



Criminal Justice Subcommittee

Tuesday, March 18, 2014

3:00 PM

404 HOB

Will Weatherford
Speaker

Matt Gaetz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Tuesday, March 18, 2014 03:00 pm
End Date and Time: Tuesday, March 18, 2014 05:00 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 429 Hearsay by Civil Justice Subcommittee, Passidomo, Young
HB 1211 Care for Retired Law Enforcement Dogs by Kerner
HB 1253 Use of Wireless Communications Devices while Operating a Motor Vehicle by Slosberg
HB 4015 Lewd and Lascivious Behavior by Stark



Consideration of the following proposed committee substitute(s):

PCS for HB 1017 -- Human Trafficking
PCS for HB 1021 -- Pub. Rec./Human Trafficking Victims
PCS for HB 1029 -- Personal Identification Information
PCS for HB 1323 -- Law Enforcement Officers and Correctional Officers

NOTICE FINALIZED on 03/14/2014 16:12 by Bowen.Erika

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 429 Hearsay
SPONSOR(S): Civil Justice Subcommittee; Passidomo; Young and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 764

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 1 N, As CS	Westcott	Bond
2) Criminal Justice Subcommittee		Westcott 	Cunningham 
3) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Evidence Code governs the admissibility of evidence a court may consider during the course of a hearing or trial. Hearsay, a statement made out of court offered to prove the truth of the matter asserted, is generally inadmissible in court. There are, however, numerous exceptions to the hearsay rule whereby hearsay may be admissible.

The bill creates a hearsay exception that applies to a statement describing an act of domestic violence that was made to enable law enforcement assistance to meet an ongoing emergency.

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

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Hearsay

"The purpose of the rules of evidence is to elicit and establish the truth."¹ One general rule of evidence is known as "hearsay." "Hearsay"² is a statement,³ other than one made by the declarant⁴ while testifying at trial or a hearing,⁵ offered in evidence to prove the truth of the matter asserted.⁶ Hearsay evidence is inadmissible unless an exception applies and the evidence is otherwise admissible.

For example, a victim of domestic violence calls the police. When a police officer arrives, the victim tells the officer that "Avery hit me." If the officer then testifies at trial that he heard the victim say "Avery hit me," the officer's testimony would be hearsay because "Avery hit me" is:

- A statement;
- Made outside of the court proceeding; and
- Offered to prove the truth of the matter asserted (i.e., that Avery hit the victim).

The reasoning behind excluding hearsay statements in general is that they are considered unreliable as probative evidence. There are many reasons for this unreliability, including that the statement is not made under oath, jurors cannot observe the demeanor of the declarant and judge the witness' credibility, and there is no opportunity to cross-examine the declarant and thereby test his or her credibility.⁷ However, current law provides 24 separate hearsay exceptions where, based on the circumstances surrounding the statement, the law finds sufficient reliability to warrant a hearsay exception. For example, out-of-court statements made by children under 16 are admissible in certain instances.⁸

Domestic Violence

Domestic violence⁹ usually takes place in private, where only the abuser and the abused are present. Because constitutional prohibitions preclude the prosecutor from compelling the accused to testify against himself or herself, the testimony of the victim becomes an essential element of the prosecution's case.¹⁰ The victim, however, is often unavailable because he or she has been killed, is unwilling to testify, or is otherwise unavailable. In these situations, a victim's hearsay statements can become the only opportunity for the prosecutor to bring in the victim's "voice" at trial.¹¹

¹ 23 Fla. Jur 2d Evidence and Witnesses s. 7, citing *Amos v. Gunn*, 94 So. 615 (Fla. 1922).

² Section 90.801, F.S.

³ A "statement" is either an oral or written assertion or nonverbal conduct of a person if it is intended by the person as an assertion. Section 90.801(1)(a), F.S. For example, the act of pointing to a suspect in a lineup in order to identify her is a "statement." *See* Fed. R. Evid. 801 Advisory Committee Note.

⁴ The "declarant" is the person who made the statement. Section 90.801(1)(b), F.S.

⁵ Often referred to simply as an "out-of-court statement."

⁶ Section 90.801(1)(c), F.S. For example, testimony that the witness heard the declarant state "I saw the light turn red" is *not* hearsay if introduced to prove the declarant was conscious at the time she made the statement. It *would* be hearsay if offered to prove the light was in fact red.

⁷ *Lyles v. State*, 412 So.2d 458, 459 (Fla. 2d DCA 1982); *see also* Charles W. Ehrhardt, *Florida Evidence*, s. 801.1, 770 (2008 ed.).

⁸ Section 90.803(23), F.S.

⁹ Section 741.28(2), F.S., defines "domestic violence" as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

¹⁰ Hudders, Neal A., *The Problem of Using Hearsay in Domestic Violence Cases: Is a New Exception the Answer?*, *Duke Law Journal* 49.4 (2000): 1041-1075.

¹¹ *Id.*

Effect of the Bill

The bill creates a hearsay exception that applies to a statement describing an act of domestic violence that was made to enable law enforcement assistance to meet an ongoing emergency.

B. SECTION DIRECTORY:

Section 1. Amends s. 90.803, F.S., relating to hearsay exceptions.

Section 2. Provides that the bill becomes effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**A. FISCAL IMPACT ON STATE GOVERNMENT:****1. Revenues:**

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**1. Revenues:**

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS**A. CONSTITUTIONAL ISSUES:****1. Applicability of Municipality/County Mandates Provision:**

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

2. Other:**Confrontation Clause**

The Confrontation Clause of the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him .

...¹² The Florida Constitution also contains a Confrontation Clause¹³, which the Florida Supreme Court has held should be interpreted in the same manner as its federal counterpart.¹⁴

The United States' Supreme Court has held that the Confrontation Clause can only be invoked to exclude statements that are considered "testimonial" in nature.¹⁵ The court clarified when a statement would be testimonial when it said:

[S]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.¹⁶

The court in that case focused on the fact that the statements made to a 911 operator were made regarding what was presently happening, and not describing a prior incident.¹⁷ The Court reasoned that the statements in that case were made to allow law enforcement to respond to an on-going emergency, which rendered the statement to be non-testimonial in nature. The court also noted the difficulty of prosecuting domestic violence cases:

This particular type of crime is notoriously susceptible to intimidation or coercion of the victim to ensure that she does not testify at trial. When this occurs, the Confrontation Clause gives the criminal a windfall.¹⁸

However, if a prior statement is admitted under this bill, it perhaps cannot be the sole basis for a conviction. The Florida Supreme Court has ruled that a prior inconsistent statement cannot be the sole substantive evidence for a conviction.¹⁹ This rationale likely applies to any inconsistent statement that may be admitted under this bill. Under this rationale, the evidence of the prior statement could be used as some evidence, but could not be the sole source of evidence used to convict an individual.

Court Rulemaking

Article V, s. 2(a) of the Florida Constitution provides that the Florida Supreme Court is responsible for adopting rules of practice and procedure in all state courts.²⁰ The case law interpreting Art. V, s. 2 focuses on the distinction between "substantive" and "procedural" legislation. Legislation concerning matters of substantive law are "within the legislature's domain" and do not violate Art. V, s. 2.²¹ On the other hand, legislation concerning matters of practice and procedure, are within the Court's "exclusive authority to regulate."²² However, "the court has refused to invalidate procedural provisions that are 'intimately related to' or 'intertwined with' substantive statutory provisions."²³ Evidence law is considered by the court to be procedural, although the court usually accedes to changes in the statutory evidence laws.

¹² U.S. CONST. AMEND. 6.

¹³ FLA. CONST. art. I, s. 16.

¹⁴ *Perez v. State*, 536 So.2d 206, 209 (Fla. 1988).

¹⁵ *Crawford v. Washington*, 541 U.S. 36 (2005).

¹⁶ *Davis v. Washington*, 547 U.S. 813, 822 (2006).

¹⁷ *Id.*

¹⁸ *Id.* at 832-33.

¹⁹ *State v. Moore*, 485 So.2d 1279 (Fla. 1986).

²⁰ Art. V, s. 2(a), Fla. Const.

²¹ *Haven Fed. Sav. & Loan Ass'n v. Kirian*, 579 So.2d 730, 732 (Fla. 1991).

²² *Id.*

²³ *In re Commitment of Cartwright*, 870 So.2d 152, 158 (Fla. 2d DCA 2004) (citing *Caple v. Tuttle's Design-Build, Inc.*, 753 So. 2d 49, 53-54 (Fla. 2000)).

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The bill as filed would have removed a requirement that a prior inconsistent statement had to be under oath in order to be admissible as substantive evidence, whereas the committee substitute narrowed the bill to only create a limited hearsay exception regarding statements made in domestic violence situations. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to hearsay; amending s. 90.803, F.S.;
 3 providing that certain statements regarding an act of
 4 domestic violence are an exception to the hearsay rule
 5 and thus admissible at a court hearing or trial;
 6 providing an effective date.

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

9
 10 Section 1. Subsection (25) is added to section 90.803,
 11 Florida Statutes, to read:

12 90.803 Hearsay exceptions; availability of declarant
 13 immaterial.—The provision of s. 90.802 to the contrary
 14 notwithstanding, the following are not inadmissible as evidence,
 15 even though the declarant is available as a witness:

16 (25) DOMESTIC VIOLENCE.—A statement describing any act of
 17 domestic violence, as defined in s. 741.28, that was made to
 18 enable law enforcement assistance to meet an ongoing emergency.

19 Section 2. This act shall take effect upon becoming a law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Passidomo offered the following:

4

5 **Amendment**


6 Remove line 18 and insert:

7 enable law enforcement to respond to an ongoing emergency.

8

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1211 Care for Retired Law Enforcement Dogs
SPONSOR(S): Kerner
TIED BILLS: IDEN./SIM. BILLS: SB 1406

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

SUMMARY ANALYSIS

The bill creates the "Care for Retired Law Enforcement Dogs Program" (Program) within the Florida Department of Law Enforcement (FDLE). The purpose of the Program is to provide a stable funding source for former handlers and adopters of retired law enforcement dogs to provide veterinary care for the dogs.

A law enforcement dog is eligible for the Program if the dog:

- Served or was employed by a law enforcement agency in the state for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders;
- No longer serves in the capacity of a law enforcement dog; and
- Received certification in obedience and apprehension work from certifying organization.

The bill requires FDLE to contract with a not for profit corporation to administer and manage the Program. The not for profit corporation must:

- Be dedicated to the protection or care of retired law enforcement dogs;
- Hold an exempt status under s. 501(a) of the Internal Revenue Code as an organization described in s. 501(c)(3) of the Internal Revenue Code and have held that status for five years;
- Agree to be subject to review and audit at the discretion of the Auditor General; and
- Demonstrate the ability to effectively and efficiently disseminate information and assist former handlers and adopters of retired law enforcement dogs.

The bill requires the not for profit corporation to be the disbursing authority for the funds appropriated to FDLE. The corporation must disburse funds upon receiving a valid invoice, submitted by the former handler or adopter of a retired law enforcement dog, from a veterinarian for veterinary care provided in the state to a retired law enforcement dog. However, annual disbursements are limited to \$1,500 per dog. The bill prohibits a former handler or adopter of a retired law enforcement dog from:

- Using accumulated unused funds from one year for use in a future year; and
- Receiving reimbursement if funds for the Program are depleted in the year for which the reimbursement is sought.

The bill appropriates the sum of \$300,000 in recurring funds from the General Revenue Fund to FDLE for the purpose of implementing the Program.

The bill is effective on July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Law enforcement canines serve in many different disciplines including narcotics detection, explosives detection, search and rescue, patrol, and human remains detection.¹ These disciplines require a huge physical demand from the canine, and many suffer injuries during their service.² As a result, law enforcement canines often have medical needs upon retirement.

Law enforcement canines generally retire at 8 or 9 years of age.³ When the time comes for the canine to retire, they are usually adopted by their handler, but are sometimes be adopted by a family.⁴ Once the canine is retired, their owner is then responsible for the canine's medical bills, which can be costly.⁵

Recently, efforts have been made to ensure that law enforcement canines are provided medical care after retirement. For example, a police department in England recently decided to pay pension benefits to its retired police dogs.⁶ These benefits include up to \$798 a year for three years for medical bills after retirement.⁷ In September 2012, a Delaware nonprofit organization called the National K-9 Working Dog, Inc., proposed its "Police K-9 Bill Of Rights," which seeks to amend federal law to provide medical benefits for retired police dogs.⁸ A number of nonprofit organizations have also been established that advocate for similar rights of retired law enforcement dogs.⁹

Effect of the Bill

The bill creates the "Care for Retired Law Enforcement Dogs Program" (Program) within the Florida Department of Law Enforcement (FDLE). The purpose of the Program is to provide a stable funding source for former handlers and adopters of retired law enforcement dogs to provide veterinary care for the dogs. Beginning in FY 2014-2015, and each year thereafter, the bill appropriates the sum of \$300,000 in recurring funds from the General Revenue Fund to FDLE for the purpose of implementing the Program.

To support the establishment of the Program, the bill acknowledges that:

- Law enforcement dogs have become an integral part of many law enforcement efforts statewide, including suspect apprehension through tracking and searching, evidence location, drug and bomb detection, and search and rescue operations;
- Law enforcement agencies agree that the use of law enforcement dogs is an extremely cost-effective means for crime control and that these dogs possess skills and abilities that frequently exceed that of existing technology;
- The work of law enforcement dogs is often dangerous and can cause these dogs to incur injuries at a rate higher than the rate of injuries that occurs with nonworking dogs; and
- Law enforcement dogs provide the significant contributions to the residents of this state.

¹ <http://www.retiredpaws.org/> (last visited on March 13, 2014).

² *Police dogs face danger in the line of duty*, December 27, 2013, http://articles.orlandosentinel.com/2013-12-27/news/os-police-dogs-face-dangers-20131227_1_such-dogs-bowden-suspected-car-burglar (last visited on March 13, 2014).

³ *K9 Unit FAQ*, http://www.tampagov.net/dept_police/about_us/investigations_and_support/Special_Support_Division/K-9_unit/K9_FAQ.asp (last visited on March 13, 2014).

⁴ <http://www.retiredpaws.org/> (last visited on March 13, 2014).

⁵ *Id.*

⁶ *England's Retired Police Dogs To Receive Pension*, November 4, 2013, <http://www.dogonews.com/2013/11/4/englands-retired-police-dogs-to-receive-pension> (last visited on March 13, 2014).

⁷ *Police Dogs To Get Full Pensions For Medical Bills After Retirement In Nottinghamshire, England*, November 5, 2013, http://www.huffingtonpost.com/2013/11/05/police-dog-pensions_n_4215560.html (last visited March 13, 2014).

⁸ *Police K-9 Bill of Rights*, <http://nationalk-9workingdog.org/police-k-9-bill-of-rights/> (last visited on March 13, 2014).

⁹ *See, e.g., "Retired Paws"* based in Sahuarita, Arizona, <http://www.retiredpaws.org/> (last visited on March 13, 2014).

The bill requires FDLE to contract with a corporation not for profit organized under ch. 617, F.S., to administer and manage the Program. Notwithstanding the competitive sealed bid procedures required under ch. 287, F.S, FDLE must enter into a contract with a corporation that:

- Is dedicated to the protection or care of retired law enforcement dogs;
- Holds exempt status under s. 501(a) of the Internal Revenue Code as an organization described in s. 501(c)(3) of the Internal Revenue Code;
- Has held its exempt status for at least 5 years;
- Agrees to be subject to review and audit at the discretion of the Auditor General to ensure accurate accounting and disbursement of state funds;
- Demonstrates the ability to effectively and efficiently disseminate information and assist former handlers and adopters of retired law enforcement dogs in understanding the provisions of this section; and
- Receives administrative fees, including salaries and benefits, not to exceed 10 percent of appropriated funds.

The bill requires the corporation to be the disbursing authority for the funds appropriated to FDLE.¹⁰ The corporation must disburse funds upon receiving a valid invoice, submitted by the former handler or adopter of a retired law enforcement dog, from a veterinarian for veterinary care provided in the state to a retired law enforcement dog. However, annual disbursements are limited to \$1,500 per dog. The bill prohibits a former handler or adopter of a retired law enforcement dog from:

- Using accumulated unused funds from one year for use in a future year; and
- Receiving reimbursement if Program funds are depleted in the year in which the reimbursement is sought.

On July 1 of each year, the Executive Office of the Governor is required to certify forward all unexpended appropriated funds. In no event may the fund balance for the Program exceed \$400,000.

The bill defines "retired law enforcement dog" as any dog who:

- Served or was employed by a law enforcement agency in the state for the purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders;
- No longer serves as a law enforcement dog; and
- Received certification in obedience and apprehension work from a certifying organization.¹¹

The bill also provides definitions for law enforcement agency,¹² veterinarian,¹³ and veterinary care.¹⁴

B. SECTION DIRECTORY:

Section 1. Creates the "Care for Retired Law Enforcement Dogs Program Act."

Section 2. Provides an appropriation.

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

¹⁰ Funds appropriated for the Program must be held in FDLE's Operating Trust Fund in a separate depository account in the name of the corporation and subject to the provisions of the contract with FDLE. The contract must contain a provisions specifying that any funds held in the separate account in the name of the corporation must revert to FDLE if the contract expires or is terminated.

¹¹ Such as the National Police Canine Association, <http://www.npca.net/home.html> (last visited on March 13, 2014).

¹² "Law enforcement agency" means a lawfully established state or local public agency having primary responsibility for the prevention and detection of crime or the enforcement of the penal, traffic, highway, regulatory, game, immigration, postal, customs, or controlled substance laws.

¹³ "Veterinarian" is defined in accordance with s. 474.202, F.S., as a health care practitioner who is licensed to engage in the practice of veterinary medicine in Florida under the authority ch. 474, F.S.

¹⁴ "Veterinary care" means any veterinary medical service described in s. 474.202(9) or s. 474.202(13), F.S. The term includes annual wellness examinations, vaccines, internal and external parasite prevention treatments, testing and treatment of illnesses and diseases, medications, emergency care and surgeries, specialties of veterinary medicine such as veterinary oncology, and euthanasia, if each of the services is provided by a veterinarian. The term also includes cremation.

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 appropriates \$300,000 in recurring funds from the General Revenue Fund to FDLE for the purpose of implementing the Program. The funds must be held in FDLE's Operating Trust Fund in a separate depository account in the name of the contracting not for profit corporation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take 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 creates the Program within FDLE, but does not grant any rulemaking authority to FDLE for this purpose. However, s. 943.03(4), F.S., requires FDLE to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of law conferring powers or duties upon it.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. Lines 49 through 67 of the bill describe the value of law enforcement dogs and are under the title "Establishment of Program." Such language may better be labeled as "Legislative Findings."
2. It is unknown how the corporation will determine whether a dog for which they have received a reimbursement request for is a retired law enforcement dog.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to care for retired law enforcement
 3 dogs; providing a short title; providing definitions;
 4 creating the Care for Retired Law Enforcement Dogs
 5 Program within the Department of Law Enforcement;
 6 requiring the department to contract with a
 7 corporation not for profit to administer the program
 8 and providing criteria therefor; providing specific
 9 procedures for how funds will be disbursed for the
 10 veterinary care of eligible retired law enforcement
 11 dogs; limiting the amount of funds available for any
 12 eligible retired law enforcement dog in any one year;
 13 providing for the deposit of program funds; providing
 14 for the reversion of funds to the department under
 15 certain circumstances; providing for the carryforward
 16 of unexpended appropriations for use in the program up
 17 to certain limits; providing an annual appropriation;
 18 providing an effective date.

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

21
 22 Section 1. (1) SHORT TITLE.—This section may be cited as
 23 the "Care for Retired Law Enforcement Dogs Program Act."
 24 (2) DEFINITIONS.—As used in this section, the term:
 25 (a) "Law enforcement agency" means a lawfully established
 26 state or local public agency having primary responsibility for

27 | the prevention and detection of crime or the enforcement of the
 28 | penal, traffic, highway, regulatory, game, immigration, postal,
 29 | customs, or controlled substance laws.

30 | (b) "Retired law enforcement dog" means any dog that was
 31 | in the service of or employed by a law enforcement agency in
 32 | this state for the principal purpose of aiding in the detection
 33 | of criminal activity, enforcement of laws, or apprehension of
 34 | offenders but that no longer serves in the capacity of a law
 35 | enforcement dog. The retired law enforcement dog must have
 36 | received certification in obedience and apprehension work from a
 37 | certifying organization such as the National Police Canine
 38 | Association or other certifying organization.

39 | (c) "Veterinarian" has the same meaning as provided in s.
 40 | 474.202, Florida Statutes.

41 | (d) "Veterinary care" means any veterinary medical service
 42 | described in s. 474.202(9) or s. 474.202(13), Florida Statutes.
 43 | The term includes annual wellness examinations, vaccines,
 44 | internal and external parasite prevention treatments, testing
 45 | and treatment of illnesses and diseases, medications, emergency
 46 | care and surgeries, specialties of veterinary medicine such as
 47 | veterinary oncology, and euthanasia, if each of the services is
 48 | provided by a veterinarian. The term also includes cremation.

49 | (3) ESTABLISHMENT OF PROGRAM.—

50 | (a) In recent years, law enforcement dogs have become an
 51 | integral part of many law enforcement efforts statewide,
 52 | including suspect apprehension through tracking and searching,

53 evidence location, drug and bomb detection, and search and
 54 rescue operations. Law enforcement agencies agree that the use
 55 of law enforcement dogs is an extremely cost-effective means for
 56 crime control and that these dogs possess skills and abilities
 57 that frequently exceed that of existing technology.

58 (b) Recognizing that the work of law enforcement dogs is
 59 often dangerous and can cause these dogs to incur injuries at a
 60 rate higher than the rate of injuries that occurs with
 61 nonworking dogs, and recognizing the significant contributions
 62 that law enforcement dogs provide to the residents of this
 63 state, the Care for Retired Law Enforcement Dogs Program is
 64 created within the Department of Law Enforcement to provide a
 65 stable funding source for former handlers and adopters of
 66 retired law enforcement dogs to provide veterinary care for
 67 these dogs.

68 (4) ADMINISTRATION.—The Department of Law Enforcement
 69 shall contract with a corporation not for profit organized under
 70 chapter 617, Florida Statutes, to administer and manage the Care
 71 for Retired Law Enforcement Dogs Program. Notwithstanding the
 72 competitive sealed bid procedures required under chapter 287,
 73 Florida Statutes, the department shall enter into a contract
 74 with a corporation that:

75 (a) Is dedicated to the protection or care of retired law
 76 enforcement dogs.

77 (b) Holds exempt status under s. 501(a) of the Internal
 78 Revenue Code as an organization described in s. 501(c)(3) of the

79 Internal Revenue Code.

80 (c) Has held its exempt status for at least 5 years.

81 (d) Agrees to be subject to review and audit at the
 82 discretion of the Auditor General to ensure accurate accounting
 83 and disbursement of state funds.

84 (e) Demonstrates the ability to effectively and
 85 efficiently disseminate information and assist former handlers
 86 and adopters of retired law enforcement dogs in understanding
 87 the provisions of this section.

88 (f) Receives administrative fees, including salaries and
 89 benefits, not to exceed 10 percent of appropriated funds.

90 (5) FUNDING.—

91 (a) The corporation shall be the disbursing authority for
 92 funds appropriated by the Legislature to the Department of Law
 93 Enforcement for the Care for Retired Law Enforcement Dogs
 94 Program. These funds shall be disbursed upon receipt of a valid
 95 invoice, submitted by the former handler or adopter of a retired
 96 law enforcement dog, from a veterinarian for veterinary care
 97 provided in the state to a retired law enforcement dog.

98 (b) Annual disbursements to any former handler or adopter
 99 of a retired law enforcement dog are limited to \$1,500 per
 100 retired law enforcement dog. A former handler or adopter of a
 101 retired law enforcement dog may not accumulate unused funds from
 102 one year for use in a future year.

103 (c) A former handler or adopter of a retired law
 104 enforcement dog who seeks reimbursement for veterinary services

105 | shall not receive reimbursement if funds for the Care for
 106 | Retired Law Enforcement Dogs Program are depleted in the year
 107 | for which the reimbursement is sought.

108 | (d) Funds appropriated for the Care for Retired Law
 109 | Enforcement Dogs Program shall be held in the Operating Trust
 110 | Fund of the Department of Law Enforcement in a separate
 111 | depository account in the name of the corporation and subject to
 112 | the provisions of the contract with the department. The contract
 113 | must provide that any funds held in the separate depository
 114 | account in the name of the corporation must revert to the
 115 | department if the contract expires or is terminated.

116 | Notwithstanding s. 216.301, Florida Statutes, and pursuant to s.
 117 | 216.351, Florida Statutes, the Executive Office of the Governor
 118 | shall, on July 1 of each year, certify forward all unexpended
 119 | funds appropriated pursuant to this section. However, in no
 120 | event shall the fund balance for the Care for Retired Law
 121 | Enforcement Dogs Program exceed \$400,000.

122 | Section 2. Beginning in the 2014-2015 fiscal year and each
 123 | year thereafter, the sum of \$300,000 in recurring funds is
 124 | appropriated from the General Revenue Fund to the Department of
 125 | Law Enforcement for the purpose of implementing the Care for
 126 | Retired Law Enforcement Dogs Program as created by this act.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee

3 Representative Kerner offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 943.69, Florida Statutes, is created to
 8 read:

9 943.69 Care for Retired Law Enforcement Dogs Program Act.-

10 (1) SHORT TITLE.-This section may be cited as the "Care
 11 for Retired Law Enforcement Dogs Program Act."

12 (2) DEFINITIONS.-As used in this section, the term:

13 (a) "Law enforcement agency" means a lawfully established
 14 state or local public agency having primary responsibility for
 15 the prevention and detection of crime or the enforcement of the
 16 penal, traffic, highway, regulatory, game, immigration, postal,
 17 customs, or controlled substance laws.



Amendment No. 1

18 (b) "Retired law enforcement dog" means any dog that was
19 in the service of or employed by a law enforcement agency in
20 this state for the principal purpose of aiding in the detection
21 of criminal activity, enforcement of laws, or apprehension of
22 offenders but that no longer serves in the capacity of a law
23 enforcement dog. The retired law enforcement dog must have
24 received certification in obedience and apprehension work from a
25 certifying organization such as the National Police Canine
26 Association or other certifying organization.

27 (c) "Veterinarian" has the same meaning as provided in s.
28 474.202, Florida Statutes.

29 (d) "Veterinary care" means any veterinary medical service
30 described in s. 474.202(9) or s. 474.202(13), Florida Statutes.
31 The term includes annual wellness examinations, vaccines,
32 internal and external parasite prevention treatments, testing
33 and treatment of illnesses and diseases, medications, emergency
34 care and surgeries, specialties of veterinary medicine such as
35 veterinary oncology, and euthanasia, if each of the services is
36 provided by a veterinarian. The term also includes cremation.

37 (3) LEGISLATIVE FINDINGS.- The Legislature finds that:

38 (a) Law enforcement dogs have become an integral part of
39 many law enforcement efforts statewide, including suspect
40 apprehension through tracking and searching, evidence location,
41 drug and bomb detection, and search and rescue operations;

42 (b) Law enforcement agencies agree that the use of law
43 enforcement dogs is an extremely cost-effective means for crime



Amendment No. 1

44 control and that these dogs possess skills and abilities that
45 frequently exceed that of existing technology;

46 (c) The work of law enforcement dogs is often dangerous
47 and can cause these dogs to incur injuries at a rate higher than
48 the rate of injuries that occurs with nonworking dogs; and

49 (d) Law enforcement dogs provide significant contributions
50 to the residents of this state.

51 (4) ESTABLISHMENT OF PROGRAM.-The Care for Retired Law
52 Enforcement Dogs Program is created within the Department of Law
53 Enforcement to provide a stable funding source for former
54 handlers and adopters of retired law enforcement dogs to provide
55 veterinary care for these dogs.

56 (5) ADMINISTRATION.-The Department of Law Enforcement shall
57 contract with a corporation not for profit organized under
58 chapter 617, Florida Statutes, to administer and manage the Care
59 for Retired Law Enforcement Dogs Program. Notwithstanding the
60 competitive sealed bid procedures required under chapter 287,
61 Florida Statutes, the department shall enter into a contract
62 with a corporation that:

63 (a) Is dedicated to the protection or care of retired law
64 enforcement dogs;

65 (b) Holds exempt status under s. 501(a) of the Internal
66 Revenue Code as an organization described in s. 501(c)(3) of the
67 Internal Revenue Code;

68 (c) Has held its exempt status for at least 5 years;

69 (d) Agrees to be subject to review and audit at the



Amendment No. 1

70 discretion of the Auditor General to ensure accurate accounting
71 and disbursement of state funds; and

72 (e) Demonstrates the ability to effectively and
73 efficiently disseminate information and assist former handlers
74 and adopters of retired law enforcement dogs in understanding
75 the provisions of this section.

76 (6) FUNDING.—

77 (a) The corporation shall be the disbursing authority for
78 funds appropriated by the Legislature to the Department of Law
79 Enforcement for the Care for Retired Law Enforcement Dogs
80 Program. These funds shall be disbursed upon receipt of:

81 1. Valid documentation from the law enforcement agency
82 the dog retired from verifying that the dog was in the service
83 of or employed by such agency; and

84 2. A valid invoice, submitted by the former handler or
85 adopter of a retired law enforcement dog, from a veterinarian
86 for veterinary care provided in the state to a retired law
87 enforcement dog.

88 (b) Annual disbursements to any former handler or adopter
89 of a retired law enforcement dog are limited to \$1,500 per
90 retired law enforcement dog. A former handler or adopter of a
91 retired law enforcement dog may not accumulate unused funds from
92 one year for use in a future year.

93 (c) A former handler or adopter of a retired law
94 enforcement dog who seeks reimbursement for veterinary services
95 shall not receive reimbursement if funds for the Care for



Amendment No. 1

96 Retired Law Enforcement Dogs Program are depleted in the year
97 for which the reimbursement is sought.

98 (d) Funds appropriated for the Care for Retired Law
99 Enforcement Dogs Program shall be held in the Operating Trust
100 Fund of the Department of Law Enforcement in a separate
101 depository account in the name of the corporation and subject to
102 the provisions of the contract with the department. The contract
103 must provide:

104 1. The corporation must receive administrative fees,
105 including salaries and benefits, not to exceed 10 percent of
106 appropriated funds; and

107 2. That any funds held in the separate depository account
108 in the name of the corporation must revert to the department if
109 the contract expires or is terminated.

110 (e) Notwithstanding s. 216.301, Florida Statutes, and
111 pursuant to s. 216.351, Florida Statutes, the Executive Office
112 of the Governor shall, on July 1 of each year, certify forward
113 all unexpended funds appropriated pursuant to this section.
114 However, in no event shall the fund balance for the Care for
115 Retired Law Enforcement Dogs Program exceed \$400,000.

116 (7) RULEMAKING AUTHORITY.- The department shall adopt
117 rules and forms pursuant to ss. 120.536(1) and 120.54 to
118 implement the requirements of this section.

119 Section 2. Beginning in the 2014-2015 fiscal year and each
120 year thereafter, the sum of \$300,000 in recurring funds is
121 appropriated from the General Revenue Fund to the Department of

102075 - h1211.strike.docx

Published On: 3/17/2014 5:29:10 PM



Amendment No. 1

122 Law Enforcement for the purpose of implementing the Care for
123 Retired Law Enforcement Dogs Program as created by this act.

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

125

126

127

128

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

129

Remove everything before the enacting clause and insert:

130

An act relating to care for retired law enforcement dogs;

131

creating s. 943.69, F.S.; providing a short title; providing

132

definitions; providing legislative findings; creating the Care

133

for Retired Law Enforcement Dogs Program within the Department

134

of Law Enforcement; requiring the department to contract with a

135

corporation not for profit to administer the program and

136

providing criteria therefor; providing specific procedures for

137

how funds will be disbursed for the veterinary care of eligible

138

retired law enforcement dogs; limiting the amount of funds

139

available for any eligible retired law enforcement dog in any

140

one year; providing for the deposit of program funds; providing

141

for the reversion of funds to the department under certain

142

circumstances; providing for the carryforward of unexpended

143

appropriations for use in the program up to certain limits;

144

providing rulemaking authority; providing an annual

145

appropriation; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1253 Use of Wireless Communications Devices while Operating a Motor Vehicle

SPONSOR(S): Slosberg

TIED BILLS: IDEN./SIM. BILLS: SB 1078

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cox <i>RC</i>	Cunningham <i>SC</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

Currently, s. 316.05, F.S., prohibits a person from using a wireless communication device (WCD) while operating a motor vehicle to:

- Manually type or enter multiple letters, numbers, symbols, or other characters into the device; or
- Send or read data for the purpose of nonvoice interpersonal communication, which in addition to texting, includes e-mailing, and instant messaging.

Florida law does not specifically make it a crime for a person to cause the death of another while operating a vehicle and using a WCD. However, depending on the facts of the case, a person who kills another while operating a vehicle and using a WCD could be prosecuted for vehicular homicide, DUI manslaughter, or leaving the scene of an accident involving death.

The bill creates s. 316.3035, F.S., providing a person commits a second degree felony by causing the death of a human being or viable fetus while operating a vehicle and using a WCD in violation of s. 316.305, F.S. The offense is reclassified to a first degree felony if:

- At the time of the accident, the person knew, or should have known, that the accident occurred; and
- The person failed to give information and render aid as required by s. 316.062, F.S.

The bill defines "wireless communication device" in accordance with s. 316.305, F.S., as "any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15 and that allows text communications."

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, there will likely be a negative prison bed impact to the Department of Corrections because the bill creates new first and second degree felonies.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Traffic Fatalities – Wireless Communication Devices

According to the Florida Department of Highway Safety and Motor Vehicles (DHSMV), there were 227,998 total crashes in Florida in 2011, down from 235,461 in 2010.¹ Mirroring trends nationally, traffic fatalities in Florida have been trending downward.² In 2011, Florida's 2,400 traffic fatalities represented a 1.8 percent decrease from the previous year and a 32 percent reduction since 2005.³

DHSMV is unable to determine how many of Florida's traffic fatalities are a direct result of distracted driving as this information may or may not show up on a crash report. However, the National Highway Traffic Safety Administration (NHTSA) reports that ten percent of fatal crashes nationwide in 2011 were reported as distraction-affected crashes.⁴ NHTSA further reports that "text messaging creates a crash risk 23 times worse than driving while not distracted,"⁵ largely because "sending or receiving a text takes a driver's eyes from the road for an average of 4.6 seconds, the equivalent – at 55 mph – of driving the length of an entire football field."⁶ Researchers have identified texting-while-driving as among the most dangerous of distractions because it involves "manual, visual, and cognitive distraction simultaneously."⁷

Driving Offenses Involving the Death of a Person

Currently, s. 316.05, F.S. (the texting-while-driving ban), prohibits a person from using a wireless communication device⁸ (WCD) while operating a motor vehicle (vehicle) to:

- Manually type or enter multiple letters, numbers, symbols, or other characters into the device; or
- Send or read data for the purpose of nonvoice interpersonal communication, which in addition to texting, includes e-mailing, and instant messaging.⁹

The offense is punishable as a noncriminal traffic infraction, punishable as a nonmoving violation,¹⁰ and enforcement is only permitted as a secondary offense.¹¹

Florida law does not specifically make it a crime for a person to cause the death of another while operating a vehicle and using a WCD. However, depending on the facts of the case, a person who kills

¹ 2011 Florida Traffic Crash Statistics, Traffic Crash Facts, <http://www.flhsmv.gov/html/safety.html> (last visited March 14, 2014).

² The National Highway Traffic Safety Administration (NHTSA) has reported that traffic fatalities fell in 2011 to their lowest level since 1949. *Highway Deaths Fell to Lowest Level in More Than Six Decades, Down 26 Percent Since 2005*, NHTSA December 10, 2012 press release,

<http://www.nhtsa.gov/About+NHTSA/Press+Releases/2012/New+NHTSA+Analysis+Shows+2011+Traffic+Fatalities+Declined+by+Nearly+Two+Percent> (last visited on March 14, 2014).

³ *Id.*

⁴ *Distraction Driving 2011*, U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA), <http://www.distraction.gov/content/press-release/2013/04-05.html> (last visited March 14, 2014) [In 2011, there were a total of 29,757 fatal crashes in the United States involving 43,668 drivers. In those crashes, 32,367 people were killed. In 2011, 3,020 fatal crashes occurred that involved distraction (10% of all fatal crashes)].

⁵ *Id.* While this information may be accessed via the NHTSA website, the study itself was authored by Rebecca L. Olson, Richard J. Hanowski, Jeffrey S. Hickman, and Joseph Bocanegra, of the Virginia Tech Transportation Institute.

⁶ *Id.*

⁷ *Id.*

⁸ Section 316.305(3)(a), F.S., defines the term "wireless communications device" as any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15 and that allows text communications.

⁹ The statute provides a variety of exceptions (e.g., the statute does not apply to law enforcement personnel who is performing official duties, or to persons reporting an emergency or criminal or suspicious activity to law enforcement).

¹⁰ A second or subsequent violation within 5 years after the date of a prior conviction for a violation is a noncriminal traffic infraction, punishable as a moving violation as provided in ch. 318, F.S. Section 316.305(4)(b), F.S.

¹¹ Section 316.305(5), F.S. Because texting while driving is a secondary offense, a driver must be first pulled over for a violation of another traffic law before that driver may be cited for violating the texting-while-driving ban.

another while operating a vehicle and using a WCD can be prosecuted for one of the offenses described below.

Vehicular Homicide

Vehicular homicide, a second degree felony,¹² is the killing of a human being, or the killing of a viable fetus¹³ by any injury to the mother, caused by the operation of a vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.¹⁴ The offense is reclassified to a first degree felony¹⁵ if:

- At the time of the accident, the person knew or should have known the accident occurred; and
- The person failed to give information and render aid as required by s. 316.062, F.S.^{16,17}

Courts have held that vehicular homicide cannot be proven without proving the elements that constitute reckless driving.¹⁸

A person commits the offense of “reckless driving” if he or she drives a vehicle in willful or wanton¹⁹ disregard for the safety of persons or property.²⁰ In determining whether a person was driving recklessly, the essential inquiry is whether the defendant knowingly drove the vehicle in such a manner and under such conditions as was likely to cause death or great bodily harm.²¹ A person need not have foreseen the specific circumstances causing the death of the particular victim, it is sufficient that he or she should have reasonably foreseen that the same general type of harm might occur if he or she knowingly drives the vehicle under circumstances that would likely cause the death of another.²²

DUI Manslaughter

DUI manslaughter, a second degree felony, occurs when a person commits the offense of driving under the influence²³ and, by operating such vehicle, causes or contributes to causing the death of a unborn quick child²⁴ or human being.²⁵ As with vehicular homicide, the offense is reclassified as a first degree felony if:

¹² A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹³ A fetus is considered viable when it becomes capable of meaningful life outside the womb through standard medical measures. Section 782.071(2), F.S.

¹⁴ Section 782.071, F.S.

¹⁵ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁶ Section 782.071(1), F.S.

¹⁷ Section 316.062, F.S., requires the driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle or other property to give his or her name, address, and the registration number of the vehicle he or she is driving. Upon request and if available, the person must exhibit his or her license or permit to drive, to any person injured in such crash or to the driver or occupant of or person attending any vehicle or other property damaged in the crash and must give such information and, upon request, exhibit such license or permit to any police officer at the scene of the crash or who is investigating the crash.

Additionally, the person must render to any person injured in the crash reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.

¹⁸ *W.E.B. v. State*, 553 So.2d 323 at 326 (Fla. 1st DCA 1989); *Berube v. State*, 6 So.3d 624 (Fla. 5th DCA 2008).

¹⁹ “Willful” means intentionally, knowingly, and purposely. “Wanton” means with a conscious and intentional indifference to consequences and with knowledge that damage is likely to be done to persons or property. *W.E.B. v. State*, 553 So.2d 323 (Fla. 1st DCA 1989).

²⁰ Section 316.192, F.S. A first conviction of reckless driving is punishable by no more than 90 days imprisonment or a fine of \$25-\$500, or by both. A second or subsequent conviction is punishable by no more than six months or by a fine of not less than \$50-\$1,000, or by both.

²¹ The Florida Supreme Court describes recklessness as a degree of negligence that falls short of culpable negligence, but more than a mere failure to use ordinary care. *McCreary v. State*, 371 So.2d 10254, 1026 (Fla. 1979).

²² *W.E.B. v. State*, 553 So.2d 323 at 326 (Fla. 1st DCA 1989).

²³ Section 316.193, F.S., provides that a person commits the offense of “driving under the influence” if he or she is driving or in actual physical control of a vehicle and the person:

- Is under the influence, to the extent that the person’s normal faculties are impaired, of alcoholic beverages, any chemical substance as provided in s. 877.111, F.S., or any substance controlled under ch. 893, F.S.;
- Has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- Has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

²⁴ Section 316.193(3), F.S., provides that the definition of the term “unborn quick child” must be determined in accordance with the definition of viable fetus as set forth in s. 782.071, F.S.

- At the time of the accident, the person knew or should have known the accident occurred; and
- The person failed to give information and render aid as required by s. 316.062, F.S.²⁶

A person convicted of DUI manslaughter must be sentenced to a mandatory minimum term of imprisonment of 4 years.²⁷

Leaving the Scene of an Accident Involving Death

Section 316.027, F.S., requires a person driving a vehicle involved in a crash that results in the death of any person to immediately stop the vehicle and remain at the scene until the driver has complied with section 316.062, F.S.²⁸ A person who leaves the scene of a crash involving death commits a first degree felony.²⁹ If the person was driving under the influence, the court must sentence the person to a minimum mandatory prison sentence of two years.³⁰

Effect of the Bill

The bill creates s. 316.3035, F.S., providing a person commits a second degree felony by causing the death of a human being or viable fetus while operating a vehicle and using a WCD in violation of s. 316.305, F.S. (the texting-while-driving ban).³¹ The offense is reclassified to a first degree felony if:

- At the time of the accident, the person knew or should have known the accident occurred; and
- The person failed to give information and render aid as required by s. 316.062, F.S.

As noted above, depending on the facts of the case, a person who kills a human being or a viable fetus while operating a vehicle and using a WCD can be prosecuted for one of the above mentioned offenses.

The bill defines “wireless communication device” to have the same meaning as provided in the Florida Ban on Texting Law and “viable fetus” to have the same meaning as in s. 782.071, F.S. (vehicular homicide).

B. SECTION DIRECTORY:

Section 1. Creates s. 316.3035, F.S., relating to death caused by motor vehicle operator using a wireless communication device; criminal penalty.

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 Criminal Justice Impact Conference has not yet met to determine the fiscal impact of this bill. However, the bill may have a negative prison bed impact on the Department of Corrections

²⁵ Section 316.193(3)(a), F.S.

²⁶ Section 316.193(3)(b), F.S.

²⁷ Section 316.193(3), F.S.

²⁸ *Supra* note 13.

²⁹ Section 316.027(1)(b), F.S. Proof that the driver caused or contributed to causing injury to a person is not required for a conviction. See *Lawrence v. State*, 801 So.2d 293, 295 (Fla. 2d DCA 2001) and *Kelly v. State*, 987 So.2d 1237, 1239 (Fla. 2d DCA 2008).

³⁰ Section 316.027(1)(b), F.S.

³¹ Law enforcement officers (LEOs) may conduct a search of a WCD, such as a cell phone, after securing a valid search warrant or when an exception to the search warrant requirement exists, such as consent from the owner of the WCD. Additionally, LEOs can obtain the electronic communication records from the providers of electronic communication service by subpoenaing the records from the provider.

because it creates a new first and second degree felony offense for causing the death of a person or viable fetus by operating a vehicle while using a WCD. The extent of the impact is unknown, however, because in many instances, a person who causes the death of another by operating a vehicle while using a WCD could currently be charged with another criminal offense.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides an effective date of July 1, 2014. Generally, bills that provide a new criminal penalty or enhance a current criminal penalty are effective October 1st so as to give agencies enough time for implementation and provide the public with sufficient notice of the conduct that is prohibited.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the use of wireless communications
 3 devices while operating a motor vehicle; creating s.
 4 316.3035, F.S.; defining the term "wireless
 5 communications device"; providing a criminal penalty
 6 if a person operating a motor vehicle while using a
 7 wireless communications device causes the death of a
 8 human being or a viable fetus; providing an effective
 9 date.

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

12
 13 Section 1. Section 316.3035, Florida Statutes, is created
 14 to read:

15 316.3035 Death caused by motor vehicle operator using a
 16 wireless communications device; criminal penalty.-

17 (1) As used in this section, the term "wireless
 18 communications device" has the same meaning as provided in s.
 19 316.305.

20 (2) A person who causes the death of a human being or a
 21 viable fetus as provided in s. 782.071 while operating a motor
 22 vehicle and using a wireless communications device in violation
 23 of s. 316.305 commits:

24 (a) A felony of the second degree, punishable as provided
 25 in s. 775.082, s. 775.083, or s. 775.084; or

26 (b) A felony of the first degree, punishable as provided

HB 1253

2014

27 | in s. 775.082, s. 775.083, or s. 775.084, if:

28 | 1. At the time of the accident, the person knew, or should
29 | have known, that the accident occurred; and

30 | 2. The person failed to give information and render aid as
31 | required by s. 316.062.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4015 Lewd and Lascivious Behavior
SPONSOR(S): Stark
TIED BILLS: IDEN./SIM. BILLS: SB 434

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

SUMMARY ANALYSIS

Florida's cohabitation law (s. 798.02, F.S.) was created in 1868, and makes it a second degree misdemeanor for any man and woman:

- Not being married to each other, to lewdly and lasciviously associate and cohabit together; or
- Married or unmarried, to engage in open and gross lewdness and lascivious behavior.

In recent years, states such as Arizona, Idaho, Maine, New Mexico, North Dakota, Virginia, and West Virginia, have repealed their cohabitation laws. In 2006, North Carolina's cohabitation law was found unconstitutional as violating one's substantive due process rights.

The bill repeals s. 798.02, F.S., in its entirety, and makes conforming changes to several other statutes.

The bill may have a positive jail bed impact.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida's Cohabitation Law

Florida is one of only three states with a law criminalizing cohabitation.¹ Section 798.02, F.S., created in 1868,² makes it a second degree misdemeanor if any man and woman:

- Not being married to each other, lewdly and lasciviously associate and cohabit together; or
- Married or unmarried, engages in open and gross lewdness and lascivious behavior.³

While rarely used in the criminal context, cohabitation laws have been used as a rationale to sanction people in a civil context. For example, in 1979, the Florida Department of Business and Professional Regulation suspended a company's liquor license after finding that six of the company's agents, servants or employees violated s. 798.02, F.S.⁴ In 1999, North Carolina officials refused to grant victim's compensation to an unmarried victim of domestic violence because she was cohabiting with her boyfriend, and was therefore a criminal.⁵ In 2001, authorities in Virginia cited that state's cohabitation law to revoke a professional license of the owner of a day care center.⁶

Other States' Cohabitation Laws

In recent years, states such as Arizona, Idaho, Maine, New Mexico, North Dakota, Virginia, and West Virginia, have repealed their cohabitation laws.⁷

It should also be noted that North Carolina's cohabitation law⁸ was found unconstitutional as violating one's substantive due process rights.⁹ In its ruling, the North Carolina court relied on *Lawrence v. Texas*, which held that a Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution.¹⁰ Writing for the United States Supreme Court, Justice Kennedy said "Liberty protects the person from unwarranted government intrusions into a dwelling or other private places. In our tradition the State is not omnipresent in the home."¹¹ Justice Kennedy also stated that the following quote by Justice Stevens' in an earlier case should be controlling:

[I]ndividual decisions by married persons, concerning the intimacies of their physical relationship, even when not intended to produce offspring, are a form of 'liberty' protected by the Due Process Clause of the Fourteenth Amendment. Moreover, this protection extends to intimate choices by unmarried as well as married persons.¹²

¹ The other states with cohabitation laws are Michigan (Section 750.335, M.C.L.A.) and Mississippi (Section 97-29-1, M.C.A.).

² Laws 1868, chapter 1637, subsection 8, section 6.

³ The statute was last amended in 1971 by ch. 71-136, L.O.F., which made the offense a misdemeanor of the second degree, punishable as provided in ss. 775.082 or 775.083, F.S., in lieu of punishment "by imprisonment in the state prison not exceeding two years, or in the county jail not exceeding one year, or by fine not exceeding three hundred dollars."

⁴ *G & B of Jacksonville, Inc. v. State, Dept. of Business Regulation, Division of Beverage*, 371 So.2d 139 (Fla. 1st DCA 1979). Section 561.29, F.S., gives the Division authority to suspend a beverage license when the Division finds sufficient cause that a licensee or its agents, officers, servants or employees, on the licensed premises, while in the scope of employment, has violated any law of this State.

⁵ *Family denied compensation because victim lived with killer*, April 1, 1999, http://lubbockonline.com/stories/040199/nat_040199068.shtml (last visited on March 12, 2014).

⁶ *Antiquated, unconstitutional law held up day care license for nearly a year*, March 19, 2002, <http://acluva.org/1746/social-services-reinstates-license-for-day-care-operator-accused-of-violating-virginia-cohabitation-law/> (last visited on March 12, 2014).

⁷ E-mail from Rochelle Finzel, Group Director of the National Conference of State Legislatures, dated February 14, 2014 (on file with the Criminal Justice Subcommittee).

⁸ Section 14-184, N.C.G.S.

⁹ *Hobbs v. Smith*, No. 05-CVS 267, 2006 WL 3103008 (N.S. Super. 2006).

¹⁰ *Lawrence v. Texas*, 539 U.S. 558 (2003).

¹¹ *Id.* at 562.

¹² *Id.* at 578 (citing *Bowers v. Hardwick*, 478 U.S. 186 (1986)).

Effect of the Bill

The bill repeals s. 798.02, F.S., in its entirety.

The bill removes references to s. 798.02, F.S., in the following statutes:

- Section 39.0139, F.S. (creating a rebuttable presumption, for purposes of dependency proceedings, that detriment to a child is created when a parent or caregiver has been found guilty of specified offenses);
- Section 39.509, F.S. (permitting the court, when determining whether grandparental visitation is in the child's best interest, to consider whether the grandparent has been found guilty of specified offenses); and
- Section 435.04, F.S. (listing disqualifying offenses for purposes of a Level 2 background screening).

B. SECTION DIRECTORY:

Section 1. Repeals s. 798.02, F.S., relating to lewd and lascivious behavior.

Section 2. Amends s. 39.0139, F.S., relating to visitation or other contact; restrictions.

Section 3. Amends s. 39.509, F.S., relating to grandparents rights.

Section 4. Amends s. 435.04, F.S., relating to Level 2 screening standards.

Section 5. 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 repeals an offense punishable as a second degree misdemeanor. This may have 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:

As discussed above, a North Carolina court, relying on *Lawrence v. Texas*, recently found North Carolina's cohabitation law unconstitutional as violating one's substantive due process rights. It could be argued that Florida's cohabitation statute is also unconstitutional on the same grounds.

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 lewd and lascivious behavior;
3 repealing s. 798.02, F.S., relating to a prohibition
4 on lewd and lascivious behavior, including a
5 prohibition on lewd and lascivious association and
6 cohabitation together by a man and woman who are not
7 married to each other; amending ss. 39.0139, 39.509,
8 and 435.04, F.S.; conforming provisions to changes
9 made by the act; providing an effective date.

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

12
13 Section 1. Section 798.02, Florida Statutes, is repealed.

14 Section 2. Paragraph (a) of subsection (3) of section
15 39.0139, Florida Statutes, is amended to read:

16 39.0139 Visitation or other contact; restrictions.—

17 (3) PRESUMPTION OF DETRIMENT.—

18 (a) A rebuttable presumption of detriment to a child is
19 created when:

20 1. A court of competent jurisdiction has found probable
21 cause exists that a parent or caregiver has sexually abused a
22 child as defined in s. 39.01;

23 2. A parent or caregiver has been found guilty of,
24 regardless of adjudication, or has entered a plea of guilty or
25 nolo contendere to, charges under the following statutes or
26 substantially similar statutes of other jurisdictions:

27 a. Section 787.04, relating to removing minors from the
 28 state or concealing minors contrary to court order;

29 b. Section 794.011, relating to sexual battery;

30 ~~e. Section 798.02, relating to lewd and lascivious~~
 31 ~~behavior;~~

32 c.d. Chapter 800, relating to lewdness and indecent
 33 exposure;

34 d.e. Section 826.04, relating to incest; or

35 e.f. Chapter 827, relating to the abuse of children; or

36 3. A court of competent jurisdiction has determined a
 37 parent or caregiver to be a sexual predator as defined in s.
 38 775.21 or a parent or caregiver has received a substantially
 39 similar designation under laws of another jurisdiction.

40 Section 3. Paragraph (a) of subsection (6) of section
 41 39.509, Florida Statutes, is amended to read:

42 39.509 Grandparents rights.—Notwithstanding any other
 43 provision of law, a maternal or paternal grandparent as well as
 44 a stepgrandparent is entitled to reasonable visitation with his
 45 or her grandchild who has been adjudicated a dependent child and
 46 taken from the physical custody of the parent unless the court
 47 finds that such visitation is not in the best interest of the
 48 child or that such visitation would interfere with the goals of
 49 the case plan. Reasonable visitation may be unsupervised and,
 50 where appropriate and feasible, may be frequent and continuing.
 51 Any order for visitation or other contact must conform to the
 52 provisions of s. 39.0139.

53 (6) In determining whether grandparental visitation is not
 54 in the child's best interest, consideration may be given to the
 55 following:

56 (a) The finding of guilt, regardless of adjudication, or
 57 entry or plea of guilty or nolo contendere to charges under the
 58 following statutes, or similar statutes of other jurisdictions:
 59 s. 787.04, relating to removing minors from the state or
 60 concealing minors contrary to court order; s. 794.011, relating
 61 to sexual battery; ~~s. 798.02, relating to lewd and lascivious~~
 62 ~~behavior~~; chapter 800, relating to lewdness and indecent
 63 exposure; s. 826.04, relating to incest; or chapter 827,
 64 relating to the abuse of children.

65 Section 4. Paragraph (v) of subsection (2) of section
 66 435.04, Florida Statutes, is amended to read:

67 435.04 Level 2 screening standards.—

68 (2) The security background investigations under this
 69 section must ensure that no persons subject to the provisions of
 70 this section have been arrested for and are awaiting final
 71 disposition of, have been found guilty of, regardless of
 72 adjudication, or entered a plea of nolo contendere or guilty to,
 73 or have been adjudicated delinquent and the record has not been
 74 sealed or expunged for, any offense prohibited under any of the
 75 following provisions of state law or similar law of another
 76 jurisdiction:

77 ~~(v) Section 798.02, relating to lewd and lascivious~~
 78 ~~behavior.~~

HB 4015

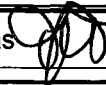

2014

79

Section 5. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1017 Human Trafficking
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: CS/HB 1019, HB 1021 **IDEN./SIM. BILLS:** SB 1440

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

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, and using coercion for commercial sexual activity.

In recent years, the Legislature has overhauled Florida's human trafficking laws to increase penalties for human trafficking and to make human trafficking prosecutions easier. The Legislature has also recognized the plight of victims of human trafficking, and has passed laws designed to protect and assist such persons.

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

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

The Criminal Justice Impact Conference has not met to determine the prison bed impact of the bill. However, the bill will have a negative prison bed impact in that it:

- Increases the felony degree of human trafficking offenses;
- Ranks human trafficking offenses in a higher level in the Chart;
- Removes the statute of limitations for human trafficking offenses; and
- Makes misdemeanor prostitution-related offenses felony offenses.

The bill may have a jail bed impact in that it makes misdemeanor prostitution-related offenses felony offenses, and creates two new second degree misdemeanor offenses in the Child Labor Law.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, men, and women. Victims are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.¹ The International Labor Organization (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 states to prevent human trafficking, enhance penalties related to human trafficking, and provide protections to human trafficking victims. A description of these statues and the changes made by the bill follows.

Child Labor Laws

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

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

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

Effect of the Bill

The bill amends s. 450.021, F.S., to prohibit a person 17 years of age or younger¹² from working in an adult theater.¹³ The bill also amends s. 450.045, F.S., to require an adult theater to obtain proof of the identity and age of its employees and independent contractors prior to employment or the provision of services. The adult theater must also verify the validity of the identification documents used to provide such proof.

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

⁸ Section 787.06(3), F.S.

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

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

¹¹ Section 450.141, F.S.

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

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

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

Human Trafficking - Criminal Penalties

The Criminal Punishment Code / Offense Severity Ranking Chart

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

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

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

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

Human Trafficking Offenses

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

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

¹⁴ Sections 921.002-921.0027, F.S.

¹⁵ Section 921.0022, F.S.

¹⁶ Section 921.0024, F.S.

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

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

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

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

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

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

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

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

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

Effect of the Bill

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

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

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

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

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

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

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

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

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

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

²⁹ Section 921.0022(3)(i), F.S.

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

Statute of Limitations

Statutes of limitations set forth time limitations for commencing criminal prosecutions and civil actions. In *State v. Hickman*,³⁰ the court explained that:

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

Similarly, in *State v. Garofalo*, the court found that "[t]he sole purpose of a statute of limitations in a criminal context is to prevent the State from hampering defense preparation by delaying prosecution until a point in time when its evidence is stale and defense witnesses have died, disappeared or otherwise become unavailable."³¹

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

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

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

Effect of the Bill

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

Prostitution

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

- Section 796.03, F.S. (procuring persons under age of 18 for prostitution);
- Section 796.035, F.S. (selling or buying of minors into prostitution);
- Section 796.036, F.S. (reclassifying prostitution violations involving minors);
- Section 796.04, F.S. (forcing, compelling, or coercing another to become a prostitute);
- Section 796.05, F.S. (deriving support from the proceeds of prostitution);
- Section 796.06, F.S. (renting space to be used for lewdness, assignation, or prostitution);
- Section 796.07, F.S. (prohibiting prostitution and related acts);
- Section 796.08, F.S. (prostitution, HIV and sexually transmissible diseases); and
- Section 796.09, F.S. (creating a civil cause of action).

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

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

Effect of the Bill

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

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

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

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

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

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

- To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution.³²
- To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act.³³
- To receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose.³⁴
- To direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation.³⁵
- To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.³⁶
- To purchase the services of any person engaged in prostitution.³⁷

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

The bill also requires the court to assess a criminal penalty of \$5,000 for the above-listed crimes if the violation results in any judicial disposition other than acquittal or dismissal (current law imposes a \$5,000 civil fine, but only for a violation of s. 796.07(2)(f), F.S., which prohibits a person from soliciting another to commit prostitution). \$500 of the fine is allocated to pay administrative costs of drug court

³² Section 796.07(2)(a), F.S.

³³ Section 796.07(2)(b), F.S.

³⁴ Section 796.07(2)(c), F.S.

³⁵ Section 796.07(2)(d), F.S.

³⁶ Section 796.07(2)(f), F.S.

³⁷ Section 796.07(2)(i), F.S.

programs, and the remainder of the fine goes to the Operations and Maintenance Trust Fund of the Department of Children and Families for the purpose of funding safe houses and short-term safe houses. As a criminal fine, its collection can be enforced as part of the defendant's criminal sentence.

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

Expunged Records

Expunging Criminal History Records - Generally

Section 943.0585, F.S., sets forth procedures for expunging a criminal history record. When a criminal history record³⁸ is expunged, criminal justice agencies³⁹ other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.⁴⁰ FDLE is required to retain expunged records.⁴¹ Records that have been expunged are confidential and exempt from the public records law,⁴² and it is a first degree misdemeanor⁴³ to divulge their existence.⁴⁴

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,⁴⁵ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.⁴⁶

In 1992, the Legislature amended s. 943.0585, F.S., to require a person petitioning the court for an expunction to first obtain a certificate of eligibility for expunction (certificate) from FDLE.⁴⁷ 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;⁴⁸

³⁸ 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.

³⁹ 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.

⁴⁰ Section 943.0585(4), F.S. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order

⁴¹ *Id.*

⁴² Section 943.0585(4)(c), F.S.

⁴³ 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.

⁴⁴ Section 943.0585(4)(c), F.S., requires FDLE to disclose expunged criminal history records to specified entities for specified purposes.

⁴⁵ 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.

⁴⁶ Section 943.0585(4)(c), F.S.

⁴⁷ Chapter 1992-73, L.O.F.

- 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.,⁴⁹ prior to the date of their application for the certificate;
- Have never been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity of the record they wish to have expunged;
- Have never had a prior sealing or expunction of criminal history record unless an expunction is sought for a record previously sealed for 10 years and the record is otherwise eligible for expunction;
- No longer be under any court supervision related to the disposition of the record they wish to have expunged; and
- Have previously obtained a court order sealing the record for a minimum of 10 years because adjudication was withheld or because all charges related to the record they wish to have expunged were not dismissed prior to trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.⁵⁰

Once a petition to expunge is submitted, it is up to the court to decide whether the expunction is appropriate.⁵¹

Expunging Human Trafficking Criminal History Records

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for the expunction of any conviction for an offense committed while he or she was a victim of human trafficking. A “victim of human trafficking” is defined as a person subjected to coercion for the purpose of being used in human trafficking, a minor who is a victim of human trafficking, or an individual subject to human trafficking as defined by federal law.⁵²

A petition must be initiated with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking.⁵³ The petition must include:

- A sworn statement attesting that the victim is eligible for such expunction to the best of his or her knowledge or belief and does not have another petition to expunge or seal before any other court; and
- Official documentation of the victim’s status as a victim of human trafficking, if any exists.⁵⁴

The court’s determination of the petition must be by a preponderance of the evidence.⁵⁵ A determination made without official documentation must be made by a showing of clear and convincing

⁴⁸ These offenses include: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients, or the reporting of such sexual misconduct; luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child, lewd or lascivious offenses committed on an elderly or disabled person; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sexually explicit conduct; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, and burglary.

⁴⁹ 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.

⁵⁰ The does not apply when a plea was not entered or all charges related to the record they wish to have expunged were dismissed prior to trial. Section 943.0585(2), F.S.

⁵¹ Section 943.0585, F.S.

⁵² Section 943.0583(1)(c), F.S.

⁵³ Section 943.0583(4), F.S.

⁵⁴ Section 943.0583(6), F.S.

evidence.⁵⁶ If a court grants an expunction, criminal justice agencies with custody of the expunged record, except FDLE, must physically destroy the record.⁵⁷ Persons who have had their human trafficking criminal history records expunged may lawfully deny or fail to acknowledge the arrests that were expunged unless they are a candidate for employment with a criminal justice agency or a defendant in a criminal prosecution.⁵⁸

Effect of the Bill

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

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

B. SECTION DIRECTORY:

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

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

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

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

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

Section 6. Amends s. 796.03, F.S., relating to procuring person under age of 18 for prostitution.

Section 7. Repeals s. 796.035, F.S., relating to selling or buying of minors into prostitution; penalties.

Section 8. Repeals s. 796.036, F.S., relating to violations involving minors; reclassification.

Section 9. Amends s. 796.05, F.S., relating to deriving support from the proceeds of prostitution.

Section 10. Amends s. 796.07, F.S., relating to prohibiting prostitution and related acts.

Section 11. Amends s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 12. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 13. Provides an effective date of October 1, 2014.

⁵⁵ Section 943.0583(3), F.S.

⁵⁶ Section 943.0583(5), F.S.

⁵⁷ Section 943.0583(8)(a), F.S. Records retained by FDLE are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, except that the record shall be made available to criminal justice agencies for their respective criminal justice purposes. Section 943.0583(10)(a), F.S.

⁵⁸ Section 943.0583(8)(b), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of the bill. However, the bill will have a negative prison bed impact in that it:

- Increases the felony degree and Chart ranking of human trafficking offenses;
- Removes the statute of limitations for human trafficking offenses; and
- Makes misdemeanor prostitution-related offenses felony offenses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a positive jail bed impact in that it makes misdemeanor prostitution-related offenses felony offenses.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

27 | investigative records related to such expunged
 28 | records; amending s. 921.0022, F.S.; conforming
 29 | provisions of the offense severity ranking chart of
 30 | the Criminal Punishment Code to changes made by the
 31 | act; providing an effective date.

32 |
 33 | Be It Enacted by the Legislature of the State of Florida:
 34 |

35 | Section 1. Subsection (5) is added to section 450.021,
 36 | Florida Statutes, to read:

37 | 450.021 Minimum age; general.—

38 | (5) In order to better ensure the elimination of minors
 39 | being exploited and becoming victims of human trafficking, a
 40 | person 17 years old or younger, whether or not such person's
 41 | disabilities of nonage have been removed by marriage or
 42 | otherwise, may not be employed, permitted, or suffered to work
 43 | in an adult theater, as defined in s. 847.001(2)(b).

44 | Section 2. Subsection (3) is added to section 450.045,
 45 | Florida Statutes, to read:

46 | 450.045 Proof of identity and age; posting of notices.—

47 | (3)(a) In order to provide the department and law
 48 | enforcement agencies the means to more effectively identify,
 49 | investigate, and arrest persons engaging in human trafficking,
 50 | an adult theater, as defined in s. 847.001(2)(b), shall obtain
 51 | proof of the identity and age of each of its employees or
 52 | independent contractors, and shall verify the validity of the

53 identification and age verification document with the issuer,
 54 before his or her employment or provision of services as an
 55 independent contractor.

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

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

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

73 775.15 Time limitations; general time limitations;
 74 exceptions.—

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

79 Section 4. Subsections (3) and (4) of section 787.06,
 80 Florida Statutes, are amended to read:

81 787.06 Human trafficking.—

82 (3) Any person who knowingly, or in reckless disregard of
 83 the facts, engages in human trafficking, or attempts to engage
 84 in human trafficking, or benefits financially by receiving
 85 anything of value from participation in a venture that has
 86 subjected a person to human trafficking:

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

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

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

96 (c) 1. Using coercion For labor or services of any child
 97 under the age of 18 ~~individual~~ who is an unauthorized alien
 98 commits a felony of the first degree, punishable as provided in
 99 s. 775.082, s. 775.083, or s. 775.084.

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

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

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

107 (e)1. ~~Using coercion~~ For labor or services who does so by
 108 the transfer or transport of any child under the age of 18
 109 ~~individual~~ from outside this state to within the state commits a
 110 felony of the first degree, punishable as provided in s.
 111 775.082, s. 775.083, or s. 775.084.

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

116 (f)1. ~~Using coercion~~ For commercial sexual activity who
 117 does so by the transfer or transport of any child under the age
 118 of 18 individual from outside this state to within the state
 119 commits a felony of the first degree, punishable by imprisonment
 120 for a term of years not exceeding life, or as provided in s.
 121 775.082, s. 775.083, or s. 775.084.

122 2. Using coercion for commercial sexual activity who does
 123 so by the transfer or transport of an adult from outside this
 124 state to within the state commits a felony of the first degree,
 125 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

126 (g) For commercial sexual activity in which any child
 127 under the age of 18, or in which any person that has a mental
 128 incapacitation, is involved commits a life felony of the first
 129 ~~degree, punishable by imprisonment for a term of years not~~
 130 ~~exceeding life, or as provided in s. 775.082(3)(a)5. 775.082, s.~~

131 | ~~775.083, or s. 775.084. In a prosecution under this paragraph in~~
 132 | ~~which the defendant had a reasonable opportunity to observe the~~
 133 | ~~person who was subject to human trafficking, the state need not~~
 134 | ~~prove that the defendant knew that the person had not attained~~
 135 | ~~the age of 18 years.~~

136 | ~~(h) For commercial sexual activity in which any child~~
 137 | ~~under the age of 15 is involved commits a life felony,~~
 138 | ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~
 139 | ~~In a prosecution under this paragraph in which the defendant had~~
 140 | ~~a reasonable opportunity to observe the person who was subject~~
 141 | ~~to human trafficking, the state need not prove that the~~
 142 | ~~defendant knew that the person had not attained the age of 15~~
 143 | ~~years.~~

144 |
 145 | For each instance of human trafficking of any individual under
 146 | this subsection, a separate crime is committed and a separate
 147 | punishment is authorized.

148 |
 149 | In a prosecution under this section, the defendant's ignorance
 150 | of the victim's age, the victim's misrepresentation of his or
 151 | her age, or the defendant's bona fide belief of the victim's age
 152 | cannot be raised as a defense.

153 |
 154 | (4)1. Any parent, legal guardian, or other person having
 155 | custody or control of a minor who sells or otherwise transfers
 156 | custody or control of such minor, or offers to sell or otherwise

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

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

170 | Section 5. Paragraph (a) of subsection (3) of section
171 | 775.082, Florida Statutes, is amended to read:

172 | 775.082 Penalties; applicability of sentencing structures;
173 | mandatory minimum sentences for certain reoffenders previously
174 | released from prison.-

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

177 | (a)1. For a life felony committed prior to October 1,
178 | 1983, by a term of imprisonment for life or for a term of years
179 | not less than 30.

180 | 2. For a life felony committed on or after October 1,
181 | 1983, by a term of imprisonment for life or by a term of
182 | imprisonment not exceeding 40 years.

183 3. Except as provided in subparagraph 4., for a life
 184 felony committed on or after July 1, 1995, by a term of
 185 imprisonment for life or by imprisonment for a term of years not
 186 exceeding life imprisonment.

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

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

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

195 b. For a life felony committed on or after July 1, 2008,
 196 which is a person's second or subsequent violation of s.
 197 800.04(5)(b), by a term of imprisonment for life.

198 5. For a life felony committed on or after October 1,
 199 2014, which is a violation of s. 787.06(3)(g), by a term of
 200 imprisonment for life.

201 Section 6. Section 796.03, Florida Statutes, is amended to
 202 read:

203 796.03 Procuring person under age of 18 for prostitution;
 204 intent.—It is the intent of the Legislature that adults who
 205 involve minors in any behavior prohibited under this chapter be
 206 prosecuted under other laws of this state, such as, but not
 207 limited to, s. 787.06, ch. 794, ch. 800, s. 810.145, ch. 827,
 208 and ch. 847. A minor is unable to consent to such behavior and,

209 therefore, prosecution under this chapter is inappropriate A
 210 person who procures for prostitution, or causes to be
 211 prostituted, any person who is under the age of 18 years commits
 212 a felony of the second degree, punishable as provided in s.
 213 775.082, s. 775.083, or s. 775.084.

214 Section 7. Section 796.035, Florida Statutes, is repealed.

215 Section 8. Section 796.036, Florida Statutes, is repealed.

216 Section 9. Section 796.05, Florida Statutes, is amended to
 217 read:

218 796.05 Deriving support from the proceeds of
 219 prostitution.—

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

225 (2) Anyone violating this section commits:

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

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

231 (c) For a third or subsequent offense, a felony of the
 232 first degree punishable as provided in s. 775.082, s. 775.083,
 233 or s. 775.084, with a mandatory minimum term of imprisonment of
 234 10 years.

235 Section 10. Subsections (4), (5) and (6) of section
 236 796.07, Florida Statutes, are amended to read:
 237 796.07 Prohibiting prostitution and related acts.—
 238 (2) It is unlawful:
 239 (a) To own, establish, maintain, or operate any place,
 240 structure, building, or conveyance for the purpose of lewdness,
 241 assignation, or prostitution.
 242 (b) To offer, or to offer or agree to secure, another for
 243 the purpose of prostitution or for any other lewd or indecent
 244 act.
 245 (c) To receive, or to offer or agree to receive, any person
 246 into any place, structure, building, or conveyance for the
 247 purpose of prostitution, lewdness, or assignation, or to permit
 248 any person to remain there for such purpose.
 249 (d) To direct, take, or transport, or to offer or agree to
 250 direct, take, or transport, any person to any place, structure,
 251 or building, or to any other person, with knowledge or
 252 reasonable cause to believe that the purpose of such directing,
 253 taking, or transporting is prostitution, lewdness, or
 254 assignation.
 255 (e) To offer to commit, or to commit, or to engage in,
 256 prostitution, lewdness, or assignation.
 257 (f) To solicit, induce, entice, or procure another to
 258 commit prostitution, lewdness, or assignation.
 259 (g) To reside in, enter, or remain in, any place,
 260 structure, or building, or to enter or remain in any conveyance,

261 for the purpose of prostitution, lewdness, or assignation.

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

264 ~~——(i) To purchase the services of any person engaged in~~
 265 ~~prostitution.~~

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

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

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

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

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

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

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

281 3. For a third or subsequent offense, a felony of the
 282 first degree, punishable as provided in s. 775.082, s. 775.083,
 283 or s. 775.084. ~~A person who is charged with a third or~~
 284 ~~subsequent violation of this section shall be offered admission~~
 285 ~~to a pretrial intervention program or a substance abuse~~
 286 ~~treatment program as provided in s. 948.08.~~

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

300 Section 11. Subsection (3) and paragraph (a) of subsection
 301 (8) of section 943.0583, Florida Statutes, are amended to read:

302 943.0583 Human trafficking victim expunction.—

303 (3) A person who is a victim of human trafficking may
 304 petition for the expunction of any criminal history record
 305 resulting from the arrest or filing of charges ~~any conviction~~
 306 for an offense committed or reported to have been committed
 307 while the person he or she was a victim of human trafficking,
 308 which offense was committed or reported to have been committed
 309 as a part of the human trafficking scheme of which the person he
 310 ~~or she~~ was a victim or at the direction of an operator of the
 311 scheme, including, but not limited to, violations under chapters
 312 796 and 847, without regard to the disposition of the arrest or

313 of any charges. However, this section does not apply to any
 314 offense listed in s. 775.084(1)(b)1. Determination of the
 315 petition under this section should be by a preponderance of the
 316 evidence. A conviction expunged under this section is deemed to
 317 have been vacated due to a substantive defect in the underlying
 318 criminal proceedings. If a person is adjudicated not guilty by
 319 reason of insanity or is found to be incompetent to stand trial
 320 for any such charge, the expunction of the criminal history
 321 record shall not prevent the entry of the judgment or finding in
 322 state and national databases for use in determining eligibility
 323 to purchase or possess a firearm or to carry a concealed firearm
 324 from accessing or using the record of the judgment or finding in
 325 the course of such agency's official duties.

326 (8)(a) Any criminal history record of a minor or an adult
 327 that is ordered expunged by the court of original jurisdiction
 328 over the charges ~~crime~~ sought to be expunged pursuant to this
 329 section must be physically destroyed or obliterated by any
 330 criminal justice agency having custody of such record, except
 331 that any criminal history record in the custody of the
 332 department must be retained in all cases.

333 Section 12. Paragraphs (c), (e), and (g) through (j) of
 334 subsection (3) of section 921.0022, Florida Statutes, are
 335 amended to read:

336 921.0022 Criminal Punishment Code; offense severity
 337 ranking chart.—

338 (3) OFFENSE SEVERITY RANKING CHART

339	(c) LEVEL 3		
340			
	Florida	Felony	Description
	Statute	Degree	
341	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
342	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
343	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
344	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
345	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
346	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or

PCS for HB 1017

ORIGINAL

2014

347			mobile home.
348	319.33 (1) (c)	3rd	Procure or pass title on stolen vehicle.
349	319.33 (4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
350	327.35 (2) (b)	3rd	Felony BUI.
351	328.05 (2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
352	328.07 (4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
353	376.302 (5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.

PCS for HB 1017

ORIGINAL

2014

354	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
355	379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
356	400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.
357	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.

PCS for HB 1017

ORIGINAL

2014

358	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
359	624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.
360	624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
361	626.902 (1) (a) & (b)	3rd	Representing an unauthorized insurer.
362	697.08	3rd	Equity skimming.
363	790.15 (3)	3rd	Person directs another to discharge firearm from a vehicle.
364	796.05 (1)	3rd	Live on earnings of a prostitute.

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

PCS for HB 1017

ORIGINAL

2014

365	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
366	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
367	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
368	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
369	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
370	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud

PCS for HB 1017

ORIGINAL

2014

			Act), property valued at less than \$20,000.
371	817.233	3rd	Burning to defraud insurer.
372	817.234 (8) (b) - (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
373	817.234 (11) (a)	3rd	Insurance fraud; property value less than \$20,000.
374	817.236	3rd	Filing a false motor vehicle insurance application.
375	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
376	817.413 (2)	3rd	Sale of used goods as new.
377	817.505 (4)	3rd	Patient brokering.
378	828.12 (2)	3rd	Tortures any animal with intent

PCS for HB 1017

ORIGINAL

2014

379			to inflict intense pain, serious physical injury, or death.
	831.28 (2) (a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
380			
	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
381			
	838.021 (3) (b)	3rd	Threatens unlawful harm to public servant.
382			
	843.19	3rd	Injure, disable, or kill police dog or horse.
383			
	860.15 (3)	3rd	Overcharging for repairs and parts.
384			
	870.01 (2)	3rd	Riot; inciting or encouraging.
385			

PCS for HB 1017

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

PCS for HB 1017

ORIGINAL

2014

386	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
387	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
388	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
	893.13(6)(a)	3rd	Possession of any controlled substance other than felony

389	893.13(7)(a)8.	3rd	possession of cannabis. Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
390	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
391	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
392	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
393	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through

394	893.13(8)(a)2.	3rd	deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
395	893.13(8)(a)3.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
396	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
397	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
	918.13(1)(a)	3rd	Alter, destroy, or conceal

PCS for HB 1017

ORIGINAL

2014

398			investigation evidence.
399	944.47 (1) (a) 1.-2.	3rd	Introduce contraband to correctional facility.
400	944.47 (1) (c)	2nd	Possess contraband while upon the grounds of a correctional institution.
401	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
402			
403	(e) LEVEL 5		
404			
405	Florida Statute	Felony Degree	Description
406	316.027 (1) (a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
407	316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.

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

PCS for HB 1017

ORIGINAL

2014

408	322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
409	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
410	379.367 (4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
411	379.3671 (2) (c) 3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
412	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
413	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
	440.105 (5)	2nd	Unlawful solicitation for the

414			purpose of making workers' compensation claims.
	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
415			
	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
416			
	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
417			
	790.01(2)	3rd	Carrying a concealed firearm.
418			
	790.162	2nd	Threat to throw or discharge destructive device.
419			
	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
420			

PCS for HB 1017

ORIGINAL

2014

421	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
422	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
423	<u>796.05 (1)</u>	<u>2nd</u>	<u>Live on earnings of a prostitute; 1st offense.</u>
424	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
425	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
426	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
427	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.

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

PCS for HB 1017

ORIGINAL

2014

428	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
429	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
430	812.131(2)(b)	3rd	Robbery by sudden snatching.
431	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
432	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
433	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
434	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.

PCS for HB 1017

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

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

PCS for HB 1017

ORIGINAL

2014

435	817.568 (2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
436	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
437	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
438	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
	827.071 (5)	3rd	Possess, control, or

PCS for HB 1017

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

V

439			intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
440			
	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
441			
	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
442			
	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
443			
	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
444			

PCS for HB 1017

ORIGINAL

2014

445	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
446	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 to join a criminal gang.
447	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned

PCS for HB 1017

ORIGINAL

2014

448	893.13(1)(d)1.	1st	recreational facility or community center. Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
449	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
450	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4.

451			drugs) within 1,000 feet of public housing facility.
452	893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
453			
454	(g) LEVEL 7		
455			
456	Florida Statute	Felony Degree	Description
457	316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
458	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.

PCS for HB 1017

ORIGINAL

2014

459	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
460	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
461	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
462	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
463	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.

PCS for HB 1017

ORIGINAL

2014

464	456.065 (2)	3rd	Practicing a health care profession without a license.
465	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
466	458.327 (1)	3rd	Practicing medicine without a license.
467	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
468	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
469	461.012 (1)	3rd	Practicing podiatric medicine without a license.
470	462.17	3rd	Practicing naturopathy without a license.
471	463.015 (1)	3rd	Practicing optometry without a license.

PCS for HB 1017

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

PCS for HB 1017

ORIGINAL

2014

472	464.016(1)	3rd	Practicing nursing without a license.
473	465.015(2)	3rd	Practicing pharmacy without a license.
474	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
475	467.201	3rd	Practicing midwifery without a license.
476	468.366	3rd	Delivering respiratory care services without a license.
477	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
478	483.901(9)	3rd	Practicing medical physics without a license.
479	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.

PCS for HB 1017

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

PCS for HB 1017

ORIGINAL

2014

480	484.053	3rd	Dispensing hearing aids without a license.
481	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
482	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
483	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
484	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.

PCS for HB 1017

ORIGINAL

2014

485	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
486	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
487	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
488	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
489	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

PCS for HB 1017

ORIGINAL

2014

490	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
491	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
492	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
493	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
494	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
495	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
	784.048 (7)	3rd	Aggravated stalking; violation

PCS for HB 1017

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

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

PCS for HB 1017

ORIGINAL

2014

496			of court order.
	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
497			
	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
498			
	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
499			
	784.081(1)	1st	Aggravated battery on specified official or employee.
500			
	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
501			
	784.083(1)	1st	Aggravated battery on code inspector.
502			
	787.06(3)(a) <u>2.</u>	1st	Human trafficking using coercion for labor and services <u>of adult.</u>
503			

PCS for HB 1017

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

PCS for HB 1017

ORIGINAL

2014

504	787.06(3)(e) <u>2.</u>	1st	Human trafficking using coercion for labor and services by the transfer or transport of <u>an adult</u> any individual from outside Florida to within the state.
505	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
506	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
507	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
508	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon

PCS for HB 1017

ORIGINAL

2014

509			of mass destruction.
	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
510	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
511	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
512	796.03	2nd	Procuring any person under 16 years for prostitution.
513	<u>796.05(1)</u>	<u>1st</u>	<u>Live on earnings of a prostitute; 2nd and subsequent offense.</u>
514			

PCS for HB 1017

ORIGINAL

2014

515	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
516	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
517	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
518	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
519	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
520	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
	810.02 (3) (e)	2nd	Burglary of authorized

PCS for HB 1017

ORIGINAL

2014

521	812.014(2)(a)1.	1st	<p>emergency vehicle.</p> <p>Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.</p>
522	812.014(2)(b)2.	2nd	<p>Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.</p>
523	812.014(2)(b)3.	2nd	<p>Property stolen, emergency medical equipment; 2nd degree grand theft.</p>
524	812.014(2)(b)4.	2nd	<p>Property stolen, law enforcement equipment from authorized emergency vehicle.</p>
525	812.0145(2)(a)	1st	<p>Theft from person 65 years of age or older; \$50,000 or more.</p>
526			

PCS for HB 1017

ORIGINAL

2014

527	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
528	812.131(2)(a)	2nd	Robbery by sudden snatching.
529	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
530	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
531	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
532	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
533	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
	817.2341	1st	Making false entries of

PCS for HB 1017

ORIGINAL

2014

	(2) (b) & (3) (b)		material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
534	817.535 (2) (a)	3rd	Filing false lien or other unauthorized document.
535	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
536	825.103 (2) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
537	827.03 (2) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
538	827.04 (3)	3rd	Impregnation of a child under

PCS for HB 1017

ORIGINAL

2014

539			16 years of age by person 21 years of age or older.
	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
540			
	838.015	2nd	Bribery.
541			
	838.016	2nd	Unlawful compensation or reward for official behavior.
542			
	838.021(3)(a)	2nd	Unlawful harm to a public servant.
543			
	838.22	2nd	Bid tampering.
544			
	843.0855(2)	3rd	Impersonation of a public officer or employee.
545			
	843.0855(3)	3rd	Unlawful simulation of legal process.
546			
	843.0855(4)	3rd	Intimidation of a public officer or employee.
547			

PCS for HB 1017

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

PCS for HB 1017

ORIGINAL

2014

548	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
549	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
550	872.06	2nd	Abuse of a dead human body.
551	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
552	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child

PCS for HB 1017

ORIGINAL

2014

553	893.13(1)(e)1.	1st	care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
554	893.13(4)(a)	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
555	893.135(1)(a)1.	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
556	893.135	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
			Trafficking in cocaine, more

PCS for HB 1017

ORIGINAL

2014

557	(1) (b) 1.a.		than 28 grams, less than 200 grams.
	893.135	1st	Trafficking in illegal drugs,
	(1) (c) 1.a.		more than 4 grams, less than 14 grams.
558			
	893.135 (1) (d) 1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
559			
	893.135 (1) (e) 1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
560			
	893.135 (1) (f) 1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
561			
	893.135	1st	Trafficking in flunitrazepam, 4
	(1) (g) 1.a.		grams or more, less than 14 grams.
562			
	893.135	1st	Trafficking in gamma-
	(1) (h) 1.a.		hydroxybutyric acid (GHB), 1

PCS for HB 1017

ORIGINAL

2014

563			kilogram or more, less than 5 kilograms.
	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
564			
	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
565			
	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
566			
	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
567			
	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
568			

PCS for HB 1017

ORIGINAL

2014

569	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
570	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
571	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
572	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
573	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
	944.607(9)	3rd	Sexual offender; failure to

PCS for HB 1017

ORIGINAL

2014

			comply with reporting requirements.
574	944.607(10) (a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
575	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
576	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
577	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
578	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
579			

PCS for HB 1017

ORIGINAL

2014

580	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
581	(h) LEVEL 8		
582			
	Florida Statute	Felony Degree	Description
583			
	316.193 (3)(c)3.a.	2nd	DUI manslaughter.
584			
	316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
585			
	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
586			
	499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
587			
	499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
588			

PCS for HB 1017

ORIGINAL

2014

589	560.123 (8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
590	560.125 (5) (b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
591	655.50 (10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
592	777.03 (2) (a)	1st	Accessory after the fact, capital felony.
	782.04 (4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery,

PCS for HB 1017

ORIGINAL

2014

593	782.051(2)	1st	<p>burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.</p> <p>Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).</p>
594	782.071(1)(b)	1st	<p>Committing vehicular homicide and failing to render aid or give information.</p>
595	782.072(2)	1st	<p>Committing vessel homicide and failing to render aid or give information.</p>
596	<u>787.06(3)(a)1.</u>	<u>1st</u>	<p><u>Human trafficking for labor and services of a child.</u></p>
597	787.06(3)(b)	1st	<p>Human trafficking using coercion for commercial sexual activity.</p>
598			

PCS for HB 1017

ORIGINAL

2014

599	787.06(3)(c) <u>2.</u>	1st	Human trafficking using coercion for labor and services of an unauthorized alien <u>adult</u> .
600	<u>787.06(3)(e)1.</u>	<u>1st</u>	<u>Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.</u>
601	787.06(3)(f) <u>2.</u>	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any <u>adult individual</u> from outside Florida to within the state.
602	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
603	794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.

PCS for HB 1017

ORIGINAL

2014

604	794.08 (3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
605	800.04 (4)	2nd	Lewd or lascivious battery.
606	806.01 (1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
607	810.02 (2) (a)	1st, PBL	Burglary with assault or battery.
608	810.02 (2) (b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
609	810.02 (2) (c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
610	812.014 (2) (a) 2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.

PCS for HB 1017

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

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

PCS for HB 1017

ORIGINAL

2014

611	812.13(2)(b)	1st	Robbery with a weapon.
612	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
613	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
614	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
615	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
616	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.

PCS for HB 1017

ORIGINAL

2014

617	817.568 (6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
618	825.102 (2)	1st	Aggravated abuse of an elderly person or disabled adult.
619	825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
620	825.103 (2) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
621	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
622	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.

PCS for HB 1017

ORIGINAL

2014

623	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
624	860.16	1st	Aircraft piracy.
625	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
626	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
627	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
628	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
	893.135	1st	Trafficking in cocaine, more

PCS for HB 1017

ORIGINAL

2014

629	(1) (b) 1.b.		than 200 grams, less than 400 grams.
	893.135	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
630	(1) (c) 1.b.		
	893.135	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
631	(1) (d) 1.b.		
	893.135	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
632	(1) (e) 1.b.		
	893.135	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
633	(1) (f) 1.b.		
	893.135	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
634	(1) (g) 1.b.		
	893.135	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5
	(1) (h) 1.b.		

PCS for HB 1017

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

PCS for HB 1017

ORIGINAL

2014

			kilograms or more, less than 10 kilograms.
635	893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
636	893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
637	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
638	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
639	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
640			

PCS for HB 1017

ORIGINAL

2014

641	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
642	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
643	896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.
644	(i) LEVEL 9		
645	Florida Statute	Felony Degree	Description
646	316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
647	327.35(3)(c)3.b.	1st	BUI manslaughter; failing to

PCS for HB 1017

ORIGINAL

2014

648			render aid or give information.
	409.920	1st	Medicaid provider fraud;
	(2) (b) 1.c.		\$50,000 or more.
649			
	499.0051 (9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
650			
	560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
651			
	560.125 (5) (c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
652			
	655.50 (10) (b) 3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
653			
	775.0844	1st	Aggravated white collar crime.
654			

PCS for HB 1017

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

PCS for HB 1017

ORIGINAL

2014

655	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
656	782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
657	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
658	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
659	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to

660	787.01(1)(a)4.	1st, PBL	commit or facilitate commission of any felony.
661	787.02(3)(a)	1st	Kidnapping with intent to interfere with performance of any governmental or political function.
662	<u>787.06(3)(c)1.</u>	<u>1st</u>	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
663	787.06(3)(d)	1st	<u>Human trafficking using coercion for labor and services of an unauthorized alien child.</u>
664			Human trafficking using coercion for commercial sexual activity of an unauthorized alien.

665	<u>787.06(3)(f)1.</u>	<u>1st</u> , PBL	<u>Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.</u>
666	787.06(3)(g)	1st , PBL	Human trafficking for commercial sexual activity of a child under the age of 18.
667	787.06(4)	1st	Selling or buying of minors into human trafficking.
668	790.161	1 st	Attempted capital destructive device offense.
669	790.166(2)	1 st , PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
670	794.011(2)	1 st	Attempted sexual battery; victim less than 12 years of age.
	794.011(2)	Life	Sexual battery; offender

PCS for HB 1017

ORIGINAL

2014

671			younger than 18 years and commits sexual battery on a person less than 12 years.
	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
672			
	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
673			
	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
674			
	796.035	1st	Selling or buying of minors into prostitution.
675			
	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
676			
	812.13(2)(a)	1st, PBL	Robbery with firearm or other

PCS for HB 1017

ORIGINAL

2014

677			deadly weapon.
	812.133 (2) (a)	1st, PBL	Carjacking; firearm or other deadly weapon.
678			
	812.135 (2) (b)	1st	Home-invasion robbery with weapon.
679			
	817.535 (3) (b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
680			
	817.535 (4) (a) 2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
681			
	817.535 (5) (b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
682			

PCS for HB 1017

ORIGINAL

2014

683	817.568 (7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
684	827.03 (2) (a)	1st	Aggravated child abuse.
685	847.0145 (1)	1st	Selling, or otherwise transferring custody or control, of a minor.
686	847.0145 (2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
687	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.

PCS for HB 1017

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

PCS for HB 1017

ORIGINAL

2014

688	893.135	1st	Attempted capital trafficking offense.
689	893.135 (1) (a) 3.	1st	Trafficking in cannabis, more than 10,000 lbs.
690	893.135 (1) (b) 1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
691	893.135 (1) (c) 1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
692	893.135 (1) (d) 1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
693	893.135 (1) (e) 1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
694	893.135 (1) (f) 1.c.	1st	Trafficking in amphetamine, more than 200 grams.
	893.135 (1) (h) 1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10

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

PCS for HB 1017

ORIGINAL

2014

695			kilograms or more.
696	893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
697	893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
698	896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding \$100,000.
699			
700	(j) LEVEL 10		
701			
702	Florida Statute	Felony Degree	Description
	499.0051(10)	1st	Knowing sale or purchase of contraband prescription drugs

703			resulting in death.
704	782.04(2)	1st, PBL	Unlawful killing of human; act is homicide, unpremeditated.
705	782.07(3)	1st	Aggravated manslaughter of a child.
706	787.01(1)(a)3.	1st, PBL	Kidnapping; inflict bodily harm upon or terrorize victim.
707	787.01(3)(a)	Life	Kidnapping; child under age 13, perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
708	<u>787.06(3)(f)1.</u>	<u>Life</u>	<u>Human trafficking for commercial sexual activity by the transfer or transport of a child from outside Florida to within the state.</u>
709			

PCS for HB 1017

ORIGINAL

2014

710	<u>787.06(3)(g)</u> 787.06(3)(h)	Life	Human trafficking for commercial sexual activity of a child under the age of <u>18</u> 15 .
711	<u>787.06(4)1.</u>	<u>Life</u>	<u>Selling or buying of minors into human trafficking.</u>
712	794.011(3)	Life	Sexual battery; victim 12 years or older, offender uses or threatens to use deadly weapon or physical force to cause serious injury.
713	812.135(2)(a)	1st, PBL	Home-invasion robbery with firearm or other deadly weapon.
714	876.32	1st	Treason against the state.
715	Section 13. This act shall take effect October 1, 2014.		
716			

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCS for HB 1017 (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 PCB: Criminal Justice
2 Subcommittee

3 Representative Spano offered the following:

4

5 **Amendment**

6 Remove line 40 and insert:

7 person under the age of 18, whether or not such person's

8

PCS for HB 1017 a1

Published On: 3/17/2014 4:35:31 PM



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing PCB: Criminal Justice
 2 Subcommittee

3 Representative Spano offered the following:
 4

Amendment

6 Remove lines 126-128 and insert:

7 (g) For commercial sexual activity in which any child
 8 under the age of 18, or in which any person who is mentally
 9 defective or mentally incapacitated as those terms are defined
 10 in s. 794.011(1), is involved commits a life felony ~~of the first~~
 11



Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing PCB: Criminal Justice
 2 Subcommittee

3 Representative Spano offered the following:

4
 5 **Amendment**

6 Remove lines 262-325 and insert:

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

9 (i) To purchase the services of any person engaged in
 10 prostitution.

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

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

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



Amendment No. 3

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

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

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

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

26 3. For a third or subsequent offense, a felony of the
27 first degree, punishable as provided in s. 775.082, s. 775.083,
28 or s. 775.084. A person who is charged with a third or
29 subsequent violation of this section shall be offered admission
30 to a pretrial intervention program or a substance abuse
31 treatment program as provided in s. 948.08.

32 (6) A person who violates paragraphs (2)(a), (b), (c), (d),
33 (f), (h), or (i) paragraph (2)(f) shall be assessed a criminal
34 civil penalty of \$5,000 if the violation results in any judicial
35 disposition other than acquittal or dismissal. Of the proceeds
36 from each penalty assessed under this subsection, the first \$500
37 shall be paid to the circuit court administrator for the sole
38 purpose of paying the administrative costs of treatment-based
39 drug court programs provided under s. 397.334. The remainder of
40 the penalty assessed shall be deposited in the Operations and
41 Maintenance Trust Fund of the Department of Children and Family

PCS for HB 1017 a4

Published On: 3/17/2014 5:24:17 PM



Amendment No. 3

42 Services for the sole purpose of funding safe houses and short-
43 term safe houses as provided in s. 409.1678.

44 Section 11. Subsection (3) and paragraph (a) of subsection
45 (8) of section 943.0583, Florida Statutes, are amended to read:

46 943.0583 Human trafficking victim expunction.-

47 (3) A person who is a victim of human trafficking may
48 petition for the expunction of any criminal history record
49 resulting from the arrest or filing of charges ~~any conviction~~
50 for an offense committed or reported to have been committed
51 while the person ~~he or she~~ was a victim of human trafficking,
52 which offense was committed or reported to have been committed
53 as a part of the human trafficking scheme of which the person ~~he~~
54 ~~or she~~ was a victim or at the direction of an operator of the
55 scheme, including, but not limited to, violations under chapters
56 796 and 847, without regard to the disposition of the arrest or
57 of any charges. However, this section does not apply to any
58 offense listed in s. 775.084(1)(b)1. Determination of the
59 petition under this section should be by a preponderance of the
60 evidence. A conviction expunged under this section is deemed to
61 have been vacated due to a substantive defect in the underlying
62 criminal proceedings. If a person is adjudicated not guilty by
63 reason of insanity or is found to be incompetent to stand trial
64 for any such charge, the expunction of the criminal history
65 record shall not prevent the entry of the judgment or finding in
66 state and national databases for use in determining eligibility
67 to purchase or possess a firearm or to carry a concealed

PCS for HB 1017 a4

Published On: 3/17/2014 5:24:17 PM

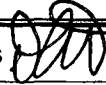



Amendment No. 3

68 firearm, as authorized at s. 790.065(2)(a)4.c., and 18 U.S.C. s.
69 922(t), nor shall it prevent any governmental agency that is
70 authorized by state or federal law to determine eligibility to
71 purchase or possess a firearm or to carry a concealed firearm
72 from accessing or using the record of the judgment or finding in
73 the course of such agency's official duties.
74

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1021 Pub. Rec./Human Trafficking Victims
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: HB 1017 **IDEN./SIM. BILLS:** SB 1426

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

SUMMARY ANALYSIS

During the current 2014 Legislative Session, PCS/HB 1017, in part, proposes to expand the provisions relating to the expunction of certain criminal records for victims of human trafficking to include the expunction of any criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed:

- As a part of the human trafficking scheme of which he or she was a victim; or
- At the direction of an operator of a human trafficking scheme.

This bill, which is linked to the passage of HB 1017, amends s. 119.071(2)(h), F.S., to expand the types of criminal intelligence and criminal investigative information that are confidential and exempt from public records requirements to include identifying information of child victims of human trafficking for labor or services, as well as, all victims of human trafficking for commercial sexual purposes.

The bill also amends s. 943.0583, F.S., to make confidential and exempt any criminal intelligence and criminal investigative information related to victims of human trafficking resulting from the arrest or filing of charges for an offense committed or reported to have been committed by the victim as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme, whose criminal history record has been expunged.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records Laws

Florida Constitution

Article I, Section 24(a), of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may exempt records from the requirements of Article I, Section 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.²

Florida Statutes

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in ch. 119, F.S. Currently, s. 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act³ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose *and* the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.⁵

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶ The Act also requires specified questions to be considered during the review process.⁷

¹ Article 1, Sec. 24(a), FLA. CONST.

² Article 1, Sec. 24(c), FLA. CONST.

³ Section 119.15, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ Section 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S., states that the specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Public Record Exemption for Expunged Criminal History Records

Any criminal history record of a minor or an adult that is ordered expunged must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that the Florida Department of Law Enforcement (FDLE) must retain criminal history records in all cases.

Current law provides that an expunged criminal history record that is retained by FDLE is confidential and exempt⁸ from s. 119.07(1), F.S., and Article I, Section 24(a) of the Florida Constitution, and is not available to any person or entity except upon order of the court with jurisdiction.⁹ In addition, information relating to the existence of an expunged criminal history record is confidential and exempt from public record requirements, except that FDLE must disclose the existence of such record to certain entities as provided for in current law.¹⁰

Public Record Exemption for Certain Agency Investigation Information

Currently, s. 119.071(2)(h), F.S., provides specified criminal intelligence information¹¹ or criminal investigative information^{12,13} is confidential and exempt from public records requirements, including:

- Any information, including the photograph, name, address, or other fact, which reveals the identity of the victim of the crime of child abuse as defined by ch. 827, F.S. (child abuse); and
- Any information, which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution); ch. 800, F.S. (lewdness and indecent exposure); ch. 827, F.S. (abuse of children), or ch. 847, F.S. (obscenity); and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewdness and indecent exposure), s. 810.145, F.S. (video voyeurism), ch. 827, F.S. (abuse of children), or ch. 847, F.S. (obscenity), regardless of whether the photograph, videotape, or image identifies the victim.¹⁴

⁸ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

⁹ Section 943.0585(4), F.S.

¹⁰ Section 943.0585(4)(c), F.S.

¹¹ Section 119.011(3)(a), F.S., defines "criminal intelligence information" to mean information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

¹² Section 119.011(3)(b), F.S., defines "criminal investigative information" to mean information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

¹³ Section 119.011(3)(c), F.S., provides "criminal intelligence information" and "criminal investigative information" shall not include:

- The time, date, location, and nature of a reported crime.
- The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.071(1), F.S., until released at trial if it is found that the release of such information would:
 - Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
 - Impair the ability of a state attorney to locate or prosecute a codefendant.
- Informations and indictments except as provided in s. 905.26, F.S.

¹⁴ Section 119.071(2)(h)3., F.S., requires the exemption to apply to confidential and exempt criminal intelligence and criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

Such confidential and exempt criminal investigative and criminal intelligence information may be disclosed by a law enforcement agency in specified instances, including:

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered;¹⁵ or
- To another governmental agency in the furtherance of its official duties and responsibilities.

This public records exemption is scheduled to repeal on October 2, 2016.

Human Trafficking Victim Expunction

During the 2013 Legislative Session, CS/CS/HB 1325 and CS/HB 1327 passed, which in part, authorized a victim of human trafficking¹⁶ to petition the court¹⁷ for the expunction of any conviction for an offense, except an offense listed in s. 775.084(1)(b)1., F.S.,¹⁸ committed while he or she was a victim of human trafficking. The only offenses that may be expunged are the convictions for offenses committed as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme.

A petition for expunction must include:

- A sworn statement¹⁹ attesting that the victim is eligible for such expunction to the best of his or her knowledge or belief and does not have another petition to expunge or seal before any other court; and
- Official documentation²⁰ of the victim's status as a victim of human trafficking, if any exists.²¹

The completed petition must be served on the appropriate state attorney or statewide prosecutor and the arresting agency, who can each respond to the court regarding the petition.²² The court's determination of the petition must be by a preponderance of the evidence.²³ A determination made without official documentation must be made by a showing of clear and convincing evidence.²⁴ If a court grants an expunction, s. 943.0583, F.S., requires:

- The clerk of the court to certify copies of the order to the appropriate state attorney or the statewide prosecutor, the arresting agency, and to any other agency that the records of the court reflect has received the criminal history record from the court;²⁵

¹⁵ Section 119.071(2)(h)2.c., F.S., provides the information disclosed should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

¹⁶ Section 943.0583(1)(c), F.S., defines "victim of human trafficking" to mean a person subjected to coercion, as defined in s. 787.06, F.S., for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

¹⁷ Section 943.0583(4), F.S., requires a petition under this section to be initiated by the petitioner with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking, subject to reasonable concerns for the safety of the victim, family members of the victim, or other victims of human trafficking that may be jeopardized by the bringing of such petition or for other reasons consistent with the purpose of s. 943.0583, F.S.

¹⁸ Arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking. Section 775.084(1)(b)1., F.S.

¹⁹ Providing false information on the sworn statement is punishable as a third degree felony.

²⁰ Section 943.0583(1)(b), F.S., defines "official documentation" to mean any documentation issued by a federal, state, or local agency tending to show a person's status as a victim of human trafficking.

²¹ Section 943.0583(6), F.S.

²² Section 943.0583(7), F.S. In judicial proceedings on the petition, the petitioner and their attorney may appear telephonically, via video conference, or other electronic means.

²³ Section 943.0583(3), F.S.

²⁴ Section 943.0583(5), F.S.

²⁵ Section 943.0583(7)(c), F.S.

- The arresting agency to forward the order to any other agency listed in the court order to which the arresting agency disseminated the criminal history record information to which the order pertains;²⁶
- FDLE to forward the order to expunge to the Federal Bureau of Investigation;²⁷ and
- Criminal justice agencies with custody of the expunged record, except FDLE, to physically destroy the record.²⁸

Persons who have had their human trafficking criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by the expunged record and not face perjury charges or otherwise be liable for giving a false statement for failing to acknowledge an expunged criminal record unless they are a candidate for employment with a criminal justice agency or is a defendant in a criminal prosecution.²⁹ However, persons are required to acknowledge such arrests when applying for future sealing or expunctions under ss. 943.059, 943.0585, or 943.0583, F.S.³⁰ Expunged convictions are deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.³¹

Additionally, the 2013 legislation created a public records exemption for a criminal history record of a victim of human trafficking that is ordered expunged. Specifically, such record retained by FDLE is confidential and exempt from public record requirements and shall only be made available to criminal justice agencies for their respective criminal justice purposes. A criminal justice agency may retain a notation indicating compliance with an order to expunge. The exemption repeals on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

Proposed Committee Substitute for House Bill 1017

During the current 2014 Legislative Session, PCS/HB 1017, in part, proposes to expand the provisions relating to the expunction of certain criminal records for victims of human trafficking to include the expunction of any criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme.

Effect of the Bill

The bill, which is linked to the passage of House Bill 1017 or similar legislation, amends s. 119.071(2)(h), F.S., to expand the types of criminal intelligence and criminal investigative information that are confidential and exempt from public records requirements to include:

- Any information which reveals the identity of a person under the age of 18 who is the victim of a crime of human trafficking for labor or services proscribed in s. 787.06(3)(a), F.S.;
- Any information which may reveal the identity of a person who is the victim of a crime of human trafficking for commercial sexual activity proscribed in s. 787.06(3)(b), (d), (f), (g), or (h), F.S.; and
- A photograph, videotape, or image of any part of the body of a victim of a crime of human trafficking involving commercial sexual activity proscribed in s. 787.06(3)(b), (d), (f), (g), or (h), F.S.

The bill also amends s. 943.0583, F.S., providing that the above-described criminal intelligence and criminal investigative information related to victims of human trafficking that is made confidential and exempt from public records requirements in s. 119.071(2)(h), F.S., is also made confidential and exempt from public records requirements under the section providing expunction for human trafficking victims.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Section 943.0583(8), F.S.

²⁹ *Id.*

³⁰ *Id.*

³¹ Section 943.0583(3), F.S.

The bill provides for repeal of the exemptions on October 2, 2019, unless both exemptions are reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.³²

B. SECTION DIRECTORY:

Section 1. Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Amends s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 3. Provides a public necessity statement.

Section 4. Provides an effective date to be the same as that of HB 1017 or similar legislation, if such legislation is passed during the same session and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to expunged criminal records of victims of human trafficking. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.071, F.S.; expanding the exemption from public
4 records requirements for information which may reveal
5 the identity of a person who is a victim of the crime
6 of human trafficking of a minor for labor or any
7 victim of human trafficking for commercial sexual
8 activity; amending s. 943.0583, F.S.; providing an
9 exemption from public records requirements for
10 investigative information relating to criminal history
11 records of human trafficking victims that have been
12 ordered expunged; providing for future legislative
13 review and repeal of the exemption; providing a
14 statement of public necessity; providing a contingent
15 effective date.

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

18
19 Section 1. Paragraph (h) of subsection (2) of section
20 119.071, Florida Statutes, is amended to read:

21 119.071 General exemptions from inspection or copying of
22 public records.—

23 (2) AGENCY INVESTIGATIONS.—

24 (h)1. The following criminal intelligence information or
25 criminal investigative information is confidential and exempt
26 from s. 119.07(1) and s. 24(a), Art. I of the State

27 Constitution:

28 a. Any information ~~that, including the photograph, name,~~
 29 ~~address, or other fact, which~~ reveals the identity of the victim
 30 of the crime of child abuse as defined by chapter 827 or which
 31 reveals the identity of a person under the age of 18 who is the
 32 victim of the crime of human trafficking proscribed in s.
 33 787.06(3)(a).

34 b. Any information which may reveal the identity of a
 35 person who is a victim of any sexual offense, including a sexual
 36 offense proscribed in s. 787.06(3)(b), (d), (f), (g), or (h),
 37 chapter 794, chapter 796, chapter 800, chapter 827, or chapter
 38 847.

39 c. A photograph, videotape, or image of any part of the
 40 body of the victim of a sexual offense prohibited under s.
 41 787.06(3)(b), (d), (f), (g), or (h), chapter 794, chapter 796,
 42 chapter 800, s. 810.145, chapter 827, or chapter 847, regardless
 43 of whether the photograph, videotape, or image identifies the
 44 victim.

45 2. Criminal investigative information and criminal
 46 intelligence information made confidential and exempt under this
 47 paragraph may be disclosed by a law enforcement agency:

48 a. In the furtherance of its official duties and
 49 responsibilities.

50 b. For print, publication, or broadcast if the law
 51 enforcement agency determines that such release would assist in
 52 locating or identifying a person that such agency believes to be

53 missing or endangered. The information provided should be
54 limited to that needed to identify or locate the victim and not
55 include the sexual nature of the offense committed against the
56 person.

57 c. To another governmental agency in the furtherance of
58 its official duties and responsibilities.

59 3. This exemption applies to such confidential and exempt
60 criminal intelligence information or criminal investigative
61 information held by a law enforcement agency before, on, or
62 after the effective date of the exemption.

63 4. This paragraph is subject to the Open Government Sunset
64 Review Act in accordance with s. 119.15, and shall stand
65 repealed on October 2, 2019 ~~2016~~, unless reviewed and saved from
66 repeal through reenactment by the Legislature.

67 Section 2. Subsection (11) is added to section 943.0583,
68 Florida Statutes, to read:

69 943.0583 Human trafficking victim expunction.-

70 (11) (a) The following criminal intelligence information or
71 criminal investigative information is confidential and exempt
72 from s. 119.07(1) and s. 24(a), Art. I of the State
73 Constitution:

74 1. Any information that reveals the identity of a person
75 who is a victim of human trafficking whose criminal history
76 record has been expunged under this section.

77 2. Any information which may reveal the identity of a
78 person who is a victim of human trafficking whose criminal

79 history record has been ordered expunged under this section.

80 (b) Criminal investigative information and criminal
 81 intelligence information made confidential and exempt under this
 82 subsection may be disclosed by a law enforcement agency:

83 1. In the furtherance of its official duties and
 84 responsibilities.

85 2. For print, publication, or broadcast if the law
 86 enforcement agency determines that such release would assist in
 87 locating or identifying a person that such agency believes to be
 88 missing or endangered. The information provided should be
 89 limited to that needed to identify or locate the victim.

90 3. To another governmental agency in the furtherance of
 91 its official duties and responsibilities.

92 (c) This exemption applies to such confidential and exempt
 93 criminal intelligence information or criminal investigative
 94 information held by a law enforcement agency before, on, or
 95 after the effective date of the exemption.

96 (d) This subsection is subject to the Open Government
 97 Sunset Review Act in accordance with s. 119.15 and shall stand
 98 repealed on October 2, 2019, unless reviewed and saved from
 99 repeal through reenactment by the Legislature.

100 Section 3. The Legislature finds that it is a public
 101 necessity to make confidential and exempt from public records
 102 requirements certain criminal intelligence information or
 103 criminal investigative information that reveals the identity of
 104 a victim of the crime of human trafficking of a minor for labor

105 | or any victim of human trafficking for commercial sexual
 106 | activity. The Legislature finds that it is important to
 107 | strengthen the protections afforded victims of human trafficking
 108 | for labor who are minors and victims of human trafficking for
 109 | commercial sexual activity, regardless of age, in order to
 110 | ensure their privacy and to prevent revictimization by making
 111 | such information confidential and exempt. The identity of these
 112 | victims is information of a sensitive personal nature. As such,
 113 | this exemption serves to minimize the trauma to victims because
 114 | the release of such information would compound the tragedy
 115 | already visited upon their lives and would be defamatory to or
 116 | cause unwarranted damage to the good name or reputation of the
 117 | victims. Protecting the release of identifying information of
 118 | such victims protects them from further embarrassment,
 119 | harassment, or injury. The Legislature also finds that it is a
 120 | public necessity that information in the investigative or
 121 | intelligence records related to a criminal history record
 122 | ordered expunged under s. 943.0583, Florida Statutes, which
 123 | would or could reasonably be expected to reveal the identity of
 124 | a person who is a victim of human trafficking whose criminal
 125 | history record has been ordered expunged under s. 943.0585,
 126 | Florida Statutes, that is retained by the Florida Department of
 127 | Law Enforcement be made confidential and exempt from s.
 128 | 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 129 | State Constitution. Persons who are victims of human trafficking
 130 | and who have been charged with crimes allegedly committed at the

131 | behest of their traffickers are themselves victims of crimes.
 132 | Such victims face barriers to employment and other life
 133 | opportunities as long as these criminal charges remain on record
 134 | and accessible to potential employers and others. It is
 135 | necessary that these records be made confidential and exempt in
 136 | order for human trafficking victims to have the chance to
 137 | rebuild their lives and reenter society.

138 | Section 4. This act shall take effect on the same date
 139 | that HB 1017 or similar legislation relating to human
 140 | trafficking takes effect, if such legislation is adopted in the
 141 | same legislative session or an extension thereof and becomes a
 142 | law.

143

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCS for HB 1021 (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 PCB: Criminal Justice
2 Subcommittee

3 Representative Spano offered the following:

4

5 **Amendment**

6 Remove lines 126-127 and insert:

7 Florida Statutes, be made confidential and exempt from s.

8

PCS for HB 1021 a1

Published On: 3/17/2014 4:38:49 PM

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1029 Personal Identification Information
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 1472

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: Orig. Comm.: Criminal Justice Subcommittee, Jones, Cunningham

SUMMARY ANALYSIS

Florida has the nation's highest rate of identity theft in the country. The Federal Trade Commission reports that in 2012, south Florida led the country with 645 identity theft complaints per 100,000 people.

Florida law currently makes it a crime to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent.

The bill enhances the penalties for personal identification information crimes against specified victims. The bill amends s. 817.568, F.S., to make it a second degree felony for any person to willfully and without authorization fraudulently use the personal identification information of an individual, without first obtaining their consent, who is:

- 60 years of age or older;
A disabled adult as defined in s. 825.101(4), F.S.;
A public servant as defined in s. 838.014, F.S.;
A veteran as defined in s. 1.01(14), F.S.;
A first responder as defined in s. 125.01045(2), F.S.;
An individual who is employed by the State of Florida; or
An individual who is employed by the U.S. Government.

The bill also requires the court to impose a \$151 surcharge on persons convicted of any crime in s. 817.568, F.S. The bill allocates the surcharge as follows:

- \$75 of the surcharge is deposited into the Department of Law Enforcement Operating Trust Fund for the department to provide grants to local law enforcement agencies in Palm Beach, Broward, and Miami-Dade counties to investigate the criminal use of personal identification information;
\$75 of the surcharge is deposited into the State Attorneys Revenue Trust Fund for the purpose of funding prosecutions of offenses relating to the criminal use of personal identification information in the Eleventh, Fifteenth, and Sixteenth Circuits; and
The clerk of the court retains \$1 of each surcharge.

The bill creates s. 817.5686, F.S., to establish the Identity Theft and Fraud Task Force (Task Force) within the Florida Department of Law Enforcement (FDLE). The purpose of the Task Force is to develop strategies and techniques that will assist in the investigation and prosecution of the criminal use of personal identification information in Palm Beach, Broward, and Miami-Dade counties. The bill requires FDLE to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the Task Force.

The Criminal Justice Impact Conference has not met to determine the prison bed impact of the proposed committee substitute. However, the bill creates a new second degree felony offense which may have a negative prison bed impact on the Department of Corrections. The bill also may also have a fiscal impact on FDLE and state and local governments. See Fiscal Section.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Identity Theft

Florida has the nation's highest rate of identity theft in the country.¹ The Federal Trade Commission reports that in 2012, south Florida led the country with 645 identity theft complaints per 100,000 people.² Tech security expert Alan Crowetz, believes that Florida's large transient and tourist population may be contributing to Florida's identify theft ranking.³ "You come here, you are on public Wi-Fi and unknown hotels," he said. "If someone rips you off, the next day you may not even be in the same city anymore, ID thieves act fast and often prey on older, less tech-savvy people."⁴

Criminal Use of Personal Identification Information

Section 817.568, F.S., attempts to address the identity theft issue by imposing penalties for the criminal use of personal identification information. The statute makes it a third degree felony⁵ for a person to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent. A person who fraudulently uses personal identification information as proscribed above:

- Commits a second degree felony,⁶ punishable by a three-year minimum mandatory sentence, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is \$5,000 or more or if the person fraudulently uses the personal identification information of 10 or more individuals, but fewer than 20 individuals, without their consent;
- Commits a first degree felony,⁷ punishable by a five-year minimum mandatory sentence, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is \$50,000 or more, or if the person fraudulently used the personal identification information of 20 or more but fewer than 30 individuals; or
- Commits a first degree felony, punishable by a 10-year minimum mandatory sentence, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is \$100,000 or more, or if the person fraudulently used the personal identification information of 30 or more individuals.⁸

The penalty is enhanced for crimes when the victim is a minor. Section 817.568(6), F.S., makes it a second degree felony for any person who willfully and without authorization fraudulently uses personal identification information concerning an individual who is less than 18 years of age without first obtaining the consent of that individual or of his or her legal guardian.

"Personal identification information" is defined as any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or

¹ *Theft a 'huge problem' in South Florida*, Linda Trischitta, SunSentinel, February 17, 2014, http://articles.sun-sentinel.com/2014-02-17/news/fl-fbi-miami-chief-priorities-20140217_1_id-theft-tax-returns-fighting-id (last accessed March 14, 2014).

² *Id.*

³ *South Florida #1 in U.S. for identity theft: Why?*, February 28, 2014,

<http://www.firstcoastnews.com/story/news/local/florida/2014/02/28/south-florida-1-in-us-for-identity-theft-why/5892223/> (last accessed March 14, 2014).

⁴ *Id.*

⁵ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁶ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁷ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁸ Section 817.568(2), F.S.

- taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
 - Unique electronic identification number, address, or routing code;
 - Medical records;
 - Telecommunication identifying information or access device; or
 - Other number or information that can be used to access a person's financial resources.⁹

Effect of the Bill

Section 817.568, F.S.

The bill enhances the penalties for personal identification information crimes against specified victims. The bill amends s. 817.568, F.S., to make it a second degree felony for any person to willfully and without authorization fraudulently use the personal identification information of an individual, without first obtaining their consent, who is:

- 60 years of age or older;
- A disabled adult as defined in s. 825.101(4), F.S.;
- A public servant as defined in s. 838.014, F.S.;
- A veteran as defined in s. 1.01(14), F.S.;
- A first responder as defined in s. 125.01045(2), F.S.;
- An individual who is employed by the State of Florida; or
- An individual who is employed by the U.S. Government.

The bill also requires the court to impose a \$151 surcharge on persons convicted of any crime in s. 817.568, F.S. Payment of the surcharge must be a condition of probation, community control, or any other court-ordered supervision and may not be waived by the court. If a defendant has been ordered to pay restitution in accordance with s. 775.089, F.S., the \$151 surcharge must be included in a judgment. The bill allocates the surcharge as follows:

- \$75 of the surcharge is deposited into the Florida Department of Law Enforcement's (FDLE) Operating Trust Fund for FDLE to provide grants to local law enforcement agencies in Palm Beach, Broward, and Miami-Dade counties to investigate the criminal use of personal identification information;
- \$75 of the surcharge is deposited into the State Attorneys Revenue Trust Fund for the purpose of funding prosecutions of offenses relating to the criminal use of personal identification information in the Eleventh, Fifteenth, and Sixteenth Circuits; and
- The clerk of the court retains \$1 of the surcharge.

Task Force

The bill creates s. 817.5686, F.S., to establish the Identity Theft and Fraud Task Force (Task Force) within the FDLE. The purpose of the Task Force is to develop strategies and techniques that will assist in the investigation and prosecution of the criminal use of personal identification information in Palm Beach, Broward, and Miami-Dade counties.¹⁰

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

- The Special Agent in Charge of FDLE's Miami Regional Operation Center, who shall serve as chair;
- The Sheriffs of Palm Beach and Broward Counties;
- The Police Chief from the Miami-Dade Police Department;

⁹ Section 817.568(1)(f), F.S.

¹⁰ The bill provides the following legislative intent language: The Legislature finds that there is a need to develop and implement a strategy to address the investigation and prosecution of the criminal use of personal identification information in Palm Beach, Broward, and Miami-Dade counties.

- The State Attorneys of the Eleventh, Fifteenth, and Sixteenth Circuits; and
- Six members appointed by the chair, consisting of two chiefs of police from Palm Beach County, two chiefs of police from Broward County, and two representatives from the Miami-Dade Police Department.¹¹

Members of the Task Force must serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S. FDLE must provide administrative and support services for the Task Force. The bill requires FDLE to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the Task Force.

The Task Force must organize by December 31, 2014, and must meet at least four times per year thereafter. Additional meetings may be held if the chair determines that extraordinary circumstances require such meetings.¹² A majority of the members of the Task Force constitutes a quorum. The chair of the Task Force may appoint subcommittees and subcommittee chairs as necessary in order to address issues related to the Task Force.¹³

The Task Force must coordinate efforts in Palm Beach, Broward, and Miami-Dade counties to:

- Develop strategies and techniques that will assist in the investigation and prosecution of the criminal use of personal identification information; and
- Incorporate other objectives reasonably related to the goals of enhancing the investigation and prosecution of the criminal use of personal identification information and a citizen's ability to prevent and detect identity theft and fraud.

By December 1, 2017, the Task Force must submit a report on its activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include any recommendations on how to better investigate and prosecute the criminal use of personal identification information. The Task Force dissolves on December 31, 2017.

B. SECTION DIRECTORY:

Section 1. Amends s. 817.568, F.S., relating to criminal use of personal identification information.

Section 2. Creates s. 817.5686, F.S., relating to Identity Theft and Fraud Task Force.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill requires \$75 of the \$151 surcharge to be deposited into the State Attorneys Revenue Trust Fund for the purpose of funding prosecutions of offenses relating to the criminal use of personal identification information in the Eleventh, Fifteenth, and Sixteenth Circuits. This may have an indeterminate positive impact on state government revenues.

¹¹ The bill specifies that Legislature finds that the task force serves a legitimate state, county, and municipal purpose and that service on the task force is consistent with a member's principal service in public office or employment. Therefore, membership on the task force does not disqualify a member from holding any other public office or from being employed by a public entity.

¹² Members may appear at meetings by electronic means.

¹³ A subcommittee chair serves at the pleasure of the chair.

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of the proposed committee substitute. However, the bill creates a new second degree felony offense, which may have a negative prison bed impact on the Department of Corrections.

The bill also establishes the Task Force within FDLE. FDLE must provide administrative and support services for the Task Force, which may have a negative workload impact on FDLE.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill requires \$75 of the \$150 surcharge to be deposited into FDLE's Operating Trust Fund for FDLE to provide grants to local law enforcement agencies in Palm Beach, Broward, and Miami-Dade counties to investigate the criminal use of personal identification information. This may have an indeterminate positive impact on these specific local government's revenues.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides FDLE with rule-making authority pursuant to ss. 120.536(1) and 120.54, F.S., to implement the Task Force.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

27 | an individual who is 60 years of age or older; a disabled adult
 28 | as defined in s. 825.101(4); a public servant as defined in s.
 29 | 838.014; a veteran as defined in s. 1.01(14); a first responder
 30 | as defined in s. 125.01045(2); an individual who is employed by
 31 | the State of Florida; or an individual who is employed by the
 32 | U.S. Government without first obtaining the consent of that
 33 | individual commits a felony of the second degree, punishable as
 34 | provided in s. 775.082, s. 775.083, or s. 775.084.

35 | (12) In addition to any sanction imposed when a person
 36 | pleads guilty or nolo contendere to, or is found guilty,
 37 | regardless of adjudication, to a violation of this section, the
 38 | court shall impose a surcharge of \$151. Payment of the surcharge
 39 | shall be a condition of probation, community control, or any
 40 | other court-ordered supervision. The sum of \$75 of the surcharge
 41 | shall be deposited into the Department of Law Enforcement
 42 | Operating Trust Fund for the department to provide grants to
 43 | local law enforcement agencies in Palm Beach, Broward, and
 44 | Miami-Dade counties to investigate the criminal use of personal
 45 | identification information. The sum of \$75 of the surcharge
 46 | shall be deposited into the State Attorneys Revenue Trust Fund
 47 | for the purpose of funding prosecutions of offenses relating to
 48 | the criminal use of personal identification information in the
 49 | Eleventh Circuit, the Fifteenth Circuit, and the Sixteenth
 50 | Circuit. The clerk of the court shall retain \$1 of each
 51 | surcharge that the clerk of the court collects as a service
 52 | charge of the clerk's office.

53 (a) The surcharge shall not be waived by the court.

54 (b) In the event that the individual has been ordered to
 55 pay restitution in accordance with s. 775.089, the surcharge
 56 shall be included in a judgment.

57 (13) The prosecutor may move the sentencing court to reduce
 58 or suspend the sentence of any person who is convicted of a
 59 violation of this section and who provides substantial
 60 assistance in the identification, arrest, or conviction of any
 61 of that person's accomplices, accessories, coconspirators, or
 62 principals or of any other person engaged in fraudulent
 63 possession or use of personal identification information. The
 64 arresting agency shall be given an opportunity to be heard in
 65 aggravation or mitigation in reference to any such motion. Upon
 66 good cause shown, the motion may be filed and heard in camera.
 67 The judge hearing the motion may reduce or suspend the sentence
 68 if the judge finds that the defendant rendered such substantial
 69 assistance.

70 (14)~~(12)~~ This section does not prohibit any lawfully
 71 authorized investigative, protective, or intelligence activity
 72 of a law enforcement agency of this state or any of its
 73 political subdivisions, of any other state or its political
 74 subdivisions, or of the Federal Government or its political
 75 subdivisions.

76 Section 2. Section 817.5686, Florida Statutes, is created
 77 to read:

78 817.5686 Identity Theft and Fraud Task Force.-

79 (1) FINDINGS.--The Legislature finds that there is a need to
80 develop and implement a strategy to address the investigation
81 and prosecution of the criminal use of personal identification
82 information in Palm Beach, Broward, and Miami-Dade counties.

83 (2) ESTABLISHMENT.--There is created the Identity Theft and
84 Fraud Task Force within the Department of Law Enforcement. The
85 purpose of the task force is to develop strategies and
86 techniques that will assist in the investigation and prosecution
87 of the criminal use of personal identification information in
88 Palm Beach, Broward, and Miami-Dade counties. The task force
89 shall dissolve on December 31, 2017.

90 (3) MEMBERSHIP.--The task force shall consist of the
91 following members or their designees:

92 (a) The Special Agent in Charge of the Miami Regional
93 Operation Center of the Department of Law Enforcement, who shall
94 serve as chair.

95 (b) The Sheriffs of Palm Beach and Broward Counties.

96 (c) The Police Chief from the Miami-Dade Police Department.

97 (d) The State Attorneys of the Eleventh Circuit, the
98 Fifteenth Circuit, and the Sixteenth Circuit.

99 (e) Six members appointed by the chair, consisting of two
100 chiefs of police from Palm Beach County, two chiefs of police
101 from Broward County, and two representatives from the Miami-Dade
102 Police Department.

103 (f) The Legislature finds that the task force serves a
104 legitimate state, county, and municipal purpose and that service

105 on the task force is consistent with a member's principal
 106 service in public office or employment. Therefore, membership on
 107 the task force does not disqualify a member from holding any
 108 other public office or from being employed by a public entity.

109 (g) Members of the task force shall serve without
 110 compensation but are entitled to reimbursement for per diem and
 111 travel expenses in accordance with s. 112.061.

112 (h) The chair of the task force may appoint subcommittees
 113 and subcommittee chairs as necessary in order to address issues
 114 related to the task force. A subcommittee chair shall serve at
 115 the pleasure of the chair.

116 (4) MEETINGS.—The task force shall organize by December 31,
 117 2014. Thereafter, the task force shall meet at least four times
 118 per year. Additional meetings may be held if the chair
 119 determines that extraordinary circumstances require an
 120 additional meeting. Members may appear at meetings by electronic
 121 means. A majority of the members of the task force constitutes a
 122 quorum. The Department of Law Enforcement shall provide
 123 administrative and support services for the task force.

124 (5) DUTIES.—The task force shall coordinate efforts in Palm
 125 Beach, Broward, and Miami-Dade to:

126 (a) Develop strategies and techniques that will assist in
 127 the investigation and prosecution of the criminal use of
 128 personal identification information;

129 (b) Incorporate other objectives reasonably related to the
 130 goals of enhancing the investigation and prosecution of the

131 criminal use of personal identification information and a
 132 citizen's ability to prevent and detect identity theft and
 133 fraud.

134 (6) RULEMAKING.—The Department of Law Enforcement shall
 135 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
 136 the requirements of this section.

137 (7) REPORT.—By December 1, 2017, the task force shall
 138 submit a report on its activities to the Governor, the President
 139 of the Senate, and the Speaker of the House of Representatives.
 140 The report shall include any recommendations on how to better
 141 investigate and prosecute the criminal use of personal
 142 identification information.

143 Section 3. This act shall take effect July 1, 2014.
 144

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1323 Law Enforcement Officers and Correctional Officers
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 1322

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Jones <i>yjt</i>	Cunningham <i>mc</i>

SUMMARY ANALYSIS

Part VI of ch. 112, F.S., commonly referred to as the "Law Enforcement Officers' Bill of Rights," (Bill of Rights), grants law enforcement officers and correctional officers (officer) certain statutory rights and privileges while under investigation and subject to interrogation by members of his or her agency for any reason which could lead to disciplinary action, demotion, or dismissal.

Section 112.534, F.S., sets forth the procedures that must be followed when a law enforcement or correctional agency intentionally fails to comply with the above rights while investigating an officer. Prior to 2009, the statute authorized an officer who was personally injured due to the violation to apply directly to the circuit court of the county where the agency is headquartered for an injunction to restrain and enjoin the violation and to compel performance of the agency's duties. In 2009, the section was rewritten, and the injunction provision was removed.

The bill amends s. 112.534, F.S., to allow an officer to institute a civil action in a court of competent jurisdiction to seek injunctive relief to force a law enforcement or correctional agency to comply with the Bill of Rights.

The bill allows for injunctive relief to be sought by an officer. If injunctive relief is granted against a local law enforcement agency or the Department of Corrections, they may incur costs associated with such relief. There may also be a fiscal impact on state courts. See Fiscal Section.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Law Enforcement Officers' Bill of Rights

Part VI of ch. 112, F.S.,¹ commonly referred to as the "Law Enforcement Officers' Bill of Rights," (Bill of Rights), grants law enforcement officers² and correctional officers³ (officer) certain statutory rights and privileges while under investigation and subject to interrogation by members of his or her agency for any reason which could lead to disciplinary action, demotion, or dismissal.⁴ For example, interrogations must be conducted in a reasonable time and place, and the officer must be:

- Informed of the nature of the investigation;
- Informed of the rank, name, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation;
- Informed of the names of all complainants;
- Provided all of the information concerning the complaint;
- Informed of the right to review witness statements;
- Afforded the right to counsel, upon request, who must be present at all times during the interrogation whenever the interrogation relates to the officer's continued fitness for service; and
- Informed of all his or her rights if the officer is under arrest, or is likely to be placed under arrest as a result of the interrogation.⁵

The Bill of Rights also requires an investigation of an allegation against an officer to be completed within 180 days after the date the officer's agency receives notice of the allegation.⁶ When an investigation is complete, the agency must determine whether disciplinary action is appropriate.⁷ If a determination for disciplinary action⁸ is made, the agency must give notice⁹ in writing, to the officer of its intent to proceed along with a proposal of the specific action sought.¹⁰ An investigation against an officer may be reopened if significant new evidence is discovered that could likely affect the outcome of the investigation and if the evidence:

- Could not have reasonably been discovered in the normal course of investigation; or
- Resulted from the predisciplinary response of the officer.¹¹

¹ Sections 112.531 – 112.535, F.S.

² Section 112.531(1), F.S., defines a "law enforcement officer" as any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07, F.S.

³ Section 121.531(2), F.S., defines "correctional officer" as any person, other than a warden, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution; and includes correctional probation officers, as defined in s. 943.10(3), F.S. However, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

⁴ Sections 112.532, and 112.534, F.S.

⁵ Section 112.532(1), F.S.

⁶ Section 112.532(6)(a), F.S.

⁷ *Id.* The contents of the complaint and investigation must remain confidential until the agency makes a final determination whether or not to issue a notice of disciplinary action consisting of suspension with loss of pay, demotion, or dismissal. Section 112.532(4)(b), F.S.

⁸ An officer who is subject to a disciplinary action may request the complete investigative file. Section 112.532(6)(a), F.S.

⁹ Notice to the officer must be provided within 180 days after the date the agency received notice of the alleged misconduct (the running of the limitations period may be tolled in certain instances). Section 112.532(6)(a), F.S.

¹⁰ The officer must be given the notice before the effective date and given the reason for a dismissal, demotion, transfer, reassignment, or other personnel action that might result in loss of pay or benefits or considered a punitive measure.

¹¹ Section 112.532(6)(b), F.S. Any disciplinary action resulting from an investigation that is reopened pursuant to this paragraph must be completed within 90 days after the date the investigation is reopened.

Section 112.532(5), F.S., specifically provides that no officer will be discharged; disciplined; demoted; denied promotion, transfer, or reassignment; or otherwise discriminated against in regard to his or her employment or appointment, or be threatened with any such treatment, by exercising any of the above stated rights.

Violations of the Law Enforcement Officers' Bill of Rights

Section 112.534, F.S., sets forth the procedures that must be followed when a law enforcement or correctional agency intentionally fails to comply with the above rights while investigating an officer.

Prior to 2009, the statute authorized an officer who was personally injured due to the violation to apply directly to the circuit court of the county where the agency is headquartered for an injunction to restrain and enjoin the violation and to compel performance of the agency's duties.^{12,13} In 2009, the section was rewritten, and the injunction provision was removed.¹⁴

In its current form, s. 112.534, F.S., requires an officer to first advise the investigator of the alleged intentional violation.¹⁵ If the investigator fails to cure the violation or continues the violation after being notified, the officer must request that the agency head be informed of the alleged intentional violation.¹⁶ Once this request is made, the interview of the officer must stop, and the officer can refuse to respond to further investigative questions.¹⁷

A written notice of the violation and a request for a compliance review hearing must then be filed within 3 working days.¹⁸ The notice must contain information that identifies what rights are alleged to have been violated and the factual basis of each violation.¹⁹ Unless otherwise remedied before the hearing, a compliance review hearing must be conducted within 10 working days after the request is filed.²⁰

A compliance review panel (panel) is comprised of three members - one member selected by the agency head, one member selected by the officer filing the request, and a third member selected by the other two members.²¹ The panel reviews the circumstances and facts of the violation to determine whether or not the investigator or agency intentionally violated the officer's rights.²² In making their determination, the panel can hear evidence, review relevant documents, and hear argument concerning the alleged intentional violation.²³ The officer has the burden of proof to establish that the violation was intentional.²⁴ If the panel determines²⁵ that the alleged violation is intentional, the investigator is removed from the investigation immediately.²⁶

¹² Section 112.534(1), F.S. (2008).

¹³ Both the 2008 statute and current law specify that officers also have the right bring a civil suit for damages suffered during the performance of the officer's official duties, for abridgment of the officer's civil rights arising out of the officer's performance of official duties, or for the filing of a complaint which the person knew was false when filed. Section 112.532(3), F.S. (2008 and 2013).

¹⁴ Chapter 2009-200, L.O.F.

¹⁵ The officer's notice of violation is sufficient to notify the investigator of the requirements of this part which are alleged to have been violated and the factual basis of each violation. Section 112.534(1)(a), F.S.

¹⁶ Section 112.534(1)(b), F.S.

¹⁷ *Id.* A refusal to answer questions after this point does not constitute insubordination or any similar type of policy violation.

¹⁸ Section 112.534(1)(c), F.S.

¹⁹ *Id.*

²⁰ The officer and agency can agree to an alternate hearing date. Section 112.534(1)(d), F.S.

²¹ The panel members must be officers who are active from the same law enforcement discipline as the officer requesting the hearing and may be selected from any state, county, or municipal agency within the county in which the officer works. The compliance review hearing must be conducted in the county in which the officer works. Section 112.534(1)(d), F.S.

²² Section 112.534(1)(e), F.S.

²³ *Id.*

²⁴ Section 112.534(1)(f), F.S. The standard of proof is by a preponderance of the evidence.

²⁵ The determination of the panel must be made at the conclusion of the hearing, in writing, and filed with the agency head and the officer. Section 112.534(1)(f), F.S.

²⁶ Section 112.534(1)(g), F.S. The agency head must direct an investigation be initiated against the investigator for purposes of agency disciplinary action. If that investigation is sustained, the sustained allegations against the investigator must be forwarded to the Criminal Justice Standards and Training Commission for review as an act of official misconduct or misuse of position.

Effect of the Bill

As noted above, 2009 legislation removed the provision in s. 112.534, F.S., that authorized an officer who was personally injured due to a violation of the Bill of Rights to apply for an injunction to restrain and enjoin the violation and to compel performance of the agency's duties.

The bill amends s. 112.534, F.S., to allow an officer to institute a civil action in a court of competent jurisdiction to seek injunctive relief to force a law enforcement or correctional agency to comply with the Bill of Rights.

B. SECTION DIRECTORY:

Section 1. Amends s. 112.534, F.S., relating to failure to comply; official misconduct.

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 Office of the State Courts Administrator reports that the civil filing fees cannot be accurately determined due to the unavailability of data needed to establish the increase resulting from the new civil cause of action created in the bill.²⁷

2. Expenditures:

The bill allows for injunctive relief to be sought by an officer. If injunctive relief is granted against the Department of Corrections, they may incur costs associated with such relief.

The bill has indeterminate impact on the State Courts System because it creates a new civil cause of action, which will increase court workload.²⁸

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 allows for injunctive relief to be sought by an officer. If injunctive relief is granted against a local law enforcement agency, they may incur costs associated with such relief.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²⁷ The Office of the State Courts Administrator Analysis of HB 1323 (on file with the Criminal Justice Subcommittee).

²⁸ *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 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to law enforcement officers and
 3 correctional officers; amending s. 112.534, F.S.;
 4 authorizing an officer to seek injunctive relief;
 5 providing an effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Paragraph (h) is added to subsection (1) of
 10 section 112.534, Florida Statutes, to read:

11 112.534 Failure to comply; official misconduct.—

12 (1) If any law enforcement agency or correctional agency,
 13 including investigators in its internal affairs or professional
 14 standards division, or an assigned investigating supervisor,
 15 intentionally fails to comply with the requirements of this
 16 part, the following procedures apply. For purposes of this
 17 section, the term "law enforcement officer" or "correctional
 18 officer" includes the officer's representative or legal counsel,
 19 except in application of paragraph (d).

20 (h) A law enforcement officer or correctional officer may
 21 institute a civil action in a court of competent jurisdiction to
 22 seek injunctive relief to force a law enforcement or
 23 correctional agency to comply with any requirement of this part.

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