remove lines 4-17 and insert:

permitting a school superintendent, with approval of the school board, to authorize a school safety designee to carry a concealed weapon or firearm on school property; providing requirements for school safety designees; providing exceptions to the prohibition on possession of firearms or other specified devices on school property; providing for fingerprint processing and retention; requiring that fees shall be borne by the designee or school; amending s. 1006.07, F.S.; requiring school boards to formulate policies and procedures for managing active shooter and hostage situations; requiring that active shooter procedures for each school be developed in consultation with local law enforcement agencies; requiring that

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 797 Clerks of Court
SPONSOR(S): Finance & Tax Subcommittee; Civil Justice Subcommittee; Pilon
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 788

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Ward	Bond
2) Finance & Tax Subcommittee	15 Y, 0 N, As CS	Wolfgang	Langston
3) Judiciary Committee		Ward <i>AW</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Tax certificates are sold to pay delinquent real property taxes. After two years of delinquent taxes, a certificateholder may request a sale of the property to satisfy the taxes, interest, costs of examining the title and advertising the sale. If the property sold is homestead, the minimum bid of a successful bidder must be at least one-half of the assessed value of the homestead property. Certain properties not sold at tax deed sale are added to a list of properties available for purchase from the county for taxes ("lands available for taxes").

The bill:

- Provides for certain tax certificates on homesteads to be purchased from the county;
- Provides that a tax certificate may be redeemed any time before the title is issued, if paid in full;
- Requires the tax certificate holder to pay the costs of resale if the tax deed sale is unsuccessful;
- Provides for certain unsold property to be placed on the list of "lands available for taxes;"
- Deletes the requirement that legal titleholders of contiguous property be notified when the county does not elect to purchase property on the list of "lands available for taxes;"
- Requires payment of the homestead assessment within 30 days of the tax deed sale;
- Provides for advertisement and scheduling of a second sale if the buyer fails to pay at the first sale; and
- Removes the requirement for unlimited recurring sales if the property is not sold.

The bill provides that the notice process required by the tax deed statute satisfies the notice requirement for unclaimed surplus funds resulting from a tax deed sale. Excess sale proceeds are presumed payable on the date the notice is mailed by the clerk that the funds are on hand to establish a beginning for the one year reporting date for holders of unclaimed property to the state. Lienholders will be paid by the clerk according to their record interests. The clerk may file an interpleader action in the event of any dispute.

Jurors and witnesses are currently paid by the clerk of the court either in cash or by warrant within 20 days after completion of service. The bill provides that jurors and witnesses can also be paid by check.

Currently, a party applying for a garnishment must deposit \$100 in the court registry for payment to the garnishee for payment of the attorney's fee of the garnishee. The bill provides that the attorney fee will be paid directly to the garnishee's attorney instead of through the court registry.

The bill makes other technical and grammatical changes to the statutes amended in the bill.

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:

Current Situation

Clerks of the Circuit Courts - In General

The clerk of the court is a county constitutional officer.¹ The responsibilities of the clerk of the court may be divided between two officers, one serving as clerk of the court and one serving as clerk of the board of county commissioners, to serve the role of auditor, recorder, and custodian of all county funds. In the role of clerk of the court, the clerk is responsible for:

- case maintenance;
- records management;
- court preparation and attendance;
- processing the assignment, reopening, and reassignment of cases;
- processing of appeals;
- collection and distribution of fines, fees, service charges, and court costs;
- processing of bond forfeiture payments;
- payment of jurors and witnesses;
- payment of expenses for meals or lodging provided to jurors;
- data collection and reporting;
- processing of jurors; and
- determinations of indigent status.²

Tax Certificates and Sales for Taxes

Chapter 197, F.S., and rule 12D-13, F.A.C., govern the process used for the collection of unpaid taxes. The right to due process before the government takes property from a citizen is a constitutional right, and these statutes and rules help ensure that adequate procedures are in place to avoid infringing upon this right.³

A tax certificate is a legal document, issued by counties against a specific parcel of real property for unpaid delinquent real property taxes, non-ad valorem assessments, special assessments, interest, and related costs and charges.⁴ A tax certificate is a lien against the real property which can lead to public sale of the property. The tax collector can sell these tax certificates to individuals or entities that will pay the taxes, interest, costs, and charges and will demand the lowest rate of interest.⁵ This allows the local government to raise funds for current expenditures and provides the certificateholder with the right to collect the value of the certificate, which is secured by certain rights against the property.⁶

When a tax certificate is redeemed (paid by the property owner), the certificateholder will receive the amount of his or her investment (the tax certificate face amount) plus the interest accrued up to the date of redemption. A tax certificate can be redeemed any time before a tax deed is issued or the property is placed on the list of lands available for sale either by redeeming a tax certificate from the investor or by purchasing a county-held tax certificate. The person redeeming or purchasing the tax

¹ Art. V s. 16, FLA. CONST.

² Section 28.35(3)(a), F.S.

³ See, e.g., *Rosado v. Vosilla*, 909 So. 2d 505 (Fla. 5th DCA 2005), *aff'd*, 944 So.2d 289 (Fla. 2006); *Delta Property Management, Inc. v. Profile Investments, Inc.*, 875 So.2d 443 (Fla. 2004).

⁴ Section 197.102(1)(f), F.S.

⁵ Section 197.432, F.S.

⁶ See s. 197.432, F.S., and *Smith v. City of Arcadia*, 185 So.2d 762 (Fla. 2d DCA 1966) (“Tax certificates are only a means of evidencing unpaid taxes and to enable the sale thereof for the purpose of realizing funds for current governmental expenditures.”).

certificate is required to pay the face amount of the certificate, plus costs and charges and all interest due, which is either the interest rate due on the certificate or a 5 percent mandatory minimum interest, whichever is greater.⁷ The tax collector then pays the certificate owner the amount received by the tax collector, less the redemption fee.⁸

A tax certificate having a value of less than \$250 in delinquent taxes on property that has been granted a homestead exemption for the year in which the delinquent taxes were assessed may not be sold at public auction.⁹ Instead, the tax collector must issue the tax certificate to the county at the maximum rate of interest allowed. The county may not sell the county-held tax certificate for these tax certificates that are valued under \$250, nor can the county apply for a tax deed.¹⁰

After 2 years have passed since the year the tax certificate is issued as of April 1, and provided that the certificate is not cancelled, the certificateholder may file the certificate and an application for a tax deed with the tax collector of the county where the property described in the certificate is located.¹¹ A certificateholder can apply to obtain a tax deed by paying the tax collector all amounts required for redemption or purchase of all other outstanding tax certificates, and interest, omitted taxes plus interest, delinquent taxes plus interest, and current taxes due.¹² Upon completion of the tax deed application, the tax collector delivers the tax deed application to the clerk and requests that a tax deed sale be held.¹³

When property is sold by the clerk of court at a public auction, the certificateholder has the right to bid. If the property is homestead property, in addition to inclusion of delinquent taxes in the bid, the certificateholder must include in the minimum bid an amount equal to one-half of the assessed value of the homestead property.¹⁴ The high bidder must post a nonrefundable deposit of 5 percent of the bid or \$200, whichever is greater, to be applied to the sale price at the time of full payment.¹⁵ If full payment of the final bid is not made when due, the clerk cancels all bids, immediately readvertises the sale to be held within 30 days, and pays all costs of the sale from the deposit.¹⁶ Any remaining funds must be applied toward the opening bid.¹⁷

If no one bids at a public sale on a county-held certificate, the clerk must enter the land on a list of "lands available for taxes" and must immediately notify the county commission and all other certificateholders that the property is available.¹⁸ During the first 90 days after the property is listed, the county may purchase the land for the bid. If the county does not, the county must notify each legal titleholder of the property contiguous to the property available for taxes during the 90-day period.

If the property is purchased by someone other than the certificateholder and in a higher amount than the statutory bid, the excess is paid over and disbursed by the clerk in priority order to lienholders and the former property owner as set out in s. 197.582(2), F.S.¹⁹ The clerk must notify by mail all persons having an interest in any balance of undisbursed funds.²⁰

⁷ Section 197.472, F.S.

⁸ *Id.*

⁹ Section 197.432(4), F.S.

¹⁰ Sections 197.432(4), 197.4725, and 197.502(3), F.S.

¹¹ Section 197.502(1), F.S.

¹² Section 197.502(2), F.S.

¹³ Rule 12D-13.060, F.A.C.

¹⁴ Section 197.542(1), F.S.

¹⁵ Section 197.542(2), F.S.

¹⁶ Section 197.542(1) and (2), F.S.

¹⁷ *Id.*

¹⁸ Section 197.502(7), F.S.

¹⁹ Section 197.582, F.S.

²⁰ *Id.*

If there are no higher bids at the public sale, the property is sold to the certificate holder.²¹ If the sale is canceled or the buyer fails to make full payment, the clerk "shall immediately re-advertise and hold the sale within 30 days."²² Department of Revenue rules²³ currently require re-publication for re-sale of homestead property when no one bids on the property; and statutes require re-publication and re-sale of a property if the sale is canceled. Neither provision establishes a responsible party for costs of re-sale nor sets a payment deadline.

Proposed Changes

The bill:

- Provides that tax certificates on homesteads under \$250 that are issued to the county may be purchased from the county once they reach \$250 in taxes and interest;
- Provides that a tax certificate may be redeemed any time before the tax deed is issued unless full payment for the tax deed has been made, including documentary stamps and recording fees;
- Deletes language specifying that a person may redeem a tax certificate at any time before the property is placed on the list of lands available for public sale;
- Requires the certificateholder to pay the costs of resale within 30 days of notice from the clerk, or the certificate is cancelled by entering the land on the list of "lands available for taxes;"
- Removes a requirement to notify all other persons holding tax certificates against a property in the event:
 - There are no bidders at a tax deed sale,
 - Costs for a subsequent sale are not paid within 30 days of the sale, and
 - The clerk enters the land on the list of "lands available for taxes;"
- Deletes the requirement that legal titleholders of contiguous property be notified when the county does not elect to purchase property on the list of "lands available for taxes."
- Provides that holders of certificates on unsold homestead property must pay one half the value of the homestead within 30 days of the sale or the property is entered on the list of "lands available for taxes;"
- Provides that if the sale is canceled or the buyer fails to make full payment within the time required, the clerk must readvertise the sale within 30 days of the buyer's nonpayment or, if canceled, within 30 days after the clerk receives the re-sale costs, with sale to be held within 30 days of readvertising;
- Provides that in a subsequent sale at which there are no bidders, where the certificate holder fails to pay the amount due within 30 days, the property will be placed on list of "lands available for taxes;" and
- Removes the requirement for unlimited recurring sales if the property is not sold.

Current Situation

Surplus Funds from Tax Deed Sales

Proceeds from tax deed sales are distributed by the clerk according to statute.²⁴ If there are excess proceeds, the clerk holds the funds for the benefit of parties who held an interest in the property, such as a mortgage or lienholder and the former owner.²⁵

Currently, clerks are required to provide notice to former titleholders and lienholders for surplus funds twice - once pursuant to the tax-deed statutes and again as unclaimed property.²⁶ In addition, the date

²¹ *Id.*

²² Section 197.542(3), F.S.

²³ 12D-13.063, F.A.C.

²⁴ Section 197.582(2), F.S.

²⁵ *Id.* Parties with an interest in the real property are given notice pursuant to s. 197.502(4), F.S.

²⁶ Section 717.117(1), F.S.

from which the one year period for reporting as required by the unclaimed property statute is unclear with respect to surplus proceeds from tax deed sales.²⁷

Proposed Change

The bill amends s. 197.582, F.S., to streamline the process by allowing the notice process required by the tax deed statutes to also satisfy the notice requirement for unclaimed funds.²⁸ It also provides that excess sale proceeds are presumed payable on the date the notice is mailed by the clerk that the funds are on hand under s. 197.582, F.S. This establishes a beginning for the one year reporting date for holders of unclaimed property to the state.²⁹

The bill further establishes distribution in accordance with lienholders' record priorities and provides for the filing of an interpleader with assessment of fees in the event of a dispute.

Current Situation

Juror and Witness Fees

Jurors may be compensated for their service in certain instances.³⁰ Juries may also receive meals and lodging.³¹ Witnesses testifying in a court case may also be paid for their services.³² The clerks are responsible for disbursing payments to jurors and witnesses, and may do so by cash or warrant.³³

Proposed Change

The bill provides that jurors and witnesses can also be paid by check.

Current Situation

Garnishment

"Garnishment is a type of summary remedy historically available to a creditor whereby a person's property, money, or credits in the possession of, under the control of, or owing by a third person known as the garnishee are applied to payment of the debtor's obligation to the creditor by proper statutory process against the debtor and the garnishee."³⁴ "Garnishment consists of notifying a third party to retain something that the third party has belonging to the defendant, to make disclosure to the court concerning it, and to dispose of it as the court directs."³⁵ Garnishment is governed by ch. 77, F.S.

Currently, a party applying for a garnishment must deposit \$100 in the court registry for payment to the garnishee on demand at any time after the service of the writ for payment of the attorney fee of the garnishee in obtaining representation in response to the writ.

²⁷ Section 717.117(3), F.S.

²⁸ Section 197.522(4), F.S.

²⁹ Section 717.117(3), F.S.

³⁰ Section 40.24, F.S., provides that jurors who are not regularly employed or who do not continue to receive regular wages while serving as a juror are entitled to receive \$15 per day for the first 3 days of service and \$30 for each day thereafter. Section 40.24(3)(a) and (b), F.S.

³¹ Section 40.26, F.S.

³² Section 40.32(1), F.S.

³³ Section 40.32(3), F.S.

³⁴ 13 Fla. Jur 2d Creditors' Rights § 59.

³⁵ *Id.*

Proposed Change

The bill amends s. 77.28, F.S., to eliminate the attorney fee payment from being processed through the court system and directs the party to pay the garnishee's attorney directly.

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

B. SECTION DIRECTORY:

Section 1 amends s. 40.32, F.S., relating to clerks to disburse money; payments to jurors and witnesses.

Section 2 amends s. 77.27, F.S., relating to no appeal until fees are paid.

Section 3 amends s. 77.28, F.S., relating to garnishment; attorney's fees costs; expenses; deposit required.

Section 4 amends s. 197.432, F.S., relating to sale of tax certificates for unpaid taxes.

Section 5 amends s. 197.472, F.S., relating to redemption of tax certificates.

Section 6 amends s. 197.502, F.S., relating to application for obtaining tax deed by holder of tax sale certificate, fees.

Section 7 amends s. 197.542, F.S., relating to tax deed sale at public auction.

Section 8 amends s. 197.582, F.S., relating to disbursement of proceeds of tax deed sale.

Section 9 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:

This bill has an indeterminate impact on local government revenues because it makes it easier for local governments to place properties on "lands available for taxes" rather than readvertising them for sale at public auction.

2. Expenditures:

Local governments will likely have to spend less money on readvertising property for sale and it removes the court system from processing garnishments under s. 77.28, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

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 March 12, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed a provision that the Department of Highway Safety and Motor Vehicles must suspend the vehicle registration of a person who has failed to pay costs and fines to the Clerk of Court under a payment plan;
- Removed a provision that all other persons holding tax certificates must be notified in the event that a tax deed sale is unsuccessful;
- Removed a provision that in the event of an uncompleted tax deed sale, contiguous property owners be notified within 90 days of the property being placed on the list of "lands available for taxes;"
- Removed a provision which prevents counties from applying for tax deeds on certain county-owned tax certificates; and
- Added a provision that a county may not apply for a tax deed on a county-held certificate whose value is less than \$250 where the underlying property is homestead. .

On April 1, 2014, the Finance and Tax Subcommittee adopted a strike-all amendment and an amendment to that amendment. The amendments were reported favorably as a committee substitute. The amendments made the following changes:

- Revises language in the bill relating to the selling of tax certificates on homesteads when the homestead owes \$250 or more.
- Deletes the portion of the bill that would have prohibited counties from applying for a tax deed on a certificate held by the county where the value of certificates is less than \$250 and the homestead exemption was claimed for that year.
- Increases from 15 to 30 the following time periods:
 - The time for the certificateholder to pay the costs of resale
 - The time for the certificateholder to pay one-half the homestead value

- Specified that a person applying for a writ of garnishment must pay the attorney fee upon issuance of the writ, rather than prior to issuance.

This analysis is drafted to reflect the committee substitute as passed by the Finance and Tax Subcommittee.

27 specified priorities; providing for interpleader
 28 actions and the award of reasonable fees and costs;
 29 providing an effective date.
 30

31 Be It Enacted by the Legislature of the State of Florida:
 32

33 Section 1. Subsection (3) of section 40.32, Florida
 34 Statutes, is amended to read:

35 40.32 Clerks to disburse money; payments to jurors and
 36 witnesses.-

37 (3) Jurors and witnesses shall be paid by the clerk of the
 38 court ~~either~~ in cash, by check, or by warrant within 20 days
 39 after completion of jury service or ~~of~~ completion of service as
 40 a witness.

41 (a) If ~~Whenever~~ the clerk of the court pays a juror or
 42 witness by cash, the juror or witness shall sign the payroll in
 43 the presence of the clerk, a deputy clerk, or some other person
 44 designated by the clerk.

45 (b) If ~~Whenever~~ the clerk pays a juror or witness by
 46 warrant, he or she shall endorse on the payroll opposite the
 47 juror's or witness's name the words "Paid by warrant," giving
 48 the number and date of the warrant.

49 Section 2. Section 77.27, Florida Statutes, is amended to
 50 read:

51 77.27 No appeal until fees are paid.-If the writ is
 52 dismissed or plaintiff fails to sustain his or her claim, an ~~no~~

53 | appeal from the judgment is not ~~shall be~~ permitted until the
 54 | attorney ~~attorney's~~ fee provided in s. 77.28 has been paid ~~into~~
 55 | ~~court.~~

56 | Section 3. Section 77.28, Florida Statutes, is amended to
 57 | read:

58 | 77.28 Garnishment; attorney ~~attorney's~~ fees, costs,
 59 | expenses; deposit required.—Upon ~~Before~~ issuance of any writ of
 60 | garnishment, the party applying for it shall pay ~~deposit~~ \$100 ~~in~~
 61 | ~~the registry of the court which shall be paid~~ to the garnishee
 62 | on the garnishee's demand at any time after the service of the
 63 | writ for the payment or part payment of his or her attorney
 64 | ~~attorney's~~ fee which the garnishee expends or agrees to expend
 65 | in obtaining representation in response to the writ. ~~At the time~~
 66 | ~~of deposit, the clerk shall collect the statutory fee provided~~
 67 | ~~by s. 28.24(10) in addition to the \$100 deposited into the~~
 68 | ~~registry of the court.~~ On rendering final judgment, the court
 69 | shall determine the garnishee's costs and expenses, including a
 70 | reasonable attorney ~~attorney's~~ fee, and in the event of a
 71 | judgment in favor of the plaintiff, the amount is ~~shall be~~
 72 | subject to offset by the garnishee against the defendant whose
 73 | property or debt owing is being garnished. In addition, the
 74 | court shall tax the garnishee's costs and expenses as costs. The
 75 | plaintiff may recover in this manner the sum advanced by him or
 76 | her ~~plaintiff and paid into registry of court,~~ and, if the
 77 | amount allowed by the court is greater than the amount paid ~~of~~
 78 | ~~the deposit,~~ together with any offset, judgment for the

79 garnishee shall be entered against the party against whom the
80 costs are taxed for the deficiency.

81 Section 4. Subsection (4) of section 197.432, Florida
82 Statutes, is amended to read:

83 197.432 Sale of tax certificates for unpaid taxes.—

84 (4) A tax certificate representing less than \$250 in
85 delinquent taxes on property that has been granted a homestead
86 exemption for the year in which the delinquent taxes were
87 assessed may not be sold at public auction or by electronic sale
88 as provided in subsection (1) but must be issued by the tax
89 collector to the county at the maximum rate of interest allowed.
90 Section ~~The provisions of s.~~ 197.4725 or s. 197.502(3) may not
91 be invoked if the homestead exemption is granted to the person
92 who received the homestead exemption for the year in which the
93 tax certificate was issued unless any. ~~However, if all~~ such tax
94 certificates and accrued interest represent an amount of \$250 or
95 more, ~~s. 197.502(3) shall be used to determine whether the~~
96 ~~county must apply for a tax deed.~~

97 Section 5. Subsection (1) of section 197.472, Florida
98 Statutes, is amended to read:

99 197.472 Redemption of tax certificates.—

100 (1) A ~~Any~~ person may redeem a tax certificate at any time
101 after the certificate is issued and before a tax deed is issued
102 unless full payment for a tax deed is made to the clerk of the
103 court, including documentary stamps and recording fees ~~or the~~
104 ~~property is placed on the list of lands available for sale.~~ The

105 | person redeeming a tax certificate shall pay the tax collector
 106 | the face amount plus all interest, costs, and charges.

107 | Section 6. Subsections (2) and (7) of section 197.502,
 108 | Florida Statutes, are amended to read:

109 | 197.502 Application for obtaining tax deed by holder of
 110 | tax sale certificate; fees.—

111 | (2) A certificateholder, other than the county, who makes
 112 | application for a tax deed shall pay the tax collector at the
 113 | time of application all amounts required for redemption or
 114 | purchase of all other outstanding tax certificates, plus
 115 | interest, any omitted taxes, plus interest, any delinquent
 116 | taxes, plus interest, and current taxes, if due, covering the
 117 | property. In addition, the certificateholder shall pay the costs
 118 | of resale, if applicable, and failure to pay such costs within
 119 | 30 days after notice from the clerk shall result in the clerk's
 120 | entering the land on a list entitled "lands available for
 121 | taxes."

122 | (7) On county-held or individually held certificates for
 123 | which there are no bidders at the public sale and for which the
 124 | certificateholder fails to timely pay costs of resale or fails
 125 | to pay the amounts due for issuance of a tax deed within 30 days
 126 | after the sale, the clerk shall enter the land on a list
 127 | entitled "lands available for taxes" and shall immediately
 128 | notify the county commission ~~and all other persons holding~~
 129 | ~~certificates against the property~~ that the property is
 130 | available. During the first 90 days after the property is placed

131 on the list, the county may purchase the land for the opening
 132 bid or may waive its rights to purchase the property.
 133 Thereafter, any person, the county, or any other governmental
 134 unit may purchase the property from the clerk, without further
 135 notice or advertising, for the opening bid, except that if the
 136 county or other governmental unit is the purchaser for its own
 137 use, the board of county commissioners may cancel omitted years'
 138 taxes, as provided under s. 197.447. ~~If the county does not~~
 139 ~~elect to purchase the property, the county must notify each~~
 140 ~~legal titleholder of property contiguous to the property~~
 141 ~~available for taxes, as provided in paragraph (4) (h), before~~
 142 ~~expiration of the 90-day period.~~ Interest on the opening bid
 143 continues to accrue through the month of sale as prescribed by
 144 s. 197.542.

145 Section 7. Subsections (1) and (3) of section 197.542,
 146 Florida Statutes, are amended to read:

147 197.542 Sale at public auction.-

148 (1) Real property advertised for sale to the highest
 149 bidder as a result of an application filed under s. 197.502
 150 shall be sold at public auction by the clerk of the circuit
 151 court, or his or her deputy, of the county where the property is
 152 located on the date, at the time, and at the location as set
 153 forth in the published notice, which must be during the regular
 154 hours the clerk's office is open. The amount required to redeem
 155 the tax certificate, plus the amounts paid by the holder to the
 156 clerk in charges for costs of sale, redemption of other tax

157 certificates on the same property, and all other costs to the
 158 applicant for tax deed, plus interest at the rate of 1.5 percent
 159 per month for the period running from the month after the date
 160 of application for the deed through the month of sale and costs
 161 incurred for the service of notice provided for in s.
 162 197.522(2), shall be the bid of the certificateholder for the
 163 property. If tax certificates exist or if delinquent taxes
 164 accrued subsequent to the filing of the tax deed application,
 165 the amount required to redeem such tax certificates or pay such
 166 delinquent taxes must be included in the minimum bid. However,
 167 if the land to be sold is assessed on the latest tax roll as
 168 homestead property, the bid of the certificateholder must be
 169 increased to include an amount equal to one-half of the assessed
 170 value of the homestead property as required by s. 197.502. If
 171 there are no higher bids, the property shall be struck off and
 172 sold to the certificateholder, who shall pay to the clerk any
 173 amounts included in the minimum bid not already paid, including,
 174 but not limited to, the documentary stamp tax, the ~~and~~ recording
 175 fees, and, if the property is homestead property, the moneys to
 176 cover the one-half value of the homestead within 30 days after
 177 the sale due. Upon payment, a tax deed shall be issued and
 178 recorded by the clerk. If the certificateholder fails to make
 179 full payment when due, the clerk shall enter the land on a list
 180 entitled "lands available for taxes."

181 (3) If the sale is canceled for any reason, or the buyer
 182 fails to make full payment within the time required, the clerk

183 shall ~~immediately~~ readvertise the sale ~~to be held~~ within 30 days
 184 after the buyer's nonpayment or, if canceled, within 30 days
 185 after the clerk receives the costs of resale. The sale shall be
 186 held within 30 days after readvertising after the date the sale
 187 ~~was canceled~~. Only one advertisement is necessary. The amount of
 188 the opening bid shall be increased by the cost of advertising,
 189 additional clerk's fees as provided for in s. 28.24(21), and
 190 interest as provided for in subsection (1). If, at the
 191 subsequent sale, there are no bidders at the tax deed sale and
 192 the certificateholder fails to pay the moneys due within 30 days
 193 after the sale, the clerk may not readvertise the sale and shall
 194 place the property on a list entitled "lands available for
 195 taxes." ~~This process must be repeated until the property is sold~~
 196 ~~and the clerk receives full payment or the clerk does not~~
 197 ~~receive any bids other than the bid of the certificateholder.~~
 198 The clerk must receive full payment before the issuance of the
 199 tax deed.

200 Section 8. Subsection (2) of section 197.582, Florida
 201 Statutes, is amended, and subsection (3) is added to that
 202 section, to read:

203 197.582 Disbursement of proceeds of sale.—

204 (2) If the property is purchased for an amount in excess
 205 of the statutory bid of the certificateholder, the excess must
 206 be paid over and disbursed by the clerk. If the property
 207 purchased is homestead property and the statutory bid includes
 208 an amount equal to at least one-half of the assessed value of

209 the homestead, that amount must be treated as excess and
 210 distributed in the same manner. The clerk shall distribute the
 211 excess to the governmental units for the payment of any lien of
 212 record held by a governmental unit against the property,
 213 including any tax certificates not incorporated in the tax deed
 214 application and omitted taxes, if any. If the excess is not
 215 sufficient to pay all of such liens in full, the excess shall be
 216 paid to each governmental unit pro rata. If, after all liens of
 217 governmental units are paid in full, there remains a balance of
 218 undistributed funds, the balance shall be retained by the clerk
 219 for the benefit of persons described in s. 197.522(1)(a), except
 220 those persons described in s. 197.502(4)(h), as their interests
 221 may appear. The clerk shall mail notices to such persons
 222 notifying them of the funds held for their benefit. Such notice
 223 constitutes compliance with the requirements of s. 717.117(4).
 224 Any service charges, at the rate prescribed in s. 28.24(10), and
 225 costs of mailing notices shall be paid out of the excess balance
 226 held by the clerk. Excess proceeds shall be held and disbursed
 227 in the same manner as unclaimed redemption moneys in s. 197.473.
 228 For purposes of identifying unclaimed property pursuant to s.
 229 717.113, excess proceeds shall be presumed payable or
 230 distributable on the date the notice is sent. If excess proceeds
 231 are not sufficient to cover the service charges and mailing
 232 costs, the clerk shall receive the total amount of excess
 233 proceeds as a service charge.

234 (3) If unresolved claims against the property exist on the

235 date the property is purchased, the clerk shall ensure that the
 236 excess funds are paid according to the priorities of the claims.
 237 If a lien appears to be entitled to priority and the lienholder
 238 has not made a claim against the excess funds, payment may not
 239 be made on any lien that is junior in priority. If potentially
 240 conflicting claims to the funds exist, the clerk may initiate an
 241 interpleader action against the lienholders involved, and the
 242 court shall determine the proper distribution of the
 243 interpleaded funds. The clerk may move the court for an award of
 244 reasonable fees and costs from the interpleaded funds.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 903 Application of Foreign Law in Certain Cases

SPONSOR(S): Combee and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 386

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	7 Y, 4 N	Ward	Bond
2) Judiciary Committee		Ward <i>AW</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

The law of a foreign jurisdiction or system may be recognized in Florida in a variety of circumstances. Contracts may contain a clause which provides that disputes must be decided according to the laws of another jurisdiction, or that disputes must be adjudicated in another jurisdiction. These are known as "choice of law" and "forum selection" provisions, respectively.

Marriage contracts are enforceable as a general rule in Florida. A conflict of laws arises when parties otherwise subject to Florida's body of family law request a Florida court to enforce a marital contract according to laws of another jurisdiction. Currently, case law has indicated that where foreign law frustrates the public policy of this state, it will not be enforced. This bill codifies these holdings making clear that the public policy of Florida will be to protect the constitutional rights of the parties above the enforcement of a foreign law or a forum selection clause.

The bill is limited in its application to dissolution proceedings and support enforcement under The Uniform Interstate Family Support Act. The bill provides that constitutional rights may be waived, but directs that waivers will be interpreted to protect the party waiving his or her rights.

The bill:

- Provides that any legal decision or contract provision is void and unenforceable if it is based upon a foreign law or system that does not grant the parties the same protections guaranteed by the state and federal constitutions.
- Provides that a forum selection clause in a contract violates the public policy of this state and is void and unenforceable if enforcement would result in a violation of constitutional protections.
- Provides that a claim of *forum non conveniens*, must be denied if a court finds that granting the claim violates or would likely lead to a violation of any constitutional right of the non-claimant in the foreign forum.

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

This bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The law of a foreign jurisdiction or system may be recognized in Florida in a variety of circumstances. "A court may take judicial notice of . . . laws of foreign nations and of an organization of nations."¹ However, even if recognized, the laws of foreign nations are not necessarily enforced unless there is a reason to do so, usually by prior agreement of the parties.

Contracts often contain clauses which provide for dispute settlement according to the laws of a certain jurisdiction. These are known as "choice of law" provisions. These may direct interpretation or enforcement of the contract according to the laws of another state, but may require adherence to the law of another country. Contracts may also contain a "forum selection clause" providing that disputes must be decided in a particular jurisdiction. These clauses compel the court to decline jurisdiction, yielding it to the other state or country. Marital contracts (ante-nuptial and post-nuptial agreements) may contain either or both such provisions, and they are enforceable in a dissolution proceeding in Florida.

A conflict of laws arises when parties otherwise subject to Florida's body of family law request a Florida court to enforce a marital contract or support order according to the law of another jurisdiction, or request that the case be transferred to another jurisdiction for decision. This bill addresses both types of provisions - the choice of substantive law to be applied, and the choice of forum. It also covers the non-contractual situation which might cause a court to relinquish jurisdiction, i.e., a claim of forum non conveniens.² The bill is limited in its application to dissolution proceedings (Chapter 61, F.S.), and support enforcement under The Uniform Interstate Family Support Act, Chapter 88, F.S.

Foreign support orders are enforced in Florida under the Uniform Interstate Family Support Act,³ which directs that as a general rule, the law of the state issuing the order shall govern, even if enforcement is requested in Florida.⁴ Likewise, Chapter 61, F.S., which governs dissolution of marriage, acknowledges the enforceability of a choice of law provision in an ante-nuptial agreement.⁵

If such provisions do not offend the public policy of Florida, they are enforceable, even if the law to be applied is different than Florida law.⁶ Historically, Florida courts have enforced an ante-nuptial contract according to the law of the place where it was entered into, unless enforcement would be contrary to public policy or unconstitutional.⁷ For example, in *Akileh v. Elchahal*,⁸ the court enforced the parties' Islamic ante-nuptial agreement, arguably a religious arrangement, since it complied with Florida contract law, and the court found nothing in the contract unconscionable.

Florida has also enacted the "Uniform Premarital Agreement Act," which specifically states that premarital agreements, including their choice of law provisions, are enforceable. See s. 61.079 F.S.

¹ Section 90.202, F.S.

² "Forum non conveniens is a common law doctrine addressing the problem that arises when a local court technically has jurisdiction over a suit but the cause of action may be fairly and more conveniently litigated elsewhere." *Kinney System, Inc., v. Continental Ins. Co.*, 674 So.2d 86 (Fla. 1996). See also s. 47.122, F.S.

³ Chapter 88, F.S.

⁴ See 28 USC s. 1738B, which is entitled "The Full Faith and Credit for Child Support Orders Act." Federal law requires that all states recognize support orders as a matter of full faith and credit. As a side note, the recognition of a foreign support order is not absolute, but the exceptions are immaterial to this analysis.

⁵ See s. 61.079, F.S.

⁶ *McNamara v. McNamara*, 40 So.3d 78, 80 (Fla. 5th DCA 2010).

⁷ *Gessler v. Gessler*, 273 F.2d 302 (5th Cir. 1959).

⁸ 666 So.2d 246 (Fla. 2d DCA 1996).

Choice of law provisions in property settlement agreements are valid and enforceable pursuant to the Uniform Interstate Family Support Act, as codified in Ch. 88, F.S.⁹

However, despite these statutes, courts maintain that where the foreign law frustrates the public policy of this state, or is not established with specificity as a matter of fact,¹⁰ it will not be enforced. For example, where the husband sought to enforce a Danish prenuptial agreement which left nothing to the wife in the event of divorce, the court refused "where to do so would bring harm to a Florida citizen or would frustrate an established public policy of this state."¹¹

Section 61.079 F.S., provides that choice of law provisions in premarital agreements are enforceable in Florida.¹² This bill codifies current caselaw which holds generally that such agreements would not be enforced if enforcement would violate constitutional rights.

Likewise, the Uniform Interstate Family Support Act does not include support orders issued pursuant to a foreign country's law or system. It only applies to orders issued by a court in another state of the union. This bill codifies current case law, making clear that the public policy of the state in respect to all matters that might be adjudicated under these statutes is to protect constitutional rights.

The bill defines "foreign law, legal code, or system" as any law, legal code, or legal system administered by any jurisdiction, nation, or entity asserting the status of a country that is outside of the United States. The bill provides that pertaining to the subject matter of chs. 61 or 88, F.S:

- Any decision based on any foreign law, legal code, or system that does not grant the parties affected the same fundamental liberties, rights, and privileges granted under the State Constitution or the Constitution of the United States, violates public policy of the State of Florida and is void and unenforceable.
- Any contract or contractual provision, if severable, that provides for a choice of foreign law, legal code, or system to govern disputes, is void and unenforceable if the system chosen includes law that would not provide the parties the same fundamental liberties, rights, and privileges guaranteed under the State Constitution or the Constitution of the United States.
- If a contractual provision provides for a choice of forum outside the state or territory of the United States and if enforcement of that choice of forum would result in a violation of any fundamental liberties, rights, or privileges guaranteed by the State Constitution or Constitution of the United States, then the provision is void and unenforceable.
- A claim of forum non conveniens must be denied if a court of this state finds that granting the claim violates or would likely lead to a denial of any fundamental constitutional liberties, rights and privileges of the nonclaimant in the foreign forum.

These provisions only apply to actual or foreseeable denials of a natural person's constitutional rights in the context of chs. 61 and 88, F.S..

The bill allows for an individual to voluntarily restrict his or her fundamental liberties, rights, and privileges guaranteed by the Florida or U.S. constitutions; however, the language of any such contract or other waiver must be strictly construed in favor of preserving the individual's constitutional rights.

⁹ See generally, *Keeton v. Keeton*, 807 So.2d 186 (Fla. 1st DCA 2002)(holding that property settlement agreement was enforceable in Florida with Kentucky law controlling), and *Blitz v. Florida Dept. Of Revenue ex rel. Maxwell*, 898 So.2d 121, 125 (Fla. 4th DCA 2005).

¹⁰ See, eg., *Courtlandt Corp. v. Whitmer*, 121 So.2d 57 (Fla. 2d DCA 1960); cf. *Hieber v. Hieber*, 151 So.2d 646 (Fla. 3d DCA 1963) (law of foreign state).

¹¹ *Gustafson v. Jensen*, 515 So.2d 1298 (Fla. 3d DCA 1987).

¹² "Parties to a premarital agreement may contract with respect to . . . the choice of law governing the construction of the agreement and any other matter, including their personal rights and obligations, not in violation of either the public policy of this state or a law imposing a criminal penalty." s. 61.079, F.S.

The bill provides that it is not to be construed to:

- Require or authorize a court to adjudicate, or prohibit any religious organization from adjudicating, ecclesiastical matters if such adjudication or prohibition would violate art. I s. 3, Fla. Const., or the First Amendment of the U.S. Constitution.
- Conflict with any federal treaty or other international agreement to which the United States is a party and such treaty or agreement preempts state law on the matter at issue.

The bill does not apply to a corporation, partnership, or other form of business association, except as to proceedings under chs. 61 or 88, F.S.

The bill contains a severability clause, providing that if any provision of this bill or its application is held invalid, the invalidity does not affect other provisions or applications of the bill.

B. SECTION DIRECTORY:

Section 1 creates s. 45.022, F.S., relating to application of foreign law contrary to public policy in certain cases.

Section 2 provides a severability clause.

Section 3 provides that the Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs with the date the bill becomes a law.

Section 4 provides the act takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill 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:

Federal Preemption

The doctrine of preemption limits state action in any matter where legislation on the topic exists at the federal level. Article VI of the U.S. Constitution provides that the laws and treaties of the U.S. are the "Supreme Law of the Land," and, therefore, they preempt state law. Under the federal Full Faith and Credit for Child Support Orders Act,¹³ "each state is required to enact the Uniform Interstate Family Support Act to improve the effectiveness of child support enforcement."¹⁴ The Full Faith and Credit for Child Support Orders Act provides for modification of child support orders issued in other states, and addresses choice of law issues in respect to orders issued in another state. It does not address orders issued by another country.

Dormant Federal Foreign Affairs Powers

Although not explicitly provided for in the U.S. Constitution, the Supreme Court has interpreted the U.S. Constitution to mean that the national government has exclusive power over foreign affairs. In *Zschernig v. Miller*, the Supreme Court reviewed an Oregon statute that refused to let a resident alien inherit property because the alien's home country barred U.S. residents from inheriting property. The Court held that the Oregon law as applied exceeded the limits of state power because the law interfered with the national government's exclusive power over foreign affairs. The Court also held that, to be unconstitutional, the state action must have more than "some incidental or indirect effect on foreign countries,"¹⁵ and the action must pose a "great potential for disruption or embarrassment"¹⁶ to the national unity of foreign policy. Such a determination would necessarily rely heavily on considerations of current political climates and foreign relations, as well as the United States' perception abroad.

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.

¹³ 28 USC s. 1738B(a)(1)

¹⁴ Fla. Jur. 2d, Family Law, s.552

¹⁵ *Zschernig v. Miller*, 389 U.S. 429, 433 (1968).

¹⁶ *Id.* at 435.

27 agreement to which the United States is a party to a
 28 specified extent; providing for severability;
 29 providing a directive to the Division of Law Revision
 30 and Information; providing an effective date.

31

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

33

34 Section 1. Section 45.022, Florida Statutes, is created to
 35 read:

36 45.022 Application of foreign law contrary to public
 37 policy in certain cases.-

38 (1) While the Legislature fully recognizes the right to
 39 contract freely under the laws of this state, it also recognizes
 40 that this right may be reasonably and rationally circumscribed
 41 pursuant to the interest of the state to protect and promote
 42 liberties, rights, and privileges granted under the State
 43 Constitution or the United States Constitution.

44 (2) As used in this section, the term "foreign law, legal
 45 code, or system" means any law, legal code, or system of a
 46 foreign country, or a state, nation, or subdivision thereof,
 47 outside the United States or its territories, including, but not
 48 limited to, a foreign or international organization claiming the
 49 status of a country, state, or nation or asserting legal
 50 authority to act on behalf of one or more foreign countries,
 51 states, nations, or any other similar international
 52 organizations or tribunals, which is applied by that

53 | jurisdiction's courts, administrative bodies, or other formal or
 54 | informal tribunals. The term does not include the common law and
 55 | statute laws of England as described in s. 2.01 or any laws of
 56 | the Native American tribes in this state.

57 | (3) This section applies:

58 | (a) Only to actual or foreseeable denials of a natural
 59 | person's fundamental liberties, rights, and privileges
 60 | guaranteed by the State Constitution or the United States
 61 | Constitution from the application of a foreign law, legal code,
 62 | or system in actions or proceedings brought under, pursuant to,
 63 | or pertaining to the subject matter of chapter 61 or chapter 88
 64 | and filed after the effective date of this act; and

65 | (b) To a corporation, partnership, or other form of
 66 | business association only as necessary to provide effective
 67 | relief in actions or proceedings brought under, pursuant to, or
 68 | pertaining to the subject matter of chapter 61 or chapter 88.

69 | (4) Any court, arbitration, tribunal, or administrative
 70 | agency ruling or decision violates the public policy of this
 71 | state and is void and unenforceable if the court, arbitration,
 72 | tribunal, or administrative agency bases its ruling or decision
 73 | in the matter at issue in whole or in part on any foreign law,
 74 | legal code, or system that does not grant the parties affected
 75 | by the ruling or decision the same fundamental liberties,
 76 | rights, and privileges guaranteed by the State Constitution or
 77 | the United States Constitution.

78 | (5) A contract, or contractual provision, if severable,

79 violates the public policy of this state and is void and
 80 unenforceable if:

81 (a) The contract or contractual provision provides for the
 82 choice of a foreign law, legal code, or system to govern some or
 83 all of the disputes arising from the contract between the
 84 parties and the foreign law, legal code, or system chosen
 85 includes or incorporates any substantive or procedural law, as
 86 applied to the dispute at issue, which would deny the parties
 87 the same fundamental liberties, rights, and privileges
 88 guaranteed by the State Constitution or the United States
 89 Constitution. This paragraph does not limit the right of a
 90 natural person in this state to voluntarily restrict or limit
 91 his or her fundamental liberties, rights, and privileges
 92 guaranteed by the State Constitution or the United States
 93 Constitution by contract or specific waiver consistent with
 94 constitutional principles, but the language of any such contract
 95 or waiver must be strictly construed in favor of preserving such
 96 liberties, rights, and privileges; or

97 (b) The contract or contractual provision provides for the
 98 choice of venue or choice of forum outside a state or territory
 99 of the United States and the enforcement of the choice of venue
 100 or choice of forum provision would result in a violation of any
 101 fundamental liberties, rights, and privileges guaranteed by the
 102 State Constitution or the United States Constitution.

103 (6) If a natural person who is subject to personal
 104 jurisdiction in this state seeks to maintain litigation,

105 arbitration, agency, or similarly binding proceedings in this
 106 state and the courts of this state find that granting a claim of
 107 forum non conveniens or a related claim denies or would likely
 108 lead to the denial of any fundamental liberties, rights, and
 109 privileges of the nonclaimant guaranteed by the State
 110 Constitution or the United States Constitution in the foreign
 111 forum with respect to the matter in dispute, it is the public
 112 policy of this state that the claim be denied.

113 (7) This section may not be construed to:

114 (a) Require or authorize any court to adjudicate, or
 115 prohibit any religious organization from adjudicating,
 116 ecclesiastical matters, including, but not limited to, the
 117 election, appointment, calling, discipline, dismissal, removal,
 118 or excommunication of a member, officer, official, priest, nun,
 119 monk, pastor, rabbi, imam, or member of the clergy of the
 120 religious organization, or determination or interpretation of
 121 the doctrine of the religious organization, if such adjudication
 122 or prohibition would violate s. 3, Art. I of the State
 123 Constitution or the First Amendment to the United States
 124 Constitution; or

125 (b) Conflict with any federal treaty or other
 126 international agreement to which the United States is a party to
 127 the extent that such federal treaty or international agreement
 128 preempts or is superior to state law on the matter at issue.

129 Section 2. If any provision of this act or its application
 130 to any natural person or circumstance is held invalid, the

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131 invalidity does not affect other provisions or applications of
 132 this act which can be given effect without the invalid provision
 133 or application, and to that end the provisions of this act are
 134 severable.

135 Section 3. The Division of Law Revision and Information is
 136 directed to replace the phrase "the effective date of this act"
 137 wherever it occurs in this act with the date this act becomes a
 138 law.

139 Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

- Amends s. 450.021, F.S., to prohibit minors from working in an adult theater;
- Amends s. 450.045, F.S., to require an adult theater to verify the age of each of its employees or independent contractors, and maintain such records;
- Amends s. 775.15, F.S., to remove the statute of limitations for human trafficking violations;
- Amends s. 787.06, F.S., to increase certain penalties relating to the trafficking of children;
- Amends s. 787.06, F.S., to create a new penalty if a trafficker permanently brands their victim;
- Create s. 796.011, F.S., to provide legislative intent that adults who involve children in any prostitution-related act should not be prosecuted under ch. 796, F.S., but should rather be prosecuted under other criminal laws;
- Amends s. 796.05, F.S., to increase penalties for those who derive support from the proceeds of prostitution;
- Amends s. 796.07, F.S., to increase various prostitution-related offenses from second degree misdemeanors to third degree felonies; and
- Amends s. 943.0583, F.S., to expand provisions relating to the expunction of criminal history records for victims of human trafficking.

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

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

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Human Trafficking

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

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

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

Survivors of human trafficking often face both criminalization and stigmatization. Trafficked persons are not always recognized or treated as victims by law enforcement and prosecutors. Despite being victims, individuals who are trafficked are often arrested and convicted of prostitution and other related offenses, and may plead guilty not understanding the consequences. Multiple arrests, incarceration, police violence, deportation, employment, and housing discrimination may result.⁷

2012 Florida Legislation on Human Trafficking

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

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

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

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

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

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

⁶ *Id.*

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

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

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

Effect of the Bill

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

Child Labor Laws

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

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

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

Effect of the Bill

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

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

⁸ Section 787.06(3), F.S.

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

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

¹¹ Section 450.141, F.S.

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

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

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

Human Trafficking - Criminal Penalties

The Criminal Punishment Code / Offense Severity Ranking Chart

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

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

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

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

Human Trafficking Offenses

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

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

¹⁴ Sections 921.002-921.0027, F.S.

¹⁵ Section 921.0022, F.S.

¹⁶ Section 921.0024, F.S.

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

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

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

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

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

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

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

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

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

Effect of the Bill

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

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

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

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

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

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

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

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

²⁹ Section 921.0022(3)(i), F.S.

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

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

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

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

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

Statute of Limitations

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

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

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

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

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

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

Effect of the Bill

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

Prostitution

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

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

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

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

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

Effect of the Bill

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

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

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

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

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

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

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

³⁴ Section 796.03, F.S.

³⁵ Section 796.035, F.S.

³⁶ Section 796.036, F.S.

³⁷ Section 796.07(2)(a), F.S.

³⁸ Section 796.07(2)(b), F.S.

³⁹ Section 796.07(2)(c), F.S.

⁴⁰ Section 796.07(2)(d), F.S.

⁴¹ Section 796.07(2)(f), F.S.

⁴² Section 796.07(2)(h), F.S.

⁴³ Section 796.07(2)(i), F.S.

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

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

The bill also deletes a provision requiring persons charged a third or subsequent time with any offense in s. 796.07, F.S., to be offered admission into a pretrial intervention program or a substance abuse treatment program.

Expunged Records

Expunging Criminal History Records - Generally

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

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

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

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

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

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

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

⁴⁷ *Id.*

⁴⁸ Section 943.0585(4)(c), F.S.

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

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

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

⁵² Section 943.0585(4)(c), F.S.

⁵³ Chapter 1992-73, L.O.F.

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

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

Expunging Human Trafficking Criminal History Records

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for the expunction of any conviction for an offense committed while he or she was a victim of human trafficking. A "victim of human trafficking" is defined as a person subjected to coercion for the purpose of being used in human trafficking, a minor who is a victim of human trafficking, or an individual subject to human trafficking as defined by federal law.⁵⁸

A petition must be initiated with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking.⁵⁹ The petition must include:

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

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

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

⁵⁷ Section 943.0585, F.S.

⁵⁸ Section 943.0583(1)(c), F.S.

⁵⁹ Section 943.0583(4), F.S.

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

The court's determination of the petition must be by a preponderance of the evidence.⁶¹ A determination made without official documentation must be made by a showing of clear and convincing evidence.⁶² If a court grants an expunction, criminal justice agencies with custody of the expunged record, except FDLE, must physically destroy the record.⁶³ Persons who have had their human trafficking criminal history records expunged may lawfully deny or fail to acknowledge the arrests that were expunged unless they are a candidate for employment with a criminal justice agency or a defendant in a criminal prosecution.⁶⁴

Effect of the Bill

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

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

B. SECTION DIRECTORY:

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

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

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

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

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

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

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

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

⁶⁰ Section 943.0583(6), F.S.

⁶¹ Section 943.0583(3), F.S.

⁶² Section 943.0583(5), F.S.

⁶³ Section 943.0583(8)(a), F.S. Records retained by FDLE are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, except that the record shall be made available to criminal justice agencies for their respective criminal justice purposes. Section 943.0583(10)(a), F.S.

⁶⁴ Section 943.0583(8)(b), F.S.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference met on March 25, 2014, and found the prison bed impact of this bill to be indeterminate. The bill increases penalties for current human trafficking offenses, primarily where the victim is under the age of 18. Since these are new penalties the number of offenders that will be sentenced to prison cannot be predicted. However, in FY 2013-14, no one was sentenced for any of the existing human trafficking offenses, so this impact will likely be insignificant. The increase of misdemeanor penalties for prostitution to felonies may result in an increase in prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

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

37

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

39

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

42 450.021 Minimum age; general.—

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

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

51 450.045 Proof of identity and age; posting of notices.—

52 (3)(a) In order to provide the department and law

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

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

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

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

78 775.15 Time limitations; general time limitations;

79 exceptions.-

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

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

87 787.06 Human trafficking.-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

227 (2) Anyone violating this section commits:

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

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

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

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

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

239 | 796.07 Prohibiting prostitution and related acts.—

240 | (2) It is unlawful:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

305 943.0583 Human trafficking victim expunction.—

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

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

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

339 department must be retained in all cases.

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

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

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

358 (3) OFFENSE SEVERITY RANKING CHART

359 (c) LEVEL 3

360

Florida	Felony	Description
Statute	Degree	

361

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

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

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

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

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

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

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

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

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

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

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420	944.47 (1) (c)	2nd	Possess contraband while upon the grounds of a correctional institution.
421	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
422	(e) LEVEL 5		
423	Florida Statute	Felony Degree	Description
424	316.027 (1) (a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
425	316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.
426	322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
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428	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
429	379.367 (4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
430	379.3671 (2) (c) 3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
431	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
432	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
433	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
	440.381 (2)	2nd	Submission of false, misleading, or incomplete

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

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			firearms, ammunition, or electronic weapons or devices.
441	<u>796.05(1)</u>	<u>2nd</u>	<u>Live on earnings of a prostitute; 1st offense.</u>
442	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
443	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
444	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
445	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
446	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
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448	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
449	812.131(2)(b)	3rd	Robbery by sudden snatching.
450	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
451	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
452	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
453	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services

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

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

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

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

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471 893.13(4)(b) 2nd Deliver to minor cannabis (or
other s. 893.03(1)(c),
(2)(c)1., (2)(c)2., (2)(c)3.,
(2)(c)5., (2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9., (3), or (4)
drugs).

472 893.1351(1) 3rd Ownership, lease, or rental for
trafficking in or manufacturing
of controlled substance.

473 (g) LEVEL 7

474 Florida Felony Description
Statute Degree

475 316.027(1)(b) 1st Accident involving death,
failure to stop; leaving scene.

476 316.193(3)(c)2. 3rd DUI resulting in serious bodily
injury.

477 316.1935(3)(b) 1st Causing serious bodily injury
or death to another person;
driving at high speed or with

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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			burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
613	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
614	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
615	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
616	<u>787.06(3)(a)1.</u>	<u>1st</u>	<u>Human trafficking for labor and services of a child.</u>
617	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity <u>of an adult.</u>
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619	787.06(3)(c) <u>2.</u>	1st	Human trafficking using coercion for labor and services of an unauthorized alien <u>adult</u> .
620	<u>787.06(3)(e)1.</u>	<u>1st</u>	<u>Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.</u>
621	787.06(3)(f) <u>2.</u>	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any <u>adult</u> individual from outside Florida to within the state.
622	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
623	794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.

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

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

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

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

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

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

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

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

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

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

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

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

			deadly weapon.
697	812.133(2)(a)	1st, PBL	Carjacking; firearm or other deadly weapon.
698	812.135(2)(b)	1st	Home-invasion robbery with weapon.
699	817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
700	817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
701	817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
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703	817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
704	827.03(2)(a)	1st	Aggravated child abuse.
705	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
706	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
707	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.

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

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

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

into human trafficking.

729

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

730

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

731

876.32 1st Treason against the state.

732

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

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

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

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

745 1. Solicit for or engage in prostitution;

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

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

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

752 90.404 Character evidence; when admissible.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

806 13. Chapter 782, relating to homicide.

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

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

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

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

813 18. Chapter 806, relating to arson.

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

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

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

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

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

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

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

826 26. Section 836.05, relating to extortion.

827 27. Chapter 837, relating to perjury.

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

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

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

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

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

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

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

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

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

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

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

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

868 775.21 The Florida Sexual Predators Act.—

869 (4) SEXUAL PREDATOR CRITERIA.—

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

875 1. The felony is:

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

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

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

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

905 (10) PENALTIES.—

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

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

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

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

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

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

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

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

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

937
938 commits a life felony, punishable as provided in s. 775.082, s.
939 775.083, or s. 775.084.

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

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

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

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

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

953 3. Lewd or lascivious battery, lewd or lascivious

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

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

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

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

962 794.056 Rape Crisis Program Trust Fund.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1211 (I) Section 794.011, excluding s. 794.011(10);

1212 (II) Section 800.04(4)(b) where the victim is under 12
 1213 years of age or where the court finds sexual activity by the use

1214 of force or coercion;

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

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

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

1222

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1567 (a) A valid certificate of eligibility for sealing issued
 1568 by the department pursuant to subsection (2).

1569 (b) The petitioner's sworn statement attesting that the
 1570 petitioner:

1571 1. Has never, prior to the date on which the petition is
 1572 filed, been adjudicated guilty of a criminal offense or
 1573 comparable ordinance violation, or been adjudicated delinquent
 1574 for committing any felony or a misdemeanor specified in s.
 1575 943.051(3)(b).

1576 2. Has not been adjudicated guilty of or adjudicated
 1577 delinquent for committing any of the acts stemming from the

1578 | arrest or alleged criminal activity to which the petition to
 1579 | seal pertains.

1580 | 3. Has never secured a prior sealing or expunction of a
 1581 | criminal history record under this section, s. 943.0585, former
 1582 | s. 893.14, former s. 901.33, or former s. 943.058.

1583 | 4. Is eligible for such a sealing to the best of his or
 1584 | her knowledge or belief and does not have any other petition to
 1585 | seal or any petition to expunge pending before any court.

1586 |
 1587 | Any person who knowingly provides false information on such
 1588 | sworn statement to the court commits a felony of the third
 1589 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1590 | 775.084.

1591 | (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
 1592 | petitioning the court to seal a criminal history record, a
 1593 | person seeking to seal a criminal history record shall apply to
 1594 | the department for a certificate of eligibility for sealing. The
 1595 | department shall, by rule adopted pursuant to chapter 120,
 1596 | establish procedures pertaining to the application for and
 1597 | issuance of certificates of eligibility for sealing. A
 1598 | certificate of eligibility for sealing is valid for 12 months
 1599 | after the date stamped on the certificate when issued by the
 1600 | department. After that time, the petitioner must reapply to the
 1601 | department for a new certificate of eligibility. Eligibility for
 1602 | a renewed certification of eligibility must be based on the
 1603 | status of the applicant and the law in effect at the time of the

1604 renewal application. The department shall issue a certificate of
 1605 eligibility for sealing to a person who is the subject of a
 1606 criminal history record provided that such person:

1607 (a) Has submitted to the department a certified copy of
 1608 the disposition of the charge to which the petition to seal
 1609 pertains.

1610 (b) Remits a \$75 processing fee to the department for
 1611 placement in the Department of Law Enforcement Operating Trust
 1612 Fund, unless such fee is waived by the executive director.

1613 (c) Has never, prior to the date on which the application
 1614 for a certificate of eligibility is filed, been adjudicated
 1615 guilty of a criminal offense or comparable ordinance violation,
 1616 or been adjudicated delinquent for committing any felony or a
 1617 misdemeanor specified in s. 943.051(3)(b).

1618 (d) Has not been adjudicated guilty of or adjudicated
 1619 delinquent for committing any of the acts stemming from the
 1620 arrest or alleged criminal activity to which the petition to
 1621 seal pertains.

1622 (e) Has never secured a prior sealing or expunction of a
 1623 criminal history record under this section, s. 943.0585, former
 1624 s. 893.14, former s. 901.33, or former s. 943.058.

1625 (f) Is no longer under court supervision applicable to the
 1626 disposition of the arrest or alleged criminal activity to which
 1627 the petition to seal pertains.

1628 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.—

1629 (a) In judicial proceedings under this section, a copy of

1630 the completed petition to seal shall be served upon the
 1631 appropriate state attorney or the statewide prosecutor and upon
 1632 the arresting agency; however, it is not necessary to make any
 1633 agency other than the state a party. The appropriate state
 1634 attorney or the statewide prosecutor and the arresting agency
 1635 may respond to the court regarding the completed petition to
 1636 seal.

1637 (b) If relief is granted by the court, the clerk of the
 1638 court shall certify copies of the order to the appropriate state
 1639 attorney or the statewide prosecutor and to the arresting
 1640 agency. The arresting agency is responsible for forwarding the
 1641 order to any other agency to which the arresting agency
 1642 disseminated the criminal history record information to which
 1643 the order pertains. The department shall forward the order to
 1644 seal to the Federal Bureau of Investigation. The clerk of the
 1645 court shall certify a copy of the order to any other agency
 1646 which the records of the court reflect has received the criminal
 1647 history record from the court.

1648 (c) For an order to seal entered by a court prior to July
 1649 1, 1992, the department shall notify the appropriate state
 1650 attorney or statewide prosecutor of any order to seal which is
 1651 contrary to law because the person who is the subject of the
 1652 record has previously been convicted of a crime or comparable
 1653 ordinance violation or has had a prior criminal history record
 1654 sealed or expunged. Upon receipt of such notice, the appropriate
 1655 state attorney or statewide prosecutor shall take action, within

1656 60 days, to correct the record and petition the court to void
 1657 the order to seal. The department shall seal the record until
 1658 such time as the order is voided by the court.

1659 (d) On or after July 1, 1992, the department or any other
 1660 criminal justice agency is not required to act on an order to
 1661 seal entered by a court when such order does not comply with the
 1662 requirements of this section. Upon receipt of such an order, the
 1663 department must notify the issuing court, the appropriate state
 1664 attorney or statewide prosecutor, the petitioner or the
 1665 petitioner's attorney, and the arresting agency of the reason
 1666 for noncompliance. The appropriate state attorney or statewide
 1667 prosecutor shall take action within 60 days to correct the
 1668 record and petition the court to void the order. No cause of
 1669 action, including contempt of court, shall arise against any
 1670 criminal justice agency for failure to comply with an order to
 1671 seal when the petitioner for such order failed to obtain the
 1672 certificate of eligibility as required by this section or when
 1673 such order does not comply with the requirements of this
 1674 section.

1675 (e) An order sealing a criminal history record pursuant to
 1676 this section does not require that such record be surrendered to
 1677 the court, and such record shall continue to be maintained by
 1678 the department and other criminal justice agencies.

1679 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
 1680 history record of a minor or an adult which is ordered sealed by
 1681 a court of competent jurisdiction pursuant to this section is

1682 confidential and exempt from the provisions of s. 119.07(1) and
 1683 s. 24(a), Art. I of the State Constitution and is available only
 1684 to the person who is the subject of the record, to the subject's
 1685 attorney, to criminal justice agencies for their respective
 1686 criminal justice purposes, which include conducting a criminal
 1687 history background check for approval of firearms purchases or
 1688 transfers as authorized by state or federal law, to judges in
 1689 the state courts system for the purpose of assisting them in
 1690 their case-related decisionmaking responsibilities, as set forth
 1691 in s. 943.053(5), or to those entities set forth in
 1692 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
 1693 licensing, access authorization, and employment purposes.

1694 (a) The subject of a criminal history record sealed under
 1695 this section or under other provisions of law, including former
 1696 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 1697 deny or fail to acknowledge the arrests covered by the sealed
 1698 record, except when the subject of the record:

- 1699 1. Is a candidate for employment with a criminal justice
- 1700 agency;
- 1701 2. Is a defendant in a criminal prosecution;
- 1702 3. Concurrently or subsequently petitions for relief under
- 1703 this section, s. 943.0583, or s. 943.0585;
- 1704 4. Is a candidate for admission to The Florida Bar;
- 1705 5. Is seeking to be employed or licensed by or to contract
- 1706 with the Department of Children and Families, the Division of
- 1707 Vocational Rehabilitation within the Department of Education,

1708 the Agency for Health Care Administration, the Agency for
 1709 Persons with Disabilities, the Department of Health, the
 1710 Department of Elderly Affairs, or the Department of Juvenile
 1711 Justice or to be employed or used by such contractor or licensee
 1712 in a sensitive position having direct contact with children, the
 1713 disabled, or the elderly;

1714 6. Is seeking to be employed or licensed by the Department
 1715 of Education, any district school board, any university
 1716 laboratory school, any charter school, any private or parochial
 1717 school, or any local governmental entity that licenses child
 1718 care facilities; or

1719 7. Is attempting to purchase a firearm from a licensed
 1720 importer, licensed manufacturer, or licensed dealer and is
 1721 subject to a criminal history check under state or federal law.

1722 (b) Subject to the exceptions in paragraph (a), a person
 1723 who has been granted a sealing under this section, former s.
 1724 893.14, former s. 901.33, or former s. 943.058 may not be held
 1725 under any provision of law of this state to commit perjury or to
 1726 be otherwise liable for giving a false statement by reason of
 1727 such person's failure to recite or acknowledge a sealed criminal
 1728 history record.

1729 (c) Information relating to the existence of a sealed
 1730 criminal record provided in accordance with the provisions of
 1731 paragraph (a) is confidential and exempt from the provisions of
 1732 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 1733 except that the department shall disclose the sealed criminal

1734 history record to the entities set forth in subparagraphs (a)1.,
 1735 4., 5., 6., and 8. for their respective licensing, access
 1736 authorization, and employment purposes. It is unlawful for any
 1737 employee of an entity set forth in subparagraph (a)1.,
 1738 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
 1739 subparagraph (a)8. to disclose information relating to the
 1740 existence of a sealed criminal history record of a person
 1741 seeking employment, access authorization, or licensure with such
 1742 entity or contractor, except to the person to whom the criminal
 1743 history record relates or to persons having direct
 1744 responsibility for employment, access authorization, or
 1745 licensure decisions. Any person who violates the provisions of
 1746 this paragraph commits a misdemeanor of the first degree,
 1747 punishable as provided in s. 775.082 or s. 775.083.

1748 (5) STATUTORY REFERENCES.—Any reference to any other
 1749 chapter, section, or subdivision of the Florida Statutes in this
 1750 section constitutes a general reference under the doctrine of
 1751 incorporation by reference.

1752 Section 27. Paragraph (b) of subsection (1) of section
 1753 944.606, Florida Statutes, is amended to read:

1754 944.606 Sexual offenders; notification upon release.—

1755 (1) As used in this section:

1756 (b) "Sexual offender" means a person who has been
 1757 convicted of committing, or attempting, soliciting, or
 1758 conspiring to commit, any of the criminal offenses proscribed in
 1759 the following statutes in this state or similar offenses in

1760 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),
 1761 where the victim is a minor and the defendant is not the
 1762 victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g) ~~r~~
 1763 ~~or (h)~~; s. 794.011, excluding s. 794.011(10); s. 794.05; ~~s.~~
 1764 ~~796.03; s. 796.035;~~ s. 800.04; s. 810.145(8); s. 825.1025; s.
 1765 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 1766 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any
 1767 similar offense committed in this state which has been
 1768 redesignated from a former statute number to one of those listed
 1769 in this subsection, when the department has received verified
 1770 information regarding such conviction; an offender's
 1771 computerized criminal history record is not, in and of itself,
 1772 verified information.

1773 Section 28. Paragraph (a) of subsection (1) of section
 1774 944.607, Florida Statutes, is amended to read:

1775 944.607 Notification to Department of Law Enforcement of
 1776 information on sexual offenders.—

1777 (1) As used in this section, the term:

1778 (a) "Sexual offender" means a person who is in the custody
 1779 or control of, or under the supervision of, the department or is
 1780 in the custody of a private correctional facility:

1781 1. On or after October 1, 1997, as a result of a
 1782 conviction for committing, or attempting, soliciting, or
 1783 conspiring to commit, any of the criminal offenses proscribed in
 1784 the following statutes in this state or similar offenses in
 1785 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),

1786 where the victim is a minor and the defendant is not the
 1787 victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g) ~~r~~
 1788 ~~or (h)~~; s. 794.011, excluding s. 794.011(10); s. 794.05; ~~s.~~
 1789 ~~796.03; s. 796.035~~; s. 800.04; s. 810.145(8); s. 825.1025; s.
 1790 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 1791 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any
 1792 similar offense committed in this state which has been
 1793 redesignated from a former statute number to one of those listed
 1794 in this paragraph; or

1795 2. Who establishes or maintains a residence in this state
 1796 and who has not been designated as a sexual predator by a court
 1797 of this state but who has been designated as a sexual predator,
 1798 as a sexually violent predator, or by another sexual offender
 1799 designation in another state or jurisdiction and was, as a
 1800 result of such designation, subjected to registration or
 1801 community or public notification, or both, or would be if the
 1802 person were a resident of that state or jurisdiction, without
 1803 regard as to whether the person otherwise meets the criteria for
 1804 registration as a sexual offender.

1805 Section 29. Subsection (2) of section 948.013, Florida
 1806 Statutes, is amended to read:

1807 948.013 Administrative probation.—

1808 (2) Effective for an offense committed on or after July 1,
 1809 1998, a person is ineligible for placement on administrative
 1810 probation if the person is sentenced to or is serving a term of
 1811 probation or community control, regardless of the conviction or

1812 adjudication, for committing, or attempting, conspiring, or
 1813 soliciting to commit, any of the felony offenses described in s.
 1814 787.01 or s. 787.02, where the victim is a minor and the
 1815 defendant is not the victim's parent; s. 787.025; chapter 794;
 1816 ~~s. 796.03~~; s. 800.04; s. 825.1025(2)(b); s. 827.071; s.
 1817 847.0133; s. 847.0135; or s. 847.0145.

1818 Section 30. Subsection (1) of section 948.32, Florida
 1819 Statutes, is amended to read:

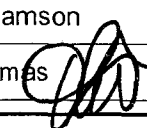
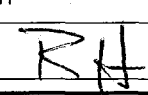
1820 948.32 Requirements of law enforcement agency upon arrest
 1821 of persons for certain sex offenses.—

1822 (1) When any state or local law enforcement agency
 1823 investigates or arrests a person for committing, or attempting,
 1824 soliciting, or conspiring to commit, a violation of s.
 1825 787.025(2)(c), chapter 794, ~~s. 796.03~~, s. 800.04, s. 827.071, s.
 1826 847.0133, s. 847.0135, or s. 847.0145, the law enforcement
 1827 agency shall contact the Department of Corrections to verify
 1828 whether the person under investigation or under arrest is on
 1829 probation, community control, parole, conditional release, or
 1830 control release.

1831 Section 31. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1021 Pub. Rec./Human Trafficking Victims
SPONSOR(S): Criminal Justice Subcommittee; Spano and others
TIED BILLS: CS/HB 1017 **IDEN./SIM. BILLS:** CS/SB 1426

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Thomas	Cunningham
2) Government Operations Subcommittee	13 Y, 0 N	Williamson	Williamson
3) Judiciary Committee		Thomas 	Havlicak 

SUMMARY ANALYSIS

During the current 2014 Legislative Session, CS/HB 1017, in part, proposes to expand the provisions relating to the expunction of certain criminal records for victims of human trafficking to include the expunction of any criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed:

- As a part of the human trafficking scheme of which he or she was a victim; or
- At the direction of an operator of a human trafficking scheme.

This bill, which is linked to the passage of CS/HB 1017, amends s. 119.071(2)(h), F.S., to expand the types of criminal intelligence and criminal investigative information that are confidential and exempt from public records requirements to include identifying information of child victims of human trafficking for labor or services, as well as, all victims of human trafficking for commercial sexual purposes.

The bill also amends s. 943.0583, F.S., to make confidential and exempt any criminal intelligence and criminal investigative information related to victims of human trafficking resulting from the arrest or filing of charges for an offense committed or reported to have been committed by the victim as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme, whose criminal history record has been expunged.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records Laws

Florida Constitution

Article I, Section 24(a), of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may exempt records from the requirements of Article I, Section 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.²

Florida Statutes

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in ch. 119, F.S. Currently, s. 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act³ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose *and* the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.⁵

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶ The Act also requires specified questions to be considered during the review process.⁷

¹ Article I, Sec. 24(a), FLA. CONST.

² Article I, Sec. 24(c), FLA. CONST.

³ Section 119.15, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ Section 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S., states that the specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Public Record Exemption for Expunged Criminal History Records

Any criminal history record of a minor or an adult that is ordered expunged must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that the Florida Department of Law Enforcement (FDLE) must retain criminal history records in all cases.

Current law provides that an expunged criminal history record that is retained by FDLE is confidential and exempt⁸ from s. 119.07(1), F.S., and Article I, Section 24(a) of the Florida Constitution, and is not available to any person or entity except upon order of the court with jurisdiction.⁹ In addition, information relating to the existence of an expunged criminal history record is confidential and exempt from public record requirements, except that FDLE must disclose the existence of such record to certain entities as provided for in current law.¹⁰

Public Record Exemption for Certain Agency Investigation Information

Currently, s. 119.071(2)(h), F.S., provides specified criminal intelligence information¹¹ or criminal investigative information^{12,13} is confidential and exempt from public records requirements, including:

- Any information, including the photograph, name, address, or other fact, which reveals the identity of the victim of the crime of child abuse as defined by ch. 827, F.S. (child abuse); and
- Any information, which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution); ch. 800, F.S. (lewdness and indecent exposure); ch. 827, F.S. (abuse of children), or ch. 847, F.S. (obscenity); and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewdness and indecent exposure), s. 810.145, F.S. (video voyeurism), ch. 827, F.S. (abuse of children), or ch. 847, F.S. (obscenity), regardless of whether the photograph, videotape, or image identifies the victim.¹⁴

⁸ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

⁹ Section 943.0585(4), F.S.

¹⁰ Section 943.0585(4)(c), F.S.

¹¹ Section 119.011(3)(a), F.S., defines "criminal intelligence information" to mean information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

¹² Section 119.011(3)(b), F.S., defines "criminal investigative information" to mean information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

¹³ Section 119.011(3)(c), F.S., provides "criminal intelligence information" and "criminal investigative information" shall not include:

- The time, date, location, and nature of a reported crime.
- The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.071(1), F.S., until released at trial if it is found that the release of such information would:
 - Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
 - Impair the ability of a state attorney to locate or prosecute a codefendant.
- Informations and indictments except as provided in s. 905.26, F.S.

¹⁴ Section 119.071(2)(h)3., F.S., requires the exemption to apply to confidential and exempt criminal intelligence and criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

Such confidential and exempt criminal investigative and criminal intelligence information may be disclosed by a law enforcement agency in specified instances, including:

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered;¹⁵ or
- To another governmental agency in the furtherance of its official duties and responsibilities.

This public records exemption is scheduled to repeal on October 2, 2016.

Human Trafficking Victim Expunction

During the 2013 Legislative Session, CS/CS/HB 1325 and CS/HB 1327 passed, which in part, authorized a victim of human trafficking¹⁶ to petition the court¹⁷ for the expunction of any conviction for an offense, except an offense listed in s. 775.084(1)(b)1., F.S.,¹⁸ committed while he or she was a victim of human trafficking. The only offenses that may be expunged are the convictions for offenses committed as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme.

A petition for expunction must include:

- A sworn statement¹⁹ attesting that the victim is eligible for such expunction to the best of his or her knowledge or belief and does not have another petition to expunge or seal before any other court; and
- Official documentation²⁰ of the victim's status as a victim of human trafficking, if any exists.²¹

The completed petition must be served on the appropriate state attorney or statewide prosecutor and the arresting agency, who can each respond to the court regarding the petition.²² The court's determination of the petition must be by a preponderance of the evidence.²³ A determination made without official documentation must be made by a showing of clear and convincing evidence.²⁴ If a court grants an expunction, s. 943.0583, F.S., requires:

- The clerk of the court to certify copies of the order to the appropriate state attorney or the statewide prosecutor, the arresting agency, and to any other agency that the records of the court reflect has received the criminal history record from the court;²⁵

¹⁵ Section 119.071(2)(h)2.c., F.S., provides the information disclosed should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

¹⁶ Section 943.0583(1)(c), F.S., defines "victim of human trafficking" to mean a person subjected to coercion, as defined in s. 787.06, F.S., for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

¹⁷ Section 943.0583(4), F.S., requires a petition under this section to be initiated by the petitioner with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking, subject to reasonable concerns for the safety of the victim, family members of the victim, or other victims of human trafficking that may be jeopardized by the bringing of such petition or for other reasons consistent with the purpose of s. 943.0583, F.S.

¹⁸ Arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking. Section 775.084(1)(b)1., F.S.

¹⁹ Providing false information on the sworn statement is punishable as a third degree felony.

²⁰ Section 943.0583(1)(b), F.S., defines "official documentation" to mean any documentation issued by a federal, state, or local agency tending to show a person's status as a victim of human trafficking.

²¹ Section 943.0583(6), F.S.

²² Section 943.0583(7), F.S. In judicial proceedings on the petition, the petitioner and their attorney may appear telephonically, via video conference, or other electronic means.

²³ Section 943.0583(3), F.S.

²⁴ Section 943.0583(5), F.S.

²⁵ Section 943.0583(7)(c), F.S.

- The arresting agency to forward the order to any other agency listed in the court order to which the arresting agency disseminated the criminal history record information to which the order pertains;²⁶
- FDLE to forward the order to expunge to the Federal Bureau of Investigation;²⁷ and
- Criminal justice agencies with custody of the expunged record, except FDLE, to physically destroy the record.²⁸

Persons who have had their human trafficking criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by the expunged record and not face perjury charges or otherwise be liable for giving a false statement for failing to acknowledge an expunged criminal record unless they are a candidate for employment with a criminal justice agency or is a defendant in a criminal prosecution.²⁹ However, persons are required to acknowledge such arrests when applying for future sealing or expunctions under ss. 943.059, 943.0585, or 943.0583, F.S.³⁰ Expunged convictions are deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.³¹

Additionally, the 2013 legislation created a public records exemption for a criminal history record of a victim of human trafficking that is ordered expunged. Specifically, such record retained by FDLE is confidential and exempt from public record requirements and shall only be made available to criminal justice agencies for their respective criminal justice purposes. A criminal justice agency may retain a notation indicating compliance with an order to expunge. The exemption repeals on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

Committee Substitute for House Bill 1017

During the current 2014 Legislative Session, CS/HB 1017, in part, proposes to expand the provisions relating to the expunction of certain criminal records for victims of human trafficking to include the expunction of any criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme.

Effect of the Bill

The bill, which is linked to the passage of CS/HB 1017 or similar legislation, amends s. 119.071(2)(h), F.S., to expand the types of criminal intelligence and criminal investigative information that are confidential and exempt from public records requirements to include:

- Any information that reveals the identity of a person under the age of 18 who is the victim of a crime of human trafficking for labor or services proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is the victim of a crime of human trafficking for commercial sexual activity proscribed in s. 787.06(3)(b), (d), (f), (g), or (h), F.S.; and
- A photograph, videotape, or image of any part of the body of a victim of a crime of human trafficking involving commercial sexual activity proscribed in s. 787.06(3)(b), (d), (f), (g), or (h), F.S.

The bill also amends s. 943.0583, F.S., providing that the above-described criminal intelligence and criminal investigative information related to victims of human trafficking that is made confidential and exempt from public records requirements in s. 119.071(2)(h), F.S., is also made confidential and exempt from public records requirements under the section providing expunction for human trafficking victims.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Section 943.0583(8), F.S.

²⁹ *Id.*

³⁰ *Id.*

³¹ Section 943.0583(3), F.S.

The bill provides for repeal of the exemptions on October 2, 2019, unless both exemptions are reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.³²

B. SECTION DIRECTORY:

Section 1. Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Amends s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 3. Provides a public necessity statement.

Section 4. Provides an effective date to be the same as that of CS/HB 1017 or similar legislation, if such legislation is passed during the same session and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on state government 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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

³² Article 1, Sec. 24(c), FLA. CONST.
STORAGE NAME: h1021c.JDC.DOCX
DATE: 4/2/2014

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to expunged criminal records of victims of human trafficking. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorable as a committee substitute. The proposed committee substitute added revisions to s. 119.071, F.S., to exempt from public records requirements identifying information of child victims of human trafficking for labor or services, as well as, all victims of human trafficking for commercial sexual purposes.

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

27 a. Any information ~~that, including the photograph, name,~~
 28 ~~address, or other fact, which~~ reveals the identity of the victim
 29 of the crime of child abuse as defined by chapter 827 or that
 30 reveals the identity of a person under the age of 18 who is the
 31 victim of the crime of human trafficking proscribed in s.
 32 787.06(3)(a).

33 b. Any information that ~~which~~ may reveal the identity of a
 34 person who is a victim of any sexual offense, including a sexual
 35 offense proscribed in s. 787.06(3)(b), (d), (f), (g), or (h),
 36 chapter 794, chapter 796, chapter 800, chapter 827, or chapter
 37 847.

38 c. A photograph, videotape, or image of any part of the
 39 body of the victim of a sexual offense prohibited under s.
 40 787.06(3)(b), (d), (f), (g), or (h), chapter 794, chapter 796,
 41 chapter 800, s. 810.145, chapter 827, or chapter 847, regardless
 42 of whether the photograph, videotape, or image identifies the
 43 victim.

44 2. Criminal investigative information and criminal
 45 intelligence information made confidential and exempt under this
 46 paragraph may be disclosed by a law enforcement agency:

47 a. In the furtherance of its official duties and
 48 responsibilities.

49 b. For print, publication, or broadcast if the law
 50 enforcement agency determines that such release would assist in
 51 locating or identifying a person that such agency believes to be
 52 missing or endangered. The information provided should be

53 | limited to that needed to identify or locate the victim and not
 54 | include the sexual nature of the offense committed against the
 55 | person.

56 | c. To another governmental agency in the furtherance of
 57 | its official duties and responsibilities.

58 | 3. This exemption applies to such confidential and exempt
 59 | criminal intelligence information or criminal investigative
 60 | information held by a law enforcement agency before, on, or
 61 | after the effective date of the exemption.

62 | 4. This paragraph is subject to the Open Government Sunset
 63 | Review Act in accordance with s. 119.15, and shall stand
 64 | repealed on October 2, 2019 ~~2016~~, unless reviewed and saved from
 65 | repeal through reenactment by the Legislature.

66 | Section 2. Subsection (11) is added to section 943.0583,
 67 | Florida Statutes, to read:

68 | 943.0583 Human trafficking victim expunction.—

69 | (11) (a) The following criminal intelligence information or
 70 | criminal investigative information is confidential and exempt
 71 | from s. 119.07(1) and s. 24(a), Art. I of the State
 72 | Constitution:

73 | 1. Any information that reveals the identity of a person
 74 | who is a victim of human trafficking whose criminal history
 75 | record has been expunged under this section.

76 | 2. Any information that may reveal the identity of a
 77 | person who is a victim of human trafficking whose criminal
 78 | history record has been ordered expunged under this section.

79 (b) Criminal investigative information and criminal
 80 intelligence information made confidential and exempt under this
 81 subsection may be disclosed by a law enforcement agency:

82 1. In the furtherance of its official duties and
 83 responsibilities.

84 2. For print, publication, or broadcast if the law
 85 enforcement agency determines that such release would assist in
 86 locating or identifying a person that the agency believes to be
 87 missing or endangered. The information provided should be
 88 limited to that needed to identify or locate the victim.

89 3. To another governmental agency in the furtherance of
 90 its official duties and responsibilities.

91 (c) This exemption applies to such confidential and exempt
 92 criminal intelligence information or criminal investigative
 93 information held by a law enforcement agency before, on, or
 94 after the effective date of the exemption.

95 (d) This subsection is subject to the Open Government
 96 Sunset Review Act in accordance with s. 119.15 and shall stand
 97 repealed on October 2, 2019, unless reviewed and saved from
 98 repeal through reenactment by the Legislature.

99 Section 3. The Legislature finds that it is a public
 100 necessity to make confidential and exempt from public records
 101 requirements certain criminal intelligence information or
 102 criminal investigative information that reveals the identity of
 103 a victim of the crime of human trafficking of a minor for labor
 104 or any victim of human trafficking for commercial sexual

105 activity. The Legislature finds that it is important to
 106 strengthen the protections afforded victims of human trafficking
 107 for labor who are minors and victims of human trafficking for
 108 commercial sexual activity, regardless of age, in order to
 109 ensure their privacy and to prevent their revictimization by
 110 making such information confidential and exempt. The identity of
 111 these victims is information of a sensitive personal nature. As
 112 such, this exemption serves to minimize the trauma to victims
 113 because the release of such information would compound the
 114 tragedy already visited upon their lives and would be defamatory
 115 to or cause unwarranted damage to the good name or reputation of
 116 the victims. Protecting the release of identifying information
 117 of such victims protects them from further embarrassment,
 118 harassment, or injury. The Legislature also finds that it is a
 119 public necessity that information in the investigative or
 120 intelligence records related to a criminal history record
 121 ordered expunged under s. 943.0583, Florida Statutes, which
 122 would or could reasonably be expected to reveal the identity of
 123 a person who is a victim of human trafficking whose criminal
 124 history record has been ordered expunged under s. 943.0583,
 125 Florida Statutes, be made confidential and exempt from s.
 126 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 127 State Constitution. Persons who are victims of human trafficking
 128 and who have been charged with crimes allegedly committed at the
 129 behest of their traffickers are themselves victims of crimes.
 130 Such victims face barriers to employment and other life

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131 opportunities as long as these criminal charges remain on record
132 and accessible to potential employers and others. It is
133 necessary that these records be made confidential and exempt in
134 order for human trafficking victims to have the chance to
135 rebuild their lives and reenter society.

136 Section 4. This act shall take effect on the same date
137 that HB 1017 or similar legislation relating to human
138 trafficking takes effect, if such legislation is adopted in the
139 same legislative session or an extension thereof and becomes a
140 law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1105 Sexual Predator & Sexual Offender Absconders
SPONSOR(S): Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Adkins and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1416

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

SUMMARY ANALYSIS

The Department of Corrections (DOC) supervises sexual predators and offenders sentenced to supervision in circuit court. When a sexual predator or offender absconds from DOC's supervision, it is a violation of the conditions of supervision and results in an arrest warrant being issued. DOC's local probation office then notifies local law enforcement that the offender has absconded and provides them the warrant and the offender's last known address.

DOC, the Florida Police Chiefs Association, and the Florida Sheriffs Association all report that DOC and local law enforcement routinely work together to apprehend registered sexual predators and offenders who have absconded from supervision. In addition to these efforts:

- DOC's Absconder Unit assists local probation offices in locating absconders and maintains a website that provides photographs of absconders and a tip line to call or email with information;
- The Florida Department of Law Enforcement (FDLE) shares information with local law enforcement agencies to ensure that sexual predators and offenders who abscond from registration are located; and
- The U.S. Marshal's Office's Sex Offender Investigations Branch assists state, local, tribal and territorial authorities in locating and apprehending non-compliant and fugitive sexual predators and offenders.

The bill creates the Sexual Predator and Sexual Offender Absconder Strike Force (Strike Force) within FDLE, whose purpose is to develop and prioritize coordinated strategies for the apprehension of registered sexual predators and offenders who are under the supervision of DOC and who have absconded from such supervision. The Strike Force consists of the following 10 members or their designees:

- The executive director of FDLE (chair); the Secretary of DOC (vice chair); the Secretary of Children and Families; the chair of the Parole Commission; the executive director of the Department of Highway Safety and Motor Vehicles; and five members appointed by the executive director of FDLE consisting of two sheriffs, two chiefs of police, and one state attorney.

The Strike Force must meet at least four times a year and must:

- Develop and review a statewide list of known sexual predator and offender absconders;
- Prioritize those absconders that pose the greatest risk to public safety by evaluating their criminal history, most recent dates of offense, length of time as an absconder, and other factors and disseminate such list to local law enforcement agencies;
- Develop and recommend coordinated state-wide strategies for the apprehension of sexual predators and sexual offender absconders with special focus on those that pose the greatest risk to public safety; and
- Annually submit a report on its activities and recommendations.

The bill requires FDLE to administer the strike force which requires one FTE, and travel and per diem expenses of approximately \$101,418. The bill provides and appropriation of \$101,418 for that purpose. According to FDLE, the bill, as amended in the Justice Appropriations Subcommittee, will have an additional fiscal impact because it requires the Strike Force to analyze and project undefined risk factors for each absconder.

The bill is effective July 1, 2014.

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

STORAGE NAME: h1105c.JDC.DOCX

DATE: 4/9/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Probation, Community Control, and Conditional Release

Probation is a form of community supervision requiring specified contacts with parole and probation officers, compliance with standard statutory terms and conditions, and compliance with any specific terms and conditions required by the sentencing court.¹ Community control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by probation officers with restricted caseloads.² Conditional release, administered by the Florida Parole Commission (Commission), is a mandatory postrelease supervision required for certain violent inmates.³

Courts are required to impose the conditions of supervision found in s. 948.03, F.S., on probationers and community controllees.⁴ Similarly, the Commission is required to impose the conditions of supervision found in s. 947.1405, F.S., on conditional releasees.⁵ The standard conditions of probation include provisions that require all offenders to:

- Report to the probation and parole supervisors as directed;
- Permit such supervisors to visit him or her at his or her home or elsewhere; and
- Remain within a specified place.⁶

The Department of Corrections (DOC) supervises all probationers, community controllees, and conditional releasees sentenced in circuit court.⁷

Violations of Probation, Community Control, and Conditional Release

Section 948.06, F.S., establishes the procedures that must be used when an offender violates the terms and conditions of his or her supervision. Upon violation, the offender is arrested and brought before the sentencing court. At the first hearing on the violation, the offender is advised of the charge. If the offender admits the charge, the court may immediately revoke, modify, or continue supervision, or place the offender into a community control program.⁸

If the offender denies having violated the terms of the probation, the court may commit him or her to jail or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation violation.⁹ Unless dismissed, the court must conduct a hearing and determine whether the offender has knowingly and willfully violated the terms of his or her probation.¹⁰ If the court finds that

¹ Section 948.001(8), F.S.

² Section 948.001(3), F.S.

³ Section 947.1405, F.S., requires conditional release for an inmate who:

- Is convicted of a crime committed on or after October 1, 1988, and before January 1, 1994, and any inmate who is convicted of a crime committed on or after January 1, 1994, which crime is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), and who has served at least one prior felony commitment at a state or federal correctional institution;
- Is sentenced as a habitual or violent habitual offender or a violent career criminal pursuant to s. 775.084, F.S.; or
- Is found to be a sexual predator under s. 775.21, F.S., or former s. 775.23, F.S.

⁴ Sections 948.001(8) and 948.03, F.S. These conditions require offenders to comply with a variety of requirements (e.g., report to probation supervisors as directed, permit probation supervisors to visit at home or elsewhere, work faithfully at suitable employment, make restitution, not associate with persons engaged in criminal activities, etc.).

⁵ Section 947.1405(2), F.S.

⁶ Section 948.03(1)(a), (b), and (d), F.S. In addition to these standard conditions of supervision, the court/Commission may add special conditions of supervision that it deems proper. Sections 948.03(2) and 947.1405(6), F.S.

⁷ Sections 948.01(1) and 947.1405, F.S.

⁸ Section 948.06(2), F.S.

⁹ Section 948.06(2)(c), F.S.

¹⁰ Section 948.06(2)(d), F.S.

the offender has violated, the court may immediately revoke, modify, or continue the supervision, or place the offender into a community control program.¹¹

If supervision is revoked, the court must adjudicate the offender guilty of the offense charged and proven or admitted. The court may then impose any sentence that it might have originally imposed for the offense for which the offender was placed on supervision.

Absconders

Occasionally, offenders abscond from DOC's supervision (i.e., they make themselves unavailable for supervision and all efforts to locate the offender have been exhausted).¹² Absconding is a violation of the terms and conditions of supervision, and subjects the offender to the above-described violation process. However, because the offender's location is unknown, he or she cannot be arrested and brought before the sentencing court. Instead, a judge issues a warrant for the offender's arrest.¹³

When a registered sexual predator or sexual offender¹⁴ absconds from supervision, DOC's local probation office and officers notify local law enforcement agencies that the offender has absconded, and provide them with the warrant and the offender's last known address.¹⁵ DOC, the Florida Police Chiefs Association, and the Florida Sheriffs Association all report that DOC and local law enforcement routinely work together to apprehend registered sex offenders who have absconded from supervision.¹⁶

In addition to the local efforts to track down absconders, DOC created an Absconder Unit 13 years ago.¹⁷ Stationed at DOC's Central Office in Tallahassee, the Absconder Unit assists local probation offices in locating high profile absconders.¹⁸ The Absconder Unit maintains a link on DOC's public website¹⁹ that provides photographs of absconders and a tip line to call or email with information. The Absconder Unit investigates tips and coordinates arrests with local law enforcement. The Absconder Unit also uses people search software and other resources to locate absconders or confirm their death.²⁰

The Florida Department of Law Enforcement (FDLE) also assists in the apprehension of sexual predators and sexual offenders who abscond. Section 943.043(5), F.S., requires FDLE to share information with local law enforcement agencies in an effort to ensure that sexual predators and sexual offenders who fail to respond to address-verification attempts or who otherwise abscond from registration are located in a timely manner. FDLE must review and analyze all available information concerning any such predator or offender and provide the information to local law enforcement agencies in order to assist the agencies in locating and apprehending the offender.²¹

¹¹ Section 948.06(2)(e), F.S.

¹² E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Criminal Justice Subcommittee).

¹³ Section 948.06(1), F.S. Additionally, whenever there are reasonable grounds to believe that an offender has violated his or her supervision, any law enforcement officer who is aware of the supervision status of the offender or any parole or probation supervisor may arrest the offender without warrant and return him or her to the court granting such supervision.

¹⁴ Sections 775.21 and 943.0435, F.S., set forth the criteria for determining whether a person is a "sexual predator" or a "sexual offender." Sexual predators and sexual offenders must comply with a number of statutory registration requirements. Whether a person has to register depends on their offense date (sexual predators) or the date on which the offender was released from the sanction imposed (sexual offenders).

¹⁵ E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Criminal Justice Subcommittee).

¹⁶ *Id.* Also see, E-mail from Amy Mercer, Executive Director of the Florida Police Chiefs Association, dated March 7, 2014; E-mail from Sarah Carroll, Assistant Executive Director of Operations of the Florida Sheriffs Association, dated March 7, 2014 (all on file with the Criminal Justice Subcommittee).

¹⁷ E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Criminal Justice Subcommittee).

¹⁸ *Id.*

¹⁹ The web address for this site is <http://www.dc.state.fl.us/wanted.html> (last visited on March 11, 2014).

²⁰ *Id.*

²¹ Section 943.043(5), F.S.

On the federal level, the United States Marshal's Office created the Sex Offender Investigations Branch (SOIB) following the passage of the Adam Walsh Child Protection and Safety Act (AWA) in 2006.²²

The SOIB:

- Assists state, local, tribal and territorial authorities in the location and apprehension of non-compliant and fugitive sex offenders;
- Investigates violations of the AWA for federal prosecution; and
- Assists in the identification and location of sex offenders relocated as a result of a major disaster.²³

There are currently 7,906 sexual predators and sexual offenders under DOC's supervision who are required to register.²⁴ Of this pool, there are currently 379 absconders.²⁵

The number of sex offender absconders (who are required to register) has been reduced over the past eight years from 419 in 2007, to 379 in 2014.²⁶

Effect of the Bill

The bill provides the following legislative finding:

- The Legislature finds that there is a need to locate and arrest registered sexual predators and sexual offenders who are under the supervision of the Department of Corrections and who have absconded from such supervision.

The bill creates s. 16.581, F.S., to establish the Sexual Predator and Sexual Offender Absconder Strike Force (Strike Force) within FDLE. The purpose of the Strike Force is to locate registered sexual predators²⁷ and sexual offenders²⁸ who are under DOC's supervision and who have absconded from such supervision.

The Strike Force must consist of the following 10 members or their designees:

- The executive director of FDLE, who shall serve as chair;
- The Secretary of Corrections, who shall serve as vice chair;
- The Secretary of Children and Families;
- The chair of the Parole Commission;
- The executive director of the Department of Highway Safety and Motor Vehicles; and
- Five members appointed by FDLE's executive director consisting of two sheriffs, two chiefs of police, and one state attorney.²⁹

The five members appointed by the executive director of the Department of Law Enforcement must be appointed to 4-year terms.³⁰ Each of the remaining members is a standing member of the Strike Force and may not serve beyond the time he or she holds the position that was the basis for the membership.³¹ Vacancies must be filled in the same manner as the original appointment, but only for the remainder of the term. Members of the Strike Force must serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S.

²² <http://www.usmarshals.gov/investigations/index.html> (last visited in March 11, 2014).

²³ *Id.*

²⁴ E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Criminal Justice Subcommittee).

²⁵ *Id.* Out of the 379 absconder warrants, 157 were issued 10 or more years ago, while 114 were issued less than three years ago.

²⁶ *Id.*

²⁷ The bill defines "sexual predator" as a person required to register as a sexual predator under s. 775.21, F.S.

²⁸ The bill defines "sexual offender" as a person required to register as a sexual offender under ss. 943.0435 or 944.607, F.S.

²⁹ In making these appointments, the executive director must consider representation by geography, population, ethnicity, and other relevant factors in order to ensure that the membership of the Strike Force is representative of the state as a whole.

³⁰ For the purpose of providing staggered terms of the initial appointments, two members must be appointed to a 2-year term, two members must be appointed to a 3-year term, and one member must be appointed to a 4-year term.

³¹ Membership on the Strike Force does not disqualify a member from holding any other public office or from being employed by a public entity, except that a member of the Legislature may not serve on the strike force.

FDLE must provide administrative and support services for the Strike Force, which must organize by December 31, 2014. Thereafter, the Strike Force must meet at least four times per year. Additional meetings may be held if the chair determines that extraordinary circumstances require an additional meeting. Members may appear at meetings by electronic means, and a majority of the members constitutes a quorum.

The Strike Force has three duties. It must:

- Develop and review a statewide list of known sexual predators and sexual offender absconders;
- Prioritize those absconders that pose the greatest risk to public safety by evaluating their criminal history, most recent dates of offense, length of time as an absconder and other factors and disseminate such list to local law enforcement agencies; and
- Develop and recommend coordinated state-wide strategies for the apprehension of sexual predators and sexual offender absconders with special focus on those that pose the greatest risk to public safety.

By October 1, 2015, and annually thereafter, the Strike Force must submit a report on its activities and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

B. SECTION DIRECTORY:

Section 1. Creates s. 16.581, F.S., relating to Sexual Predator and Sexual Offender Absconder Strike Force.

Section 2. Provides an appropriation.

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 establishes the Sexual Predator and Sexual Offender Absconder Strike Force within FDLE. FDLE must provide administrative and support services for the Strike Force. This requires one FTE at approximately \$65,000 in salaries and benefits, and travel and per diem expenses for six traveling members of the Strike Force of approximately \$36,418, for a total cost of \$101,418.³² The bill provides and appropriation of \$101,418 for that purpose.

The bill, as amended in the Justice Appropriations Subcommittee, requires the Strike Force to prioritize those absconders that pose the greatest risk to public safety by evaluating their criminal history, most recent dates of offense, length of time as an absconder and other factors and disseminate such list to local law enforcement agencies. According to FDLE, this will result in an additional fiscal impact to FDLE requiring analysis and projection of undefined risk factors for each absconder.³³

³² FDLE's analysis of CS/HB 1105, dated April 3, 2014 (on file with Judiciary Committee staff).

³³ *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to FDLE, FDLE's absconder team has been very successful in locating Florida's absconded sexual offender and predators. Analysts create a case for each absconded registrant, prioritizing them based upon several factors including input from local law enforcement, probation officers, designation as a predator, offender, former civil commitment detainee, number and seriousness of qualifying offenses, e.g. sexual battery vs. possession of child pornography etc. FDLE reports that adding a separate layer of processing and prioritization will dilute efforts at a higher cost to the State.³⁴

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2014, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorable as a committee substitute. The proposed committee substitute removed provisions of HB 1105 that amended ch. 394, F.S.

On April 2, 2014, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorable as a committee substitute. The amendment moves the strike force from OAG to FDLE. The amendment provides the purpose of the Strike Force is to develop and prioritize coordinated strategies for the

³⁴ *Id.*

apprehension of registered sexual predators and sexual offenders who are under the supervision of the Department of Corrections and who have absconded from such supervision. The amendment revises the Strike Force's duties. The amendment also provides an appropriation of \$101,418 in recurring general revenue funds.

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

27 and Sexual Offender Absconder Strike Force within the Department
 28 of Law Enforcement. The purpose of the strike force is to
 29 develop and prioritize coordinated strategies for the
 30 apprehension of registered sexual predators and sexual offenders
 31 who are under the supervision of the Department of Corrections
 32 and who have absconded from such supervision.

33 (3) DEFINITIONS.—As used in this section, the term:

34 (a) "Sexual offender" means a person required to register
 35 as a sexual offender under s. 943.0435 or s. 944.607.

36 (b) "Sexual predator" means a person required to register
 37 as a sexual predator under s. 775.21.

38 (4) MEMBERSHIP.—The strike force shall consist of the
 39 following 10 members or their designees:

40 (a) The executive director of the Department of Law
 41 Enforcement, who shall serve as chair.

42 (b) The Secretary of Corrections, who shall serve as vice
 43 chair.

44 (c) The Secretary of Juvenile Justice.

45 (d) The chair of the Parole Commission.

46 (e) The executive director of the Department of Highway
 47 Safety and Motor Vehicles.

48 (f) Five members appointed by the executive director of
 49 the Department of Law Enforcement, consisting of two sheriffs,
 50 two chiefs of police, and one state attorney. In making these
 51 appointments, the executive director of the Department of Law
 52 Enforcement shall consider representation by geography,

53 population, ethnicity, and other relevant factors in order to
 54 ensure that the membership of the strike force is representative
 55 of the state as a whole.

56 (5) TERMS OF MEMBERSHIP; COMPENSATION; ADMINISTRATIVE
 57 SERVICES.—

58 (a) The five members appointed by the executive director
 59 of the Department of Law Enforcement shall be appointed to 4-
 60 year terms; however, for the purpose of providing staggered
 61 terms of the initial appointments, two members shall be
 62 appointed to a 2-year term, two members shall be appointed to a
 63 3-year term, and one member shall be appointed to a 4-year term.
 64 Each of the remaining members is a standing member of the strike
 65 force and may not serve beyond the time he or she holds the
 66 position that was the basis for the membership. A vacancy shall
 67 be filled in the same manner as the original appointment but
 68 only for the remainder of the term.

69 (b) The Legislature finds that the strike force serves a
 70 legitimate state, county, and municipal purpose and that service
 71 on the strike force is consistent with a member's principal
 72 service in public office or employment. Therefore, membership on
 73 the strike force does not disqualify a member from holding any
 74 other public office or from being employed by a public entity,
 75 except that a member of the Legislature may not serve on the
 76 strike force.

77 (c) Members of the strike force shall serve without
 78 compensation but are entitled to reimbursement for per diem and

79 travel expenses in accordance with s. 112.061.

80 (d) The Department of Law Enforcement shall provide
 81 administrative and support services for the strike force.

82 (6) MEETINGS.—The strike force shall organize by December
 83 31, 2014. Thereafter, the strike force shall meet at least four
 84 times per year. Additional meetings may be held if the chair
 85 determines that extraordinary circumstances require an
 86 additional meeting. Members may appear at meetings by electronic
 87 means. A majority of the members of the strike force constitutes
 88 a quorum.

89 (7) DUTIES.—The strike force shall coordinate with the
 90 Department of Corrections and local law enforcement agencies to:

91 (a)1. Develop and review a statewide list of known sexual
 92 predator and sexual offender absconders.

93 2. Prioritize those absconders who pose the greatest risk
 94 to public safety by evaluating their criminal history, most
 95 recent dates of offense, length of time as absconders, and other
 96 factors.

97 3. Disseminate the list produced under this paragraph to
 98 local law enforcement agencies.

99 (b) Develop and recommend coordinated statewide strategies
 100 for the apprehension of sexual predator and sexual offender
 101 absconders with special focus on those who pose the greatest
 102 risk to public safety.

103 (8) REPORT.—By October 1, 2015, and annually thereafter,
 104 the strike force shall submit a report on its activities and

105 | recommendations to the Governor, the President of the Senate,
106 | and the Speaker of the House of Representatives.

107 | Section 2. For the 2014-2015 fiscal year, the sum of
108 | \$101,418 in recurring funds is appropriated from the General
109 | Revenue Fund to the Department of Law Enforcement for the
110 | implementation of this act.

111 | 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 Adkins offered the following:

Amendment

5 Remove lines 86-96 and insert:

6 additional meeting. At least one meeting must be held via
 7 teleconference. Members may appear at meetings by electronic
 8 means. A majority of the members of the strike force constitutes
 9 a quorum.

10 (7) DUTIES.—The strike force shall coordinate with the
 11 Department of Corrections and local law enforcement agencies to:

12 (a)1. Develop and review a statewide list of known sexual
 13 predator and sexual offender absconders.

14 2. Identify the statewide challenges, legal obstacles, and
 15 case law that impact sexual predator and sexual offender
 16 absconders.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1135 Limitation of Civil Liability for Farmers
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Rader and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1138

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Ward	Bond
2) Agriculture & Natural Resources Subcommittee	13 Y, 0 N, As CS	Kaiser	Blalock
3) Judiciary Committee		Ward <i>JW</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Current law provides that any farmer who, without receiving compensation, allows persons to enter his or her land for the purpose of removing produce or crops remaining in the fields after harvest is exempt from civil liability arising from any injury or death resulting from the condition of the land, produce, or crop. However, this exemption from civil liability does not apply if injury or death directly results from the gross negligence or intentional act of the farmer, or from known dangerous conditions not disclosed by the farmer.

The bill removes statutory language that limits the exemption from liability to post-harvest removal of produce or crops, and removes additional statutory language providing that the exemption from civil liability does not apply if injury or death results from known dangerous conditions not disclosed by the farmer. The effect is that any farmer who, without receiving compensation, allows persons to enter his or her land at any time for the purpose of removing produce or crops is exempt from civil liability arising from any injury or death resulting from the condition of the land, produce, or crop, even if the injury or death results from known dangerous conditions not disclosed by the farmer. Consistent with current law, this exemption will not apply if injury or death directly results from the gross negligence or intentional act of the farmer.

The bill does not appear to have a fiscal impact on the state or local governments. The bill has a potentially positive fiscal impact on farmers by relieving them from civil liability under the circumstances stated above.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Landowner Liability

A plaintiff who is injured on another person's land may sue the landowner in tort if the landowner breached a duty of care owed to the plaintiff and the plaintiff suffered damages as a result of the landowner's breach.¹ A landowner's duty to persons on his or her land is governed by the status of the injured person.

An "invitee" is a person who was invited to enter the land.² Florida law defines "invitation" to mean "that the visitor entering the premises has an objectively reasonable belief that he or she has been invited or is otherwise welcome on that portion of the real property where injury occurs."³ The duties owed to most invitees are the duty to keep property in reasonably safe condition; the duty to warn of concealed dangers which are known or should be known to the property holder, and which the invitee cannot discover through the exercise of due care; and the duty to refrain from wanton negligence or willful misconduct.⁴

Farms

Persons invited to pick crops on another's land are considered "invitees," according to the above definition. In the absence of contract, the farmer⁵ owning and working the land has a duty of care to parties who are invited to glean excess produce, or who enter upon the land for cooperative farming, or other harvesting reasons.

Current law⁶ provides that any farmer who, without receiving compensation, allows persons to enter his or her land for the purpose of removing produce or crops remaining in the fields after harvest is exempt from civil liability arising from any injury or death resulting from the condition of the land, produce, or crop. However, this exemption from civil liability does not apply if injury or death directly results from the gross negligence or intentional act of the farmer, or from known dangerous conditions not disclosed by the farmer.⁷

Effect of Proposed Changes

The bill removes current statutory language that limits the exemption from liability to post-harvest removal of produce or crops, and removes current statutory language providing that the exemption from civil liability does not apply if injury or death results from known dangerous conditions not disclosed by the farmer. The effect is that any farmer who, without receiving compensation, allows persons to enter his or her land at any time for the purpose of removing produce or crops is exempt from civil liability arising from any injury or death resulting from the condition of the land, produce, or crop, even if the injury or death results from known dangerous conditions not disclosed by the farmer.

¹ 74 Am.Jur 2d Torts s. 7 (2013).

² *Post v. Lunney*, 261 So.2d 147, 147-48 (Fla. 1972).

³ Section 768.075(3)(a)1., F.S.

⁴ See, e.g., *Dampier v. Morgan Tire & Auto, LLC*, 82 So.3d 204, 205 (Fla. 5th DCA 2012).

⁵ "[T]he term 'farmer' means a person who is engaging in the growing or producing of farm produce, either part time or full time, for personal consumption or for sale and who is the owner or lessee of the land" Section 768.137(1), F.S.

⁶ Section 768.137, F.S.

⁷ Section 768.137(3), F.S.

Consistent with current law, this exemption will not apply if injury or death directly results from the gross negligence or intentional act of the farmer.⁸

B. SECTION DIRECTORY:

Section 1: Amends s. 768.137, F.S., limiting civil liability for certain farmers.

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 has a potentially positive fiscal impact on farmers who, without receiving compensation, allow persons to enter their land, at any time, for the purpose of removing produce or crops by exempting them from civil liability arising from any injury or death resulting from the condition of the land, produce, or crop.

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:

The bill provides that a farmer who, without receiving compensation, allows a person or group of people onto his property to harvest crops at any time is exempt from civil liability arising from any injury or death resulting from the condition of the land or crop, unless the farmer acts with gross negligence or commits an intentional act. This provision in the bill may violate Article I, Section 21 of the Florida Constitution, which provides:

SECTION 21. Access to courts.--The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

The right to go to court to resolve disputes is a fundamental right.⁹ In order to make a claim of denial of access to courts, an aggrieved party must demonstrate that the Legislature has abolished a common-law right previously enjoyed by the people of Florida.¹⁰ A person's guaranteed access to the courts should not be unduly or unreasonably burdened or restricted.¹¹ If the Legislature asserts a valid public purpose, it can restrict access to the courts as long as it provides a reasonable alternative to litigation.

The Florida Supreme Court has held:

"Where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of Florida, or where such right has become a part of the common law of the State, the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown."¹²

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2014, the Agriculture and Natural Resources (ANR) Subcommittee reported HB 1135 favorably as a committee substitute. The ANR subcommittee adopted one amendment to HB 1135. The amendment removes current statutory language providing that the exemption from civil liability does not apply if injury or death results from known dangerous conditions not disclosed by the farmer.

This analysis is drafted to the committee substitute as passed by the ANR subcommittee.

⁹ *DR Lakes Inc. v. Brandsmart U.S.A. of West Palm Beach*, 819 So.2d 971, 974 (Fla. 4th DCA 2002).

¹⁰ *Yachting Promotions, Inc. v. Broward Yachts, Inc.*, 792 So. 2d 660, 663 (Fla. 4th DCA 2001); *Strohm v. Hertz Corporation/Hertz Claim Management*, 685 So. 2d 37, 39 (Fla. 1st DCA 1996).

¹¹ *Preferred Medical Plan, Inc. v. Ramos*, 742 So. 2d 322, 323 (Fla. 3rd DCA 1999); *Swain v. Curry*, 595 So. 2d 168, 174 (Fla. 1st DCA 1992).

¹² *Kluger v. White*, 281 So.2d 1, 4 (Fla. 1973).

1 A bill to be entitled
 2 An act relating to limitation of civil liability for
 3 farmers; amending s. 768.137, F.S.; revising
 4 conditions under which certain farmers are exempt from
 5 civil liability; revising applicability of the
 6 exemption from civil liability; providing an effective
 7 date.

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

10
 11 Section 1. Subsections (2) and (3) of section 768.137,
 12 Florida Statutes, are amended to read:

13 768.137 Definition; limitation of civil liability for
 14 certain farmers; exception.—

15 (2) Any farmer who gratuitously allows persons to enter
 16 upon her or his own land for the purpose of removing any farm
 17 produce or crops is ~~remaining in the fields following the~~
 18 ~~harvesting thereof,~~ shall be exempt from civil liability arising
 19 out of any injury or death resulting from the nature or
 20 condition of such land or the nature, age, or condition of any
 21 such farm produce or crop.

22 (3) The exemption from civil liability provided for in
 23 this section does ~~shall~~ not apply if injury or death directly
 24 results from the gross negligence or, intentional act of, ~~or~~
 25 ~~from known dangerous conditions not disclosed by the farmer.~~

26 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 Pilon offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:
 6 Section 1. Subsections (2) and (3) of section 768.137,
 7 Florida Statutes, are amended to read:

8 768.137 Definition; limitation of civil liability for
 9 certain farmers; exception.-

10 (2) A ~~Any~~ farmer who gratuitously allows a person ~~persons~~
 11 to enter upon the farmer's ~~her or his own~~ land for the purpose
 12 of removing ~~any~~ farm produce or crops is remaining in the fields
 13 ~~following the harvesting thereof, shall be~~ exempt from civil
 14 liability:

15 (a) Arising out of any injury or the death of such person
 16 due to ~~resulting from~~ the nature or condition of the ~~such~~ land;
 17 or



Amendment No. 1

18 (b) Arising out of any injury or death due to the nature,
19 age, or condition of the any such farm produce or crops removed
20 by such person erop.

21 (3) The exemption from civil liability provided for in
22 this section does shall not apply if injury or death directly
23 results from the gross negligence or, intentional act of the
24 farmer, or the failure of the farmer to warn of a dangerous
25 condition of which the farmer has actual knowledge unless the
26 dangerous condition would be obvious to a person entering upon
27 the farmer's land from known dangerous conditions not disclosed
28 by the farmer.

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

32 -----
33 T I T L E A M E N D M E N T

34 Remove everything before the enacting clause and insert:
35 An act relating to the civil liability of farmers; amending s.
36 768.137, F.S.; expanding an existing exemption from civil
37 liability for farmers who gratuitously allow a person to enter
38 upon their land for the purpose of removing farm produce or
39 crops left in the field after harvesting to include farmers who
40 gratuitously allow a person to enter upon their land to remove
41 any farm produce or crops; revising exceptions to the exemption
42 from civil liability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1215 False Personation
SPONSOR(S): Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Watson, B.
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N, As CS	McAuliffe	Lloyd
3) Judiciary Committee		Cox <i>kan</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Section 843.08, F.S., makes it a third degree felony for a person to falsely assume or pretend to be a specified officer and take it upon himself or herself to act as such officer, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such an officer. The offense is reclassified to a second degree felony or a first degree felony in specified instances.

Section 843.085, F.S., makes it a first degree misdemeanor for a person to own or operate a motor vehicle marked or identified in any manner by words or insignia that could deceive a reasonable person into believing the vehicle is authorized by a law enforcement agency for use by the person operating the vehicle. The prohibited words and insignia include words such as "police," "patrolman," "sheriff," and "deputy."

The bill amends s. 843.08, F.S., to add "firefighter" and "investigator with the Bureau of Fire and Arson Investigations within the office of the Chief Financial Officer" to the list of officers that may not be falsely personated. The bill expands the application of s. 843.085, F.S., to prohibit a person from:

- Wearing or displaying the word "fire department" on any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof;
- Marking or identifying a vehicle by the word "fire department," or any lettering, marking, insignia, or colorable imitation thereof; and
- Selling, transferring, or giving away the authorized badge, or colorable imitation thereof, including miniatures which bear the word "fire department."

The bill addresses a 2005 Florida Supreme Court decision by requiring proof that the offender had the intent to mislead or cause another person to believe (rather than requiring proof that a reasonable person could be deceived) that the:

- Person is a member of that agency or is authorized to wear or display such item; or
- Vehicle is an official vehicle of that agency and is authorized to be used by that agency.

The Criminal Justice Impact Conference (CJIC) met March 25, 2014, and determined this bill will have an insignificant prison bed impact. The bill may also have a negative jail bed impact on local governments, because it expands the application of a misdemeanor offense.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

False Personation of an Officer or Others

Section 843.08, F.S., makes it a third degree felony¹ for a person to falsely assume or pretend to be a specified officer and take it upon himself or herself to act as such officer, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such an officer.² This section applies to the false personation of the following:

- A sheriff or deputy sheriff;
- Officers of the Florida Highway Patrol;
- Officers of the Fish and Wildlife Conservation Commission;
- Officers of the Department of Transportation;
- Officers of the Department of Financial Services;
- Officers of the Department of Corrections;
- Correctional probation officers;
- State Attorneys, assistant state attorneys, and state attorney investigators;
- The Statewide Prosecutor and assistant statewide prosecutors;
- Coroners;
- Police officers;
- Lottery special agents and lottery investigators;
- Beverage enforcement agents;
- Watchman;
- Members of the Parole Commission and any administrative aid or supervisor employed by the Parole Commission;
- Any personnel or representative of the Florida Department of Law Enforcement (FDLE); and
- Federal law enforcement officers as defined in s. 901.1505, F.S.

If a person falsely personates any of the above listed officers during the commission of a felony, the offense is reclassified to a second degree felony.³ If the commission of a felony results in the death or injury of another person, the offense is reclassified to a first degree felony.⁴

Currently, the term "watchman" is not defined.

Effect of the Bill

The bill amends s. 843.08, F.S., to add "firefighter" and "investigator with the Bureau of Fire and Arson Investigations within the office of the Chief Financial Officer" to the list of officers described above, and defines the term "watchman" as a security officer licensed under ch. 493, F.S.⁵ The bill also removes the reference to "officer of the Department of Transportation" since these officers were consolidated with the Florida Highway Patrol.

The bill amends the title of this offense to "false personation" and makes conforming changes in s. 921.0022, F.S., to reflect this title change.

¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

² Section 843.08, F.S.

³ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

⁴ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁵ Section 493.6101(19), F.S., defines a "security officer" as any individual who, for consideration:

- Advertises as providing or performs bodyguard services or otherwise guards persons or property;
- Attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or
- Attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof.

Unlawful Use of Police Badges or Other Indicia of Authority

Unlawful use of Police Badges

Section 843.085(1), F.S., makes it a first degree misdemeanor,⁶ for a person, unless authorized by the appropriate agency, to wear or display any authorized indicia of authority including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof of a law enforcement agency which could deceive a reasonable person into believing that such item is authorized by the agency for use by the person displaying or wearing it.

The subsection also prohibits a person from wearing or displaying any item which displays the word "police," "patrolman," "agent," "sheriff," "deputy," "trooper," "highway patrol," "Wildlife Officer," "Marine Patrol Officer," "state attorney," "public defender," "marshal," "constable," or "bailiff" and which could deceive a reasonable person into believing that such item is authorized by the law enforcement agency for use by the person displaying or wearing it.

Operating a Vehicle Marked as a Law Enforcement Vehicle

Section 843.085(2), F.S., makes it a first degree misdemeanor for a person to own or operate a motor vehicle marked or identified in any manner or combination (marked vehicle) by words or insignia which could deceive a reasonable person into believing that the vehicle is authorized by a law enforcement agency for use by the person operating the vehicle.⁷ The prohibited words and insignia include:

- The word or words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff;" or
- Any lettering, marking, or insignia or colorable imitation thereof, including, but not limited to, stars, badges, or shields, officially used to identify the marked vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency.⁸

Section 843.085(2), F.S., does not apply if:

- The marked vehicle is owned or operated by the appropriate agency and its use is authorized by such agency;
- The local law enforcement agency authorizes the use of the marked vehicle; or
- The person is appointed by the Governor pursuant to ch. 354, F.S.⁹

An exception is also provided to allow fraternal, benevolent, or labor organizations or associations (fraternal association), to use any of the following words in the official name of the organization or association:

- "Police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff."¹⁰

Selling Badges

Currently, s. 843.085(3), F.S., makes it a first degree misdemeanor to sell, transfer, or give away the authorized badge, or colorable imitation thereof of any criminal justice agency or bearing words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "Wildlife Officer," "Marine Patrol Officer,"

⁶ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁷ Section 843.085(2), F.S.

⁸ Section 943.045, F.S., defines the term "criminal justice agency" as a court, FDLE, the Department of Juvenile Justice, the protective investigations component of the Department of Children and Family Services, which investigates the crimes of abuse and neglect, and any other governmental agency or subunit thereof which performs the administration of criminal justice pursuant to a statute or rule of court and which allocates a substantial part of its annual budget to the administration of criminal justice.

⁹ Chapter 354, F.S., requires the Governor to appoint one or more persons who have met specified law enforcement qualifications and training requirements as special officers for the protection and safety of railroads and common carriers; their passengers and employees; and the property of such carriers, passengers, and employees.

¹⁰ Section 843.085(4), F.S.

“marshal,” “constable,” “agent,” “state attorney,” “public defender,” or “bailiff,” which could deceive a reasonable person into believing that such item is authorized by the agency.¹¹

Sult v. State¹²

In *Sult v. State*,¹³ the Florida Supreme Court held that s. 843.085, F.S., was unconstitutionally overbroad and vague. The court found the statute unconstitutional because it did not require that the offender had a specific intent to deceive and it made no distinction between innocent wearing of law enforcement items and wearing of these items in order to deceive the public into believing the wearer was a member of the law enforcement agency. The court found:

With no specific intent-to-deceive element, the section extends its prohibitions to innocent wearing and displaying of specified words. The reach of the statute is not tailored toward the legitimate public purpose of prohibiting conduct intended to deceive the public into believing law enforcement impersonators. The could deceive a reasonable person element of section 843.085(1), in conjunction with the prohibition of a display in any manner or combination of words listed in the statute, results in a virtually boundless and uncertain restriction on expression. Thus... [the section] is overbroad because it reaches a substantial amount of constitutionally protected conduct.¹⁴

Effect of the Bill

The bill expands the application of s. 843.085, F.S., to prohibit a person from:

- Wearing or displaying the word “fire department” on any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof;
- Marking or identifying a vehicle by the word “fire department,” or any lettering, marking, insignia, or colorable imitation thereof; and
- Selling, transferring, or giving away the authorized badge, or colorable imitation thereof, including miniatures which bear the word “fire department.”

The bill addresses the *Sult v. State* decision by requiring proof that the offender had the intent to mislead or cause another person to believe (rather than requiring proof that a reasonable person could be deceived) that the:

- Person is a member of that agency or is authorized to wear or display such item; or
- Vehicle is an official vehicle of that agency and is authorized to be used by that agency.

B. SECTION DIRECTORY:

Section 1. Amends s. 843.08, F.S., relating to falsely personating officer, etc.

Section 2. Amends s. 843.085, F.S., relating to unlawful use of police badges or other indicia of authority.

Section 3. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4. Provides an effective date of October 1, 2014.

¹¹ The bill provides an exception for “agency purchases or upon the presentation and recordation of both a driver’s license and other identification showing any transferee to actually be a member of such criminal justice agency or unless the person is appointed by the Governor pursuant to chapter 354.” A transferor of an item covered by this subsection is required to maintain for 2 years a written record of the transaction, including records showing compliance with this subsection, and if such transferor is a business, it must make such records available during normal business hours for inspection by any law enforcement agency having jurisdiction in the area where the business is located. Violation of this provision is a first degree misdemeanor. The bill does not change this provision.

¹² 906 So.2d 1013 (Fla. 2005).

¹³ *Id.*

¹⁴ *Id.* at 1021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met March 25, 2014, and determined this bill will have an insignificant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill may also have a negative jail bed impact on local governments because it expands the application of s. 843.085, F.S., a first degree misdemeanor, to include vehicles marked or identified by the word "fire department," or any lettering, marking, insignia, or colorable imitation thereof.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment adds "fire department" to s. 843.085(1) and (3), F.S., and corrects the intent language in these sections to bring the section into compliance with the Florida Supreme Court's decision in *Sult v. State*.

On April 2, 2014, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment adds "investigator with the Bureau of Fire and Arson Investigations within the office of the Chief Financial Officer" to the list of officers that may not be falsely personated. The bill also removes the reference to "officer of the Department of Transportation."

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

27 or assistant statewide prosecutor, state attorney investigator,
 28 coroner, police officer, lottery special agent or lottery
 29 investigator, beverage enforcement agent, or watchman, or any
 30 member of the Parole Commission and any administrative aide or
 31 supervisor employed by the commission, or any personnel or
 32 representative of the Department of Law Enforcement, or a
 33 federal law enforcement officer as defined in s. 901.1505, and
 34 takes upon himself or herself to act as such, or to require any
 35 other person to aid or assist him or her in a matter pertaining
 36 to the duty of any such officer, commits a felony of the third
 37 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 38 775.084. However, a person who falsely personates any such
 39 officer during the course of the commission of a felony commits
 40 a felony of the second degree, punishable as provided in s.
 41 775.082, s. 775.083, or s. 775.084. If the commission of the
 42 felony results in the death or personal injury of another human
 43 being, the person commits a felony of the first degree,
 44 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 45 The term "watchman" means a security officer licensed under
 46 chapter 493.

47 Section 2. Section 843.085, Florida Statutes, is amended
 48 to read:

49 843.085 Unlawful use of ~~police~~ badges or other indicia of
 50 authority. ~~It is unlawful for any person:~~

51 (1) It is unlawful for any person, unless appointed by the
 52 Governor pursuant to chapter 354, authorized by the appropriate

53 | agency, or displayed in a closed or mounted case as a collection
 54 | or exhibit, to wear or display any authorized indicia of
 55 | authority, including any badge, insignia, emblem, identification
 56 | card, or uniform, or any colorable imitation thereof, of any
 57 | federal, state, county, or municipal law enforcement agency, or
 58 | other criminal justice agency as now or hereafter defined in s.
 59 | 943.045, with the intent to mislead or cause another person to
 60 | believe that he or she is a member of that agency or is
 61 | authorized to display or wear such item, or to wear or display
 62 | any item that ~~which could deceive a reasonable person into~~
 63 | ~~believing that such item is authorized by any of the agencies~~
 64 | ~~described above for use by the person displaying or wearing it,~~
 65 | ~~or which~~ displays in any manner or combination the word or words
 66 | "police," "patrolman," "agent," "sheriff," "deputy," "trooper,"
 67 | "highway patrol," "commission officer," "Wildlife Officer,"
 68 | "Marine Patrol Officer," "state attorney," "public defender,"
 69 | "marshal," "constable," ~~or~~ "bailiff," or "fire department," with
 70 | the intent to mislead or cause another person to believe that he
 71 | or she is a member of that agency or is authorized to wear or
 72 | display such item ~~which could deceive a reasonable person into~~
 73 | ~~believing that such item is authorized by any of the agencies~~
 74 | ~~described above for use by the person displaying or wearing it.~~

75 | (2) It is unlawful for a person to own or operate a motor
 76 | vehicle marked or identified in any manner or combination by the
 77 | word or words "police," "patrolman," "sheriff," "deputy,"
 78 | "trooper," "highway patrol," "commission officer," "Wildlife

79 Officer," "Marine Patrol Officer," "marshal," "constable," ~~or~~
 80 "bailiff," or "fire department," or by any lettering, marking,
 81 or insignia, or colorable imitation thereof, including, but not
 82 limited to, stars, badges, or shields, officially used to
 83 identify the vehicle as a federal, state, county, or municipal
 84 law enforcement vehicle or a vehicle used by a criminal justice
 85 agency as ~~now or hereafter~~ defined in s. 943.045, or a vehicle
 86 used by a fire department with the intent to mislead or cause
 87 another person to believe that such vehicle is an official
 88 vehicle of that agency and is authorized to be used by that
 89 agency which could deceive a reasonable person into believing
 90 that such vehicle is authorized by any of the agencies described
 91 above for use by the person operating the motor vehicle, unless
 92 such vehicle is owned or operated by the appropriate agency and
 93 its use is authorized by such agency, or the local law
 94 enforcement agency or fire department authorizes the use of such
 95 vehicle, or unless the person is appointed by the Governor
 96 pursuant to chapter 354.

97 (3) It is unlawful for a person to sell, transfer, or give
 98 away the authorized badge, or colorable imitation thereof,
 99 including miniatures, of any criminal justice agency as ~~now or~~
 100 ~~hereafter~~ defined in s. 943.045, or bearing in any manner or
 101 combination the word or words "police," "patrolman," "sheriff,"
 102 "deputy," "trooper," "highway patrol," "commission officer,"
 103 "Wildlife Officer," "Marine Patrol Officer," "marshal,"
 104 "constable," "agent," "state attorney," "public defender," ~~or~~

105 "bailiff," or "fire department," with the intent to mislead or
 106 cause another person to believe that he or she is a member of
 107 that agency or is authorized to wear or display such item ~~which~~
 108 ~~could deceive a reasonable person into believing that such item~~
 109 ~~is authorized by any of the agencies described above,~~ except for
 110 agency purchases or upon the presentation and recordation of
 111 both a driver's license and other identification showing any
 112 transferee to actually be a member of such criminal justice
 113 agency or unless the person is appointed by the Governor
 114 pursuant to chapter 354. A transferor of an item covered by this
 115 subsection is required to maintain for 2 years a written record
 116 of such transaction, including records showing compliance with
 117 this subsection, and if such transferor is a business, it shall
 118 make such records available during normal business hours for
 119 inspection by any law enforcement agency having jurisdiction in
 120 the area where the business is located.

121 (4) ~~Nothing in~~ This section does not ~~shall~~ prohibit a
 122 fraternal, benevolent, or labor organization or association, or
 123 their chapters or subsidiaries, from using the following words,
 124 in any manner or in any combination, if those words appear in
 125 the official name of the organization or association: "police,"
 126 "patrolman," "sheriff," "deputy," "trooper," "highway patrol,"
 127 "commission officer," "Wildlife Officer," "Marine Patrol
 128 Officer," "marshal," "constable," ~~or~~ "bailiff," or "fire
 129 department."

130 (5) Violation of any provision of this section is a

131 misdemeanor of the first degree, punishable as provided in s.
 132 775.082 or s. 775.083. This section is cumulative to any law now
 133 in force in the state.

134 Section 3. Paragraph (b) of subsection (3) of section
 135 921.0022, Florida Statutes, is amended to read:

136 921.0022 Criminal Punishment Code; offense severity
 137 ranking chart.—

138 (3) OFFENSE SEVERITY RANKING CHART

139 (b) LEVEL 2

140

Florida Statute	Felony Degree	Description
379.2431 (1) (e) 3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1) (e) 4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6) (c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic

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			feet in volume or any quantity for commercial purposes, or hazardous waste.
144	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
145	590.28(1)	3rd	Intentional burning of lands.
146	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
147	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
148	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
149	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling;

			facilitating or furthering burglary.
150	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
151	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
152	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
153	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
154	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
155	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit,

			etc., credit card, value over \$300.
156	817.52 (3)	3rd	Failure to redeliver hired vehicle.
157	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
158	817.60 (5)	3rd	Dealing in credit cards of another.
159	817.60 (6) (a)	3rd	Forgery; purchase goods, services with false card.
160	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
161	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
162	831.01	3rd	Forgery.
163			

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164	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
165	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
166	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
167	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
168	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
169	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
170	843.08	3rd	<u>False personation</u> Falsely impersonating an officer.

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893.13(2)(a)2. 3rd Purchase of any s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4) drugs
other than cannabis.

171

893.147(2) 3rd Manufacture or delivery of drug
paraphernalia.

172

173

Section 4. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1279 Marriage of Minors
SPONSOR(S): Stafford
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1498

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Cary	Bond
2) Healthy Families Subcommittee	11 Y, 0 N	Entress	Brazzell
3) Judiciary Committee		Cary JMC	Havlicak RH

SUMMARY ANALYSIS

Under current law, a minor can marry if he or she is at least 16 years of age and if the parents or guardian of the minor consent in writing; if both parents are deceased; or if the minor has previously been married. In addition, a minor of any age can marry if the marriage is approved by a county court judge and the female is pregnant or has given birth.

This bill prohibits any person under the age of 16 from marrying.

This bill may have a minimal fiscal impact on state revenues. This bill does not appear to have a local government impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Under current law, a minor may be married if he or she is at least 16 years of age if the parents or guardian of the minor consents in writing.¹ If a minor of at least 16 years of age has been previously married, no parental consent is required. Likewise, if both parents of a minor of at least 16 years of age are deceased, no parental consent is required.²

A county court judge may, in his or her discretion, issue a marriage license to a minor without parental consent under two specific circumstances:

- Upon application of both parties sworn under oath that they are the parents of a child;³ or
- When a pregnancy is verified by the written statement of a licensed physician and the minor female (or both the male and the female, if both are minors) swears under oath that she is an expectant parent.⁴

There is currently no age limitation when the minor is a parent or expectant parent.

Florida is one of many states that allow marriage below the age of 16 with certain statutory requirements, including pregnancy, parental, and/or judicial consent. Only 13 states and the District of Columbia appear to prohibit marriage under the age of 16 in all cases: Alabama, Illinois, Iowa, Kentucky, Michigan, Minnesota, Montana, Nebraska, North Dakota, Oregon, Utah, Vermont, Wisconsin.⁵ All other states appear to currently allow marriage under the age of 16 under some circumstances.⁶

In 2013, 9 marriages in Florida involved a person under the age of 16.⁷ In 2012, 16 marriages involved a person under the age of 16. The youngest person to be married during those years was a 13-year-old groom.⁸

Effect of the Bill

The bill prohibits marriage by a minor under the age of 16.

B. SECTION DIRECTORY:

Section 1: Amends s. 741.0405, F.S., relating to when a marriage license may be issued to persons under 18 years.

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

¹ Section 741.0405(1), F.S.

² *Id.*

³ Section 741.0405(2), F.S.

⁴ Section 741.0405(3), F.S.

⁵ See the Cornell University Marriage Laws database at http://www.law.cornell.edu/wex/table_marriage (last viewed March 13, 2013).

⁶ *Id.*

⁷ Email correspondence with the Bureau of Vital Statistics, March 19, 2014 (on file with the Civil Justice Subcommittee).

⁸ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a minor impact on state revenues. See Fiscal Comments section below.

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 marriage license costs \$93.50, \$32 of which goes to the county clerk of courts,⁹ \$25 of which goes to General Revenue,¹⁰ \$4 of which goes to the state Department of Health,¹¹ \$25 of which goes to a domestic violence trust fund,¹² and \$7.50 of which goes to a displaced homemaker trust fund.¹³ If the couple takes a premarital preparation course, the fee is reduced by \$32.50, so that the state does not collect \$25 into General Revenue or \$7.50 for the displaced homemaker trust fund.¹⁴

The Department of Health maintains marriage statistics at the Bureau of Vital Statistics. In 2013, 9 marriages in Florida involved a person under the age of 16. In 2012, 16 marriages involved a person under the age of 16.¹⁵ Had the bill been enacted prior to 2012, if none of the licenses' cost were reduced by taking the premarital preparation course, this would have resulted in a reduction of \$225 in general revenue collections in 2013 and \$400 in general revenue collections in 2012 and a reduction of \$67.50 and \$120 into the displaced homemaker trust fund. Likewise, the bill would have resulted in reduced collections of \$288 and \$512 statewide by the various clerks of court, \$36 and \$64 by the Department of Health, and \$225 and \$400 less deposited into the domestic violence trust fund.

⁹ Sections 28.24(23) and 741.01(1), F.S.

¹⁰ Section 741.01(4), F.S.

¹¹ Section 741.02, F.S.

¹² Section 741.01(2), F.S.

¹³ Section 741.01(3), F.S.

¹⁴ Section 741.01(5), F.S.

¹⁵ Email correspondence with the Bureau of Vital Statistics, March 17, 2014 (on file with the Civil Justice Subcommittee).

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

None.

1 A bill to be entitled
 2 An act relating to marriage of minors; amending s.
 3 741.0405, F.S.; deleting provisions that allow the
 4 issuance of marriage licenses to minors under 16 years
 5 of age in certain circumstances; conforming provisions
 6 to changes made by the act; providing an effective
 7 date.

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

10
 11 Section 1. Subsections (2), (3), and (4) of section
 12 741.0405, Florida Statutes, are amended to read:

13 741.0405 When marriage license may be issued to persons
 14 under 18 years.—

15 (2) The county court judge of any county in the state may,
 16 in the exercise of his or her discretion, issue a license to
 17 marry to a ~~any~~ male or female under the age of 18 years, but at
 18 least 16 years of age, upon application of both parties sworn
 19 under oath that they are the parents of a child.

20 (3) When the fact of pregnancy is verified by the written
 21 statement of a licensed physician, the county court judge of any
 22 county in the state may, in his or her discretion, issue a
 23 license to marry:

24 (a) To a ~~any~~ male or female under the age of 18 years, but
 25 at least 16 years of age, upon application of both parties sworn
 26 under oath that they are the expectant parents of a child; or

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27 (b) To a ~~any~~ female under the age of 18 years, but at
 28 least 16 years of age, and male over the age of 18 years upon
 29 the female's application sworn under oath that she is an
 30 expectant parent.

31 (4) No license to marry shall be granted to a ~~any~~ person
 32 under the age of 16 years, with or without the consent of the
 33 parents, ~~except as provided in subsections (2) and (3).~~

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