



Criminal Justice Subcommittee

Monday, March 10, 2014

2:00 PM

404 HOB

Will Weatherford
Speaker

Matt Gaetz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Monday, March 10, 2014 02:00 pm

End Date and Time: Monday, March 10, 2014 03:00 pm

Location: Sumner Hall (404 HOB)

Duration: 1.00 hrs

Consideration of the following bill(s):

HB 41 Florida Law Enforcement Officers' Hall of Fame by Campbell

HB 517 Fraudulent Controlled Substance Prescriptions by Hooper

HB 989 Human Trafficking by Trujillo

HB 1013 Court-Ordered Expunction of Criminal History Records by Steube



Consideration of the following proposed committee substitute(s):

PCS for HB 1105 -- Sexual Predator and Sexual Offender Absconders

NOTICE FINALIZED on 03/06/2014 16:13 by Bowen.Erika

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones 	Cunningham 
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill establishes the "Florida Law Enforcement Officers' Hall of Fame" (Hall of Fame). The bill requires the Department of Management (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 nominees and submit them to the Governor and Cabinet. 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 Governor and Cabinet ultimately select who will be inducted into the Hall of Fame.

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 may have a negative fiscal impact on DMS and FDLE. See fiscal section.

The bill is effective on July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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

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

Effect of the Bill

The bill provides the following legislative intent language:

It is the intent of the Legislature to recognize and honor those law enforcement officers who, through their works, service, and exemplary accomplishments during or following their service as law enforcement officers, have dedicated their lives to, and sacrificed their lives for, the safety of the citizens of Florida and have made significant contributions to the state.

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 (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 potential nominees from law enforcement organizations that FDLE deems appropriate.⁵ FDLE may establish criteria and time periods for accepting and selecting nominee recommendations. After receiving nominee recommendations, FDLE must choose nominees and submit them to the Governor and Cabinet. 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 Governor and Cabinet ultimately select who will be inducted into the Hall of Fame.

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.

B. SECTION DIRECTORY:

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

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

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

² The American Police Hall of Fame, <http://www.aphf.org/> (last visited on March 4, 2014).

³ The Florida State Law Enforcement Officers Memorial, <http://www.floridastatefop.org/flmemorial.asp> (last visited on March 4, 2014).

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

⁵ Such organizations include, but are not limited to, the Police Benevolent Association.

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.⁶

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.⁷

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 1 FTE 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.⁸

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.⁹

The bill directs FDLE to administer the Hall of Fame without appropriation of state funds. FDLE reports that the costs related to staff time and agency resources that will be expended to carry out the bill's provisions cannot be absorbed within FDLE's existing appropriated resources.¹⁰

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.

⁶ DMS 2014 Analysis of HB 41 (on file with the Criminal Justice Subcommittee).

⁷ *Id.*

⁸ FDLE 2014 Analysis of HB 41 (on file with the Criminal Justice Subcommittee).

⁹ *Id.*

¹⁰ *Id.*

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:

1. The bill creates s. 265.004, F.S., to establish the Florida Law Enforcement Officers' Hall of Fame, but does not define the term "law enforcement officer."
2. Lines 31 and 35 use the term "person" when referring to Hall of Fame inductees and nominees. If the intent of the bill is to only allow law enforcement officers to be eligible for induction into the Hall of Fame, replacing the term "person" with "law enforcement officer" would be more clear.
3. Other halls of fame specify the number of nominees that may be submitted to the Governor and Cabinet as well as the number of persons who may be inducted each year. To provide uniformity in ch. 265, F.S., it is suggested that the bill do the same.
4. The legislative intent language in the bill specifies that "the Legislature intends to recognize and honor those law enforcement officers who, through their works, service, and exemplary accomplishments during or following their service as law enforcement officers, have dedicated their lives to, and sacrificed their lives for, the safety of the citizens of Florida and have made significant contributions to the state." However, the remainder of the bill does not provide any guidance to FDLE as to what criteria a law enforcement officer must meet in order to be inducted into the Hall of Fame (aside from requiring FDLE to give preference officers born in Florida or who have adopted Florida as their home state). As a result, it is unclear how the legislative intent language applies to the remainder of the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

11
 12 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 those law enforcement officers who, through their works,
 17 service, and exemplary accomplishments during or following their
 18 service as law enforcement officers, have dedicated their lives
 19 to, and sacrificed their lives for, the safety of the citizens
 20 of Florida and have made significant contributions to the state.

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

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

26 (b) The Department of Management Services shall set aside
 27 an appropriate public area on the Plaza Level of the Capitol
 28 Building for the Florida Law Enforcement Officers' Hall of Fame

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29 and shall consult with the Department of Law Enforcement
 30 regarding the design and theme of the area.

31 (c) The Department of Law Enforcement shall affix the name
 32 of each person inducted into the Florida Law Enforcement
 33 Officers' Hall of Fame on a plaque displayed in the designated
 34 area of the Capitol Building.

35 (3)(a) The Department of Law Enforcement shall annually
 36 accept recommendations of persons to be considered as nominees
 37 for induction into the Florida Law Enforcement Officers' Hall of
 38 Fame. The department shall accept recommendations of potential
 39 nominees from law enforcement organizations that the department
 40 deems appropriate, including, but not limited to, the Police
 41 Benevolent Association. The department shall choose nominees
 42 from among the recommendations submitted and transmit the names
 43 of those law enforcement officers to the Governor and Cabinet
 44 who will select the nominees to be inducted.

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

49 (4) The Department of Law Enforcement may establish
 50 criteria and set specific time periods for the acceptance of
 51 recommendations for nomination and for the process of selecting
 52 nominees' names to forward to the Governor and Cabinet. The
 53 department may establish, organize, and conduct a formal
 54 induction ceremony.

55 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: Criminal Justice
 2 Subcommittee

3 Representative Campbell offered the following:

4
 5 **Amendment**

6 Remove everything after the enacting clause and insert:
 7 Section 1. Section 265.004, Florida Statutes, is created
 8 to read:

9 265.004 Florida Law Enforcement Officers' Hall of Fame.-

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

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



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18 (a) The Florida Law Enforcement Officers' Hall of Fame is
19 administered by the Department of Law Enforcement without
20 appropriation of state funds.

21 (b) The Department of Management Services shall set aside
22 an appropriate public area on the Plaza Level of the Capitol
23 Building for the Florida Law Enforcement Officers' Hall of Fame
24 and shall consult with the Department of Law Enforcement
25 regarding the design and theme of the area.

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

32 (3)(a) The Department of Law Enforcement shall annually
33 accept recommendations of law enforcement officers to be
34 considered for induction into the Florida Law Enforcement
35 Officers' Hall of Fame. The department shall accept
36 recommendations from law enforcement organizations that the
37 department deems appropriate, including, but not limited to, the
38 Police Benevolent Association. The department shall nominate ten
39 law enforcement officers from the recommendations submitted and
40 transmit the names of the nominees to the Governor and Cabinet.
41 The Governor and Cabinet must select five of the nominees to be
42 inducted.



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43 (b) In determining who should be nominated, the Department
44 of Law Enforcement shall give preference to law enforcement
45 officers who were born in Florida or who have adopted Florida as
46 their home state and who have put their lives on the line for
47 the safety and protection of the citizens of Florida through
48 their works, service, and exemplary accomplishments during or
49 following their service as law enforcement officers.

50 (4) The Department of Law Enforcement may establish
51 criteria and set specific time periods for accepting
52 recommendations and for selecting nominees.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 517 Fraudulent Controlled Substance Prescriptions
SPONSOR(S): Hooper
TIED BILLS: IDEN./SIM. BILLS: SB 1208

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Criminal Justice Subcommittee, Cox, [Signature], Cunningham [Signature]. Row 2: 2) Justice Appropriations Subcommittee. Row 3: 3) Judiciary Committee.

SUMMARY ANALYSIS

Florida's drug control laws are contained in ch. 893, F.S., entitled the Florida Comprehensive Drug Abuse Prevention and Control Act (Drug Control Act). The Drug Control Act classifies controlled substances into five categories, ranging from Schedule I to Schedule V, which are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein.

The Drug Control Act permits a practitioner, in good faith and in the course of his or her professional practice only, to prescribe a controlled substance to a patient. Written prescriptions must meet certain requirements (e.g., they must have the quantity of the drug prescribed in both textual and numerical formats and be written on a standardized counterfeit-proof prescription pad).

Currently, it is a first degree misdemeanor for a person to possess a prescription form that has not been:

- Completed; and
Signed by the practitioner whose name appears printed thereon.

The bill prohibits a person from possessing a prescription form that has not been:

- Completed in its entirety by the practitioner whose name appears printed thereon; or
Signed by the practitioner whose name appears printed thereon.

This has the effect of expanding the types of prescription forms that a person is prohibited from possessing, and may make it easier to prosecute the unauthorized possession of prescription forms.

Additionally, the bill makes first violations of the offense a third degree felony (rather than a first degree misdemeanor).

On January 30, 2014, the Criminal Justice Impact Conference determined the bill will have an insignificant prison bed impact. Additionally, because the bill reclassifies a first degree misdemeanor to a third degree felony, it may result in a positive jail bed impact.

The bill is effective on October 1, 2014.

Handwritten mark resembling a checkmark or the number 4.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida's drug control laws are contained in ch. 893, F.S., entitled the Florida Comprehensive Drug Abuse Prevention and Control Act (Drug Control Act). The Drug Control Act classifies controlled substances into five categories, ranging from Schedule I to Schedule V. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the "potential for abuse"¹ of the substance listed therein and whether there is a currently accepted medical use for the substance in the United States. For example, Schedule I substances have a high potential for abuse and have no currently accepted medical use,² while Schedule II substances have a high potential for abuse and have a currently accepted, but severely restricted medical use in treatment.³

Prescriptions of Controlled Substances

The Drug Control Act permits a practitioner,⁴ in good faith and in the course of his or her professional practice only, to prescribe a controlled substance to a patient.⁵ Additionally, controlled substances may only be dispensed by a pharmacist upon a written or oral prescription⁶ of a practitioner in accordance with specified conditions.⁷

A written prescription for a controlled substance listed in ch. 893, F.S., must:

- Have the quantity of the drug prescribed in both textual and numerical formats;⁸
- Be dated with the abbreviated month written out on the face of the prescription;⁹
- Be either written on a standardized counterfeit-proof prescription pad¹⁰ produced by a Department of Health-approved vendor¹¹ or electronically prescribed;¹² and
- Not be issued on the same prescription blank with another prescription order for a:
 - Controlled substance that is described in a different schedule; or
 - Medicinal drug.^{13,14}

¹ Section 893.035(3)(a), F.S., defines "potential for abuse" as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: used in amounts that create a hazard to the user's health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user's own initiative rather than on the basis of professional medical advice.

² Section 893.03(1), F.S.

³ Section 893.03(2), F.S.

⁴ Section 893.02(21), F.S., defines "practitioner" to mean a physician licensed pursuant to chapter 458, F.S., a dentist licensed pursuant to chapter 466, F.S., a veterinarian licensed pursuant to chapter 474, F.S., an osteopathic physician licensed pursuant to chapter 459, F.S., a naturopath licensed pursuant to chapter 462, F.S., a certified optometrist licensed pursuant to chapter 463, F.S., or a podiatric physician licensed pursuant to chapter 461, F.S., provided such practitioner holds a valid federal controlled substance registry number.

⁵ Section 893.05, F.S.

⁶ Section 893.02(22), F.S., defines "prescription," in part, as an order for drugs or medicinal supplies written, signed, or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed practitioner licensed by the laws of the state to prescribe such drugs or medicinal supplies

⁷ Section 893.04, F.S.

⁸ Section 456.42, F.S.

⁹ *Id.*

¹⁰ The Department of Health is required to develop the form and content for a counterfeit-resistant prescription blank. Practitioners must use the counterfeit-resistant prescription blank when prescribing a controlled substance listed in Schedule II, III, IV, or V. Section 893.065, F.S.

¹¹ An approved vendor is required to submit a monthly report to the Department of Health which, at a minimum, documents the number of prescription pads sold and identifies the purchasers of such prescription pads. Section 456.42, F.S.

¹² Section 456.42, F.S.

¹³ Section 893.02(22), F.S.

There are a number of controlled substances contained in Schedules II through V that are prescribed by practitioners via a prescription form. Examples of such controlled substances include codeine, morphine, oxycodone, methadone, barbiturates, benzodiazepines, amphetamine; and anabolic steroids.

Prohibited Acts Related to Prescriptions of Controlled Substances

Chapter 893, F.S., contains a variety of provisions criminalizing behavior related to controlled substances. Currently, s. 893.13(7)(a)7., F.S., makes it a first degree misdemeanor¹⁵ for a person to possess a prescription form that has not been:

- Completed; and
- Signed by the practitioner whose name appears printed thereon.

A person commits a third degree felony¹⁶ if he or she violates this provision a second or subsequent time.¹⁷

The offense does not apply to the issuing practitioner, an agent or employee of that practitioner, suppliers of prescription forms who are authorized by that practitioner to possess such forms, or pharmacists.¹⁸

Effect of the Bill

The bill prohibits a person from possessing a prescription form that has not been:

- Completed in its entirety by the practitioner whose name appears printed thereon; or
- Signed by the practitioner whose name appears printed thereon.

This has the effect of expanding the types of prescription forms that a person is prohibited from possessing, and may make it easier to prosecute the unauthorized possession of prescription forms.

Additionally, the bill makes first violations¹⁶ of the offense a third degree felony (rather than a first degree misdemeanor).

B. SECTION DIRECTORY:

Section 1. Amends s. 893.13, F.S., relating to prohibited acts; penalties.

Section 2. 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:

On January 30, 2014, the Criminal Justice Impact Conference determined the bill will have an insignificant prison bed impact.

¹⁴ Section 465.003(8), F.S., defines the term "medicinal drug" to mean those substances or preparations commonly known as "prescription" or "legend" drugs which are required by federal or state law to be dispensed only on a prescription, but shall not include patents or proprietary preparations as hereafter defined.

¹⁵ 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.

¹⁶ 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.

¹⁷ Section 893.13(7)(c), F.S.

¹⁸ Section 893.13(7)(a)7., F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill reclassifies a first degree misdemeanor to a third degree felony. To the extent that this reduces the number of persons subject to misdemeanor penalties, the bill will result in a positive jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not define what constitutes a prescription form being completed "in its entirety."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 517

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1 A bill to be entitled
 2 An act relating to fraudulent controlled substance
 3 prescriptions; amending s. 893.13, F.S.; revising
 4 provisions prohibiting possession of incomplete
 5 prescription forms; providing enhanced criminal
 6 penalties for violations involving incomplete
 7 prescription forms; providing an effective date.

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

10
 11 Section 1. Paragraphs (a), (c), and (d) of subsection (7)
 12 of section 893.13, Florida Statutes, are amended to read:

13 893.13 Prohibited acts; penalties.—

14 (7) (a) A person may not:

15 1. Distribute or dispense a controlled substance in
 16 violation of this chapter.

17 2. Refuse or fail to make, keep, or furnish any record,
 18 notification, order form, statement, invoice, or information
 19 required under this chapter.

20 3. Refuse entry into any premises for any inspection or
 21 refuse to allow any inspection authorized by this chapter.

22 4. Distribute a controlled substance named or described in
 23 s. 893.03(1) or (2) except pursuant to an order form as required
 24 by s. 893.06.

25 5. Keep or maintain any store, shop, warehouse, dwelling,
 26 building, vehicle, boat, aircraft, or other structure or place

27 | which is resorted to by persons using controlled substances in
 28 | violation of this chapter for the purpose of using these
 29 | substances, or which is used for keeping or selling them in
 30 | violation of this chapter.

31 | 6. Use to his or her own personal advantage, or reveal,
 32 | any information obtained in enforcement of this chapter except
 33 | in a prosecution or administrative hearing for a violation of
 34 | this chapter.

35 | 7. Possess a prescription form that ~~which~~ has not been
 36 | completed in its entirety by the practitioner whose name appears
 37 | printed thereon, or that has not been ~~and~~ signed by the
 38 | practitioner whose name appears printed thereon, unless the
 39 | person is that practitioner, is an agent or employee of that
 40 | practitioner, is a pharmacist, or is a supplier of prescription
 41 | forms who is authorized by that practitioner to possess those
 42 | forms.

43 | 8. Withhold information from a practitioner from whom the
 44 | person seeks to obtain a controlled substance or a prescription
 45 | for a controlled substance that the person making the request
 46 | has received a controlled substance or a prescription for a
 47 | controlled substance of like therapeutic use from another
 48 | practitioner within the previous 30 days.

49 | 9. Acquire or obtain, or attempt to acquire or obtain,
 50 | possession of a controlled substance by misrepresentation,
 51 | fraud, forgery, deception, or subterfuge.

52 | 10. Affix any false or forged label to a package or

53 receptacle containing a controlled substance.

54 11. Furnish false or fraudulent material information in,
55 or omit any material information from, any report or other
56 document required to be kept or filed under this chapter or any
57 record required to be kept by this chapter.

58 12. Store anhydrous ammonia in a container that is not
59 approved by the United States Department of Transportation to
60 hold anhydrous ammonia or is not constructed in accordance with
61 sound engineering, agricultural, or commercial practices.

62 13. With the intent to obtain a controlled substance or
63 combination of controlled substances that are not medically
64 necessary for the person or an amount of a controlled substance
65 or substances that is not medically necessary for the person,
66 obtain or attempt to obtain from a practitioner a controlled
67 substance or a prescription for a controlled substance by
68 misrepresentation, fraud, forgery, deception, subterfuge, or
69 concealment of a material fact. For purposes of this
70 subparagraph, a material fact includes whether the person has an
71 existing prescription for a controlled substance issued for the
72 same period of time by another practitioner or as described in
73 subparagraph 8.

74 (c) A ~~Any~~ person who violates ~~the provisions of~~
75 subparagraphs (a)1.-6. ~~(a)1.-7.~~ commits a misdemeanor of the
76 first degree, punishable as provided in s. 775.082 or s.
77 775.083, + except that, upon a second or subsequent violation,
78 the person commits a felony of the third degree, punishable as

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79 provided in s. 775.082, s. 775.083, or s. 775.084.

80 (d) A Any person who violates ~~the provisions of~~
 81 subparagraphs (a)7.-12. ~~(a)8.-12.~~ commits a felony of the third
 82 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 83 775.084.

84 Section 2. 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: Criminal Justice
 2 Subcommittee

3 Representative Hooper offered the following:



4
 5 **Amendment**

6 Remove lines 35-42 and insert:

7 7. Possess a prescription form unless it has been signed
 8 by the practitioner whose name appears printed thereon and
 9 completed. which has not been completed and signed by the
 10 practitioner whose name appears printed thereon, unless This
 11 subparagraph does not apply if the person in possession is the
 12 that practitioner whose name appears printed on the prescription
 13 form, is an agent or employee of that practitioner, is a
 14 pharmacist, or is a supplier of prescription forms who is
 15 authorized by that practitioner to possess those forms.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 989 Human Trafficking
SPONSOR(S): Trujillo
TIED BILLS: IDEN./SIM. BILLS: SB 768

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Thomas 	Cunningham 
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 787.06, F.S., Florida's human trafficking statute, 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, or for commercial sexual activity. In addition to addressing the perpetrators of human trafficking, s. 787.06, F.S., addresses *victims* of human trafficking by providing legislative intent that "victims of trafficking be protected and assisted by this state and its agencies."

The bill amends a variety of statutes that currently provide protections to victims of sexual offenses, to extend those protections to victims of human trafficking. Specifically, the bill:

- Amends s. 39.01(67), F.S., to ensure that the definition of "sexual abuse of a child" used in dependency proceedings includes "allowing, encouraging, or forcing a child to participate in commercial sexual activity," as provided in the human trafficking statute;
- Amends s. 92.56, F.S., to protect court records involving human trafficking of a minor for labor or human trafficking for commercial sexual activity;
- Amends s. 794.024, F.S., to make it a second degree misdemeanor for a public employee or officer to disclose the photograph, name, or address of a person who is alleged to be the victim of human trafficking of a minor for labor or human trafficking for commercial sexual activity;
- Amends s. 960.065(2), F.S., to specify that compensation claims filed by persons engaged in an unlawful activity at the time of the crime upon which the claim is based are not eligible for an award, unless the victim was engaged in prostitution as a result of being a victim of human trafficking for commercial sexual activity; and
- Amends s. 960.199, F.S., specify that victims of human trafficking of a minor for labor or human trafficking for commercial sexual activity are eligible for victim relocation assistance.

The bill may result in more victims receiving victim compensation funds from the Department of Legal Affairs. To the extent these victims receive such funds, the bill will impact expenditures. The bill may also have a negative jail bed impact. See fiscal section.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Human Trafficking

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

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

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

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

2012 Florida Legislation on Human Trafficking

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

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

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

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

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

⁵ Richard J. Estes and Neil Alan Weiner, *Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico*, University of Pennsylvania, 2001, available at <http://www.sp2.upenn.edu/restes/CSEC.htm> (last visited March 6, 2012).

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 that currently provide protections to victims of sexual offenses, to extend those protections to victims of human trafficking. A description of these statutes and the protections they provide follows.

Dependency Proceedings

Chapter 39, F.S., establishes Florida child dependency process, and provides the process and procedures for the following:

- Reporting child abuse and neglect;
- Protective investigations;
- Taking children into custody and shelter hearings;
- Petition, arraignment, and adjudication of dependency;
- Disposition of the dependent child;
- Post-disposition change of custody;
- Case plans;
- Permanency;
- Judicial reviews; and
- Termination of parental rights.

Currently, the definition of "sexual abuse of a child," for purposes of finding a child to be dependent, includes numerous sexual acts, as well as "the sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution...." or participating in "the trade of sex trafficking as provided in s. 796.035."¹⁰ Such abused children may be considered dependent¹¹ by the courts and delivered to the Department of Children and Families for shelter and services in or out of their caregiver's home.¹²

Effect of the Bill

The bill amends the definition of "sexual abuse of a child" in s. 39.01(67), F.S., to replace the reference to "participate in the trade of sex trafficking" with the phrase "participate in commercial sexual activity as provided in s. 787.06(3)(g) or (h)¹³ or s. 796.035."¹⁴

⁸ Section 787.06(3), F.S.

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

¹⁰ Section 39.01(67), F.S.

¹¹ Section 39.01(15), F.S.

¹² See generally s. 39.013(2), F.S., which gives the circuit court exclusive original jurisdiction over a child found to be dependent.

¹³ Section 787.06(3)(g) and (h), F.S., relate to human trafficking for commercial sexual activity of a child under the age of 18.

¹⁴ Section 796.035, F.S., relates to the selling or buying of minors into prostitution.

Confidentiality - Identity and Images of Victims of Sexual Offenses

Section 119.071(2)(h), F.S., provides, in part, that the following criminal intelligence information¹⁵ or criminal investigative information¹⁶ is confidential and exempt from s. 119.07(1), F.S., and Article I, Section 24(a), of the Florida Constitution:¹⁷

- Any information which may reveal the identity of a person who is a victim of sexual abuse;¹⁸
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense, regardless of whether the photograph, videotape, or image identifies the victim.¹⁹

Section 92.56(1)(a), F.S., provides that the confidential and exempt status of the above-described criminal intelligence information or criminal investigative information must be maintained in court records and in court proceedings.

Currently, a defendant charged with a crime described in ch. 794, F.S. (sexual battery), or ch. 800, F.S. (lewdness and indecent exposure), or with child abuse, aggravated child abuse, or sexual performance by a child as described in ch. 827, F.S., may request a court order allowing the defendant access to the confidential and exempt information in order to prepare his or her defense.²⁰ Additionally, trial testimony is permitted to be published or broadcast in such cases, so long as it does not include an identifying photograph, identifiable voice, or the name or address of the victim (unless consented to).²¹

The state may also use a pseudonym instead of a victim's name in cases relating to violations of

- Chapter 794, F.S. (sexual battery);
- Chapter 827, F.S. (child abuse, aggravated child abuse, or sexual performance by a child);
- Chapter 800, F.S. (lewdness and indecent exposure); or
- Any crime involving the production, possession, or promotion of child pornography.²²

Effect of the Bill

The bill amends s. 92.56, F.S., to permit a defendant charged with human trafficking of a minor for labor or human trafficking for commercial sexual activity (regardless of victim age) to request a court order allowing the defendant access to the confidential and exempt information in order to prepare his or her defense. The bill also:

- Permits trial testimony to be published or broadcast in such cases, so long as it does not include an identifying photograph, identifiable voice, or the name or address of the victim; and

¹⁵ "Criminal intelligence information" is 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. Section 119.011(3)(a), F.S.

¹⁶ "Criminal investigative information" is 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. Section 119.011(3)(b), F.S.

¹⁷ Criminal intelligence information and criminal investigative information do not include: (1) time, date, location, and nature of a reported crime; (2) 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.; (3) time, date, and location of the incident and of the arrest; (4) crime charged; (5) 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. 119.07(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; and (6) informations and indictments except as provided in s. 905.26, F.S. Section 119.011(3)(c), F.S.

¹⁸ Section 119.071(2)(h)1.b., F.S.

¹⁹ Section 119.071(2)(h)1.c., F.S.

²⁰ The confidential and exempt status of the records may not be used to prevent the disclosure of the victim's identity to the defendant; however, the defendant may not disclose the victim's identity to any person other than the defendant's attorney or any other person directly involved in the preparation of the defense. Section 92.56(2), F.S.

²¹ Section 92.56(5), F.S.

²² Section 92.56(3), F.S.

- Allows the state to use a pseudonym instead of a victim's name in such cases.

Unlawful Disclosure of Victim Information

Section 794.024, F.S., makes it a second degree misdemeanor²³ for a public employee or officer who has access to the photograph, name, or address of a person who is alleged to be the victim of specified sex offenses, to willfully and knowingly disclose the information to another person (the statute provides exceptions that allow disclosure to the defendant, the defendant's attorney, persons assisting in the investigation or prosecution of the alleged offense, and other specified entities). The statute currently applies to the following sex offenses:

- Chapter 794, F.S. (sexual battery),
- Chapter 800, F.S. (lewdness and indecent exposure),
- Section 827.03, F.S. (abuse or neglect of a child),
- Section 827.04, F.S. (contributing to the delinquency or dependency of a child), and
- Section 827.071, F.S. (sexual performance by a child).

Effect of the Bill

The bill amends s. 794.024, F.S., to make it a second degree misdemeanor for a public employee or officer to disclose the photograph, name, or address of a person who is alleged to be the victim of human trafficking of a minor for labor or any human trafficking for commercial sexual activity (regardless of victim age).

Relocation Assistance for Victims of Sexual Battery

The Florida Crimes Compensation Act (the Act),²⁴ authorizes the Florida Attorney General's Division of Victim Services to administer a compensation program to ensure financial assistance for victims of crime. Injured crime victims may be eligible for financial assistance for medical care, lost income, mental health services, funeral expenses and other out-of-pocket expenses directly related to the injury.²⁵ Currently, s. 906.065(2), F.S., provides that compensation claims filed by persons engaged in an unlawful activity at the time of the crime upon which the claim is based are not eligible for an award.

Section 960.199, F.S., provides relocation assistance to victims of sexual battery. The Department of Legal Affairs (DLA) administers the assistance program. Under the program, a victim of sexual battery²⁶ who needs relocation assistance and meets the statutory criteria²⁷ may receive:

- A one-time payment not exceeding \$1,500 on any one claim; and
- A lifetime maximum of \$3,000.

Effect of the Bill

The bill amend s. 960.065(2), F.S., to specify that compensation claims filed by persons engaged in an unlawful activity at the time of the crime upon which the claim is based are not eligible for an award, unless the victim was engaged in prostitution as a result of being a victim of human trafficking for commercial sexual activity.

²³ 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.

²⁴ Sections 960.01-960.28, F.S.

²⁵ <http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument> (last visited on March 7, 2014).

²⁶ As defined in s. 794.011, F.S.

²⁷ The statutory criteria for eligibility is:

- There must be proof that a sexual battery offense was committed.
- The sexual battery offense must be reported to the proper authorities.
- The victim's need for assistance must be certified by a certified rape crisis center in this state.
- The center certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan.
- The act of sexual battery must be committed in the victim's place of residence or in a location that would lead the victim to reasonably fear for his or her continued safety in the place of residence.

The bill amends s. 960.199, F.S., to specify that victims of human trafficking of a minor for labor or human trafficking for commercial sexual activity (regardless of victim age) are eligible for victim relocation assistance.

B. SECTION DIRECTORY:

Section 1. Amends s. 39.01, F.S., relating to definitions.

Section 2. Amends s. 92.56, F.S., relating to judicial proceedings and court records involving sexual offenses.

Section 3. Amends s. 787.06, F.S., relating human trafficking.

Section 4. Amends s. 794.024, F.S., relating to unlawful to disclose identifying information.

Section 5. Amends s. 960.065, F.S., relating to eligibility for awards.

Section 6. Amends s. 960.199, F.S., relating to relocation assistance for victims of sexual battery.

Section 7. Provides an effective date.

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 include victims of human trafficking of a minor for labor or any human trafficking for commercial sexual activity within those persons eligible for victim relocation assistance by the Department of Legal Affairs. To the extent these victims receive such relocation funds, the bill will impact expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill amends s. 794.024, F.S., to make it a second degree misdemeanor for a public employee or officer to disclose the photograph, name, or address of a person who is alleged to be the victim of human trafficking of a minor for labor or any human trafficking for commercial sexual activity (regardless of victim age). This may have a negative jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to human trafficking; amending s.
 3 39.01, F.S.; including human trafficking in the
 4 definition of the term "sexual abuse of a child";
 5 amending s. 92.56, F.S.; including human trafficking
 6 within provisions providing for confidentiality of
 7 court records concerning certain offenses involving
 8 children; amending s. 787.06, F.S.; clarifying the
 9 offense of human trafficking; amending s. 794.024,
 10 F.S.; including human trafficking victims within
 11 provisions prohibiting disclosure of identifying
 12 information of certain crime victims; amending s.
 13 960.065, F.S.; providing that victims of human
 14 trafficking are eligible for crime victim compensation
 15 awards under certain circumstances; amending s.
 16 960.199, F.S.; allowing victims of human trafficking to
 17 be eligible for financial relocation assistance;
 18 providing an effective date.

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

21
 22 Section 1. Paragraph (g) of subsection (67) of section
 23 39.01, Florida Statutes, is amended to read:

24 39.01 Definitions.—When used in this chapter, unless the
 25 context otherwise requires:

26 (67) "Sexual abuse of a child" for purposes of finding a

27 child to be dependent means one or more of the following acts:
 28 (g) The sexual exploitation of a child, which includes the
 29 act of a child offering to engage in or engaging in
 30 prostitution, provided that the child is not under arrest or is
 31 not being prosecuted in a delinquency or criminal proceeding for
 32 a violation of any offense in chapter 796 based on such
 33 behavior; or allowing, encouraging, or forcing a child to:
 34 1. Solicit for or engage in prostitution;
 35 2. Engage in a sexual performance, as defined by chapter
 36 827; or
 37 3. Participate in commercial sexual activity ~~the trade of~~
 38 ~~sex trafficking~~ as provided in s. 787.06(3)(g) or (h) or s.
 39 796.035.

40 Section 2. Subsections (2), (3), and (5) of section 92.56,
 41 Florida Statutes, are amended to read:

42 92.56 Judicial proceedings and court records involving
 43 sexual offenses and human trafficking.-

44 (2) A defendant charged with a crime described in s.
 45 787.06(3)(a) in which the victim is under the age of 18, s.
 46 787.06(3)(b), (d), (f), (g), or (h), chapter 794, or chapter
 47 800, or with child abuse, aggravated child abuse, or sexual
 48 performance by a child as described in chapter 827, may apply to
 49 the trial court for an order of disclosure of information in
 50 court records held confidential and exempt pursuant to s.
 51 119.0714(1)(h) or maintained as confidential and exempt pursuant
 52 to court order under this section. Such identifying information

53 concerning the victim may be released to the defendant or his or
 54 her attorney in order to prepare the defense. The confidential
 55 and exempt status of this information may not be construed to
 56 prevent the disclosure of the victim's identity to the
 57 defendant; however, the defendant may not disclose the victim's
 58 identity to any person other than the defendant's attorney or
 59 any other person directly involved in the preparation of the
 60 defense. A willful and knowing disclosure of the identity of the
 61 victim to any other person by the defendant constitutes
 62 contempt.

63 (3) The state may use a pseudonym instead of the victim's
 64 name to designate the victim of a crime described in s.
 65 787.06(3)(a) in which the victim is under the age of 18, in s.
 66 787.06(3)(b), (d), (f), (g), or (h), or in chapter 794 or
 67 chapter 800, or of child abuse, aggravated child abuse, or
 68 sexual performance by a child as described in chapter 827, or
 69 any crime involving the production, possession, or promotion of
 70 child pornography as described in chapter 847, in all court
 71 records and records of court proceedings, both civil and
 72 criminal.

73 (5) This section does not prohibit the publication or
 74 broadcast of the substance of trial testimony in a prosecution
 75 for an offense described in s. 787.06(3)(a) in which the victim
 76 is under the age of 18, s. 787.06(3)(b), (d), (f), (g), or (h),
 77 chapter 794, or chapter 800, or a crime of child abuse,
 78 aggravated child abuse, or sexual performance by a child, as

79 described in chapter 827, but the publication or broadcast may
 80 not include an identifying photograph, an identifiable voice, or
 81 the name or address of the victim, unless the victim has
 82 consented in writing to the publication and filed such consent
 83 with the court or unless the court has declared such records not
 84 confidential and exempt as provided for in subsection (1).

85 Section 3. Subsection (3) of section 787.06, Florida
 86 Statutes, is amended 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) Using coercion for labor or services commits a felony
 94 of the first degree, punishable as provided in s. 775.082, s.
 95 775.083, or s. 775.084.

96 (b) Using coercion for commercial sexual activity commits
 97 a felony of the first degree, punishable as provided in s.
 98 775.082, s. 775.083, or s. 775.084.

99 (c) Using coercion for labor or services of any individual
 100 who is an unauthorized alien commits a felony of the first
 101 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 102 775.084.

103 (d) Using coercion for commercial sexual activity of any
 104 individual who is an unauthorized alien commits a felony of the

105 first degree, punishable as provided in s. 775.082, s. 775.083,
 106 or s. 775.084.

107 (e) Using coercion for labor or services who does so by
 108 the transfer or transport of any individual from outside this
 109 state to within the state commits a felony of the first degree,
 110 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

111 (f) Using coercion for commercial sexual activity who does
 112 so by the transfer or transport of any individual from outside
 113 this state to within the state commits a felony of the first
 114 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 115 775.084.

116 (g) For commercial sexual activity in which any child
 117 under the age of 18 is involved commits a felony of the first
 118 degree, punishable by imprisonment for a term of years not
 119 exceeding life, or as provided in s. 775.082, s. 775.083, or s.
 120 775.084. In a prosecution under this paragraph in which the
 121 defendant had a reasonable opportunity to observe the person who
 122 was subject to human trafficking, the state need not prove that
 123 the defendant knew that the person had not attained the age of
 124 18 years.

125 (h) For commercial sexual activity in which any child
 126 under the age of 15 is involved commits a life felony,
 127 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 128 In a prosecution under this paragraph in which the defendant had
 129 a reasonable opportunity to observe the person who was subject
 130 to human trafficking, the state need not prove that the

131 defendant knew that the person had not attained the age of 15
 132 years.

133

134 For each instance of human trafficking of any individual under
 135 this subsection, a separate crime is committed and a separate
 136 punishment is authorized.

137 Section 4. Section 794.024, Florida Statutes, is amended
 138 to read:

139 794.024 Unlawful to disclose identifying information.—

140 (1) A public employee or officer who has access to the
 141 photograph, name, or address of a person who is alleged to be
 142 the victim of an offense described in this chapter, s.
 143 787.06(3)(a) in which the victim is under the age of 18, s.
 144 787.06(3)(b), (d), (f), (g), or (h), chapter 800, s. 827.03, s.
 145 827.04, or s. 827.071 may not willfully and knowingly disclose
 146 it to a person who is not assisting in the investigation or
 147 prosecution of the alleged offense or to any person other than
 148 the defendant, the defendant's attorney, a person specified in
 149 an order entered by the court having jurisdiction of the alleged
 150 offense, or organizations authorized to receive such information
 151 made exempt by s. 119.071(2)(h), or to a rape crisis center or
 152 sexual assault counselor, as defined in s. 90.5035(1)(b), who
 153 will be offering services to the victim.

154 (2) A violation of subsection (1) constitutes a
 155 misdemeanor of the second degree, punishable as provided in s.
 156 775.082 or s. 775.083.

157 Section 5. Paragraph (b) of subsection (2) of section
 158 960.065, Florida Statutes, is amended to read:

159 960.065 Eligibility for awards.—

160 (2) Any claim filed by or on behalf of a person who:

161 (b) Was engaged in an unlawful activity at the time of the
 162 crime upon which the claim for compensation is based, unless the
 163 victim was engaged in prostitution as a result of being a victim
 164 of human trafficking as described in s. 787.06(3)(b), (d), (f),
 165 (g), or (h);

166
 167 is ineligible for an award.

168 Section 6. Section 960.199, Florida Statutes, is amended
 169 to read:

170 960.199 Relocation assistance for victims of sexual
 171 battery or human trafficking.—

172 (1) The department may award a one-time payment of up to
 173 \$1,500 on any one claim and a lifetime maximum of \$3,000 to a
 174 victim of sexual battery, as defined in s. 794.011, or a victim
 175 of human trafficking, as described in s. 787.06(3)(b), (d), (f),
 176 (g), or (h), who needs relocation assistance.

177 (2) In order for an award to be granted to a victim for
 178 relocation assistance:

179 (a) There must be proof that a sexual battery offense or
 180 human trafficking offense, as defined in s. 787.06(3)(b), (d),
 181 (f), (g), or (h), was committed.

182 (b) The sexual battery offense or human trafficking

183 offense, as defined in s. 787.06(3)(b), (d), (f), (g), or (h),
 184 must be reported to the proper authorities.

185 (c) The victim's need for assistance must be certified by
 186 a certified rape crisis center in this state or by the state
 187 attorney or statewide prosecutor having jurisdiction over the
 188 offense.

189 (d) The center's ~~center~~ certification must assert that the
 190 victim is cooperating with law enforcement officials, if
 191 applicable, which assertion must be approved by the state
 192 attorney or statewide prosecutor, as appropriate, and must
 193 include documentation that the victim has developed a safety
 194 plan.

195 (e) The act of sexual battery or human trafficking, as
 196 described in s. 787.06(3)(b), (d), (f), (g), or (h), must be
 197 committed in the victim's place of residence or in a location
 198 that would lead the victim to reasonably fear for his or her
 199 continued safety in the place of residence.

200 (3) Relocation payments for a sexual battery or human
 201 trafficking claim under this section shall be denied if the
 202 department has previously approved or paid out a domestic
 203 violence relocation claim under s. 960.198 to the same victim
 204 regarding the same incident.

205 Section 7. 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: Criminal Justice
 2 Subcommittee
 3 Representative Trujillo offered the following:

Amendment (with title amendment)

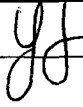

Remove lines 137-156

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

Remove lines 9-12 and insert:
 offense of human trafficking; amending s.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1013 Court-Ordered Expunction of Criminal History Records
SPONSOR(S): Steube
TIED BILLS: IDEN./SIM. BILLS: SB 812

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones 	Cunningham 
2) Judiciary Committee			

SUMMARY ANALYSIS

Section 943.0585, F.S., sets forth procedures for expunging a criminal history record. When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement must physically destroy the record. 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, petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.

The bill removes the requirement that none of the charges resulted in a trial. Instead, the bill requires a person seeking a certificate of eligibility to submit a written and certified statement from a state attorney or statewide prosecutor indicating that a judge or jury rendered a verdict of not guilty. The bill specifies that the records of a person adjudicated not guilty by reason of insanity are not eligible for expunction.

The bill also amends s. 943.0585, F.S., to require a person or entity that publishes, displays, or in any way disseminates information regarding an arrest that has been expunged *to remove* such information from any publication, Internet posting, or credit report upon receipt of a certified copy of an order granting a petition to expunge without further notice or cost to the individual who is the subject of the order.

The bill does not appear to have any fiscal impact on state or local governments. However, the bill may negatively impact private businesses. See fiscal section.

The bill is effective on July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Expunging Criminal History Records

Section 943.0585, F.S., sets forth procedures for expunging a criminal history record. When a criminal history record¹ is expunged, criminal justice agencies² other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.³ FDLE is required to retain expunged records.⁴ Records that have been expunged are confidential and exempt from the public records law,⁵ and it is a first degree misdemeanor⁶ to divulge their existence.⁷

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,⁸ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.⁹

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 from FDLE.¹⁰ 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:
 - 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;¹¹

¹ 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.

² 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.

³ Section 943.0585(4), F.S. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order
⁴ *Id.*

⁵ Section 943.0585(4)(c), F.S.

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

⁸ 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.

⁹ Section 943.0585(4)(c), F.S.

¹⁰ Chapter 1992-73, L.O.F.

¹¹ 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

- 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.,¹² 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. A record must have been sealed for 10 years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court; and
- No longer be under any court supervision related to the disposition of the record they wish to have expunged.¹³

In addition to the certificate, a petition to expunge a criminal history record must also include the petitioner's sworn statement that he or she:

- Has not previously been adjudicated guilty of any offense or comparable ordinance violation, or adjudicated delinquent for committing any felony or misdemeanor listed in s. 943.051(3)(b), F.S.;
- Has not been adjudicated guilty or delinquent for committing any of the acts he or she is currently trying to have sealed or expunged;
- Has not obtained a prior sealing or expunction unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to s. 943.0585(2)(h), F.S., and the record is otherwise eligible for expunction; and
- Is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before any court.¹⁴

Once a petition to expunge is submitted, it is up to the court to decide whether the sealing or expunction is appropriate.¹⁵

Effect of the Bill

As noted above a person seeking a certificate of eligibility must submit to FDLE a written, certified statement from the appropriate state attorney or statewide prosecutor indicating that an indictment, information, or other charging document, if filed, was dismissed, or nolle prosequi by the state attorney or statewide prosecutor or dismissed by the court with jurisdiction and that *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.*

The bill removes the requirement that none of the charges resulted in a trial. Instead, the bill requires a person seeking a certificate of eligibility to submit a written and certified statement from a state attorney or statewide prosecutor indicating that *a judge or jury rendered a verdict of not guilty.* The bill specifies that the records of a person adjudicated not guilty by reason of insanity are not eligible for expunction.

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.

¹² 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.

¹³ Section 943.0585(2), F.S.

¹⁴ Section 943.0585(1)(b), F.S. Any person knowingly providing false information on the sworn statement commits a third degree felony.

¹⁵ Section 943.0585, F.S.

The bill also amends s. 943.0585, F.S., to require a person or entity that publishes, displays, or in any way disseminates information regarding an arrest that has been expunged *to remove* such information from any publication, Internet posting, or credit report upon receipt of a certified copy of an order granting a petition to expunge without further notice or cost to the individual who is the subject of the order.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 2. Provides an effective date of 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 requires certain Florida businesses to remove information regarding an arrest that has been expunged from any publication, Internet posting, or credit report upon receipt of a certified copy of an order granting a petition to expunge. Florida businesses engaged in publishing this type of information may be negatively impacted.

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:

The First Amendment to the United States Constitution and Article I, Section 4, of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The

constitutions protect not only speech and the written word, but also conduct intended to communicate. When lawmakers attempt to restrict or burden fundamental and basic rights such as these, the laws must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible. As the United States Supreme Court has noted, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."¹⁶ Put another way, statutes cannot be so broad that they prohibit constitutionally protected conduct as well as unprotected conduct.¹⁷

In *Reno v. American Civil Liberties Union*, the United States Supreme Court stated:

[T]he growth of the Internet has been and continues to be phenomenal. As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than encourage it. The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship.¹⁸

The bill requires any person or entity that publishes, displays, or in any way disseminates information regarding an arrest that has been expunged *to remove* such information from any publication, Internet posting, or credit report upon receipt of a certified copy of an order granting a petition to expunge. To the extent that the bill regulates content of speech protected by the First Amendment, it could be challenged as being unconstitutional.

B. RULE-MAKING AUTHORITY:

Section 943.0585, F.S., requires the FDLE to adopt rules to establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. The bill does not appear to create a need for additional rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. The bill amends s. 985.0585(2)(a)2., F.S., to allow a person to apply for and receive a certificate of eligibility if a judge or jury rendered a verdict of not guilty. However, there is language in s. 985.0585(2)(h), F.S., that specifies a person is not eligible to receive a certificate of eligibility if the charges resulted in a trial.
2. The bill does not provide a penalty for businesses that do not remove the records when an expunction order is granted, nor would this prohibition apply to businesses outside of Florida.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁶ *NAACP v. Button*, 371 U.S. 415, 433 (1963).

¹⁷ *Sult v. State*, 906 So.2d 1013 (Fla. 2005).

¹⁸ 521 U.S. 844 (1997).

27 | this section. The court shall not order a criminal justice
 28 | agency to expunge a criminal history record until the person
 29 | seeking to expunge a criminal history record has applied for and
 30 | received a certificate of eligibility for expunction pursuant to
 31 | subsection (2). A criminal history record that relates to a
 32 | violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 33 | s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
 34 | 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
 35 | 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
 36 | any violation specified as a predicate offense for registration
 37 | as a sexual predator pursuant to s. 775.21, without regard to
 38 | whether that offense alone is sufficient to require such
 39 | registration, or for registration as a sexual offender pursuant
 40 | to s. 943.0435, may not be expunged, without regard to whether
 41 | adjudication was withheld, if the defendant was found guilty of
 42 | or pled guilty or nolo contendere to the offense, or if the
 43 | defendant, as a minor, was found to have committed, or pled
 44 | guilty or nolo contendere to committing, the offense as a
 45 | delinquent act. The court may only order expunction of a
 46 | criminal history record pertaining to one arrest or one incident
 47 | of alleged criminal activity, except as provided in this
 48 | section. The court may, at its sole discretion, order the
 49 | expunction of a criminal history record pertaining to more than
 50 | one arrest if the additional arrests directly relate to the
 51 | original arrest. If the court intends to order the expunction of
 52 | records pertaining to such additional arrests, such intent must

53 be specified in the order. A criminal justice agency may not
54 expunge any record pertaining to such additional arrests if the
55 order to expunge does not articulate the intention of the court
56 to expunge a record pertaining to more than one arrest. This
57 section does not prevent the court from ordering the expunction
58 of only a portion of a criminal history record pertaining to one
59 arrest or one incident of alleged criminal activity.

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

68 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
69 petitioning the court to expunge a criminal history record, a
70 person seeking to expunge a criminal history record shall apply
71 to the department for a certificate of eligibility for
72 expunction. The department shall, by rule adopted pursuant to
73 chapter 120, establish procedures pertaining to the application
74 for and issuance of certificates of eligibility for expunction.
75 A certificate of eligibility for expunction is valid for 12
76 months after the date stamped on the certificate when issued by
77 the department. After that time, the petitioner must reapply to
78 the department for a new certificate of eligibility. Eligibility

79 for a renewed certification of eligibility must be based on the
 80 status of the applicant and the law in effect at the time of the
 81 renewal application. The department shall issue a certificate of
 82 eligibility for expunction to a person who is the subject of a
 83 criminal history record if that person:

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

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

89 2. That an indictment, information, or other charging
 90 document, if filed or issued in the case, was dismissed or nolle
 91 prosequed ~~prosequi~~ by the state attorney or statewide
 92 prosecutor, ~~or was dismissed by a court of competent~~
 93 jurisdiction, or a judge or jury rendered a verdict of not
 94 guilty. The records of a person adjudicated not guilty by reason
 95 of insanity are not eligible for expunction under this section
 96 ~~and that none of the charges related to the arrest or alleged~~
 97 ~~criminal activity to which the petition to expunge pertains~~
 98 ~~resulted in a trial, without regard to whether the outcome of~~
 99 ~~the trial was other than an adjudication of guilt.~~

100 3. That the criminal history record does not relate to a
 101 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 102 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
 103 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
 104 893.135, s. 916.1075, a violation enumerated in s. 907.041, or

105 any violation specified as a predicate offense for registration
 106 as a sexual predator pursuant to s. 775.21, without regard to
 107 whether that offense alone is sufficient to require such
 108 registration, or for registration as a sexual offender pursuant
 109 to s. 943.0435, where the defendant was found guilty of, or pled
 110 guilty or nolo contendere to any such offense, or that the
 111 defendant, as a minor, was found to have committed, or pled
 112 guilty or nolo contendere to committing, such an offense as a
 113 delinquent act, without regard to whether adjudication was
 114 withheld.

115 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
 116 criminal history record of a minor or an adult which is ordered
 117 expunged by a court of competent jurisdiction pursuant to this
 118 section must be physically destroyed or obliterated by any
 119 criminal justice agency having custody of such record; except
 120 that any criminal history record in the custody of the
 121 department must be retained in all cases. A criminal history
 122 record ordered expunged that is retained by the department is
 123 confidential and exempt from the provisions of s. 119.07(1) and
 124 s. 24(a), Art. I of the State Constitution and not available to
 125 any person or entity except upon order of a court of competent
 126 jurisdiction. A criminal justice agency may retain a notation
 127 indicating compliance with an order to expunge.

128 (d) A person or entity that publishes, displays, or in any
 129 way disseminates information regarding an arrest that has been
 130 expunged shall remove such information from any publication,

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2014

131 | Internet posting, or credit report upon receipt of a certified
132 | copy of an order granting a petition to expunge without further
133 | notice or cost to the individual who is the subject of the
134 | order.

135 | 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: Criminal Justice
 2 Subcommittee

3 Representative Steube offered the following:

4

5 **Amendment (with directory and title amendments)**

6 Remove lines 115-127 and insert:

7 (h) Has previously obtained a court order sealing the
 8 record under this section, former s. 893.14, former s. 901.33,
 9 or former s. 943.058 for a minimum of 10 years because
 10 adjudication was withheld ~~or because all charges related to the~~
 11 ~~arrest or alleged criminal activity to which the petition to~~
 12 ~~expunge pertains were not dismissed prior to trial, without~~
 13 ~~regard to whether the outcome of the trial was other than an~~
 14 ~~adjudication of guilt.~~ The requirement for the record to have
 15 previously been sealed for a minimum of 10 years does not apply
 16 when a plea was not entered, when ~~or~~ all charges related to the
 17 arrest or alleged criminal activity to which the petition to



Amendment No. 1

18 expunge pertains were dismissed prior to trial, or when a judge
19 or jury rendered a verdict of not guilty. The records of a
20 person adjudicated not guilty by reason of insanity are not
21 eligible for expunction under this section.

22 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
23 criminal history record of a minor or an adult which is ordered
24 expunged by a court of competent jurisdiction pursuant to this
25 section must be physically destroyed or obliterated by any
26 criminal justice agency having custody of such record; except
27 that any criminal history record in the custody of the
28 department must be retained in all cases. A criminal history
29 record ordered expunged that is retained by the department is
30 confidential and exempt from the provisions of s. 119.07(1) and
31 s. 24(a), Art. I of the State Constitution and not available to
32 any person or entity except upon order of a court of competent
33 jurisdiction. A criminal justice agency may retain a notation
34 indicating compliance with an order to expunge. If a person is
35 adjudicated not guilty by reason of insanity or is found to be
36 incompetent to stand trial, the expunction of the criminal
37 history record shall not prevent the entry of the judgment or
38 finding in state and national databases for use in determining
39 eligibility to purchase or possess a firearm or to carry a
40 concealed firearm, as authorized at s. 790.065(2)(a)4.c., and 18
41 U.S.C. s. 922(t), nor shall it prevent any governmental agency
42 that is authorized by state or federal law to determine
43 eligibility to purchase or possess a firearm or to carry a

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Amendment No. 1

44 concealed firearm from accessing or using the record of the
45 judgment or finding in the course of such agency's official
46 duties.

47 (a) The person who is the subject of a criminal history
48 record that is expunged under this section or under other
49 provisions of law, including former s. 893.14, former s. 901.33,
50 and former s. 943.058, may lawfully deny or fail to acknowledge
51 the arrests covered by the expunged record, except when the
52 subject of the record:

53 1. Is a candidate for employment with a criminal justice
54 agency;

55 2. Is a defendant in a criminal prosecution;

56 3. Concurrently or subsequently petitions for relief under
57 this section, s. 943.0583, or s. 943.059;

58 4. Is a candidate for admission to The Florida Bar;

59 5. Is seeking to be employed or licensed by or to contract
60 with the Department of Children and Families, the Division of
61 Vocational Rehabilitation within the Department of Education,
62 the Agency for Health Care Administration, the Agency for
63 Persons with Disabilities, the Department of Health, the
64 Department of Elderly Affairs, or the Department of Juvenile
65 Justice or to be employed or used by such contractor or licensee
66 in a sensitive position having direct contact with children, the
67 disabled, or the elderly; or

68 6. Is seeking to be employed or licensed by the Department
69 of Education, any district school board, any university

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Amendment No. 1

70 laboratory school, any charter school, any private or parochial
71 school, or any local governmental entity that licenses child
72 care facilities.

73 (b) Subject to the exceptions in paragraph (a), a person
74 who has been granted an expunction under this section, former s.
75 893.14, former s. 901.33, or former s. 943.058 may not be held
76 under any provision of law of this state to commit perjury or to
77 be otherwise liable for giving a false statement by reason of
78 such person's failure to recite or acknowledge an expunged
79 criminal history record.

80 (c) Information relating to the existence of an expunged
81 criminal history record which is provided in accordance with
82 paragraph (a) is confidential and exempt from the provisions of
83 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
84 except that the department shall disclose the existence of a
85 criminal history record ordered expunged to the entities set
86 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
87 respective licensing, access authorization, and employment
88 purposes, ~~and~~ to criminal justice agencies for their respective
89 criminal justice purposes, and with respect to any governmental
90 agency that is authorized by state or federal law to determine
91 eligibility to purchase or possess a firearm or to carry a
92 concealed firearm, the department shall disclose the record of
93 an adjudication of not guilty by reason of insanity or a finding
94 of incompetence to stand trial for use in the course of such
95 agency's official duties. It is unlawful for any employee of an



Amendment No. 1

96 entity set forth in subparagraph (a)1., subparagraph (a)4.,
97 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
98 disclose information relating to the existence of an expunged
99 criminal history record of a person seeking employment, access
100 authorization, or licensure with such entity or contractor,
101 except to the person to whom the criminal history record relates
102 or to persons having direct responsibility for employment,
103 access authorization, or licensure decisions. Any person who
104 violates this paragraph commits a misdemeanor of the first
105 degree, punishable as provided in s. 775.082 or s. 775.083.
106
107

108 -----
109 **D I R E C T O R Y A M E N D M E N T**

110 Remove lines 15-17 and insert:

111 Section 1. Paragraphs (a) and (h) of subsection (2) and
112 subsection (4) of section 943.0585, Florida Statutes, are
113 amended to read:
114
115

116 -----
117 **T I T L E A M E N D M E N T**

118 Remove line 7 and insert:

119 criminal history record expunction; revising when a certificate
120 of eligibility for expunction shall be issued; authorizing the
121 Department of Law Enforcement to enter certain expunged records



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1013 (2014)

Amendment No. 1

122 in specified databases; requiring the Department of Law
123 Enforcement to disclose certain expunged records to specified
124 governmental entities; requiring a person
125

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1105 Sexual Predator and Sexual Offender Absconders
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 1416

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Cunningham	Cunningham

SUMMARY ANALYSIS

The Department of Corrections (DOC) supervises offenders sentenced in circuit court. Occasionally, offenders abscond from DOC's supervision. Absconding is a violation of the terms and conditions of supervision, and results in a warrant being issued for the offender's arrest.

When a registered sexual predator or sexual offender absconds from supervision, DOC's local probation office notifies local law enforcement agencies that the offender has absconded, and provides them with the warrant and the offender's last known address. DOC, the Florida Police Chiefs Association, and the Florida Sheriffs Association all report that DOC and local law enforcement routinely work together to apprehend registered sex offenders who have absconded from supervision. In addition to these efforts:

- DOC's Absconder Unit assists local probation offices in locating absconders and maintains a website that provides photographs of absconders and a tip line to call or email with information;
- The Florida Department of Law Enforcement (FDLE) shares information with local law enforcement agencies in an effort to ensure that sexual offenders who abscond from registration are located; and
- The United States Marshal's Office's Sex Offender Investigations Branch assists state, local, tribal and territorial authorities in locating and apprehending non-compliant and fugitive sex offenders.

The bill creates the Sexual Predator and Sexual Offender Absconder Strike Force (Strike Force) within the Office of the Attorney General (OAG), whose purpose is to locate registered sexual predators and sexual offenders who are under DOC's supervision and who have absconded from such supervision. The Strike Force consists of the following 11 members or their designees:

- The Attorney General, who serves as chair;
- The executive director of FDLE, who serves as vice chair;
- The Secretary of Children and Families;
- The Secretary of DOC;
- The chair of the Parole Commission
- The executive director of the Department of Highway Safety and Motor Vehicles; and
- Five members appointed by the Attorney General, consisting of two sheriffs, two chiefs of police, and one state attorney.

The Strike Force must meet at least four times a year and has two duties. It must coordinate with FDLE, DOC and local law enforcement agencies to:

- Arrest sexual predators and sexual offenders who are under the supervision of the Department of Corrections and who have absconded from such supervision; and
- Create a statewide list of known absconders and to provide such list to local law enforcement agencies.

The Strike Force must annually submit a report on its activities and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill will have an indeterminate negative workload impact on OAG.

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: pcs1105.CRJS.DOCX

DATE: 3/7/2014

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 7, 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 the Office of the Attorney General (OAG). The purpose of the Strike Force is to locate registered sexual predators²⁷ and sexual offenders²⁸ who are under DOC's supervision and who have absconded from such supervision.

The Strike Force must consist of the following 11 members or their designees:

- The Attorney General, who shall serve as chair;
- The executive director of the Department of Law Enforcement, who shall serve as vice chair;
- The Secretary of Children and Families;
- The Secretary of Corrections;
- The chair of the Parole Commission;
- The executive director of the Department of Highway Safety and Motor Vehicles; and
- Five members appointed by the Attorney General, consisting of two sheriffs, two chiefs of police, and one state attorney.²⁹

The five members appointed by the Attorney General must be appointed to 4-year terms.³⁰ Each of the remaining members is a standing member of the Strike Force and may not serve beyond the time he or 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

²² <http://www.usmarshals.gov/investigations/index.html> (last visited in March 7, 2014).

²³ *Id.*

²⁴ E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Criminal Justice Subcommittee).

²⁵ *Id.* Out of the 379 absconder warrants, 157 were issued 10 or more years ago, while 114 were issued less than three years ago.

²⁶ *Id.*

²⁷ The bill defines "sexual predator" as a person required to register as a sexual predator under s. 775.21, F.S.

²⁸ The bill defines "sexual offender" as a person required to register as a sexual offender under ss. 943.0435 or 944.607, F.S.

²⁹ In making these appointments, the Attorney General must consider representation by geography, population, ethnicity, and other relevant factors in order to ensure that the membership of the Strike Force is representative of the state as a whole.

³⁰ For the purpose of providing staggered terms of the initial appointments, two members must be appointed to a 2-year term, two members must be appointed to a 3-year term, and one member must be appointed to a 4-year term.

³¹ Membership on the Strike Force does not disqualify a member from holding any other public office or from being employed by a public entity, except that that a member of the Legislature may not serve on the strike force.

Force must serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S.

OAG must provide administrative and support services for the Strike Force, which must organize by December 31, 2014. Thereafter, the Strike Force must meet at least four times per year. Additional meetings may be held if the chair determines that extraordinary circumstances require an additional meeting. Members may appear at meetings by electronic means, and a majority of the members constitutes a quorum.

The Strike Force has two duties. It must coordinate with FDLE, DOC and local law enforcement agencies to:

- Arrest sexual predators and sexual offenders who are under the supervision of the Department of Corrections and who have absconded from such supervision; and
- Create a statewide list of known absconders and to provide such list to local law enforcement agencies.

By October 1, 2015, and annually thereafter, the Strike Force must submit a report on its activities and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

B. SECTION DIRECTORY:

Section 1. Creates s. 16.581, F.S., relating to Sexual Predator and Sexual Offender Absconder Strike Force.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill establishes the Sexual Predator and Sexual Offender Absconder Strike Force within OAG. OAG must provide administrative and support services for the Strike Force. This will have an indeterminate negative workload impact on OAG.

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:

Currently, OAG has no role in supervising sexual predators or sexual offenders, or in locating sexual predators or sexual offenders who have absconded from supervision. It is unclear why the bill locates the Strike Force within OAG.

The bill requires the Strike Force to submit a report on its activities and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives. However, the duties of the Strike Force do not include making recommendations (only arresting absconders and creating a statewide list of absconders).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to sexual predators and sexual
 3 offender absconders; creating s. 16.581, F.S.;
 4 providing legislative findings; creating the Sexual
 5 Predator and Sexual Offender Absconder Strike Force
 6 within the Office of the Attorney General; providing
 7 definitions; providing for the membership, terms, and
 8 staff of the strike force; requiring the strike force
 9 to organize by a specified date; providing for
 10 meetings; specifying the duties of the strike force;
 11 requiring annual reports to the Governor and
 12 Legislature; providing an effective date.

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

15
 16 Section 1. Section 16.581, Florida Statutes, is created to
 17 read:

18 16.581 Sexual Predator and Sexual Offender Absconder
 19 Strike Force.—

20 (1) FINDINGS.—The Legislature finds that there is a need
 21 to locate and arrest registered sexual predators and sexual
 22 offenders who are under the supervision of the Department of
 23 Corrections and who have absconded from such supervision.

24 (2) ESTABLISHMENT.—There is created the Sexual Predator
 25 and Sexual Offender Absconder Strike Force within the Office of
 26 the Attorney General. The purpose of the strike force is to

27 locate registered sexual predators and sexual offenders who are
 28 under the supervision of the Department of Corrections and who
 29 have absconded from such supervision.

30 (3) DEFINITIONS.—As used in this section, the term:

31 (a) "Sexual offender" means a person required to register
 32 as a sexual offender under s. 943.0435 or s. 944.607.

33 (b) "Sexual predator" means a person required to register
 34 as a sexual predator under s. 775.21.

35 (4) MEMBERSHIP.—The strike force shall consist of the
 36 following 11 members or their designees:

37 (a) The Attorney General, who shall serve as chair.

38 (b) The executive director of the Department of Law
 39 Enforcement, who shall serve as vice chair.

40 (c) The Secretary of Children and Families.

41 (d) The Secretary of Corrections.

42 (e) The chair of the Parole Commission.

43 (f) The executive director of the Department of Highway
 44 Safety and Motor Vehicles.

45 (g) Five members appointed by the Attorney General,
 46 consisting of two sheriffs, two chiefs of police, and one state
 47 attorney. In making these appointments, the Attorney General
 48 shall consider representation by geography, population,
 49 ethnicity, and other relevant factors in order to ensure that
 50 the membership of the strike force is representative of the
 51 state as a whole.

52 (5) TERMS OF MEMBERSHIP; COMPENSATION; STAFF.—

53 (a) The five members appointed by the Attorney General
 54 shall be appointed to 4-year terms; however, for the purpose of
 55 providing staggered terms of the initial appointments, two
 56 members shall be appointed to a 2-year term, two members shall
 57 be appointed to a 3-year term, and one member shall be appointed
 58 to a 4-year term. Each of the remaining members is a standing
 59 member of the strike force and may not serve beyond the time he
 60 or she holds the position that was the basis for the membership.
 61 A vacancy shall be filled in the same manner as the original
 62 appointment but only for the remainder of the term.

63 (b) The Legislature finds that the strike force serves a
 64 legitimate state, county, and municipal purpose and that service
 65 on the strike force is consistent with a member's principal
 66 service in public office or employment. Therefore, membership on
 67 the strike force does not disqualify a member from holding any
 68 other public office or from being employed by a public entity,
 69 except that that a member of the Legislature may not serve on
 70 the strike force.

71 (c) Members of the strike force shall serve without
 72 compensation but are entitled to reimbursement for per diem and
 73 travel expenses in accordance with s. 112.061.

74 (d) The Office of the Attorney General shall provide
 75 administrative and support services for the strike force.

76 (6) MEETINGS.—The strike force shall organize by December
 77 31, 2014. Thereafter, the strike force shall meet at least four
 78 times per year. Additional meetings may be held if the chair

79 determines that extraordinary circumstances require an
 80 additional meeting. Members may appear at meetings by electronic
 81 means. A majority of the members of the strike force constitutes
 82 a quorum.

83 (7) DUTIES.— The strike force shall coordinate with the
 84 Department of Law Enforcement, the Department of Corrections,
 85 and local law enforcement agencies to:

86 (a) Arrest sexual predators and sexual offenders who are
 87 under the supervision of the Department of Corrections and who
 88 have absconded from such supervision.

89 (b) Create a statewide list of known absconders and to
 90 provide such list to local law enforcement agencies.

91 (8) REPORTS.—By October 1, 2015, and annually thereafter,
 92 the strike force shall submit a report on its activities and
 93 recommendations to the Governor, the President of the Senate,
 94 and the Speaker of the House of Representatives.

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