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# **Criminal Justice Subcommittee**

**Wednesday, March 5, 2014**

**9:00 AM**

**404 HOB**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Criminal Justice Subcommittee

**Start Date and Time:** Wednesday, March 05, 2014 09:00 am

**End Date and Time:** Wednesday, March 05, 2014 11:00 am

**Location:** Sumner Hall (404 HOB)

**Duration:** 2.00 hrs

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

HB 69 Pub. Rec./Names of Spouses and Children of Public Defenders and Criminal Conflict and Civil Regional Counsel by Pritchett

HB 109 Pub. Rec./Participants in Treatment-Based Drug Court Programs by Gibbons

HB 111 Pub. Rec./Forensic Behavioral Health Evaluations by Gibbons

CS/HB 183 Drivers Leaving the Scene of a Crash by Transportation & Highway Safety Subcommittee, Nelson

CS/HB 623 Money Services Businesses by Insurance & Banking Subcommittee, Roberson, K.

HB 659 Protective Orders by Mayfield

HB 841 Crime Stoppers Trust Fund by Broxson

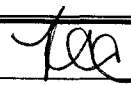
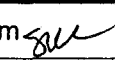
HB 843 Cannabis by Gaetz, Edwards

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 69 Pub. Rec./Names of Spouses and Children of Public Defenders and Criminal Conflict and Civil Regional Counsel  
**SPONSOR(S):** Pritchett and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/CS/SB 238

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

### SUMMARY ANALYSIS

Both the Florida Constitution and Florida Statutes guarantee every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may exempt such records from the requirements of Article I, Section 24(a) of the State Constitution by general law.

Currently, s. 119.071(4)(d)2.j., F.S., provides a public records exemption relating to various types of personal information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel ("public defenders") and for certain personal information of such personnel's spouses and children. Notably, the *names* of spouses and children of public defenders are not exempted.

The bill amends s. 119.071(4)(d)2.j., F.S., to create a public records exemption for the names of spouses and children of current or former public defenders.

The bill repeals 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 State Constitution.

**Article I, Section 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 expands current public record exemptions; thus, it requires a two-thirds vote for final passage.**

The bill is effective on October 1, 2014.

## 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.<sup>1</sup>

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.<sup>2</sup>

##### 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 Act<sup>3</sup> 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."<sup>4</sup> 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.<sup>5</sup>

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

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<sup>1</sup> Article 1, Sec. 24(a), FLA. CONST.

<sup>2</sup> Article 1, Sec. 24(c), FLA. CONST.

<sup>3</sup> Section 119.15, F.S.

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

<sup>5</sup> *Id.*

<sup>6</sup> Section 119.15(3), F.S.

<sup>7</sup> 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 the 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 Certain Identification and Location Information

Currently, s. 119.071(4)(d)2.j., F.S., provides a public records exemption for certain identification and location information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel ("public defenders"), and their spouses and children. The following information is exempt<sup>8</sup> from public records requirements:

- Home addresses, telephone numbers, social security numbers, dates of birth, and photographs of public defenders;
- Home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of public defenders; and
- Names and locations of schools and day care facilities attended by the children of public defenders.

Notably, the *names* of spouses and children of public defenders are not exempt from public record requirements. In contrast, the names of spouses and children of the following are exempt from public records: former or current sworn or civilian law enforcement personnel, state attorneys, human resource or labor relations agency personnel, code enforcement officers, guardians ad litem, juvenile justice officers, investigators or inspectors of the Department of Business and Professional Regulation, and county tax collectors.<sup>9</sup>

### Effect of the Bill

The bill amends s. 119.071(4)(d)2.j., F.S., to provide that the names of spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are exempt from s. 119.07(1), F.S., and Article I, Section 24(a) of the Florida Constitution.

The bill repeals 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 State Constitution.<sup>10</sup>

## B. SECTION DIRECTORY:

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

Section 2. Provides a public necessity statement.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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

<sup>8</sup> 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 85-62 Fla. Op. Att'y Gen. (1985).

<sup>9</sup> Section 119.071(4)(d)2., F.S.

<sup>10</sup> Article I, Sec. 24(c), FLA. CONST.

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:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled  
 An act relating to public records; amending s.  
 119.071, F.S.; creating an exemption from public  
 records requirements for the names of the spouses and  
 children of current or former public defenders,  
 assistant public defenders, criminal conflict and  
 civil regional counsel, and assistant criminal  
 conflict and civil regional counsel; providing for  
 future review and repeal of the exemption; providing a  
 statement of necessity; providing an effective date.

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

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

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

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone  
 numbers" includes home telephone numbers, personal cellular  
 telephone numbers, personal pager telephone numbers, and  
 telephone numbers associated with personal communications  
 devices.

2.a.(I) The home addresses, telephone numbers, social  
 security numbers, dates of birth, and photographs of active or  
 former sworn or civilian law enforcement personnel, including  
 correctional and correctional probation officers, personnel of  
 the Department of Children and Families whose duties include the



29 investigation of abuse, neglect, exploitation, fraud, theft, or  
 30 other criminal activities, personnel of the Department of Health  
 31 whose duties are to support the investigation of child abuse or  
 32 neglect, and personnel of the Department of Revenue or local  
 33 governments whose responsibilities include revenue collection  
 34 and enforcement or child support enforcement; the home  
 35 addresses, telephone numbers, social security numbers,  
 36 photographs, dates of birth, and places of employment of the  
 37 spouses and children of such personnel; and the names and  
 38 locations of schools and day care facilities attended by the  
 39 children of such personnel are exempt from s. 119.07(1).

40 (II) The names of the spouses and children of active or  
 41 former sworn or civilian law enforcement personnel and the other  
 42 specified agency personnel identified in sub-sub-subparagraph  
 43 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the  
 44 State Constitution.

45 (III) Sub-sub-subparagraph (II) is subject to the Open  
 46 Government Sunset Review Act in accordance with s. 119.15, and  
 47 shall stand repealed on October 2, 2018, unless reviewed and  
 48 saved from repeal through reenactment by the Legislature.

49 b. The home addresses, telephone numbers, dates of birth,  
 50 and photographs of firefighters certified in compliance with s.  
 51 633.408; the home addresses, telephone numbers, photographs,  
 52 dates of birth, and places of employment of the spouses and  
 53 children of such firefighters; and the names and locations of  
 54 schools and day care facilities attended by the children of such  
 55 firefighters are exempt from s. 119.07(1).

56 c. The home addresses, dates of birth, and telephone

57 numbers of current or former justices of the Supreme Court,  
 58 district court of appeal judges, circuit court judges, and  
 59 county court judges; the home addresses, telephone numbers,  
 60 dates of birth, and places of employment of the spouses and  
 61 children of current or former justices and judges; and the names  
 62 and locations of schools and day care facilities attended by the  
 63 children of current or former justices and judges are exempt  
 64 from s. 119.07(1).

65 d.(I) The home addresses, telephone numbers, social  
 66 security numbers, dates of birth, and photographs of current or  
 67 former state attorneys, assistant state attorneys, statewide  
 68 prosecutors, or assistant statewide prosecutors; the home  
 69 addresses, telephone numbers, social security numbers,  
 70 photographs, dates of birth, and places of employment of the  
 71 spouses and children of current or former state attorneys,  
 72 assistant state attorneys, statewide prosecutors, or assistant  
 73 statewide prosecutors; and the names and locations of schools  
 74 and day care facilities attended by the children of current or  
 75 former state attorneys, assistant state attorneys, statewide  
 76 prosecutors, or assistant statewide prosecutors are exempt from  
 77 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

78 (II) The names of the spouses and children of current or  
 79 former state attorneys, assistant state attorneys, statewide  
 80 prosecutors, or assistant statewide prosecutors are exempt from  
 81 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

82 (III) Sub-sub-subparagraph (II) is subject to the Open  
 83 Government Sunset Review Act in accordance with s. 119.15, and  
 84 shall stand repealed on October 2, 2018, unless reviewed and

85 saved from repeal through reenactment by the Legislature.  
 86 e. The home addresses, dates of birth, and telephone  
 87 numbers of general magistrates, special magistrates, judges of  
 88 compensation claims, administrative law judges of the Division  
 89 of Administrative Hearings, and child support enforcement  
 90 hearing officers; the home addresses, telephone numbers, dates  
 91 of birth, and places of employment of the spouses and children  
 92 of general magistrates, special magistrates, judges of  
 93 compensation claims, administrative law judges of the Division  
 94 of Administrative Hearings, and child support enforcement  
 95 hearing officers; and the names and locations of schools and day  
 96 care facilities attended by the children of general magistrates,  
 97 special magistrates, judges of compensation claims,  
 98 administrative law judges of the Division of Administrative  
 99 Hearings, and child support enforcement hearing officers are  
 100 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 101 Constitution if the general magistrate, special magistrate,  
 102 judge of compensation claims, administrative law judge of the  
 103 Division of Administrative Hearings, or child support hearing  
 104 officer provides a written statement that the general  
 105 magistrate, special magistrate, judge of compensation claims,  
 106 administrative law judge of the Division of Administrative  
 107 Hearings, or child support hearing officer has made reasonable  
 108 efforts to protect such information from being accessible  
 109 through other means available to the public.  
 110 f. The home addresses, telephone numbers, dates of birth,  
 111 and photographs of current or former human resource, labor  
 112 relations, or employee relations directors, assistant directors,

113 managers, or assistant managers of any local government agency  
 114 or water management district whose duties include hiring and  
 115 firing employees, labor contract negotiation, administration, or  
 116 other personnel-related duties; the names, home addresses,  
 117 telephone numbers, dates of birth, and places of employment of  
 118 the spouses and children of such personnel; and the names and  
 119 locations of schools and day care facilities attended by the  
 120 children of such personnel are exempt from s. 119.07(1) and s.  
 121 24(a), Art. I of the State Constitution.

122 g. The home addresses, telephone numbers, dates of birth,  
 123 and photographs of current or former code enforcement officers;  
 124 the names, home addresses, telephone numbers, dates of birth,  
 125 and places of employment of the spouses and children of such  
 126 personnel; and the names and locations of schools and day care  
 127 facilities attended by the children of such personnel are exempt  
 128 from s. 119.07(1) and s. 24(a), Art. I of the State  
 129 Constitution.

130 h. The home addresses, telephone numbers, places of  
 131 employment, dates of birth, and photographs of current or former  
 132 guardians ad litem, as defined in s. 39.820; the names, home  
 133 addresses, telephone numbers, dates of birth, and places of  
 134 employment of the spouses and children of such persons; and the  
 135 names and locations of schools and day care facilities attended  
 136 by the children of such persons are exempt from s. 119.07(1) and  
 137 s. 24(a), Art. I of the State Constitution, if the guardian ad  
 138 litem provides a written statement that the guardian ad litem  
 139 has made reasonable efforts to protect such information from  
 140 being accessible through other means available to the public.

141 i. The home addresses, telephone numbers, dates of birth,  
 142 and photographs of current or former juvenile probation  
 143 officers, juvenile probation supervisors, detention  
 144 superintendents, assistant detention superintendents, juvenile  
 145 justice detention officers I and II, juvenile justice detention  
 146 officer supervisors, juvenile justice residential officers,  
 147 juvenile justice residential officer supervisors I and II,  
 148 juvenile justice counselors, juvenile justice counselor  
 149 supervisors, human services counselor administrators, senior  
 150 human services counselor administrators, rehabilitation  
 151 therapists, and social services counselors of the Department of  
 152 Juvenile Justice; the names, home addresses, telephone numbers,  
 153 dates of birth, and places of employment of spouses and children  
 154 of such personnel; and the names and locations of schools and  
 155 day care facilities attended by the children of such personnel  
 156 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 157 Constitution.

158 j.(I) The home addresses, telephone numbers, dates of  
 159 birth, and photographs of current or former public defenders,  
 160 assistant public defenders, criminal conflict and civil regional  
 161 counsel, and assistant criminal conflict and civil regional  
 162 counsel; the home addresses, telephone numbers, dates of birth,  
 163 and places of employment of the spouses and children of such  
 164 defenders or counsel; and the names and locations of schools and  
 165 day care facilities attended by the children of such defenders  
 166 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
 167 the State Constitution.

168 (II) The names of the spouses and children of the

169 specified agency personnel identified in sub-sub-subparagraph  
 170 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the  
 171 State Constitution. This sub-sub-subparagraph is subject to the  
 172 Open Government Sunset Review Act in accordance with s. 119.15  
 173 and shall stand repealed on October 2, 2019, unless reviewed and  
 174 saved from repeal through reenactment by the Legislature.

175 k. The home addresses, telephone numbers, and photographs  
 176 of current or former investigators or inspectors of the  
 177 Department of Business and Professional Regulation; the names,  
 178 home addresses, telephone numbers, and places of employment of  
 179 the spouses and children of such current or former investigators  
 180 and inspectors; and the names and locations of schools and day  
 181 care facilities attended by the children of such current or  
 182 former investigators and inspectors are exempt from s. 119.07(1)  
 183 and s. 24(a), Art. I of the State Constitution if the  
 184 investigator or inspector has made reasonable efforts to protect  
 185 such information from being accessible through other means  
 186 available to the public. This sub-subparagraph is subject to the  
 187 Open Government Sunset Review Act in accordance with s. 119.15  
 188 and shall stand repealed on October 2, 2017, unless reviewed and  
 189 saved from repeal through reenactment by the Legislature.

190 1. The home addresses and telephone numbers of county tax  
 191 collectors; the names, home addresses, telephone numbers, and  
 192 places of employment of the spouses and children of such tax  
 193 collectors; and the names and locations of schools and day care  
 194 facilities attended by the children of such tax collectors are  
 195 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 196 Constitution if the county tax collector has made reasonable

197 efforts to protect such information from being accessible  
 198 through other means available to the public. This sub-  
 199 subparagraph is subject to the Open Government Sunset Review Act  
 200 in accordance with s. 119.15 and shall stand repealed on October  
 201 2, 2017, unless reviewed and saved from repeal through  
 202 reenactment by the Legislature.

203 3. An agency that is the custodian of the information  
 204 specified in subparagraph 2. and that is not the employer of the  
 205 officer, employee, justice, judge, or other person specified in  
 206 subparagraph 2. shall maintain the exempt status of that  
 207 information only if the officer, employee, justice, judge, other  
 208 person, or employing agency of the designated employee submits a  
 209 written request for maintenance of the exemption to the  
 210 custodial agency.

211 4. The exemptions in this paragraph apply to information  
 212 held by an agency before, on, or after the effective date of the  
 213 exemption.

214 5. This paragraph is subject to the Open Government Sunset  
 215 Review Act in accordance with s. 119.15, and shall stand  
 216 repealed on October 2, 2017, unless reviewed and saved from  
 217 repeal through reenactment by the Legislature.

218 Section 2. The Legislature finds that it is a public  
 219 necessity that the names of the spouses and children of current  
 220 or former public defenders, assistant public defenders, criminal  
 221 conflict and civil regional counsel, and assistant criminal  
 222 conflict and civil regional counsel be made exempt from s.  
 223 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 224 State Constitution. Public defenders, assistant public

225 defenders, criminal conflict and civil regional counsel, and  
226 assistant criminal conflict and civil regional counsel personnel  
227 in this state perform a variety of important duties that ensure  
228 public safety and welfare and encourage safe and civil  
229 communities. They work with felons, many of whom have committed  
230 violent crimes. As a result of their duties, such personnel  
231 often come in close contact with individuals who not only may be  
232 a threat to these personnel, but who might seek to take revenge  
233 against them by harming their spouses and children. Permitting  
234 access to the names of the spouses and children of current or  
235 former public defenders, assistant public defenders, criminal  
236 conflict and civil regional counsel, and assistant criminal  
237 conflict and civil regional counsel provides a means by which  
238 individuals who have been investigated, arrested, interrogated,  
239 or incarcerated can identify and cause physical or emotional  
240 harm to these spouses and children. The Legislature therefore  
241 finds that the harm that may result from the release of the  
242 names of spouses and children of current or former public  
243 defenders, assistant public defenders, criminal conflict and  
244 civil regional counsel, and assistant criminal conflict and  
245 civil regional counsel outweighs any public benefit that may be  
246 derived from the disclosure of the information.

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





Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice  
 2 Subcommittee

3 Representative Kerner offered the following:

4  
 5 **Amendment**  
 6 Remove line 214 and insert:  
 7 5. Except as otherwise expressly provided in this  
 8 paragraph, this paragraph is subject to the Open Government  
 9 Sunset

10



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	_____	

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1 Committee/Subcommittee hearing bill: Criminal Justice  
 2 Subcommittee

3 Representative Kerner offered the following:

**Amendment**

6 Remove lines 229-240 and insert:

7 communities. These persons work with felons, many of whom have  
 8 committed violent crimes. As a result of their duties, such  
 9 personnel often come in close contact with individuals who not  
 10 only may be a threat to these personnel, but who might seek to  
 11 take revenge against them by harming their spouses and children.  
 12 These attorneys also interact with the victims of crime.  
 13 Allowing access to the names of the spouses and children of  
 14 current or former public defenders, assistant public defenders,  
 15 criminal conflict and civil regional counsel, and assistant  
 16 criminal conflict and civil regional counsel provides a means by  
 17 which individuals who have been investigated, arrested,



Amendment No. 2

18 interrogated, or incarcerated can identify and cause physical or  
19 emotional harm to these spouses and children. In addition,  
20 criminal conflict and civil regional counsel and their  
21 assistants provide representation in sensitive civil matters,  
22 such as those in which a person's parental rights may be  
23 terminated based on allegations of perpetrating abuse and  
24 neglect against a child. By providing legal representation in  
25 criminal and civil matters, these attorneys provide a valuable  
26 service. The Legislature therefore  
27



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 109 Pub. Rec./Participants in Treatment-Based Drug Court Programs
SPONSOR(S): Gibbons
TIED BILLS: IDEN./SIM. BILLS: SB 280

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

SUMMARY ANALYSIS

Rule 2.420, of the Florida Rules of Judicial Administration states that the public must have access to the records of the judicial branch. However, Rule 2.420 establishes 20 categories of court record information which the clerk of the court must automatically designate and maintain as confidential (Type I information) that the public may not access.

In 2011, it was suggested that Rule 2.420 be amended to include pretrial and post-trial psychological and psychiatric evaluations and reports (which would include drug court records) as Type I information. However, the Florida Supreme Court held that "the Legislature would have to expressly make mental health evaluations filed with the court exempt from public access before those evaluations can properly be added to that list."

The bill amends s. 397.334, F.S., to make specified drug court program records confidential and exempt from the public records requirements of ch.119, F.S., and Article 1, Section 24(a), of the Florida Constitution. The types of records included are:

- Records relating to initial screenings for participation in a treatment-based drug court program;
Records relating to substance abuse screenings;
Behavioral health evaluations; and
Subsequent treatment status reports.

The bill repeals 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 State Constitution.

The bill eliminates the need to file motions and conduct hearings to make drug court records confidential. The Office of the State Courts Administrator reports that the bill will result in a reduction in judicial and court system workload, but that the precise impact cannot be accurately determined.

Article I, Section 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 expands current public record exemptions; thus, it requires a two-thirds vote for final passage.

The bill is effective upon becoming law.

## 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.<sup>1</sup>

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.<sup>2</sup>

###### 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 Act<sup>3</sup> 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."<sup>4</sup> 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.<sup>5</sup>

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

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<sup>1</sup> Article 1, Sec. 24(a), FLA. CONST.

<sup>2</sup> Article 1, Sec. 24(c), FLA. CONST.

<sup>3</sup> Section 119.15, F.S.

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

<sup>5</sup> *Id.*

<sup>6</sup> Section 119.15(3), F.S.

<sup>7</sup> 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 the 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 Access to Judicial Records

Rule 2.420, of the Florida Rules of Judicial Administration (Rule), states that the public must have access to the records of the judicial branch.<sup>8,9</sup> However, the Rule currently identifies 20 categories of court record information which the clerk of the court must automatically designate and maintain as confidential (Type I information).<sup>10</sup> Information not listed as Type I information may still be treated as confidential, but only upon motion and only after a judicial hearing.<sup>11</sup>

In 2011, it was suggested that the Rule be amended to include pretrial and post-trial psychological and psychiatric evaluations and reports (which would include drug court records) as Type I information. However, the Florida Supreme Court held that because such information was not expressly exempt from public access by the laws in effect on July 1, 1993, or court rules in effect on September 1992, such information was not appropriate for inclusion as Type I information.<sup>12</sup> The opinion further stated that “the Legislature would have to expressly make mental health evaluations filed with the court exempt from public access before those evaluations can properly be added to that list.”<sup>13</sup>

## Records from Treatment-Based Drug Courts

Section 397.334, F.S., establishes pretrial and postadjudicatory treatment-based drug court programs. These programs are designed to divert drug addicted offenders from the criminal justice system and provide supervised community treatment services in lieu of incarceration.<sup>14</sup> Participants in drug court programs receive substance abuse treatment, screenings, and continual monitoring and evaluations.<sup>15</sup> Records of the screenings and evaluations can be reviewed by court officials as part of the process of determining whether the individual is complying with the drug court program.<sup>16</sup>

Since drug court records contained in court files are not currently listed as Type I information, a motion must be filed and the trial court must hold a hearing in order to make these records confidential.<sup>17</sup>

## Effect of the Bill

The bill amends s. 397.334, F.S., to make the information contained in the following treatment-based drug court program records confidential and exempt<sup>18</sup> from the public records requirements of ch. 119,

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<sup>8</sup> Fla. R. Jud. Admin. 2.420(b)(1) defines “records of the judicial branch” as all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consist of:

- “Court records,” which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes, or stenographic tapes of court proceedings; and
- “Administrative records,” which are all other records made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business by any judicial branch entity.

<sup>9</sup> Fla. R. Jud. Admin. 2.420(b)(2) defines “judicial branch” as the judicial branch of government, which includes the state courts system, the clerk of court when acting as an arm of the court, The Florida Bar, the Florida Board of Bar Examiners, the Judicial Qualifications Commission, and all entities established by or operating under the authority of the supreme court or the chief justice.

<sup>10</sup> *In re: Amendments to the Florida Rule of Judicial Administration 2.420*, 68 So. 3d 228 (Fla. 2011); Fla. R. Jud. Admin. 2.420(d)(3).  
<sup>11</sup> *Id.*

<sup>12</sup> *In re: Amendments to the Florida Rule of Judicial Administration 2.420*, 68 So. 3d 228 (Fla. 2011).

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

<sup>14</sup> Section 397.305, F.S.

<sup>15</sup> Section 397.334(4), F.S.

<sup>16</sup> Section 397.334(5), F.S.

<sup>17</sup> Office of the State Courts Administrator, Analysis of HB 109 (on file with the Criminal Justice Subcommittee). This analysis is further cited as “OSCA Analysis;” See Fla. R. Jud. Admin. 2.420.

<sup>18</sup> 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

F.S., and Article 1, Section 24(a), of the Florida Constitution:

- Records relating to initial screenings for participation in a treatment-based drug court program;
- Records relating to substance abuse screenings;
- Behavioral health evaluations; and
- Subsequent treatment status reports.

The exemption applies to the records of participants and persons considering participation in a treatment-based drug court program.

The bill repeals 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 State Constitution.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 397.334, F.S., relating to treatment-based drug court programs.

Section 2. Provides a public necessity statement.

Section 3. The bill is effective upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

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

2. Expenditures:

The bill eliminates the need to file motions and conduct hearings to make drug court records confidential. The Office of the State Courts Administrator (OSCA) determined the bill will result in a reduction in judicial and court system workload.<sup>19</sup> However, the precise impact cannot be accurately determined due to the unavailability of data needed to quantifiably establish the reduction in workload.<sup>20</sup>

**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.

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not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See 85-62 Fla. Op. Att'y Gen. (1985).

<sup>19</sup> Office of the State Courts Administrator, Analysis of HB 109 (2014)(on file with the Criminal Justice Subcommittee).

<sup>20</sup> *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:

OSCA reports that this bill will result in the need for changes to Rule 2.420(d)(1)(B), of the Florida Rules of Judicial Administration to add drug court records contained in court files as automatic Type I exemptions.<sup>21</sup>

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>21</sup> *Id.*

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A bill to be entitled  
 An act relating to public records; amending s.  
 397.334, F.S.; exempting from public records  
 requirements information from the initial screenings  
 for participation in a treatment-based drug court  
 program, substance abuse screenings, behavioral health  
 evaluations, and subsequent treatment status reports  
 regarding a participant or a person considered for  
 participation in a treatment-based drug court program;  
 providing for future repeal and legislative review of  
 the exemption; providing a statement of public  
 necessity; providing an effective date.

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

Section 1. Subsection (10) is added to section 397.334,  
 Florida Statutes, to read:

397.334 Treatment-based drug court programs.—

(10) (a) Information relating to a participant or a person  
 considered for participation in a treatment-based drug court  
 program which is contained in the following records, reports,  
 and evaluations is confidential and exempt from s. 119.07(1) and  
 s. 24(a), Art. I, of the State Constitution:

- 1. Records relating to initial screenings for  
 participation in the program.
- 2. Records relating to substance abuse screenings.
- 3. Behavioral health evaluations.
- 4. Subsequent treatment status reports.

29 (b) This subsection is subject to the Open Government  
 30 Sunset Review Act in accordance with s. 119.15 and shall stand  
 31 repealed on October 2, 2019, unless reviewed and saved from  
 32 repeal through reenactment by the Legislature.

33 Section 2. The Legislature finds that it is a public  
 34 necessity that information relating to a participant or person  
 35 considered for participation in a treatment-based drug court  
 36 program under s. 397.334, Florida Statutes, which is contained  
 37 in certain records, reports, and evaluations, be made  
 38 confidential and exempt from s. 119.07(1), Florida Statutes, and  
 39 s. 24(a), Art. I of the State Constitution. Protecting  
 40 information contained in records relating to initial screenings  
 41 for participation in a treatment-based drug court program,  
 42 records relating to substance abuse screenings, behavioral  
 43 health evaluations, and subsequent treatment status reports is  
 44 necessary to protect the privacy rights of participants or  
 45 individuals considered for participation in treatment-based drug  
 46 court programs. Accordingly, the Legislature finds that the  
 47 chilling effect to an individual who is seeking treatment for  
 48 his or her substance abuse which would result from the release  
 49 of this information substantially outweighs any public benefit  
 50 derived from disclosure to the public. Making this information  
 51 confidential and exempt will protect information that is of a  
 52 sensitive, personal nature; thus, the release of this  
 53 information would cause unwarranted damage to the reputation of  
 54 an individual. Furthermore, making this information confidential  
 55 and exempt will encourage individuals to participate in drug  
 56 court programs, and thereby promote the effective and efficient

HB 109

2014

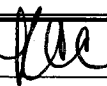
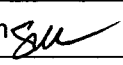
57 | administration of treatment-based drug court programs.

58 |       Section 3. This act shall take effect upon becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 111 Pub. Rec./Forensic Behavioral Health Evaluations  
**SPONSOR(S):** Gibbons  
**TIED BILLS:** IDEN./SIM. BILLS: SB 256

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

### SUMMARY ANALYSIS

Rule 2.420, of the Florida Rules of Judicial Administration states that the public must have access to the records of the judicial branch. However, Rule 2.420 establishes 20 categories of court record information which the clerk of the court must automatically designate and maintain as confidential (Type I information) that the public may not access. Information not listed as Type I information may still be treated as confidential, but only upon motion and only after a judicial hearing. Forensic behavioral health records filed with the courts in ch. 916, F.S., proceedings are not automatically exempt from public records as a Type I exemption.

In 2011, it was suggested that Rule 2.420 be amended to include pretrial and post-trial psychological and psychiatric evaluations and reports (which would include behavioral health records) as Type I information. However, the Florida Supreme Court held that "the Legislature would have to expressly make mental health evaluations filed with the court exempt from public access before those evaluations can properly be added to that list."

The bill creates s. 916.1065, F.S., to provide that forensic behavioral health evaluations filed with the courts in ch. 916, F.S., proceedings are confidential and exempt from the public records requirements of Article 1, Section 24(a) of the State Constitution.

The bill defines the term "forensic behavioral health evaluation" to mean any record, including supporting documentation, derived from a competency, substance abuse, psychosexual, psychological, psychiatric, psychosocial, cognitive impairment, sanity, or other mental health evaluation of an individual.

The bill repeals 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 State Constitution.

The bill eliminates the need to file motions and conduct hearings to make forensic behavioral health evaluations confidential. The Office of State Courts Administrator determined the bill will result in a reduction in judicial and court system workload, but that the precise impact cannot be accurately determined.

**Article I, Section 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 expands current public record exemptions; thus, it requires a two-thirds vote for final passage.**

The bill is effective upon becoming law.

## 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.<sup>1</sup>

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.<sup>2</sup>

###### 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 Act<sup>3</sup> 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."<sup>4</sup> 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.<sup>5</sup>

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

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<sup>1</sup> Article 1, Sec. 24(a), FLA. CONST.

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

<sup>3</sup> Section 119.15, F.S.

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

<sup>5</sup> *Id.*

<sup>6</sup> Section 119.15(3), F.S.

<sup>7</sup> 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 the 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 Access to Judicial Records

Rule 2.420, of the Florida Rules of Judicial Administration (Rule), states that the public must have access to the records of the judicial branch.<sup>8,9</sup> However, the Rule currently identifies 20 categories of court record information which the clerk of the court must automatically designate and maintain as confidential (Type I information).<sup>10</sup> Information not listed as Type I information may still be treated as confidential, but only upon motion and only after a judicial hearing.<sup>11</sup>

In 2011, it was suggested that the Rule be amended to include pretrial and post-trial psychological and psychiatric evaluations and reports as Type I information. However, the Florida Supreme Court held that because such information was not expressly exempt from public access by the laws in effect on July 1, 1993, or court rules in effect on September 1992, such information was not appropriate for inclusion as Type I information.<sup>12</sup> The opinion further stated that “the Legislature would have to expressly make mental health evaluations filed with the court exempt from public access before those evaluations can properly be added to that list.”<sup>13</sup>

## Forensic Clients

The Department of Children and Families (DCF) and the Agency for Persons with Disabilities (APD) establish, locate, and maintain separate and secure forensic facilities and programs for the treatment and training of defendants who have been charged with a felony and found to be incompetent to proceed due to their mental illness, mental retardation, or autism.<sup>14</sup> These agencies also provide services for individuals who have been acquitted of a felony by reason of insanity. In fiscal year 2012-2013, DCF provided services to a total of 2,885 individuals in accordance with ch. 916, F.S.<sup>15,16</sup>

Competency restoration training and mental health services are provided by DCF in four state forensic mental health treatment facilities with a total secure capacity of 1108 beds. There are also 435 non-secure, forensic step-down beds in civil hospitals. Evaluators employed at state mental health treatment facilities, as well as court-appointed evaluators, are tasked with evaluating defendants to determine if they meet criteria for involuntary commitment. Those reports are received by the circuit clerks of courts, presiding judges, defense counsel and opposing counsel.<sup>17</sup>

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<sup>8</sup> Fla. R. Jud. Admin 2.420(b)(1) defines “records of the judicial branch” as all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consist of:

- “Court records,” which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes, or stenographic tapes of court proceedings; and
- “Administrative records,” which are all other records made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business by any judicial branch entity.

<sup>9</sup> Fla. R. Jud. Admin 2.420(b)(2) defines “judicial branch” as the judicial branch of government, which includes the state courts system, the clerk of court when acting as an arm of the court, The Florida Bar, the Florida Board of Bar Examiners, the Judicial Qualifications Commission, and all entities established by or operating under the authority of the supreme court or the chief justice.

<sup>10</sup> *In re: Amendments to the Florida Rule of Judicial Administration 2.420*, 68 So. 3d 228 (Fla. 2011); Fla. R. Jud Admin 2.420(d)(3).

<sup>11</sup> *Id.*

<sup>12</sup> *In re: Amendments to the Florida Rule of Judicial Administration 2.420*, 68 So. 3d 228 (Fla. 2011).

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

<sup>14</sup> Section 916.105, F.S., further provides that forensic facilities must be designed and administered so that entry and exit may be strictly controlled by staff responsible for security in order to protect the defendant, facility personnel, other clients, and citizens in adjacent communities.

<sup>15</sup> Chapter 916, F.S., governs mentally deficient and mentally ill defendants.

<sup>16</sup> Electronic mail from Gina Sisk with DCF, dated February 24, 2014 (on file with the Criminal Justice Subcommittee).

<sup>17</sup> Department of Children and Families, Analysis of HB 1183 (2013), which is similar to this bill (on file with the Criminal Justice Subcommittee).



### **Clinical Records of Forensic Clients**

Clinical records<sup>18</sup> for individuals adjudicated as incompetent to proceed due to mental illness, mental retardation, or autism, or who have been acquitted of a felony by reason of insanity are confidential and exempt from public records requirements of s. 119.07(1), F.S., and Article 1, Section 24(a), of the State Constitution.<sup>19</sup> These records may be released to specified individuals, including persons authorized by order of the court and to the client's counsel when the records are needed by counsel for adequate representation.<sup>20</sup>

However, individuals evaluated pursuant to ch. 916, F.S., that are not adjudicated incompetent to proceed or acquitted by reason of insanity will also have their records filed with the courts.<sup>21</sup> These individuals' records have not been deemed exempt from public records requirements by the Legislature and thus are not automatically exempt under Rule 2.420 as a Type I exemption. Such records include those created as a result of a competency, substance abuse, psychosexual, psychological, psychiatric, psychosocial, cognitive impairment, sanity, or other mental health evaluation.

Since forensic behavioral health evaluations contained in court files are not currently listed as Type I information, a motion must be filed and the trial court must hold a hearing in each case in order to make these records confidential. The Office of State Courts Administrator (OSCA) reports that in every applicable case in essentially every circuit, these motions are being filed and granted after being unopposed by the State.<sup>22</sup>

### **Effect of the Bill**

The bill creates s. 916.1065, F.S., to provide that forensic behavioral health evaluations filed with the court under ch. 916, F.S., are confidential and exempt<sup>23</sup> from the public records requirements of Article 1, Section 24(a) of the State Constitution.

The bill defines the term "forensic behavioral health evaluation" to mean any record, including supporting documentation, derived from a competency, substance abuse, psychosexual, psychological, psychiatric, psychosocial, cognitive impairment, sanity, or other mental health evaluation of an individual.

The bill provides a statement of public necessity as required by the State Constitution.

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

Section 1. Creates s. 916.1065, F.S., relating to confidentiality of forensic behavioral health evaluations.

Section 2. Provides a public necessity statement.

Section 3. Provides that the bill shall take effect upon becoming a law

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<sup>18</sup> Section 916.107(8), F.S., states that a clinical record must include data pertaining to admission and such other information as may be required under rules of DCF or APD.

<sup>19</sup> Section 916.107(8), F.S.

<sup>20</sup> Section 916.107(8)(a)2., F.S.

<sup>21</sup> See s. 916.107, F.S.

<sup>22</sup> Electronic mail from Sarah Naf, dated February 27, 2014 (on file with the Criminal Justice Subcommittee).

<sup>23</sup> 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 85-62 Fla. Op. Att'y Gen. (1985).

## 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 eliminates the need to file motions and conduct hearings to make forensic behavioral health evaluations confidential. OSCA determined the bill will result in a reduction in judicial and court system workload.<sup>24</sup> However, the precise impact cannot be accurately determined due to the unavailability of data needed to quantifiably establish the reduction in workload.<sup>25</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

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

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

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

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill fails to provide language indicating that the exemption is subject to the Open Government Sunset Review Act and shall repeal in accordance with the Act unless reenacted by the Legislature.

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<sup>24</sup> Office of the State Courts Administrator, Analysis of HB 111 (on file with the Criminal Justice Subcommittee).

<sup>25</sup> *Id.*

The bill does not exempt the records from the public records requirements of ch.119, F.S., but only from the requirements of s. 24(a), Art. I of the State Constitution.

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

HB 111

2014

1 A bill to be entitled  
 2 An act relating to public records; creating s.  
 3 916.1065, F.S.; creating an exemption from public  
 4 records requirements for a forensic behavioral health  
 5 evaluation filed with a court; defining the term  
 6 "forensic behavioral health evaluation"; providing a  
 7 statement of public necessity; providing an effective  
 8 date.

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

11  
 12 Section 1. Section 916.1065, Florida Statutes, is created  
 13 to read:

14 916.1065 Confidentiality of forensic behavioral health  
 15 evaluations.-

16 (1) A forensic behavioral health evaluation filed with the  
 17 court under this chapter is confidential and exempt from s.  
 18 24(a), Art. I of the State Constitution.

19 (2) As used in this section, the term "forensic behavioral  
 20 health evaluation" means any record, including supporting  
 21 documentation, derived from a competency, substance abuse,  
 22 psychosexual, psychological, psychiatric, psychosocial,  
 23 cognitive impairment, sanity, or other mental health evaluation  
 24 of an individual.

25 Section 2. The Legislature finds that it is a public  
 26 necessity that forensic behavioral health evaluations filed with  
 27 the court pursuant to chapter 916, Florida Statutes, be  
 28 confidential and exempt from disclosure under s. 24(a), Art. I

29 | of the State Constitution. The personal health of an individual  
 30 | and the treatment he or she receives are intensely private  
 31 | matters. An individual's forensic behavioral health evaluation  
 32 | should not be made public merely because it is filed with the  
 33 | court. Protecting forensic behavioral health evaluations is  
 34 | necessary to consistently protect the health care privacy rights  
 35 | of all persons. Making these evaluations confidential and exempt  
 36 | will protect information of a sensitive personal nature, the  
 37 | release of which would cause unwarranted damage to the  
 38 | reputation of an individual. Further, the knowledge that  
 39 | sensitive personal information is subject to disclosure could  
 40 | have a chilling effect on mental health experts who conduct the  
 41 | evaluations for use by the court. Therefore, making these  
 42 | evaluations confidential and exempt allows courts to effectively  
 43 | and efficiently make decisions relating to the competency of  
 44 | individuals who interact with the state courts system.

45 | Section 3. 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	___	

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1 Committee/Subcommittee hearing bill: Criminal Justice  
2 Subcommittee  
3 Representative Gibbons offered the following:

**Amendment**

Remove lines 16-24 and insert:

7 (1) As used in this section, the term "forensic behavioral  
8 health evaluation" means any record, including supporting  
9 documentation, derived from a competency, substance abuse,  
10 psychosexual, psychological, psychiatric, psychosocial,  
11 cognitive impairment, sanity, or other mental health evaluation  
12 of an individual.

13 (2) A forensic behavioral health evaluation filed with the  
14 court under this chapter is confidential and exempt from s.  
15 119.07(1) and s. 24(a), Art. I of the State Constitution.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 183 Drivers Leaving the Scene of a Crash  
**SPONSOR(S):** Transportation & Highway Safety Subcommittee; Nelson and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 102

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	13 Y, 0 N, As CS	Thompson	Miller
2) Criminal Justice Subcommittee		Cunningham <i>ECU</i>	Cunningham <i>ECU</i>
3) Justice Appropriations Subcommittee			
4) Economic Affairs Committee			

### SUMMARY ANALYSIS

Section 316.027, F.S., requires the driver of any vehicle involved in a crash that results in injury or death to immediately stop the vehicle, remain at the scene until the driver provides specified information, and render aid to the injured person. A violation is:

- A third degree felony, ranking in Level 5 of the ranking chart, if the crash results in injury;
- A first degree felony, ranked in Level 7 of the ranking chart, when the crash results in death; and
- A first degree felony, ranked in Level 7 of the ranking chart and punishable by a 2-year mandatory minimum term of imprisonment, when the crash results in death and the person was driving under the influence.

The bill creates the "Aaron Cohen Life Protection Act," to create and increases penalties for leaving the scene of an accident. Specifically, the bill:

- Creates a third "leaving the scene of an accident offense" that makes it second degree felony, ranked in Level 6 of the ranking chart, for a person to leave the scene of an accident involving serious bodily injury;
- Ranks leaving the scene of an accident involving injury, serious bodily injury, and death one level higher in the ranking chart if the victim of the offense is a "vulnerable road user;"
- Creates a new 4-year mandatory minimum term of imprisonment applicable to persons who leave the scene of an accident involving death;
- Increases the mandatory minimum term of imprisonment applicable to persons who are driving under the influence and who leave the scene of an accident involving death from 2 to 4 years;
- Allows a defendant to move to depart from the four-year mandatory minimum sentence for leaving the scene of an accident involving death, unless the defendant was driving under the influence at the time of the violation;
- Requires a driver who leaves the scene of a crash involving injury, serious bodily injury, or death to:
  - Have his or her driver license revoked for at least three years; and
  - Complete a victim's impact panel session, if one exists, or a driver improvement course relating to the rights of vulnerable road users relative to vehicles on the roadway; and
- Requires the Department of Highway Safety and Motor Vehicles (DHSMV) to include in its approved driver improvement course curriculum instruction specifically addressing the rights of vulnerable road users relative to vehicles on the roadway.

The Criminal Justice Impact Conference met on January 30, 2014 and found that CS/SB 102, which is similar to this bill, will have an indeterminate impact on prison beds. The bill may also have an indeterminate negative fiscal impact on DHSMV. See Fiscal Impact on State Government.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0183a.CRJS.DOCX

DATE: 3/3/2014



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Aaron Cohen

On February 15, 2012, at approximately 5:40 A.M., Aaron Cohen and Enda Walsh were cycling in the bike lane eastbound across the Rickenbacker Causeway in Miami-Dade County when they were both struck from behind by a 2010 Honda Civic. According to an independent witness, the vehicle fled the scene. Aaron Cohen expired on February 16, 2012 at approximately 1 P.M., from injuries sustained in the crash.<sup>1</sup>

According to reports, the driver turned himself in 17 hours later and admitted to being the driver of the vehicle at the time of the crash.<sup>2</sup> Police found evidence that the driver, who was on probation for cocaine charges,<sup>3</sup> had been drinking, but they could not test him because of the amount of time that had elapsed since the accident.<sup>4</sup> On February 1, 2013, the driver was sentenced to 364 days in jail<sup>5</sup> and released to two years of probation after serving 264 days.<sup>6</sup>

##### Section 316.027, F.S. - Leaving the Scene of an Accident

Section 316.027, F.S., requires that the driver of any vehicle involved in a crash that results in death or injury of any person must immediately stop the vehicle and remain at the scene until the driver has complied with section 316.062, F.S. That statute 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 driven or attended by any person to:

- Give his or her name, address, and vehicle registration number;
- Provide a driver's license, upon request and if available, to any person injured in the crash or to the driver or occupant of or person attending any vehicle or other property damaged in the crash;
- Provide a driver's license, upon request, to any police officer at the scene or who is investigating the crash;
- Render to any injured person 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; and

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<sup>1</sup> Information received from the Department of Highway Safety and Motor Vehicles, Florida Long Form Traffic Crash Report number 83005647, on file with the Transportation and Highway Safety Subcommittee.

<sup>2</sup> See additional information on the Aaron Cohen incident from the Miami Herald news article, at <http://www.miamiherald.com/2014/02/04/3913086/attorney-general-pam-bondi-legislators.html>. (Last viewed 2/5/14).

<sup>3</sup> According to the Florida Department of Corrections Offender Network, the driver's criminal history record lists a cocaine-possession charge offense date of 05/13/2011. On file with the Transportation and Highway Safety Subcommittee.

<sup>4</sup> According to the American Prosecutors Research Institute (APRI), a non-profit research, training and technical assistance affiliate of the National District Attorneys Association, APRI Special Topics Series (2003), alcohol is eliminated from the body at an average rate of about one standard drink per hour. However, there are other factors that affect intoxication (food consumption, gender, medications, illness). Retrograde extrapolation is the process of estimating an alcohol concentration at an earlier time from a measurement taken at a later time; however, a delay between the time of the crash and the test can hinder an accurate determination. On file with the Transportation and Highway Safety Subcommittee.

<sup>5</sup> Miami-Dade Clerk of the Courts Criminal Sentence Document, Docket Image Book/Page: 028479/03416, case number F12-003845, *The State Of Florida VS. Michele Traverso*, on file with the Transportation and Highway Safety Subcommittee. Miami-Dade court documents can be viewed at <https://www2.miami-dadeclerk.com/CJIS/CaseSearch.aspx>.

<sup>6</sup> According to the Florida Department of Corrections Offender Network, at <http://www.dc.state.fl.us/InmateInfo/InmateInfoMenu.asp> the driver's criminal history record provides a sentence date of 01/16/2013 for the offense of leaving the scene of a crash with death, a supervision (probation) begin date of 10/06/13, and a scheduled termination date of 10/08/15. On file with the Transportation and Highway Safety Subcommittee.

- Having stopped and remained at the scene to provide the required information, if none of the persons identified are able to receive the information, report the crash to the nearest police authority and submit the required information.

All violations of section 316.027, F.S., require that the driver violating the statute make restitution to the victim unless the court finds clear and compelling reasons not to order restitution. Restitution is required to be made a condition of probation.<sup>7</sup> The Department of Highway Safety and Motor Vehicles (DHSMV) is required to revoke the driver license of a person who violates section 316.027, F.S.<sup>8</sup>

#### *Injury*

A driver who leaves the scene of a crash involving injury, commits a third degree felony.<sup>9</sup> A third degree felony is punishable by up to five years in prison and a fine of up to \$5,000.<sup>10</sup> The violation does not include a mandatory minimum prison sentence. Proof that the driver caused or contributed to causing injury to a person is not required for a conviction.<sup>11</sup>

#### *Death*

A driver who leaves the scene of a crash involving death, commits a first degree felony.<sup>12</sup> A first degree felony is punishable by up to 30 years in prison and a fine of up to \$10,000.<sup>13</sup> If the person was driving under the influence, the court must sentence the person to a minimum mandatory prison sentence of two years.<sup>14</sup> Again, proof that the driver caused or contributed to causing the death of a person is not required for a conviction, and current law reflects no mandatory minimum sentence for these violations.

According to Florida Uniform Traffic Citation Statistics, there were 15,642 leaving the scene of an accident violations during calendar year 2012.<sup>15</sup>

#### Minimum Mandatory Prison Sentences

Currently, there are discrepancies in the mandatory minimum penalties that apply to crashes involving death. For example, a driver convicted of DUI manslaughter is required to serve a mandatory minimum prison sentence of four years.<sup>16</sup> In contrast, a person driving under the influence who leaves the scene of a crash involving death is only required to receive a minimum prison sentence of two years.

Additionally, the current penalties for leaving the scene of an accident involving death and leaving the scene of an accident involving death while driving under the influence may have unintended consequences. The former is a first degree misdemeanor, while the latter is a first degree misdemeanor punishable by a two-year mandatory minimum sentence. This could incentivize drivers who are under the influence and involved in an accident resulting in death to leave the scene (i.e., law enforcement will be less likely to determine the driver was drunk).

#### Driver Improvement Courses

Section 322.0261(2), F.S., provides that in addition to any other applicable penalties, DHSMV must require operators convicted of, or who have plead nolo contendere to, the following traffic offenses to attend a department-approved driver improvement course in order to maintain his or her driving privileges:

<sup>7</sup> s. 316.027(1)(c), F.S.

<sup>8</sup> s. 316.027(2), F.S.

<sup>9</sup> s. 316.027(1)(a), F.S.

<sup>10</sup> ss. 775.082, 775.083, and 775.084, F.S.

<sup>11</sup> 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).

<sup>12</sup> s. 316.027(1)(b), F.S.

<sup>13</sup> ss. 775.082, 775.083, and 775.084, F.S.

<sup>14</sup> s. 316.027(1)(b), F.S.

<sup>15</sup> See the Department of Highway Safety and Motor Vehicles website, Statistics, Studies, and Publications at <http://www.flhsmv.gov/html/safety.html>, (Last viewed 2/6/14).

<sup>16</sup> s. 316.193(3), F.S., flush left.

- A crash involving death or bodily injury requiring transport to a medical facility;<sup>17</sup> or
- A second crash by the same operator within the previous two-year period involving property damage in an apparent amount of at least \$500.<sup>18</sup>

If the operator fails to complete the course within ninety days after receiving notice from DHSMV, then DHSMV is required to cancel the operator's driver's license until the course is successfully completed. Currently, the course curriculum does not address the rights of vulnerable road users.

#### Driver License - Periods of Suspension or Revocation

Section 322.28, F.S., provides for certain driver license suspension and revocation periods and, unless otherwise provided, limits the authority of DHSMV to suspend or revoke a driver's license to one year. Consequently, the revocation period for violations of leaving the scene of a crash resulting in injury or death (in the absence of DUI), is one year.

Section 322.28(4), F.S., currently requires a court to revoke for a minimum of three years the driver license of a person convicted of DUI involving serious bodily injury, vehicular manslaughter, or vehicular homicide. Section 322.28(2)(d), F.S., requires the court to permanently revoke the driver license or driving privilege of any person who has been convicted of DUI manslaughter in violation of s. 316.193, F.S.

Thus, under current law, in cases involving DUI and leaving the scene of a crash resulting in death, revocation of the driver license is permanent.<sup>19</sup> A person driving DUI may view an attempt to leave the scene as advantageous because, if successful, a DUI charge is avoided. The period of license revocation in such event would be not less than one year nor more than five,<sup>20</sup> as opposed to permanent.

#### Criminal Punishment Code, Offense Severity Ranking Chart

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998.<sup>21</sup> Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature.<sup>22</sup> If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.<sup>23</sup> A defendant's sentence is calculated based on points assigned for factors including the offense for which the defendant is being sentenced, injury to the victim, additional offenses that the defendant committed at the time of the primary offense, the defendant's prior record, and other aggravating factors.<sup>24</sup> The points are added in order to determine the "lowest permissible sentence" for the offense.<sup>25</sup>

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.<sup>26</sup>

Currently, leaving the scene of a crash involving injury is a third degree felony ranked in Level 5 of the offense severity ranking chart.<sup>27</sup> Leaving the scene of a crash involving death is a first degree felony ranked in Level 7 of the offense severity ranking chart.<sup>28</sup>

<sup>17</sup> s. 322.0261(1)(a), F.S.

<sup>18</sup> s. 322.0261(1)(b), F.S.

<sup>19</sup> s. 322.28(2)(d), F.S.

<sup>20</sup> 316.1935(5), F.S.

<sup>21</sup> s. 921.002, F.S.

<sup>22</sup> ss 921.0022 and 921.0024, F.S.

<sup>23</sup> s. 921.0023, F.S.

<sup>24</sup> s. 921.0024, F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Rule 3.704(d)(26) ("The Criminal Punishment Code"), Florida Rules of Criminal Procedure.

<sup>27</sup> s. 921.0022(3)(e), F.S.

## Proposed Changes

The bill creates the "Aaron Cohen Life Protection Act," to create and increase penalties for leaving the scene of an accident.

As noted above, s. 316.027, F.S., makes it a third degree felony, ranked in Level 5 of the offense severity ranking chart, for a person to leave the scene of an accident involving injury. It is a first degree felony, ranking in Level 7, for a person to leave the scene of an accident involving death. The bill creates a middle category by making it second degree felony,<sup>29</sup> ranked in Level 6, for a person to leave the scene of an accident involving serious bodily injury. The bill defines "serious bodily injury" as an injury to a person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ.<sup>30</sup>

The bill ranks each of the above-described offenses one level higher in the offense severity ranking chart if the victim of the offense is a "vulnerable road user." This term is defined as a:

- Pedestrian, including a person actually engaged in work upon a highway, or in work upon utility facilities along a highway, or engaged in the provision of emergency services within the right-of-way;
- Person operating a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
- Person riding an animal; or
- Person lawfully operating the following on a public right-of-way, crosswalk, or shoulder of the roadway:
  - Farm tractor or similar vehicle designed primarily for farm use;
  - Skateboard, roller skates, in-line skates;
  - Horse-drawn carriage;
  - Electric personal assistive mobility device; or
  - Wheelchair.

This will have the effect of increasing the offender's lowest permissible sentence.

The bill also creates a new 4-year mandatory minimum term of imprisonment applicable to persons who leave the scene of an accident involving death. The bill also increases the mandatory minimum term of imprisonment applicable to persons who are driving under the influence and who leave the scene of an accident involving death from 2 to 4 years.

The bill allows a defendant to move to depart from the four-year mandatory minimum sentence for leaving the scene of an accident involving death, unless the defendant was driving under the influence at the time of the violation. The bill allows the state attorney to object to the motion, and prohibits the court from granting the motion unless it finds that a factor, consideration, or circumstance clearly demonstrates that imposing the mandatory minimum term would constitute or result in an injustice. The court must state the basis for granting a departure in open court.

The bill requires a driver in violation of leaving the scene of a crash involving injury, serious bodily injury, or death to:

- Have his or her driver license revoked for at least three years as provided in s. 322.28(4), F.S., and
- Complete a victim's impact panel session, if one exists, or a driver improvement course relating to the rights of vulnerable road users relative to vehicles on the roadway.

DHSMV may reinstate an offender's driving privilege after verifying that the above-described criteria have been satisfied.

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<sup>28</sup> s. 921.0022(3)(g), F.S.

<sup>29</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>30</sup> The definition is the same as used in the driving under the influence statute. See s. 316.1933(1)(b), F.S.

The bill amends s. 322.0261(2), F.S., to require DHSMV to include in its approved driver improvement course curriculum instruction specifically addressing the rights of vulnerable road users relative to vehicles on the roadway.

The bill amends s. 322.28(4), F.S., to require a court to revoke the driver license of a person convicted of leaving the scene of a crash involving injury, serious bodily injury, or death, for a minimum of three years. In the event the period of revocation was not specified by the court at the time of imposing sentence or within thirty days thereafter, DHSMV is required to revoke the driver license for the same period for a conviction of leaving the scene of a crash involving serious bodily injury.

The bill reenacts s. 322.34(6), F.S., relating to driving while a driver license is suspended, revoked, canceled, or disqualified, to incorporate the amendment to s. 322.28, F.S., and makes a technical change.

The bill also makes technical and conforming changes to s. 316.027, F.S.

#### B. SECTION DIRECTORY:

- Section 1. Cites the act as the "Aaron Cohen Life Protection Act."
- Section 2. Amends s. 316.027, F.S., relating to crashes involving death or personal injuries.
- Section 3. Amends s. 316.0261, F.S., relating to driver improvement course curriculum.
- Section 4. Amends s. 322.28, F.S., relating to period of suspension or revocation.
- Section 5. Reenacts s. 322.34, F.S., relating to driving while license suspended, revoked, canceled, or disqualified.
- Section 6. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.
- Section 7. Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

DHSMV expects the bill to require approximately thirty non-recurring system programming hours, the cost of which will be absorbed within existing resources.<sup>31</sup>

The bill requires a driver in violation of leaving the scene of a crash involving injury, serious bodily injury, or death to participate in either a victim's impact panel session or a driver education course relating to the rights of vulnerable road users. The bill does not specify penalties for not completing these requirements or whether the court or an agency will administer the requirements, therefore the fiscal impact is indeterminate.<sup>32</sup>

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<sup>31</sup> See the DHSMV 2014 Agency Legislative Bill Analysis for HB 183, page 4. On file with the Transportation and Highway Safety Subcommittee.

<sup>32</sup> *Id.*

The Criminal Justice Impact Conference met on January 30, 2014 and found that CS/SB 102, which is similar to this bill, will have an indeterminate impact on prison beds.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 18, 2014, the Transportation & Highway Safety Subcommittee adopted one amendment to PCS/HB 183 before reporting it favorably as a committee substitute. The amendment:

- Revised the requirement for an offender to participate in either a victim's impact panel session or a driver improvement course;
- Specified that DHSMV will verify completion of the victim's impact panel session or driver improvement course;
- Specified the driver license cannot be reinstated until the three year revocation and the victim's impact panel session or driver improvement course have been completed; and
- Corrected a reference to driver "education" to driver "improvement" course.

The analysis is drafted to the committee substitute.



27 of vulnerable road users; amending s. 322.28, F.S.;  
 28 requiring the court to revoke for at least 3 years the  
 29 driver license of a person convicted of leaving the  
 30 scene of a crash involving injury, serious bodily  
 31 injury, or death; reenacting and amending s.  
 32 322.34(6), F.S., relating to driving while a driver  
 33 license is suspended, revoked, canceled, or  
 34 disqualified, to incorporate the amendment to s.  
 35 322.28, F.S., in a reference thereto; amending s.  
 36 921.0022, F.S.; revising the offense severity ranking  
 37 chart; conforming a cross-reference; providing an  
 38 effective date.

39

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

41

42 Section 1. This act may be cited as the "Aaron Cohen Life  
 43 Protection Act."

44 Section 2. Section 316.027, Florida Statutes, is amended  
 45 to read:

46 316.027 Crash involving death or personal injuries.—

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

48 (a) "Serious bodily injury" means an injury to a person,  
 49 including the driver, which consists of a physical condition  
 50 that creates a substantial risk of death, serious personal  
 51 disfigurement, or protracted loss or impairment of the function  
 52 of a bodily member or organ.



53 (b) "Vulnerable road user" means:

54 1. A pedestrian, including a person actually engaged in  
 55 work upon a highway, or in work upon utility facilities along a  
 56 highway, or engaged in the provision of emergency services  
 57 within the right-of-way;

58 2. A person operating a bicycle, motorcycle, scooter, or  
 59 moped lawfully on the roadway;

60 3. A person riding an animal; or

61 4. A person lawfully operating on a public right-of-way,  
 62 crosswalk, or shoulder of the roadway:

63 a. A farm tractor or similar vehicle designed primarily  
 64 for farm use;

65 b. A skateboard, roller skates, or in-line skates;

66 c. A horse-drawn carriage;

67 d. An electric personal assistive mobility device; or

68 e. A wheelchair.

69 (2)(1)(a) The driver of a ~~any~~ vehicle involved in a crash  
 70 occurring on public or private property ~~which that~~ results in  
 71 injury to a ~~of any~~ person other than serious bodily injury shall  
 72 ~~must~~ immediately stop the vehicle at the scene of the crash, or  
 73 as close thereto as possible, and shall ~~must~~ remain at the scene  
 74 of the crash until he or she has fulfilled the requirements of  
 75 s. 316.062. ~~A Any~~ person who willfully violates this paragraph  
 76 commits a felony of the third degree, punishable as provided in  
 77 s. 775.082, s. 775.083, or s. 775.084.

78 (b) The driver of a vehicle involved in a crash occurring

79 on public or private property which results in serious bodily  
 80 injury to a person shall immediately stop the vehicle at the  
 81 scene of the crash, or as close thereto as possible, and shall  
 82 remain at the scene of the crash until he or she has fulfilled  
 83 the requirements of s. 316.062. A person who willfully violates  
 84 this paragraph commits a felony of the second degree, punishable  
 85 as provided in s. 775.082, s. 775.083, or s. 775.084.

86 (c)~~(b)~~ The driver of a ~~any~~ vehicle involved in a crash  
 87 occurring on public or private property which ~~that~~ results in  
 88 the death of a ~~any~~ person shall ~~must~~ immediately stop the  
 89 vehicle at the scene of the crash, or as close thereto as  
 90 possible, and shall ~~must~~ remain at the scene of the crash until  
 91 he or she has fulfilled the requirements of s. 316.062. A person  
 92 who is arrested for a violation of this paragraph and who has  
 93 previously been convicted of a violation of this section, s.  
 94 316.061, s. 316.191, or s. 316.193, or a felony violation of s.  
 95 322.34, shall be held in custody until brought before the court  
 96 for admittance to bail in accordance with chapter 903. A ~~Any~~  
 97 person who willfully violates this paragraph commits a felony of  
 98 the first degree, punishable as provided in s. 775.082, s.  
 99 775.083, or s. 775.084, and shall be sentenced to a mandatory  
 100 minimum term of imprisonment of 4 years. A ~~Any~~ person who  
 101 willfully commits such a violation while driving under the  
 102 influence as set forth in s. 316.193(1) shall be sentenced to a  
 103 mandatory minimum term of imprisonment of 4 ~~2~~ years.

104 (d)~~(e)~~ Notwithstanding s. 775.089(1)(a), if the driver of

105 a vehicle violates paragraph (a), ~~or~~ paragraph (b), or paragraph  
 106 (c), the court shall order the driver to make restitution to the  
 107 victim for any damage or loss unless the court finds clear and  
 108 compelling reasons not to order the restitution. Restitution may  
 109 be monetary or nonmonetary restitution. The court shall make the  
 110 payment of restitution a condition of probation in accordance  
 111 with s. 948.03. An order requiring the defendant to make  
 112 restitution to a victim does not remove or diminish the  
 113 requirement that the court order payment to the Crimes  
 114 Compensation Trust Fund under chapter 960. Payment of an award  
 115 by the Crimes Compensation Trust Fund creates an order of  
 116 restitution to the Crimes Compensation Trust Fund unless  
 117 specifically waived in accordance with s. 775.089(1)(b).

118 (e) A driver who violates paragraph (a), paragraph (b), or  
 119 paragraph (c) shall have his or her driver license revoked for  
 120 at least 3 years as provided in s. 322.28(4).

121 1. A person convicted of violating paragraph (a),  
 122 paragraph (b), or paragraph (c) shall, before his or her driving  
 123 privilege may be reinstated, present to the department proof of  
 124 completion of a victim's impact panel session in a judicial  
 125 circuit if such a panel exists, or if such a panel does not  
 126 exist, a department-approved driver improvement course relating  
 127 to the rights of vulnerable road users relative to vehicles on  
 128 the roadway as provided in s. 322.0261(2).

129 2. The department may reinstate an offender's driving  
 130 privilege after he or she satisfies the 3-year revocation period

131 as provided in s. 322.28(4) and successfully completes either a  
 132 victim's impact panel session or a department-approved driver  
 133 improvement course relating to the rights of vulnerable road  
 134 users relative to vehicles on the roadway as provided in s.  
 135 322.0261(2).

136 3. For purposes of this paragraph, an offender's driving  
 137 privilege may be reinstated only after the department verifies  
 138 that the offender participated in and successfully completed a  
 139 victim's impact panel session or a department-approved driver  
 140 improvement course.

141 (f) For purposes of sentencing under chapter 921 and  
 142 determining incentive gain-time eligibility under chapter 944,  
 143 an offense listed in this subsection is ranked one level above  
 144 the ranking specified in s. 921.0022 or s. 921.0023 for the  
 145 offense committed if the victim of the offense was a vulnerable  
 146 road user.

147 (g) The defendant may move to depart from the mandatory  
 148 minimum term of imprisonment prescribed in paragraph (c) unless  
 149 the violation was committed while the defendant was driving  
 150 under the influence. The state may object to this departure. The  
 151 court may grant the motion only if it finds that a factor,  
 152 consideration, or circumstance clearly demonstrates that  
 153 imposing a mandatory minimum term of imprisonment would  
 154 constitute or result in an injustice. The court shall state in  
 155 open court the basis for granting the motion.

156 ~~(2) The department shall revoke the driver's license of~~

157 ~~the person so convicted.~~

158 (3) The stops shall ~~Every stop must~~ be made without  
 159 unnecessarily obstructing traffic ~~more than is necessary~~, and,  
 160 if a damaged vehicle is obstructing traffic, the driver of the  
 161 vehicle shall ~~must~~ make every reasonable effort to move the  
 162 vehicle or have it moved so as not to obstruct the regular flow  
 163 of traffic. A ~~Any~~ person who fails to comply with this  
 164 subsection shall be cited for a nonmoving violation, punishable  
 165 as provided in chapter 318.

166 (4) In addition to any other civil, criminal, or  
 167 administrative penalty imposed, a person whose commission of a  
 168 noncriminal traffic infraction or a ~~any~~ violation of this  
 169 chapter or s. 1006.66 causes or results in the death of another  
 170 person may, ~~in addition to any other civil, criminal, or~~  
 171 ~~administrative penalty imposed~~, be required by the court to  
 172 serve 120 community service hours in a trauma center or hospital  
 173 that regularly receives victims of vehicle accidents, under the  
 174 supervision of a registered nurse, an emergency room physician,  
 175 or an emergency medical technician pursuant to a voluntary  
 176 community service program operated by the trauma center or  
 177 hospital.

178 (5) This section does not apply to crashes occurring  
 179 during a motorsports event, as defined in s. 549.10(1), or at a  
 180 closed-course motorsport facility, as defined in s. 549.09(1).

181 Section 3. Subsection (2) of section 322.0261, Florida  
 182 Statutes, is amended to read:

183           322.0261 Driver improvement course; requirement to  
 184 maintain driving privileges; failure to complete; department  
 185 approval of course.—

186           (2) With respect to an operator convicted of, or who  
 187 pleaded nolo contendere to, a traffic offense giving rise to a  
 188 crash identified in paragraph (1)(a) or paragraph (1)(b), the  
 189 department shall require that the operator, in addition to other  
 190 applicable penalties, attend a department-approved driver  
 191 improvement course in order to maintain his or her driving  
 192 privileges. The department shall include in the course  
 193 curriculum instruction specifically addressing the rights of  
 194 vulnerable road users as defined in s. 316.027 relative to  
 195 vehicles on the roadway. If the operator fails to complete the  
 196 course within 90 days after receiving notice from the  
 197 department, the operator's driver ~~driver's~~ license shall be  
 198 canceled by the department until the course is successfully  
 199 completed.

200           Section 4. Subsection (4) of section 322.28, Florida  
 201 Statutes, is amended to read:

202           322.28 Period of suspension or revocation.—

203           (4) (a) Upon a conviction for a violation of s.  
 204 316.193(3)(c)2., involving serious bodily injury, a conviction  
 205 of manslaughter resulting from the operation of a motor vehicle,  
 206 or a conviction of vehicular homicide, the court shall revoke  
 207 the driver license of the person convicted for a minimum period  
 208 of 3 years. If a conviction under s. 316.193(3)(c)2., involving

209 | serious bodily injury, is also a subsequent conviction as  
 210 | described under paragraph (2) (a), the court shall revoke the  
 211 | driver license or driving privilege of the person convicted for  
 212 | the period applicable as provided in paragraph (2) (a) or  
 213 | paragraph (2) (d).

214 | (b) Upon a conviction for a violation of s. 316.027(2) (a),  
 215 | s. 316.027(2) (b), or s. 316.027(2) (c) involving injury, serious  
 216 | bodily injury, or death, the court shall revoke the driver  
 217 | license of the person convicted for a minimum period of 3 years.

218 | ~~(c)~~ If the period of revocation was not specified by  
 219 | the court at the time of imposing sentence or within 30 days  
 220 | thereafter, the department shall revoke the driver license for  
 221 | the minimum period applicable under paragraph (a) or paragraph  
 222 | (b) or, for a subsequent conviction, for the minimum period  
 223 | applicable under paragraph (2) (a) or paragraph (2) (d).

224 | Section 5. For the purpose of incorporating the amendment  
 225 | made by this act to section 322.28, Florida Statutes, in a  
 226 | reference thereto, subsection (6) of section 322.34, Florida  
 227 | Statutes, is reenacted and amended to read:

228 | 322.34 Driving while license suspended, revoked, canceled,  
 229 | or disqualified.—

230 | (6) Any person who operates a motor vehicle:

231 | (a) Without having a driver's license as required under s.  
 232 | 322.03; or

233 | (b) While his or her driver's license or driving privilege  
 234 | is canceled, suspended, or revoked pursuant to s. 316.655, s.

235 322.26(8), s. 322.27(2), or s. 322.28(2) or (4),

236

237 and who by careless or negligent operation of the motor vehicle  
 238 causes the death of or serious bodily injury to another human  
 239 being commits ~~is guilty of~~ a felony of the third degree,  
 240 punishable as provided in s. 775.082 or s. 775.083.

241 Section 6. Paragraphs (e) through (g) of subsection (3) of  
 242 section 921.0022, Florida Statutes, are amended to read:

243 921.0022 Criminal Punishment Code; offense severity  
 244 ranking chart.-

245 (3) OFFENSE SEVERITY RANKING CHART

246 (e) LEVEL 5

247

Florida Statute	Felony Degree	Description
316.027 <u>(2) (a)</u> <del>(1) (a)</del>	3rd	Accidents involving personal injuries <u>other than serious bodily injury</u> , failure to stop; leaving scene.
316.1935 (4) (a)	2nd	Aggravated fleeing or

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249



			eluding.
250	322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
251	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
252	379.367 (4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
253	379.3671 (2) (c) 3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
254	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs

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			knowing HIV positive.
255	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
256	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
257	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
258	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
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260	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
261	790.01 (2)	3rd	Carrying a concealed firearm.
262	790.162	2nd	Threat to throw or discharge destructive device.
263	790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
264	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
265	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
266	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years <u>of age</u> .

267	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years <u>of age</u> or older.
268	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
269	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
270	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
271	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
272	812.131 (2) (b)	3rd	Robbery by sudden snatching.

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273	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
274	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
275	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
276	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use

277	817.625 (2) (b)	2nd	of personal identification information of 10 or more individuals. Second or subsequent fraudulent use of scanning device or reencoder.
278	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
279	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
280	827.071 (5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
281			

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282	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.
283	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
284	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
285	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
286	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or

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287	874.05 (2) (a)	2nd	<p>subsequent offense.</p> <p>Encouraging or recruiting person under 13 <u>years of age</u> to join a criminal gang.</p>
288	893.13 (1) (a) 1.	2nd	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs).</p>
289	893.13 (1) (c) 2.	2nd	<p>Sell, manufacture, or deliver cannabis (or other s. 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned</p>



290	893.13(1)(d)1.	1st	recreational facility or community center.
291	893.13(1)(e)2.	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) within 1,000 feet of university.
292	893.13(1)(f)1.	1st	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.
			Sell, manufacture, or deliver cocaine (or other

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293	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).
294	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
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297	(f) LEVEL 6		
298	Florida Statute	Felony Degree	Description
299			

s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.

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300	<u>316.027(2)(b)</u>	<u>2nd</u>	<u>Leaving the scene of a crash involving serious bodily injury.</u>
301	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
302	499.0051(3)	2nd	Knowing forgery of pedigree papers.
303	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
304	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
305	775.0875(1)	3rd	Taking firearm from law enforcement officer.
	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.

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306	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
307	784.041	3rd	Felony battery; domestic battery by strangulation.
308	784.048 (3)	3rd	Aggravated stalking; credible threat.
309	784.048 (5)	3rd	Aggravated stalking of person under 16.
310	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
311	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
312	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.

313	784.081 (2)	2nd	Aggravated assault on specified official or employee.
314	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
315	784.083 (2)	2nd	Aggravated assault on code inspector.
316	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
317	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
318	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm

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319	790.164 (1)	2nd	or damage property.
320	790.19	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
321	794.011 (8) (a)	3rd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
322	794.05 (1)	2nd	Solicitation of minor to participate in sexual activity by custodial adult.
323	800.04 (5) (d)	3rd	Unlawful sexual activity with specified minor.
			Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years

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			<u>of age</u> ; offender less than 18 years.
324	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
325	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
326	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
327	810.145 (8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
328	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
329			

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330	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
331	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
332	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
333	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
334	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
	825.102(1)	3rd	Abuse of an elderly person or disabled adult.



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335	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
336	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
337	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
338	827.03(2)(c)	3rd	Abuse of a child.
339	827.03(2)(d)	3rd	Neglect of a child.
340	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
341	836.05	2nd	Threats; extortion.

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342	836.10	2nd	Written threats to kill or do bodily injury.
343	843.12	3rd	Aids or assists person to escape.
344	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
345	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
346	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
347			

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348	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
349	944.35 (3) (a) 2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
350	944.40	2nd	Escapes.
351	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
351	944.47 (1) (a) 5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.

352	951.22 (1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
353			
354			
355	(g) LEVEL 7		
356	Florida	Felony	
	Statute	Degree	Description
357	316.027 <u>(2) (c)</u> <del>(1) (b)</del>	1st	Accident involving death, failure to stop; leaving scene.
358	316.193 (3) (c) 2.	3rd	DUI resulting in serious bodily injury.
359	316.1935 (3) (b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with

360	327.35 (3) (c) 2.	3rd	wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
361	402.319 (2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
362	409.920 (2) (b) 1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
363	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
364			

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365	456.065 (2)	3rd	Practicing a health care profession without a license.
366	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
367	458.327 (1)	3rd	Practicing medicine without a license.
368	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
369	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
370	461.012 (1)	3rd	Practicing podiatric medicine without a license.
371	462.17	3rd	Practicing naturopathy without a license.

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372	463.015(1)	3rd	Practicing optometry without a license.
373	464.016(1)	3rd	Practicing nursing without a license.
374	465.015(2)	3rd	Practicing pharmacy without a license.
375	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
376	467.201	3rd	Practicing midwifery without a license.
377	468.366	3rd	Delivering respiratory care services without a license.
378	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
379	483.901(9)	3rd	Practicing medical physics without a license.

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380	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.
381	484.053	3rd	Dispensing hearing aids without a license.
382	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.
383	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.
	560.125 (5) (a)	3rd	Money services business by unauthorized person,



384	655.50(10)(b)1.	3rd	currency or payment instruments exceeding \$300 but less than \$20,000. Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
385	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
386	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
387	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual

			predator.
388	782.051 (3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
389	782.07 (1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
390	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
391	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
392	784.045 (1) (a) 1.	2nd	Aggravated battery;

393			intentionally causing great bodily harm or disfigurement.
	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
394			
	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
395			
	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
396			
	784.048 (7)	3rd	Aggravated stalking; violation of court order.
397			
	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
398			
	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
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400	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
401	784.081 (1)	1st	Aggravated battery on specified official or employee.
402	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
403	784.083 (1)	1st	Aggravated battery on code inspector.
404	787.06 (3) (a)	1st	Human trafficking using coercion for labor and services.
	787.06 (3) (e)	1st	Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the

405			state.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).	
406	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
407	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
408	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
409	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
410	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax

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411	790.23	1st, PBL	<p>weapon of mass destruction while committing or attempting to commit a felony.</p>
412	794.08 (4)	3rd	<p>Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.</p>
413	796.03	2nd	<p>Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.</p>
414	800.04 (5) (c) 1.	2nd	<p>Procuring any person under 16 years <u>of age</u> for prostitution.</p>
415			<p>Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years <u>of age</u>.</p>

	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years <u>of age</u> ; offender 18 years <u>of age</u> or older.
416	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
417	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
418	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
419	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
420	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
421			

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422	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
423	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
424	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
425	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.



	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
426	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
427	812.131(2)(a)	2nd	Robbery by sudden snatching.
428	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
429	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
430	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
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432	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
433	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
434	817.2341 (2) (b) & (3) (b)	1st	Making false entries of 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.
435	817.535 (2) (a)	3rd	Filing false lien or other unauthorized document.
	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or

436			disfigurement.
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.	
437	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
438	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
439	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
440	838.015	2nd	Bribery.
441	838.016	2nd	Unlawful compensation or reward

			for official behavior.
442	838.021(3)(a)	2nd	Unlawful harm to a public servant.
443	838.22	2nd	Bid tampering.
444	843.0855(2)	3rd	Impersonation of a public officer or employee.
445	843.0855(3)	3rd	Unlawful simulation of legal process.
446	843.0855(4)	3rd	Intimidation of a public officer or employee.
447	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
448	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
449	872.06	2nd	Abuse of a dead human

450	874.05 (2) (b)	1st	body. Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
451	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
452	893.13 (1) (c) 1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational

453	893.13(1)(e)1.	1st	facility or community center.
454	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.
455	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
456	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less

457			than 200 grams.
	893.135	1st	Trafficking in illegal
	(1)(c)1.a.		drugs, more than 4 grams, less than 14 grams.
458			
	893.135(1)(d)1.	1st	Trafficking in
			phencyclidine, more than 28 grams, less than 200 grams.
459			
	893.135(1)(e)1.	1st	Trafficking in
			methaqualone, more than 200 grams, less than 5 kilograms.
460			
	893.135(1)(f)1.	1st	Trafficking in
			amphetamine, more than 14 grams, less than 28 grams.
461			
	893.135	1st	Trafficking in flunitrazepam, 4
	(1)(g)1.a.		grams or more, less than 14 grams.
462			

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463 893.135 (1) (h) 1.a. 1st Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.

464 893.135 (1) (j) 1.a. 1st Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.

465 893.135 (1) (k) 2.a. 1st Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.

466 893.1351 (2) 2nd Possession of place for trafficking in or manufacturing of controlled substance.

467 896.101 (5) (a) 3rd Money laundering, financial transactions exceeding \$300 but less than \$20,000.

896.104 (4) (a) 1. 3rd Structuring transactions



			to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
468	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
469	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
470	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
471	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor

			or conceal a sexual offender.
472	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
473	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
474	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
475	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
476	944.607(13)	3rd	Sexual offender; failure to report and reregister;

477 failure to respond to address  
verification.

985.4815(10) 3rd Sexual offender; failure  
to submit to the taking  
of a digitized  
photograph.

478 985.4815(12) 3rd Failure to report or  
providing false  
information about a  
sexual offender; harbor  
or conceal a sexual  
offender.

479 985.4815(13) 3rd Sexual offender; failure to  
report and reregister;  
failure to respond to  
address verification.

480

481 Section 7. This act shall take effect July 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 623 Money Services Businesses  
**SPONSOR(S):** Insurance & Banking Subcommittee; Roberson  
**TIED BILLS:** IDEN./SIM. BILLS: CS/CS/SB 590

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Bauer	Cooper
2) Criminal Justice Subcommittee		Jones <i>JJ</i>	Cunningham <i>sc</i>
3) Government Operations Appropriations Subcommittee			
4) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Money services businesses ("MSBs") offer a variety of non-depository financial services involving the receipt and transmission of currency, monetary value, or payment instruments through a variety of means, including wire, electronic transfer, or through third-party payment systems. MSBs that are located in Florida or do business in this state must comply with the federal Bank Secrecy Act and implementing regulations, as well as the Florida Money Services Businesses Act (ch. 560, F.S., "the Act"), which is administered and enforced by the Florida Office of Financial Regulation ("OFR").

The bill:

- Makes violations under s. 560.310(2)(d), F.S., relating to electronic log and database reporting requirements applicable to licensed check cashers that cash checks exceeding \$1,000, a third-degree felony;
- Allows the OFR to summarily suspend the license of a MSB pursuant to s. 120.60(6), F.S., if the OFR finds the licensee poses an immediate, serious danger to the public health, safety, and welfare, and if a natural person listed on the application is criminally charged or arrested for specified crimes;
- Provides that a deferred presentment transaction is void if the person conducting the transaction is not authorized under the Act, and such person has no right to collect funds relating to such transaction; and
- Updates outdated cross-references to federal MSB regulations.

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill may have a negative prison bed impact on the Department of Corrections because the bill creates a new third degree felony offense. The bill does not have a fiscal impact on local governments, and the bill's provision regarding unauthorized deferred presentment transactions may have a positive impact on the private sector.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Money services businesses (MSBs) offer a variety of non-depository financial services involving the receipt and transmission of currency, monetary value, or payment instruments through a variety of means, including wire, electronic transfer, or through third-party payment systems. MSBs that are located in or do business in this state (whether within Florida or into Florida from locations outside Florida or country)<sup>1</sup> must comply with the following federal and state laws and regulations.

##### ***Federal Regulation of MSBs – Bank Secrecy Act***

The Financial Crimes Enforcement Network (FinCEN) is a bureau within the U.S. Department of the Treasury, and its mission is to “safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.”<sup>2</sup>

FinCEN enforces the Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the “Bank Secrecy Act” or “BSA”), which requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering. The BSA is sometimes referred to as an “anti-money laundering” law (“AML”) or jointly as “BSA/AML.”<sup>3</sup> The BSA was amended by Title III of the USA PATRIOT Act of 2001 to include additional measures to prevent, detect, and prosecute terrorist-related activities and international money laundering. The BSA requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding \$10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. In addition, MSBs conducting more than \$1,000 in business with one person in one or more transaction are required to register with FinCEN or be subject to civil money penalties and criminal prosecution.<sup>4</sup>

The Secretary of the Treasury has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations under 31 C.F.R. Part 103.<sup>5</sup> On March 1, 2011, FinCEN transferred its regulations from 31 CFR Part 103 to 31 CFR Chapter X as part of an ongoing effort to increase the efficiency and effectiveness of its regulatory oversight. There have been no substantive changes made to the underlying regulation as a result of this transfer and reorganization.<sup>6</sup>

##### ***State Regulation of MSBs - Money Services Businesses Act***

In 1994, the Florida Legislature enacted the Money Transmitters’ Code (renamed the Money Services Business Act, ch. 560, F.S., “the Act”). The Act consists of four parts: (I) general provisions, (II) payment instruments and funds transmission; (III) check cashing and foreign currency exchange; and (IV) deferred presentment. The Act does not apply to state and federally chartered banks, credit unions, trust companies, and other financial depository institutions, nor does it apply to the sovereign.<sup>7</sup> Part I of the Act gives supervisory, licensing, and enforcement authority to the Florida Office of Financial Regulation

<sup>1</sup> See s. 560.103(22), F.S. (definition of “money services business”).

<sup>2</sup> FinCEN, “What We Do,” at [http://www.fincen.gov/about\\_fincen/wwd/](http://www.fincen.gov/about_fincen/wwd/) (last accessed February 24, 2014).

<sup>3</sup> FinCEN, “FinCEN’s Mandate from Congress / Bank Secrecy Act,” at [http://www.fincen.gov/statutes\\_regs/bsa/](http://www.fincen.gov/statutes_regs/bsa/) (last accessed February 24, 2014).

<sup>4</sup> 31 C.F.R. § 1022.380.

<sup>5</sup> U.S. Department of the Treasury, Treasury Order 180-01, at <http://www.treasury.gov/about/role-of-treasury/orders-directives/Pages/to180-01.aspx> (last accessed February 24, 2014).

<sup>6</sup> FinCEN, Chapter X, at [http://www.fincen.gov/statutes\\_regs/ChapterX/](http://www.fincen.gov/statutes_regs/ChapterX/) (last accessed February 24, 2014).

<sup>7</sup> Section 560.104, F.S.

("OFR"), and authorizes the OFR's rulemaking body, the Financial Services Commission (Commission), to adopt rules to implement the Act's requirements regarding books and records, examinations, forms, and fees.

According to the Act, MSBs are persons who act as one or more of the following:

- Part II:
  - *Payment instrument seller*: a qualified entity that sells instruments like checks, money orders, and travelers checks. Payment instruments do not include gift cards, credit card vouchers, and letters of credit.
  - *Money transmitter*: a qualified entity that receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means to, within, or from the U.S.
- Part III:
  - *Foreign currency exchanger*: a person who exchanges currency of one country to that of another for compensation.
  - *Check casher*: a person who sells currency in exchange for payment instruments received, excluding travelers checks.
    - Licensed check cashers are required to comply with federal requirements, if applicable, and state requirements, such as maintaining specified records and reporting information to the OFR. Section 560.310, F.S., requires licensed check cashers to maintain copies of cashed checks, and for checks exceeding \$1,000, the licensed check casher must submit specified transactional data to an electronic log or check-cashing database.
      - In 2013, the Florida Legislature enacted CS/CS/HB 217,<sup>8</sup> which authorized the OFR to issue a competitive solicitation for a statewide, real-time online check cashing database. The database will hold the same transactional information required from licensed check cashers for checks exceeding \$1,000 that is currently required in an electronic log format. The implementation of check cashing database will also be used by the Department of Financial Services' Division of Workers Compensation and Division of Insurance Fraud and various law enforcement agencies in efforts to combat workers' compensation insurance fraud.
- Part IV:
  - *Deferred presentment provider ("DPP", commonly known as payday lenders)*: DPPs are a MSB designation, not a separate license. DPPs are persons licensed under part II or part III of the Act, and have filed a declaration of intent with the OFR to engage in *deferred presentment transactions*, which means providing currency or a payment instrument in exchange for a customer's check and agreeing to hold the check for a deferment period.
    - Part IV of ch. 560, F.S., regulates DPPs and deferred presentment transactions. A deferred presentment transaction means providing currency or a payment instrument in exchange for a person's check and agreeing to hold the person's check for a period prior to presentment, deposit, or redemption.<sup>9</sup> The face amount of a check taken for a deferred presentment may not exceed \$500.<sup>10</sup> A DPP may charge a maximum fee of 10 percent of the currency or payment instrument provided (exclusive of the verification fee). Section 560.404(19), F.S., prohibits a DPP from entering into a deferred presentment agreement with a customer if the customer has an outstanding deferred presentment agreement with any DPP, or terminated an agreement within the previous 24 hours.

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<sup>8</sup> CS/CS/HB 217 was approved by the Governor on June 7, 2013 (ch. 2013-139, Laws of Florida).

<sup>9</sup> See s. 560.402(3), F.S.

<sup>10</sup> Section 560.404, F.S.

The current licensee statistics from the OFR<sup>11</sup> are:

- Part II: 163 licensees
- Part III: 1,133 licensees
- Part IV: 162 declarations of intent
  - 21 DPPs are licensed under Part II
  - 141 DPPs are licensed under Part III

To qualify for licensure as a MSB under the Act, an applicant must meet the following requirements:

- Demonstrate to the OFR the character and general fitness necessary to command the confidence of the public and warrant the belief that the money services business or deferred presentment provider will operate lawfully;
- Be legally authorized to do business in Florida;
- Be registered as a MSB with the FinCEN as required by 31 C.F.R. s. 103.41, if applicable;
- Have an anti-money laundering program in place that meets the requirements of 31 C.F.R. s. 103.125;<sup>12</sup> and
- Provide the OFR with information required under the Act and related rules.<sup>13</sup>

### ***Prohibited Acts***

The Act prohibits MSBs, authorized vendors, and affiliated parties from engaging in specified acts in s. 560.111, F.S., such as embezzlement and making false entries in books and documents with the intent to deceive or defraud. A person who violates any of these acts commits a third-degree felony.<sup>14</sup> In addition, the Act prohibits a willful violation of certain DPP requirements (i.e., willfully failing to file a declaration of intent, willfully failing to with the requirements for deferred presentment transactions, or willfully failing to comply with deposit and redemption requirements<sup>15</sup>), which is also a third-degree felony.

### ***Emergency Suspension Authority***

Currently, the Act authorizes the OFR to immediately suspend the license of a MSB that fails to provide the office specified records or fails to maintain a federally insured depository account, and such failure constitutes immediate and serious danger to the public health, safety, and welfare, for purposes of s. 120.60(6), F.S.<sup>16</sup>

The OFR has an emergency suspension and restriction authority pursuant to s. 120.60(6), F.S., which provides that:

- (6) If the agency *finds that* immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if:
  - (a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
  - (b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and
  - (c) The agency states in writing at the time of, or prior to, its action the *specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances*. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding

<sup>11</sup> E-mail from the OFR (received January 21, 2014), on file with the Insurance & Banking Subcommittee staff.

<sup>12</sup> In 2008, the Florida Legislature adopted a number of BSA/AML regulations in the Act and provided that it was a violation of state law, subject to administrative sanctions by the OFR, to fail to comply with federal BSA/AML regulations. Ch. 2008-177, Laws of Florida.

<sup>13</sup> Section 560.1401, F.S.

<sup>14</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>15</sup> These DPP requirements are found at ss. 560.403, 560.404, and 560.405, F.S.

<sup>16</sup> Section 560.114(2), F.S.



pursuant to ss. 120.569 and 120.57, F.S., shall also be promptly instituted and acted upon (emphasis added).

A licensee who is the subject of an emergency order may request an expedited administrative hearing with the Division of Administrative Hearings to challenge the factual basis of an emergency suspension order (ESO), or may seek to enjoin the ESO and immediately appeal to a district court of appeal to determine the limited issue of whether the ESO complies with the statutory and due process requirements of the Administrative Procedures Act.<sup>17</sup>

The case law surrounding ESOs has repeatedly held that general conclusory predictions of harm are not sufficient to support the issuance of an emergency suspension order; rather, the agency's stated reasons "must be factually explicit and persuasive concerning the existence of a genuine emergency."<sup>18</sup> The courts have found to sustain ESO, it must: "contain *factual allegations* which demonstrate that (i) the complained of conduct was likely to continue; (ii) the order was necessary to stop the emergency; and (iii) the order was sufficiently narrowly tailored to be fair."<sup>19</sup>

The *Bio-Med* court further held that although proof of a specific statutory violation (such as being criminally charged with a felony) may satisfy an agency's burden in an ordinary non-emergency administrative proceeding, "an allegation of such a violation does not, by itself, satisfy the requirements of s. 120.60(6)" and the specific regulatory statute authorizing emergency action.<sup>20</sup>

## **Effect of the Bill**

### ***Prohibited Acts – s. 560.111, F.S.***

The bill provides that any licensed check casher who knowingly and willfully violates the check casher electronic log and database reporting requirements of s. 560.310(2)(d), F.S., commits a felony of the third degree. As noted above, the electronic log and database reporting requirements of s. 560.310(2)(d), F.S., apply to checks exceeding \$1,000 that are cashed by licensees.

### ***BSA/Chapter X citation updates***

Sections 2, 3, 5, 6, and 7 of the bill conforms the Act's cross-references to federal BSA/AML regulations which were moved and renumbered by FinCEN on March 1, 2011.

### ***Summary suspension powers – s. 560.114(2), F.S.***

The bill gives the OFR an additional ground to summarily suspend a MSB's license pursuant to s. 120.60(6), F.S., if the OFR "finds that licensee poses an immediate, serious danger to the public health, safety, and welfare." Specifically, the bill allows the OFR to summarily suspend a MSB's license when a natural person who is required to be listed on the license application is criminally charged, or arrested for one of the crimes listed in:

- s. 560.114(1)(o), F.S. – A felony or equivalent which involves fraud, moral turpitude, or dishonest dealing;
- s. 560.114(1)(p), F.S. – A crime under 18 U.S.C. 1956 [laundering of monetary instruments] or 31 U.S.C. s. 5324 [structuring transactions to evade reporting requirement]; or
- s. 560.114(1)(q), F.S. – Misappropriation, conversion, or unlawful withholding of moneys belonging to others.

The bill requires the OFR to seek the issuance of a final order for the summary suspension of the licensee at a proceeding conducted by the commissioner of the OFR, or his or her designee, who shall issue the

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<sup>17</sup> *Robin Hood Group, Inc. v. Fla. Office of Ins. Regulation*, 885, So.2d 393, 396 (Fla. 4th DCA 2004) and *Bertany Ass'n for Travel and Leisure, Inc. v. Fla. Dep't of Fin. Servs.*, 877 So.2d 854, 855 (Fla. 1st DCA 2004).

<sup>18</sup> *Fla. Home Builders v. Div. of Labor*, 355 So.2d 1245, 1246 (Fla. 1st DCA 1978).

<sup>19</sup> *Bio-Med Plus, Inc., v. Fla. Dep't of Health*, 915 So.2d 669 at 672 (Fla. 1st DCA 2005).

<sup>20</sup> *Id.* at 673.

final order. Currently, s. 20.121(3)(c), F.S., designates the director (commissioner) as the agency head for purposes of final agency action under ch. 120, F.S.

### **Unauthorized deferred presentment – s. 560.125, F.S.**

#### ***Current Situation***

Often, out-of-state payday lenders evade applicable rate caps and state licensing requirements by operating through the Internet, which present challenges for regulatory detection and enforcement. Persons who provide deferred presentment transactions in Florida without the appropriate Part II or Part III license and declaration of intent, as required by the Act, typically operate through the Internet and thus evade other regulatory requirements that were intended to provide consumer protections (such as the Act's prohibitions on DPP rollovers, excessive fees, and extensions of multiple, simultaneous loans, or interest rate in excess of the caps set forth in the Florida Consumer Finance Act, ch. 516, F.S.<sup>21</sup>). In addition, unlicensed internet payday lenders may also seek subterfuge by operating offshore, affiliating with Native American tribes in order to claim tribal immunity, or incorporating in states with no usury caps with the belief that only the home state law applies despite reaching other states' residents through the Internet.

A number of states have recently increased enforcement efforts and/or legislative measures towards payday lending abuses, such as enacting rate caps, reaching affiliates (banks and debt collectors) who participate in the making or servicing of unauthorized loans,<sup>22</sup> and exercising state jurisdiction to out-of-state lenders who make usurious loans.<sup>23</sup> In addition, state and federal courts have ruled in favor of state jurisdiction over online payday lenders.<sup>24</sup>

Section 560.125(1), F.S., provides that a person may not engage in the business of a money services business or deferred presentment provider in this state unless the person is licensed or exempted from the licensure under ch. 560, F.S.

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

The bill amends s. 560.125(1), F.S., to add that a deferred presentment transaction conducted by a person who is not authorized by the OFR under the Act as a DPP is void, and that the unauthorized person has no right to collect, receive, or retain any principal, interest, or charges relating to such transactions. This would mean that the unauthorized lender does not have the legal authority to collect on the loan via garnishment, court action, or otherwise.

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

Section 1: Amends s. 560.111, F.S., relating to definitions.

Section 2: Amends s. 560.114, F.S., relating to disciplinary actions; penalties.

Section 3: Amends s. 560.1235, F.S., relating to anti-money laundering requirements.

Section 4: Amends s. 560.125, F.S., relating to unlicensed activity; penalties.

Section 5: Amends s. 560.1401, F.S., relating to licensing standards.

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<sup>21</sup> The Florida Consumer Finance Act (ch. 516, F.S.), is also administered by the OFR and sets forth allowable interest rates for small unsecured loans. That act also provides a similar provision in that “[a] loan for which a greater rate of interest or charge than is allowed by this chapter has been contracted for or received, wherever made, is not enforceable in this state.” (s. 516.02(2)(c), F.S.).

<sup>22</sup> New York Department of Financial Services press release on payday loan investigation (August 6, 2013), at <http://www.dfs.ny.gov/about/press2013/pr1308061.htm> (last accessed February 24, 2014).

<sup>23</sup> See Center for Responsible Lending, *Issue Brief: Effective State and Federal Payday Lending Enforcement: Paving the Way for Broader, Stronger Protections* (October 4, 2013), on file with the Insurance & Banking Subcommittee staff.

<sup>24</sup> Consumer Federation of America, *States Have Jurisdiction over Online Payday Lenders* (May 2010), on file with the Insurance & Banking Subcommittee staff.

Section 6: Amends s. 560.141, F.S., relating to license application.

Section 7: Amends s. 560.309, F.S., relating to conduct of business.

Section 8: Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill may have a negative prison bed impact on the Department of Corrections because the bill creates a new third degree felony offense.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

The bill's prohibition on unlicensed deferred presentment transactions may be beneficial to consumers and may provide competitive equality for licensed MSBs who comply with the Part IV/DPP requirements of the Act.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None provided in the bill. However, the bill's updating of the federal regulations cited in the Act will also require updating of the same citations currently in Chapter 69V-560, Fla. Admin. Code.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 11, 2014, the Insurance & Banking Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment retained the provisions of the bill and made the following changes:

- Provided a title change to the bill;
- Clarified that failure to provide certain information relating to a check cashing transaction is a felony;
- Clarified the OFR's emergency suspension powers;
- Corrected several cross-references to federal Bank Secrecy Act regulations in the Act; and
- Clarified the regulatory approval required of deferred presentment providers.

This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

1 A bill to be entitled

2 An act relating to money services businesses; amending  
 3 s. 560.111, F.S.; prohibiting the knowing and willful  
 4 failure of a licensee to provide certain information  
 5 relating to a check cashing transaction; providing  
 6 criminal penalties; reenacting and amending s.  
 7 560.114, F.S.; updating cross-references; authorizing  
 8 the Office of Financial Regulation to summarily  
 9 suspend a license if criminal charges are filed  
 10 against certain persons or such persons are arrested  
 11 for certain offenses; amending s. 560.1235, F.S.;  
 12 updating cross-references; amending s. 560.125, F.S.;  
 13 providing that a deferred presentment transaction  
 14 conducted by an unauthorized person is void; amending  
 15 ss. 560.1401 and 560.141, F.S.; updating cross-  
 16 references; amending s. 560.309, F.S.; updating a  
 17 cross-reference; providing an effective date.

18  
 19 Be It Enacted by the Legislature of the State of Florida:

20  
 21 Section 1. Subsection (6) is added to section 560.111,  
 22 Florida Statutes, to read:

23 560.111 Prohibited acts.—

24 (6) A person who knowingly and willfully violates s.  
 25 560.310(2)(d) commits a felony of the third degree, punishable  
 26 as provided in s. 775.082, s. 775.083, or s. 775.084.

27 Section 2. Paragraphs (e) and (y) of subsection (1) and  
 28 subsection (2) of section 560.114, Florida Statutes, are  
 29 amended, and paragraph (h) of subsection (1) of that section is  
 30 reenacted, to read:

31 560.114 Disciplinary actions; penalties.—

32 (1) The following actions by a money services business,  
 33 authorized vendor, or affiliated party constitute grounds for  
 34 the issuance of a cease and desist order; the issuance of a  
 35 removal order; the denial, suspension, or revocation of a  
 36 license; or taking any other action within the authority of the  
 37 office pursuant to this chapter:

38 (e) Failure to maintain, preserve, keep available for  
 39 examination, and produce all books, accounts, files, or other  
 40 documents required by this chapter or related rules or orders,  
 41 by 31 C.F.R. ss. 1010.306, 1010.311, 1010.312, 1010.340,  
 42 1010.410, 1010.415, 1022.210, 1022.320, 1022.380, and 1022.410  
 43 ~~103.20, 103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37,~~  
 44 ~~103.41, and 103.125,~~ or by an ~~any~~ agreement entered into with  
 45 the office.

46 (h) Engaging in an act prohibited under s. 560.111.

47 (y) Violations of 31 C.F.R. ss. 1010.306, 1010.311,  
 48 1010.312, 1010.340, 1010.410, 1010.415, 1022.210, 1022.320,  
 49 1022.380, and 1022.410 ~~103.20, 103.22, 103.23, 103.27, 103.28,~~  
 50 ~~103.29, 103.33, 103.37, 103.41, and 103.125,~~ and United States  
 51 Treasury Interpretive Release 2004-1.

52 (2) Pursuant to s. 120.60(6), the office may summarily

53 suspend the license of a money services business if the office  
 54 finds that a licensee poses an immediate, serious danger to the  
 55 public health, safety, and welfare. A proceeding in which the  
 56 office seeks the issuance of a final order for the summary  
 57 suspension of a licensee shall be conducted by the Commissioner  
 58 of Financial Regulation, or his or her designee, who shall issue  
 59 such order. The following acts are deemed to constitute an  
 60 immediate and serious danger to the public health, safety, and  
 61 welfare, and the office may immediately suspend the license of a  
 62 any money services business if ~~the money services business fails~~  
 63 to:

64 (a) The money services business fails to provide to the  
 65 office, upon written request, any of the records required by s.  
 66 560.123, s. 560.1235, s. 560.211, or s. 560.310 or any rule  
 67 adopted under those sections. The suspension may be rescinded if  
 68 the licensee submits the requested records to the office.

69 (b) The money services business fails to maintain a  
 70 federally insured depository account as required by s. 560.309.

71 (c) A natural person required to be listed on the license  
 72 application for a money service business pursuant to s.  
 73 560.141(1)(a)3. is criminally charged with or arrested for a  
 74 crime described in paragraph (1)(o), paragraph (1)(p), or  
 75 paragraph (1)(q).

76  
 77 ~~For purposes of s. 120.60(6), failure to perform any of the acts~~  
 78 ~~specified in this subsection constitutes immediate and serious~~

79 ~~danger to the public health, safety, and welfare.~~

80 Section 3. Section 560.1235, Florida Statutes, is amended  
81 to read:

82 560.1235 Anti-money laundering requirements.—

83 (1) A licensee and authorized vendor must comply with all  
84 state and federal laws and rules relating to the detection and  
85 prevention of money laundering, including, as applicable, s.  
86 560.123, and 31 C.F.R. ss. 1010.306, 1010.311, 1010.312,  
87 1010.313, 1010.340, 1010.410, 1010.415, 1022.320, 1022.380, and  
88 1022.410 ~~103.20, 103.22, 103.23, 103.27, 103.28, 103.29, 103.33,~~  
89 ~~103.37, and 103.41.~~

90 (2) A licensee and authorized vendor must maintain an  
91 anti-money laundering program in accordance with 31 C.F.R. s.  
92 1022.210 ~~103.125~~. The program must be reviewed and updated as  
93 necessary to ensure that the program continues to be effective  
94 in detecting and deterring money laundering activities.

95 (3) A licensee must comply with United States Treasury  
96 Interpretive Release 2004-1.

97 Section 4. Subsection (1) of section 560.125, Florida  
98 Statutes, is amended to read:

99 560.125 Unlicensed activity; penalties.—

100 (1) A person may not engage in the business of a money  
101 services business or deferred presentment provider in this state  
102 unless the person is licensed or exempted from licensure under  
103 this chapter. A deferred presentment transaction conducted by a  
104 person not authorized to conduct such a transaction under this



105 chapter is void, and the unauthorized person has no right to  
 106 collect, receive, or retain any principal, interest, or charges  
 107 relating to such transaction.

108 Section 5. Subsections (3) and (4) of section 560.1401,  
 109 Florida Statutes, are amended to read:

110 560.1401 Licensing standards.—To qualify for licensure as  
 111 a money services business under this chapter, an applicant must:

112 (3) Be registered as a money services business with the  
 113 Financial Crimes Enforcement Network as required by 31 C.F.R. s.  
 114 1022.380 ~~103.41~~, if applicable.

115 (4) Have an anti-money laundering program in place which  
 116 meets the requirements of 31 C.F.R. s. 1022.210 ~~103.125~~.

117 Section 6. Paragraph (d) of subsection (1) of section  
 118 560.141, Florida Statutes, is amended to read:

119 560.141 License application.—

120 (1) To apply for a license as a money services business  
 121 under this chapter, the applicant must submit:

122 (d) A copy of the applicant's written anti-money  
 123 laundering program required under 31 C.F.R. s. 1022.210 ~~103.125~~.

124 Section 7. Subsection (5) of section 560.309, Florida  
 125 Statutes, is amended to read:

126 560.309 Conduct of business.—

127 (5) A licensee must report all suspicious activity to the  
 128 office in accordance with the criteria ~~set forth~~ in 31 C.F.R. s.  
 129 1022.320 ~~103.20~~. In lieu of filing such reports, the commission  
 130 may prescribe by rule that the licensee may file such reports

CS/HB 623

2014

131 | with an appropriate regulator.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 659 Protective Orders  
**SPONSOR(S):** Mayfield  
**TIED BILLS:** IDEN./SIM. BILLS: SB 920

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cox <i>lee</i>	Cunningham <i>su</i>
2) Business & Professional Regulation Subcommittee			
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

### SUMMARY ANALYSIS

Victims of domestic, repeat, dating, or sexual violence, or stalking or cyberstalking (specified acts of violence) may obtain an injunction for protection if certain requirements are met. An injunction is either temporary, lasting a maximum of 15 days, or final, lasting until dissolved by the court. The court can enforce a violation of an injunction against specified acts of violence through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a first degree misdemeanor.

The bill amends various provisions relating to injunctions for protection against domestic, repeat, dating, or sexual violence, or stalking or cyberstalking. Specifically, the bill:

- Requires a temporary injunction to remain in effect until the final injunction is served on the respondent;
- Provides that a respondent is subject to prosecution or contempt proceedings for violating an injunction if the respondent directs a third party to commit specified acts that result in a violation of the injunction; and
- Provides that a respondent violates the terms of the final injunction against stalking or cyberstalking by possessing a firearm or ammunition.

The bill expands when an officer may arrest a person without a warrant to include cases that involve acts of domestic, repeat, dating, or sexual violence, stalking or cyberstalking, and injunction violations.

The bill also requires a private investigator to:

- Conduct search through the Attorney General's Office to ensure that the subject of an investigation is not a participant in the Address Confidentiality Program; and
- Conduct a records search on the subject of the investigation to ensure that the subject is not a targeted individual of an active temporary or final injunction against domestic, repeat, dating, or sexual violence, or stalking or cyberstalking.

Private investigators who violate the provision relating to the Address Confidentiality Program are subject to criminal penalties and licensure disciplinary actions.

The bill may have a negative jail bed impact on local governments because it increases the number of defendants subject to misdemeanor penalties.

The bill is effective October 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Injunctions for Protection against Specified Acts of Violence**

###### *Domestic Violence*

Any person who is the victim of domestic violence<sup>1</sup> or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.<sup>2</sup> The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.<sup>3</sup> A hearing must be set at the earliest possible time after a petition is filed,<sup>4</sup> and the respondent must be personally served with a copy of the petition.<sup>5</sup> At the hearing, specified injunctive relief may be granted if the court finds that the petitioner is:

- The victim of domestic violence; or
- Has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.<sup>6</sup>

If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant a temporary injunction *ex parte*.<sup>7,8</sup> Temporary injunctions are only effective for a fixed period that cannot exceed 15 days.<sup>9</sup> The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.<sup>10</sup>

###### *Repeat, Dating, and Sexual Violence*

Section 784.046, F.S., governs the issuance of injunctions against repeat violence,<sup>11</sup> dating violence,<sup>12</sup> and sexual violence.<sup>13</sup> This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

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<sup>1</sup> Section 741.28, 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.

<sup>2</sup> Section 741.30, F.S.

<sup>3</sup> Section 741.30(3), F.S.

<sup>4</sup> Section 741.30(4), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 741.30(6), F.S. Either party may move the court to modify or dissolve an injunction at any time. Section 741.30(6)(c) and (10), F.S.

<sup>7</sup> The court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan. Section 741.30(5), F.S.

<sup>8</sup> The only evidence admissible in the *ex parte* hearing is verified pleadings or affidavits, unless the respondent appears at the hearing or has received reasonable notice of the hearing. Section 741.30(5)(b), F.S.

<sup>9</sup> Section 741.30(5)(c), F.S.

<sup>10</sup> The court may grant a continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance. Section 741.30(5)(c), F.S.

<sup>11</sup> Section 784.046(1)(b), F.S., defines “repeat violence” to mean two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner’s immediate family member. Section 784.046(1)(a), F.S., defines “violence” to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.

<sup>12</sup> Section 784.046(1)(d), F.S., defines “dating violence” to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The following factors come into play when determining the existence of such a relationship: 1. a dating relationship must have existed within the past six months; 2. the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and 3. the persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization.

### *Stalking and Cyberstalking*

Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

All three statutes are silent as to whether a temporary injunction may remain in effect past the 15 day time limit to allow a final injunction that is issued by the court to be served on the respondent.

### Effect of the Bill

The bill amends ss. 741.30 and 741.31 (domestic violence), 784.046 (repeat, dating, or sexual violence), and 784.0485, F.S. (stalking and cyberstalking), to specify that a temporary injunction is effective for a fixed period that cannot exceed 15 days, unless a final injunction is issued. In such instances, the temporary injunction remains in effect until the final injunction is served on the respondent.

### **Violation of an Injunction against Specified Acts of Violence**

A respondent violates the terms of an injunction against domestic, repeat, dating, or sexual violence, or stalking if the respondent willfully:

- Refuses to vacate the dwelling that the parties share;<sup>14</sup>
- Goes to, or is within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Commits an act of domestic, repeat, dating, or sexual violence, or stalking against the petitioner;
- Commits any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephones, contacts, or otherwise communicates with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally comes within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defaces or destroys the petitioner's personal property, including the petitioner's car; or
- Refuses to surrender firearms or ammunition if ordered to do so by the court.<sup>15</sup>

A court can enforce a violation of an injunction through civil or criminal contempt proceedings, or the state attorney may prosecute the violation as a first degree misdemeanor.<sup>16,17</sup>

Currently, the statutes are silent as to whether a respondent can be prosecuted or subject to civil or criminal contempt proceedings for directing a third party to commit any of the above listed acts that result in a violation of an injunction.

### Effect of the Bill

The bill provides that a respondent is subject to prosecution or contempt proceedings for violating an injunction if the respondent directs a third party to commit any of the specified acts that result in a violation of the injunction. This provision is added to ss. 741.31 (domestic violence), 784.047 (repeat, dating, or sexual violence), and 784.0487, F.S. (stalking and cyberstalking).

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<sup>13</sup> Section 784.046(1)(c), F.S., defines "sexual violence" to mean any one incident of: 1. Sexual battery; 2. A lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; 3. Luring or enticing a child; 4. Sexual performance by a child; or 5. Any other forcible felony wherein a sexual act is committed or attempted. For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

<sup>14</sup> The terms of an injunction against stalking or cyberstalking cannot be violated by a respondent refusing to vacate the parties' shared dwelling. Section 784.0487(4), F.S.

<sup>15</sup> Sections 741.31(4)(a), 784.047, and 784.0487, F.S.

<sup>16</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>17</sup> Sections 741.30(9), 784.046(9), and 784.0485(9), F.S.

The bill also amends s. 784.0487, F.S., to make it a first degree misdemeanor for a person to violate a stalking or cyberstalking injunction by having in his or her care, custody, possession, or control any firearm or ammunition.<sup>18</sup> This mirrors language currently found in s. 741.31, F.S., which addresses violations of domestic violence injunctions.

### **Lawful Arrest by an Officer without a Warrant**

Section 901.15, F.S., sets forth the instances in which a law enforcement officer (LEO) can arrest a person without a warrant. For misdemeanor offenses, the general rule is that LEOs must witness the occurrence of the offense in order to make an arrest without a warrant. LEOs that do not witness the offense must obtain an arrest warrant.<sup>19</sup>

In certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to the above rule. Those crimes include instances in which there is probable cause to believe that a person:

- Possessed a firearm or ammunition when such person is subject to a final injunction against domestic violence, stalking, or cyberstalking;<sup>20</sup>
- Committed a criminal act that violates the terms of an injunction against domestic, repeat, dating, or sexual violence;<sup>21</sup> or
- Committed an act of domestic or dating violence.<sup>22</sup>

Section 901.15, F.S., also provides LEOs civil immunity from any actions taken when effectuating a good faith arrest of a person believed to have:

- Committed an act of domestic or dating violence; or
- Violated the terms of an injunction against domestic, repeat, dating, or sexual violence.

### **Effect of the Bill**

The bill amends s. 901.15, F.S., to permit a LEO to arrest a person without a warrant when there is probable cause to believe that a person has committed:

- A criminal act that violates the terms of an injunction against:
  - An act of child abuse occurring after a protective investigation is initiated;<sup>23</sup> or
  - Stalking or cyberstalking; or
- An act of repeat or sexual violence, stalking or cyberstalking, or child abuse.<sup>24</sup>

The bill expands the civil immunity provision to apply to a LEO who effectuates a good faith arrest of a person believed to have:

- Committed an act of repeat or sexual violence, stalking or cyberstalking, or child abuse; or
- Violated the terms of an injunction against:
  - An act of child abuse occurring after a protective investigation is initiated; or
  - Stalking or cyberstalking.

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<sup>18</sup> This is also a violation of s. 790.233, F.S., which prohibits a person from having in his or her care, custody, possession, or control any firearm or ammunition if the person has been issued a final injunction that is currently in force and effect, restraining that person from committing acts of domestic violence, or from committing acts of stalking or cyberstalking.

<sup>19</sup> Section 901.15, F.S.

<sup>20</sup> Section 901.15(6), F.S., in accordance with s. 790.233, F.S.

<sup>21</sup> This includes injunctions issued in accordance with ss. 741.30 or 784.046, F.S., or a foreign protection order accorded full faith and credit pursuant to s. 741.315, F.S. Additionally, the arrest may be made over the objection of the petitioner, if necessary. Section 901.15(6), F.S.

<sup>22</sup> Section 901.15(7), F.S., further provides that the arrest may be made without consent of the victim.

<sup>23</sup> This injunction is governed by s. 39.504, F.S.

<sup>24</sup> As provided in s. 39.01, F.S.

## Regulation of Private Investigators

### *Background*

The profession of private investigation is regulated by the Department of Agriculture.<sup>25</sup> Private investigation is the investigation by a person for the purpose of obtaining information on any of the following matters:

- Crimes or threats against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation;
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons;
- The credibility of witnesses or other persons;
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates;
- The location or recovery of lost or stolen property;
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property; or
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases.<sup>26</sup>

Every private investigator<sup>27</sup> must meet specified educational and training requirements and obtain a Class "C" license.<sup>28</sup> A Class "C" licensee (private investigator) may conduct investigations, own or manage a private investigation agency, carry a firearm, and perform bodyguard services.<sup>29</sup> A private investigator must comply with all regulations of the profession and is subject to specified disciplinary actions or criminal penalties for violating any provision of ch. 493, F.S.<sup>30</sup>

### *Address Confidentiality Program*

Domestic violence victims may apply to the Office of the Attorney General (Attorney General) to have his or her address designated as confidential.<sup>31</sup> The application must meet specified requirements. For example, a sworn statement must be provided that there is good reason to believe the subject of the application is the victim of domestic violence and the subject fears for his or her safety, or the safety of the subject's children.<sup>32</sup> Once a properly completed application is filed, the Attorney General must certify the subject as a program participant, and designate an address to serve as the victim's address.<sup>33</sup> The Attorney General becomes the agent for purposes of service of process and receipt of mail.<sup>34</sup>

Section 741.465, F.S., specifies that the addresses, telephone numbers, and social security numbers of Address Program participants are exempt from the public records requirements of s. 119.07(1), F.S., and Article 1, Section 24(a) of the State Constitution. A limited number of specified instances are provided that allow the confidential information to be released.

Currently, it is not a crime for a person to release a program participant's confidential information.

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<sup>25</sup> See ss. 493.6100 and 493.6101(1), F.S.

<sup>26</sup> Section 493.6101(17), F.S.

<sup>27</sup> Section 493.6101(16), F.S., defines "private investigator" to mean any individual who, for consideration, advertises as providing or performs private investigation.

<sup>28</sup> See s. 493.6201 and 493.6203, F.S.

<sup>29</sup> Section 493.6201(3), (5), (7), and (8), F.S.

<sup>30</sup> Sections 493.6118 and 493.6120, F.S.

<sup>31</sup> Section 741.403(1), F.S., states that any adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of a person adjudicated incapacitated under ch. 744, F.S., may apply to the Attorney General.

<sup>32</sup> Section 741.403(1)(a), F.S.

<sup>33</sup> Section 741.403(1) and (3), F.S. The certification is valid for four years, unless it is withdrawn or invalidated.

<sup>34</sup> Section 741.403(1)(b), F.S.



### *Injunctions*

Currently, a private investigator is not required to conduct a records search to identify whether the subject of a private investigation is also the targeted individual of a temporary or final injunction against specified acts of violence.<sup>35</sup>

### Effect of the Bill

The bill amends s. 493.6120, F.S., to require private investigators to conduct a search through the Attorney General's Office to ensure that the subject of an investigation is not a participant in the Address Program. If the subject of the investigation is a participant, the private investigator may not release the subject's confidential information. A private investigator who violates this provision commits a first degree misdemeanor and is subject to disciplinary action.

The bill also amends s. 493.6120, F.S., to require private investigators to conduct a records search on the subject of the investigation to ensure that the subject is not a targeted individual of an active temporary or final injunction against domestic, repeat, dating, or sexual violence, or stalking or cyberstalking

### B. SECTION DIRECTORY:

Section 1. Amends s. 493.6118, F.S., relating to grounds for disciplinary action.

Section 2. Amends s. 493.6120, F.S., relating to violations; penalty.

Section 3. Amends s. 741.30, F.S., relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.

Section 4. Amends s. 741.31, F.S., relating to violation of an injunction for protection against domestic violence.

Section 5. Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.

Section 6. Amends s. 784.047, F.S., relating to penalties for violating protective injunction against violators.

Section 7. Amends s. 784.0485, F.S., relating to stalking; injunction; powers and duties of court and clerk; notice and hearing; temporary injunction; issuance of injunctions; statewide verification system; enforcement.

Section 8. Amends s. 784.0487, F.S., relating to violation of an injunction for protection against stalking or cyberstalking.

Section 9. Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

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

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<sup>35</sup> Department of Agriculture and Consumer Services, Analysis of HB 659 (on file with the Criminal Justice Subcommittee). This analysis is further cited as "Agriculture Analysis."

## 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 requires private investigators to conduct a records search to determine whether the subject of their investigation is a participant in the Address Confidentiality Program through the Attorney General. The Attorney General has determined that the bill will not result in a fiscal impact.<sup>36</sup>

The Department of Agriculture has determined that the bill's provisions regulating private investigators will not result in a fiscal impact.<sup>37</sup>

The bill expands the application of ss. 741.31, 784.047, and 784.0487, F.S., to subject a respondent to contempt proceedings if he or she directs a third party to commit acts that violate the injunction. To the extent that this bill increases the number of contempt proceedings conducted by the court, the bill may have an indeterminate negative fiscal impact on the state court system.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

The bill expands the application of ss. 741.31, 784.047, and 784.0487, F.S., to allow a respondent to be prosecuted if he or she directs a third party to commit acts that violate an injunction. This may have a negative jail bed impact on local governments.

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

The bill requires private investigators to conduct records searches on subjects of their investigations. If complying requires a significant amount of time, it could have a negative fiscal impact on private investigators.

### 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.

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<sup>36</sup> Electronic mail from Andrew Fay, dated February 27, 2014 (on file with the Criminal Justice Subcommittee).

<sup>37</sup> Agriculture Analysis.

**B. RULE-MAKING AUTHORITY:**

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

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

1) Lines 48-52: The bill only requires a private investigator to conduct a records check to determine if the subject is a targeted individual of an injunction, but does not provide any penalty for instances where a private investigator either does not comply or releases the information of the targeted subject. If the intent is to prevent the information of these victims from being released, some type of penalty could be added to this portion of the bill.

2) Lines 52-61: The bill requires a private investigator to conduct a records search with the Attorney General to determine if the subject of the investigation is a participant in the Address Program. The bill does not outline a process for verifying that the person requesting this information is in fact a licensed private investigator, which could result in the unauthorized release of exempt information.

3) Line 58: The bill references s. 119.071, F.S., as the source for the public records exemption relating to the Address Program, but the public records exemption is established in s. 741.465, F.S.

4) Line 58: The bill references "confidential information," however, s. 741.465, F.S., only provides that the information is exempt, rather than confidential and exempt. The use of the term "confidential" in the bill when referencing the public records exemption could be confusing.

5) Lines 87-90: This language is identical to the language added to s. 741.30, F.S., and thus may not be necessary. Subsection (4) is limited to stating the criminal penalties for violating an injunction against domestic violence and listing the specified acts that result in the violation. As such, the language may be better in a different location if it remains in the bill.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



27 s. 901.15, F.S.; conforming provisions to changes made  
 28 by the act; expanding situations in which an arrest  
 29 without a warrant is lawful to include probable cause  
 30 of stalking, cyberstalking, or child abuse; providing  
 31 an effective date.

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

34  
 35 Section 1. Paragraph (y) is added to subsection (1) of  
 36 section 493.6118, Florida Statutes, to read:

37 493.6118 Grounds for disciplinary action.—

38 (1) The following constitute grounds for which  
 39 disciplinary action specified in subsection (2) may be taken by  
 40 the department against any licensee, agency, or applicant  
 41 regulated by this chapter, or any unlicensed person engaged in  
 42 activities regulated under this chapter.

43 (y) For a Class "C" licensee, failure to comply with s.  
 44 493.6120(8).

45 Section 2. Subsection (8) is added to section 493.6120,  
 46 Florida Statutes, to read:

47 493.6120 Violations; penalty.—

48 (8) A Class "C" licensee shall conduct a records search on  
 49 the subject of the investigation to ensure that the subject is  
 50 not a targeted individual of an active temporary or final  
 51 domestic violence, repeat violence, stalking, cyberstalking,  
 52 dating violence, or sexual violence injunction. In addition, the

53 Class "C" licensee shall conduct a search through the Office of  
 54 the Attorney General to ensure that the subject is not a  
 55 participant in the Address Confidentiality Program for Victims  
 56 of Domestic Violence, and, if the subject is such a participant,  
 57 the Class "C" licensee shall not release the subject's  
 58 confidential information, in compliance with ss. 119.071 and  
 59 741.30. A Class "C" licensee who violates this subsection  
 60 commits a misdemeanor of the first degree, punishable as  
 61 provided in s. 775.082 or s. 775.083.

62 Section 3. Paragraph (c) of subsection (5) of section  
 63 741.30, Florida Statutes, is amended to read:

64 741.30 Domestic violence; injunction; powers and duties of  
 65 court and clerk; petition; notice and hearing; temporary  
 66 injunction; issuance of injunction; statewide verification  
 67 system; enforcement; public records exemption.-

68 (5)

69 (c) Any such ex parte temporary injunction is ~~shall be~~  
 70 effective for a fixed period not to exceed 15 days unless a  
 71 final injunction is issued on the same case, which extends the  
 72 effectiveness of the temporary injunction until such time as the  
 73 final injunction is served. A full hearing, as provided by this  
 74 section, shall be set for a date no later than the date when the  
 75 temporary injunction ceases to be effective. The court may grant  
 76 a continuance of the hearing before or during a hearing for good  
 77 cause shown by any party, which must ~~shall~~ include a continuance  
 78 to obtain service of process. An ~~Any~~ injunction shall be

79 extended, if necessary, so that it remains ~~to remain~~ in full  
 80 force and effect during any period of continuance.

81 Section 4. Paragraph (c) is added to subsection (4) and  
 82 subsection (7) is added to section 741.31, Florida Statutes, to  
 83 read:

84 741.31 Violation of an injunction for protection against  
 85 domestic violence.-

86 (4)

87 (c) If a final injunction is issued but has not been  
 88 served, the terms of the temporary injunction, if served, remain  
 89 in full force and effect until service of the final injunction  
 90 is effected upon the respondent.

91 (7) A respondent who directs a third party to violate this  
 92 section commits a violation of this section as if the same  
 93 violation had been personally committed by the respondent  
 94 without regard to the mental state of the third party acting at  
 95 the direction of the respondent.

96 Section 5. Paragraph (c) of subsection (6) of section  
 97 784.046, Florida Statutes, is amended to read:

98 784.046 Action by victim of repeat violence, sexual  
 99 violence, or dating violence for protective injunction; dating  
 100 violence investigations, notice to victims, and reporting;  
 101 pretrial release violations; public records exemption.-

102 (6)

103 (c) Any such ex parte temporary injunction is ~~shall be~~  
 104 effective for a fixed period not to exceed 15 days unless a

105 final injunction is issued on the same case, which extends the  
106 effectiveness of the temporary injunction until such time as the  
107 final injunction is served. However, an ex parte temporary  
108 injunction granted under subparagraph (2)(c)2. is effective for  
109 15 days following the date the respondent is released from  
110 incarceration unless a final injunction is issued on the same  
111 case, which extends the effectiveness of the temporary  
112 injunction until such time as the final injunction is served. A  
113 full hearing, as provided by this section, shall be set for a  
114 date no later than the date when the temporary injunction ceases  
115 to be effective. The court may grant a continuance of the ex  
116 parte injunction and the full hearing before or during a  
117 hearing, for good cause shown by any party.

118 Section 6. Section 784.047, Florida Statutes, is amended  
119 to read:

120 784.047 Penalties for violating protective injunction  
121 against violators.—

122 (1) A person who willfully violates an injunction for  
123 protection against repeat violence, sexual violence, or dating  
124 violence~~7~~ issued pursuant to s. 784.046~~7~~ or a foreign protection  
125 order accorded full faith and credit pursuant to s. 741.315 by:

126 (a)~~(1)~~ Refusing to vacate the dwelling that the parties  
127 share;

128 (b)~~(2)~~ Going to, or being within 500 feet of, the  
129 petitioner's residence, school, place of employment, or a  
130 specified place frequented regularly by the petitioner and any



131 named family or household member;

132 ~~(c)(3)~~ Committing an act of repeat violence, sexual  
 133 violence, or dating violence against the petitioner;

134 ~~(d)(4)~~ Committing any other violation of the injunction  
 135 through an intentional unlawful threat, word, or act to do  
 136 violence to the petitioner;

137 ~~(e)(5)~~ Telephoning, contacting, or otherwise communicating  
 138 with the petitioner directly or indirectly, unless the  
 139 injunction specifically allows indirect contact through a third  
 140 party;

141 ~~(f)(6)~~ Knowingly and intentionally coming within 100 feet  
 142 of the petitioner's motor vehicle, regardless of whether ~~or not~~  
 143 that vehicle is occupied;

144 ~~(g)(7)~~ Defacing or destroying the petitioner's personal  
 145 property, including the petitioner's motor vehicle; or

146 ~~(h)(8)~~ Refusing to surrender firearms or ammunition if  
 147 ordered to do so by the court,

148

149 commits a misdemeanor of the first degree, punishable as  
 150 provided in s. 775.082 or s. 775.083.

151 (2) A respondent who directs a third party to violate this  
 152 section commits a violation of this section as if the same  
 153 violation had been personally committed by the respondent  
 154 without regard to the mental state of the third party acting at  
 155 the direction of the respondent.

156 Section 7. Paragraph (c) of subsection (5) of section

157 784.0485, Florida Statutes, is amended to read:

158 784.0485 Stalking; injunction; powers and duties of court  
 159 and clerk; petition; notice and hearing; temporary injunction;  
 160 issuance of injunction; statewide verification system;  
 161 enforcement.—

162 (5)

163 (c) Any such ex parte temporary injunction is effective  
 164 for a fixed period not to exceed 15 days unless a final  
 165 injunction is issued on the same case, which extends the  
 166 effectiveness of the temporary injunction until such time as the  
 167 final injunction is served. A full hearing, as provided in this  
 168 section, shall be set for a date no later than the date when the  
 169 temporary injunction ceases to be effective. The court may grant  
 170 a continuance of the hearing before or during a hearing for good  
 171 cause shown by any party, which shall include a continuance to  
 172 obtain service of process. An injunction shall be extended, if  
 173 necessary, so that it remains ~~to remain~~ in full force and effect  
 174 during any period of continuance.

175 Section 8. Subsections (6) and (7) are added to section  
 176 784.0487, Florida Statutes, to read:

177 784.0487 Violation of an injunction for protection against  
 178 stalking or cyberstalking.—

179 (6) A person who violates a final injunction for  
 180 protection against stalking or cyberstalking by having in his or  
 181 her care, custody, possession, or control any firearm or  
 182 ammunition violates s. 790.233 and commits a misdemeanor of the

183 first degree, punishable as provided in s. 775.082 or s.  
 184 775.083.

185 (7) A respondent who directs a third party to violate this  
 186 section commits a violation of this section as if the same  
 187 violation had been personally committed by the respondent  
 188 without regard to the mental state of the third party acting at  
 189 the direction of the respondent.

190 Section 9. Subsections (6) and (7) of section 901.15,  
 191 Florida Statutes, are amended to read:

192 901.15 When arrest by officer without warrant is lawful.—A  
 193 law enforcement officer may arrest a person without a warrant  
 194 when:

195 (6) There is probable cause to believe that the person has  
 196 committed a criminal act according to s. 790.233 or according to  
 197 s. 39.504, s. 741.31, ~~or~~ s. 784.047, or s. 784.0487 which  
 198 violates an injunction for protection entered pursuant to s.  
 199 39.504, s. 741.30, ~~or~~ s. 784.046, or s. 784.0485, or a foreign  
 200 protection order accorded full faith and credit pursuant to s.  
 201 741.315, over the objection of the petitioner, if necessary.

202 (7) There is probable cause to believe that the person has  
 203 committed an act of domestic violence~~;~~ as defined in s. 741.28;~~;~~  
 204 ~~or~~ dating violence, repeat violence, or sexual violence as  
 205 provided in s. 784.046; stalking or cyberstalking as provided in  
 206 s. 784.048; or an act of child abuse as provided in s. 39.01.  
 207 The decision to arrest does ~~shall~~ not require consent of the  
 208 victim or consideration of the relationship of the parties. It

209 is the public policy of this state to strongly discourage arrest  
 210 and charges of both parties for domestic violence or dating  
 211 violence on each other and to encourage training of law  
 212 enforcement and prosecutors in these areas. A law enforcement  
 213 officer who acts in good faith and exercises due care in making  
 214 an arrest under this subsection, under s. 39.504, s. 741.31(4),  
 215 ~~or~~ s. 784.047, or s. 784.0487, or pursuant to a foreign order of  
 216 protection accorded full faith and credit pursuant to s.  
 217 741.315, is immune from civil liability that otherwise might  
 218 result by reason of his or her action.

219 Section 10. This act shall take effect October 1, 2014.



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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice  
 2 Subcommittee

3 Representative Mayfield offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (c) of subsection (5) of section  
 8 741.30, Florida Statutes, is amended to read:

9 741.30 Domestic violence; injunction; powers and duties of  
 10 court and clerk; petition; notice and hearing; temporary  
 11 injunction; issuance of injunction; statewide verification  
 12 system; enforcement; public records exemption.—

13 (5)

14 (c) Any such ex parte temporary injunction is ~~shall be~~  
 15 effective for a fixed period not to exceed 15 days. However, if  
 16 a final injunction is issued for the same case, the  
 17 effectiveness of the ex parte temporary injunction extends until



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18 the final injunction is served upon the respondent. A full  
19 hearing, as provided by this section, shall be set for a date no  
20 later than the date when the temporary injunction ceases to be  
21 effective. The court may grant a continuance of the hearing  
22 before or during a hearing for good cause shown by any party,  
23 which must ~~shall~~ include a continuance to obtain service of  
24 process. An Any injunction shall be extended, if necessary, so  
25 that it remains ~~to remain~~ in full force and effect during any  
26 period of continuance.

27 Section 2. Subsection (4) of section 741.31, Florida  
28 Statutes, is amended to read:

29 741.31 Violation of an injunction for protection against  
30 domestic violence.—

31 (4)(a) A person who willfully violates an injunction for  
32 protection against domestic violence issued pursuant to s.  
33 741.30, or a foreign protection order accorded full faith and  
34 credit pursuant to s. 741.315, by:

- 35 1. Refusing to vacate the dwelling that the parties share;
- 36 2. Going to, or being within 500 feet of, the petitioner's  
37 residence, school, or place of employment, or a specified place  
38 frequented regularly by the petitioner or ~~and~~ any named family  
39 or household member;
- 40 3. Committing an act of domestic violence against the  
41 petitioner;



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42 4. Committing any other violation of the injunction  
43 through an intentional unlawful threat, word, or act to do  
44 violence to the petitioner;

45 5. Telephoning, contacting, or otherwise communicating  
46 with the petitioner directly or indirectly, unless the  
47 injunction specifically allows indirect contact through a third  
48 party;

49 6. Knowingly and intentionally coming within 100 feet of  
50 the petitioner's motor vehicle, whether or not that vehicle is  
51 occupied;

52 7. Defacing or destroying the petitioner's personal  
53 property, including the petitioner's motor vehicle; or

54 8. Refusing to surrender firearms or ammunition if ordered  
55 to do so by the court

56  
57 commits a misdemeanor of the first degree, punishable as  
58 provided in s. 775.082 or s. 775.083.

59 (b)1. A person who violates a final injunction for  
60 protection against domestic violence by having in his or her  
61 care, custody, possession, or control any firearm or ammunition  
62 violates ~~It is a violation of s. 790.233,~~ and commits a  
63 misdemeanor of the first degree, punishable as provided in s.  
64 775.082 or s. 775.083, ~~for a person to violate a final~~  
65 ~~injunction for protection against domestic violence by having in~~  
66 ~~his or her care, custody, possession, or control any firearm or~~  
67 ~~ammunition.~~



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68           2. It is the intent of the Legislature that the  
69 disabilities regarding possession of firearms and ammunition are  
70 consistent with federal law. Accordingly, this paragraph does  
71 ~~shall~~ not apply to a state or local officer as defined in s.  
72 943.10(14), holding an active certification, who receives or  
73 possesses a firearm or ammunition for use in performing official  
74 duties on behalf of the officer's employing agency, unless  
75 otherwise prohibited by the employing agency.

76           Section 3. Paragraph (c) of subsection (6) of section  
77 784.046, Florida Statutes, is amended to read:

78           784.046 Action by victim of repeat violence, sexual  
79 violence, or dating violence for protective injunction; dating  
80 violence investigations, notice to victims, and reporting;  
81 pretrial release violations; public records exemption.-

82           (6)

83           (c) Any such ex parte temporary injunction is ~~shall be~~  
84 effective for a fixed period not to exceed 15 days. An ~~However,~~  
85 ~~an~~ ex parte temporary injunction granted under subparagraph  
86 (2)(c)2. is effective for 15 days following the date the  
87 respondent is released from incarceration. However, if a final  
88 injunction is issued for the same case, the effectiveness of the  
89 ex parte temporary injunction extends until the final injunction  
90 is served upon the respondent. A full hearing, as provided by  
91 this section, shall be set for a date no later than the date  
92 when the temporary injunction ceases to be effective. The court  
93 may grant a continuance of the ~~ex parte injunction and the full~~





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94 hearing before or during a hearing, for good cause shown by any  
95 party, which must include a continuance to obtain service of  
96 process. An injunction shall be extended, if necessary, so that  
97 it remains in full force and effect during any period of  
98 continuance.

99 Section 4. Section 784.047, Florida Statutes, is amended  
100 to read:

101 784.047 Penalties for violating protective injunction  
102 against violators.-

103 (1) A person who willfully violates an injunction for  
104 protection against repeat violence, sexual violence, or dating  
105 violence, issued pursuant to s. 784.046, or a foreign protection  
106 order accorded full faith and credit pursuant to s. 741.315 by:

107 (a)~~(1)~~ Refusing to vacate the dwelling that the parties  
108 share;

109 (b)~~(2)~~ Going to, or being within 500 feet of, the  
110 petitioner's residence, school, or place of employment, or a  
111 specified place frequented regularly by the petitioner or ~~and~~  
112 any named family or household member;

113 (c)~~(3)~~ Committing an act of repeat violence, sexual  
114 violence, or dating violence against the petitioner;

115 (d)~~(4)~~ Committing any other violation of the injunction  
116 through an intentional unlawful threat, word, or act to do  
117 violence to the petitioner;

118 (e)~~(5)~~ Telephoning, contacting, or otherwise communicating  
119 with the petitioner directly or indirectly, unless the



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120 injunction specifically allows indirect contact through a third  
121 party;

122 (f)-(6) Knowingly and intentionally coming within 100 feet  
123 of the petitioner's motor vehicle, whether or not that vehicle  
124 is occupied;

125 (g)-(7) Defacing or destroying the petitioner's personal  
126 property, including the petitioner's motor vehicle; or

127 (h)-(8) Refusing to surrender firearms or ammunition if  
128 ordered to do so by the court,

129

130 commits a misdemeanor of the first degree, punishable as  
131 provided in s. 775.082 or s. 775.083.

132 (2) A person who violates a final injunction for  
133 protection against repeat violence, sexual violence, or dating  
134 violence by having in his care, custody, possession, or control  
135 any firearm or ammunition violates s. 790.233 and commits a  
136 misdemeanor in the first degree, punishable by s. 775.082 or s.  
137 775.083.

138 Section 5. Paragraph (c) of subsection (5) of section  
139 784.0485, Florida Statutes, is amended to read:

140 784.0485 Stalking; injunction; powers and duties of court  
141 and clerk; petition; notice and hearing; temporary injunction;  
142 issuance of injunction; statewide verification system;  
143 enforcement.—

144 (5)



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145 (c) Any such ex parte temporary injunction is effective  
146 for a fixed period not to exceed 15 days. However, if a final  
147 injunction is issued for the same case, the effectiveness of the  
148 ex parte temporary injunction extends until the final injunction  
149 is served upon the respondent. A full hearing, as provided in  
150 this section, shall be set for a date no later than the date  
151 when the temporary injunction ceases to be effective. The court  
152 may grant a continuance of the hearing before or during a  
153 hearing for good cause shown by any party, which must ~~shall~~  
154 include a continuance to obtain service of process. An  
155 injunction shall be extended, if necessary, so that it remains  
156 ~~to remain~~ in full force and effect during any period of  
157 continuance.

158 Section 6. Paragraph (a) of subsection (4) of section  
159 784.0487, Florida Statutes, is amended and paragraph (6) is  
160 added to read:

161 784.0487 Violation of an injunction for protection against  
162 stalking or cyberstalking.—

163 (4) A person who willfully violates an injunction for  
164 protection against stalking or cyberstalking issued pursuant to  
165 s. 784.0485, or a foreign protection order accorded full faith  
166 and credit pursuant to s. 741.315, by:

167 (a) Going to, or being within 500 feet of, the  
168 petitioner's residence, school, or place of employment, or a  
169 specified place frequented regularly by the petitioner, and any



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170 named family members, or individuals closely associated with the  
171 petitioner;

172

173 commits a misdemeanor of the first degree, punishable as  
174 provided in s. 775.082 or s. 775.083.

175 (6) A person who violates a final injunction for  
176 protection against stalking or cyberstalking by having in his  
177 care, custody, possession, or control any firearm or ammunition  
178 violates s. 790.233 and commits a misdemeanor in the first  
179 degree, punishable by s. 775.082 or s. 775.083.

180 Section 7. Subsection (1) of section 790.233, Florida  
181 Statutes, is amended to read:

182 790.233 Possession of firearm or ammunition prohibited  
183 when person is subject to an injunction against committing acts  
184 of domestic violence, repeat violence, dating violence, sexual  
185 violence, stalking, or cyberstalking; penalties.-

186 (1) A person may not have in his or her care, custody,  
187 possession, or control any firearm or ammunition if the person  
188 has been issued a final injunction that is currently in force  
189 and effect, restraining that person from committing acts of:

190 (a) Domestic violence, as issued under s. 741.30;

191 (b) Repeat, dating, or sexual violence, as issued under s.  
192 784.046; or from committing acts of

193 (c) Stalking or cyberstalking, as issued under s.

194 784.0485.



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195 Section 8. Subsections (6) and (7) of section 901.15,  
196 Florida Statutes, are amended to read:

197 901.15 When arrest by officer without warrant is lawful.—A  
198 law enforcement officer may arrest a person without a warrant  
199 when:

200 (6) There is probable cause to believe that the person has  
201 committed a criminal act according to s. 790.233 or according to  
202 s. 741.31, ~~or~~ s. 784.047, 784.0487, or s. 39.504 which violates  
203 an injunction for protection entered pursuant to s. 741.30, ~~or~~  
204 s. 784.046, s. 784.0485, or s. 39.504, or a foreign protection  
205 order accorded full faith and credit pursuant to s. 741.315,  
206 over the objection of the petitioner, if necessary.

207 (7) There is probable cause to believe that the person has  
208 committed an act of domestic violence, ~~as defined in s. 741.28;~~  
209 ~~or~~ dating violence, repeat violence, or sexual violence as  
210 provided in s. 784.046; stalking or cyberstalking as provided in  
211 s. 784.0485; or an act of child abuse as provided in s. 39.01.

212 The decision to arrest does ~~shall~~ not require consent of the  
213 victim or consideration of the relationship of the parties. It  
214 is the public policy of this state to strongly discourage arrest  
215 and charges of both parties for domestic violence or dating  
216 violence on each other and to encourage training of law  
217 enforcement and prosecutors in these areas. A law enforcement  
218 officer who acts in good faith and exercises due care in making  
219 an arrest under this subsection, under s. 741.31(4), ~~or~~ s.  
220 784.047, s. 784.0487, or 39.504, or pursuant to a foreign order



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221 of protection accorded full faith and credit pursuant to s.  
222 741.315, is immune from civil liability that otherwise might  
223 result by reason of his or her action.

224 Section 9. This act shall take effect October 1, 2014.

225

226

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227

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

228

Remove everything before the enacting clause and insert:

229

An act relating to protective orders; amending ss. 741.30,

230

784.046, and 784.0485, F.S.; extending the effectiveness of

231

certain temporary injunctions in domestic violence, repeat

232

violence, sexual violence, dating violence, or stalking

233

proceedings in certain circumstances; amending s. 784.047, F.S.;

234

providing that it is unlawful for a person to violate a final

235

injunction for protection against repeat, dating, or sexual

236

violence by having in his or her care, custody, possession, or

237

control any firearm or ammunition; providing penalties; amending

238

s. 784.0487, F.S.; providing that it is unlawful for a person to

239

violate a final injunction for protection against stalking or

240

cyberstalking by having in his or her care, custody, possession,

241

or control any firearm or ammunition; providing penalties;

242

amending s. 790.233, F.S.; conforming provisions to changes made

243

in the act; amending s. 901.15, F.S.; expanding situations in

244

which an arrest without a warrant is lawful to include probable

245

cause of stalking, cyberstalking, or child abuse; providing an

246

effective date.

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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 841 Crime Stoppers Trust Fund  
**SPONSOR(S):** Broxson and others  
**TIED BILLS:** IDEN./SIM. BILLS: SB 978

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

### SUMMARY ANALYSIS

Crime Stoppers programs are citizen-run non-profit corporations that operate on the principle that "someone other than the criminal has information that can solve a crime." Crime Stoppers programs allow citizens to anonymously provide information to law enforcement about crimes. Typically, a cash reward is given if the information leads to an arrest.

In 1991, the Legislature created s. 16.555, F.S., which required the Department of Legal Affairs (Department) to establish a Crime Stoppers Trust Fund. At the time, the Crime Stoppers Trust Fund was solely funded through federal, state, private grants awarded to the Department.

In 1998, the Legislature added a funding source by imposing a \$20 court cost on persons convicted of any criminal offense. The proceeds from the \$20 court cost are deposited in a separate account within the Crime Stoppers Trust Fund and designated according to the judicial circuit from which they were collected. Counties may apply to the Department for a grant from the funds collected by their judicial circuit. However, grants may only be awarded to counties that are served by an official member of the Florida Association of Crime Stoppers, Inc. and used only to support Crime Stoppers and their crime fighting programs.

The bill permits a county which is awarded funds under s. 16.555, F.S., to use the funds to purchase and distribute promotional items to increase public awareness and educate the public about Crime Stoppers.

The bill is effective July 1, 2014.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Crime Stoppers Programs**

Crime Stoppers programs are citizen run non-profit corporations that operate on the principle that "someone other than the criminal has information that can solve a crime."<sup>1</sup> Crime Stoppers allow citizens to anonymously provide information to law enforcement about crimes.<sup>2</sup> Typically, a cash reward is given if the information leads to an arrest.<sup>3</sup>

The Crime Stoppers concept originated in Albuquerque, New Mexico in 1976 when a detective asked local media to broadcast a reenactment of an unsolved murder he was investigating.<sup>4</sup> Local media publicized the reenactment as the "Crime of the Week" and provided a phone number to call if anyone had information.<sup>5</sup> The broadcast promised anonymity for anyone who called with information and a cash reward if the information led to persons involved in the crime.<sup>6</sup>

The first Crime Stoppers program in Florida formed in 1977. Subsequently, the Florida Association of Crime Stoppers, Inc. (Association) was established to facilitate the flow of information and spread the Crime Stoppers program throughout the state.<sup>7</sup> The Association, which currently has 32 programs, also provides holds trainings for Crime Stoppers programs throughout Florida.<sup>8</sup>

##### **Crime Stoppers Funding**

In 1991, the Legislature created s. 16.555, F.S., which required the Department of Legal Affairs (Department) to establish a Crime Stoppers Trust Fund.<sup>9</sup> At the time, the Crime Stoppers Trust Fund was solely funded through federal, state, private grants awarded to the Department.<sup>10</sup>

In 1998, the Legislature added a funding source by imposing a \$20 court cost on persons convicted of any criminal offense.<sup>11</sup> The proceeds from the \$20 court cost are deposited in a separate account within the Crime Stoppers Trust Fund and designated according to the judicial circuit from which they were collected.<sup>12</sup> Counties may apply to the Department for a grant from the funds collected by their judicial circuit. However, grants may only be awarded to counties that are served by an official member of the Association and used only to support Crime Stoppers and their crime fighting programs.<sup>13</sup>

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

The bill amends s. 16.555, F.S., to allow a county which is awarded grant funds to use the funds to purchase and distribute promotional items to increase public awareness and educate the public about Crime Stoppers.

---

<sup>1</sup> Big Bend Crime Stoppers, <http://www.bbcsi.org/about-2> (last visited on February 27, 2014).

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

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

<sup>4</sup> Florida Association of Crime Stoppers, <http://www.floridacrimestoppers.com/pages/where> (last visited on February 27, 2014).

<sup>5</sup> Crime Stoppers USA, <http://www.crimestoppersusa.com/profile.htm> (last visited on February 27, 2014).

<sup>6</sup> Florida Association of Crime Stoppers, <http://www.floridacrimestoppers.com/pages/where> (last visited on February 27, 2014).

<sup>7</sup> *Id.* The association's original name was the "Florida Association of Crimelines Anonymous, Inc., it was changed in September 1991.

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

<sup>9</sup> Chapter 1991-205, L.O.F.

<sup>10</sup> Section 16.555(4)(a), F.S., requires the department to apply for all federal and state or private grants which meet the purposes of advancing Crime Stoppers in the State of Florida. Upon securing such grants, the funds must be deposited in the "Crime Stoppers Trust Fund."

<sup>11</sup> Chapter 1998-319, L.O.F.; Section 938.06(2), F.S., requires the clerk of the court to collect the court costs, forward the costs to the Crime Stoppers Trust Fund and assess a \$3.00 service charge.

<sup>12</sup> Section 16.555(4)(b), F.S.

<sup>13</sup> Section 16.555(5)(b), F.S.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 16.555, F.S., relating to Crime Stoppers Trust Fund; rulemaking.

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

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

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

2. Expenditures:

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

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

1. Revenues:

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

2. Expenditures:

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

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

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:**

Section 16.555(6), F.S., requires the Department to adopt and enforce rules to implement the provisions of s. 16.555, F.S., and specifies what such rules must include (e.g., criteria for local governments to apply for funding from the "Crime Stoppers Trust Fund" in order to aid in local law enforcement). The bill does not appear to create a need for additional rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to the Crime Stoppers Trust Fund;  
 3           amending s. 16.555, F.S.; authorizing a county that is  
 4           awarded funds from the trust fund to use the funds for  
 5           promotional items; providing an effective date.

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

8  
 9           Section 1. Subsection (5) of section 16.555, Florida  
 10          Statutes, is amended to read:

11           16.555 Crime Stoppers Trust Fund; rulemaking.—

12           (5)(a) The department shall be the disbursing authority  
 13          for the distribution of funding to units of local government  
 14          that apply, ~~upon their application~~ to the department for funding  
 15          assistance.

16           (b) Funds deposited in the trust fund pursuant to  
 17          paragraph (4)(b) shall be disbursed as provided in this  
 18          paragraph. A ~~Any~~ county may apply to the department under s.  
 19          938.06 for a grant from the funds collected in the judicial  
 20          circuit in which the county is located ~~under s. 938.06~~. A grant  
 21          may be awarded only to counties that ~~which~~ are served by an  
 22          official member of the Florida Association of Crime Stoppers and  
 23          may ~~only~~ be used only to support Crime Stoppers and its ~~their~~  
 24          crime fighting programs. Only one such official member is ~~shall~~  
 25          be eligible for support within any county. In order to aid the  
 26          department in determining eligibility, the secretary of the

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27 Florida Association of Crime Stoppers shall furnish the  
28 department with a schedule of authorized crime stoppers programs  
29 and shall update the schedule as necessary. The department shall  
30 award grants to eligible counties from available funds and shall  
31 distribute funds as equitably as possible, based on amounts  
32 collected within each county, if ~~when~~ more than one county is  
33 eligible within a judicial circuit.

34 (c) A county that is awarded funds under this section may  
35 use such funds to purchase and distribute promotional items to  
36 increase public awareness and educate the public about Crime  
37 Stoppers.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 843 Cannabis  
**SPONSOR(S):** Gaetz; Edwards and others  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1030

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

### SUMMARY ANALYSIS

Currently, s. 893.02, F.S., defines "cannabis" as "all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin." Cannabis is a Schedule I controlled substance. As such, persons who sell, manufacture, deliver, possess, traffic, etc., cannabis, are subject to criminal penalties.

In recent months, a particular strain of cannabis has gained national attention as a way to treat certain seizure disorders in children. This strain of marijuana is high in cannabidiol (CBD), a non-psychoactive ingredient known for treating seizures, and low in of tetrahydrocannabinol (THC), which causes cannabis smokers to feel "high."

The bill amends the definition of "cannabis" to exclude "any plant of the genus Cannabis that contains .5 percent or less of tetrahydrocannabinol and more than 15 percent of cannabidiol; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin." As a result, such plants will no longer be illegal to sell, manufacture, deliver, possess, traffic, etc.

The bill will have a positive prison and jail bed impact.

The bill is effective July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Florida's Drug Control Act - Cannabis**

Florida's drug control laws are contained in ch. 893, F.S., entitled the Florida Comprehensive Drug Abuse Prevention and Control Act (Drug Control Act). The Drug Control Act classifies controlled substances into five categories, ranging from Schedule I to Schedule V. Cannabis is currently a Schedule I<sup>1</sup> controlled substance, and is defined as:

All parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.<sup>2</sup>

The Drug Control Act contains a variety of provisions criminalizing behavior related to cannabis. The majority of these penalties are found in s. 893.13, F.S., which provides the following:

- It is a third degree felony<sup>3</sup> for a person to sell; manufacture; deliver; or possess with intent to sell, manufacture, or deliver, cannabis;<sup>4</sup>
- It is a third degree felony for a person to purchase, or possess with intent to purchase, cannabis;<sup>5</sup>
- It is a first degree misdemeanor<sup>6</sup> for a person to deliver, without consideration, not more than 20 grams of cannabis;<sup>7</sup>
- It is a second degree felony<sup>8</sup> for a person 18 years of age or older to deliver cannabis to a person under the age of 18 years, or to use or hire a person under the age of 18 years as an agent or employee in the sale or delivery of cannabis, or to use such person to assist in avoiding detection or apprehension for a violation of ch. 893, F.S.;<sup>9</sup>
- It is a third degree felony for a person to bring cannabis into this state unless the possession of cannabis is authorized by ch. 893, F.S., or unless such person is licensed to do so by the appropriate federal agency;<sup>10</sup> and
- It is a third degree felony for a person to be in actual or constructive possession of more than 20 grams of cannabis unless otherwise authorized by ch. 893, F.S., or unless the cannabis was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice.<sup>11</sup> It is a first degree misdemeanor for a person to possess less than 20 grams of cannabis.<sup>12</sup>

In addition to the above-described offenses, s. 893.135, F.S., makes it a first degree felony<sup>13</sup> for a person to knowingly sell, purchase, manufacture, deliver, bring into this state, or possess more than 25

<sup>1</sup> Schedule I substances have a high potential for abuse and have no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards.

<sup>2</sup> Section 893.02(3), F.S.

<sup>3</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>4</sup> Section 893.13(1), F.S. It is a second degree felony if the offense occurred within 1,000 feet of specified locations (e.g., schools, churches, etc.).

<sup>5</sup> Section 893.13(2), F.S.

<sup>6</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>7</sup> Section 893.13(3), F.S. For purposes of this offense, the term "cannabis" does not include the resin extracted from the plants of the genus Cannabis or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

<sup>8</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>9</sup> Section 893.13(4), F.S.

<sup>10</sup> Section 893.13(5), F.S.

<sup>11</sup> Section 893.13(6), F.S. For purposes of this offense, the term "cannabis" does not include the resin extracted from the plants of the genus Cannabis, or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

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

<sup>13</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.



pounds of cannabis or 300 or more cannabis plants (known as "trafficking in cannabis").<sup>14</sup> A person convicted of trafficking in cannabis must be sentenced to minimum mandatory terms of imprisonment that vary from 3-15 years depending on the amount of cannabis involved in the offense.<sup>15</sup>

### **Charlotte's Web**

In recent months, a particular strain of cannabis has gained national attention as a way to treat certain seizure disorders in children.<sup>16</sup> This strain of marijuana is high in cannabidiol (CBD), a non-psychoactive ingredient known for treating seizures, and low in of tetrahydrocannabinol (THC), which causes cannabis smokers to feel "high."

Currently, more than 180 Colorado children are being treated with a special strain of medical cannabis that's helping to combat their extreme seizures and other debilitating conditions.<sup>17</sup> The strain, known as "Charlotte's Web," was developed by a group of brothers who run the Realm of Caring Foundation in Colorado Springs, and is named for 7 year-old Charlotte Figi, who was successfully treated with the strain.<sup>18</sup>

Charlotte's Web and similar strains are administered in liquid or capsule form and are reported to produce little to no side effects. Because of the low THC count, users don't experience a traditional marijuana high.<sup>19</sup>

### **Effect of the Bill**

The bill amends the definition of "cannabis" to exclude "any plant of the genus Cannabis that contains .5 percent or less of tetrahydrocannabinol and more than 15 percent of cannabidiol; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin." As a result, none of the above-described criminal penalties will apply to people who to sell, manufacture, deliver, possess, traffic, etc., such plants.

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 893.02, F.S., relating to definitions.

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

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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

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<sup>14</sup> Section 893.135(1), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> *See, e.g., Meet The Children Who Rely On Marijuana To Survive*, published 1/31/14, [http://www.huffingtonpost.com/2014/01/31/cannabis-for-children\\_n\\_4697135.html](http://www.huffingtonpost.com/2014/01/31/cannabis-for-children_n_4697135.html) (last visited on February 21, 2104); *Moving for marijuana: Families with seizure-stricken kids relocating to Colorado for strain of pot*, published 2/18/14, <http://www.nydailynews.com/life-style/health/kids-seizure-charlotte-web-pot-treatment-article-1.1619066> (last visited on February 21, 2014); *Marijuana stops child's severe seizures*, published 8/7/13, <http://www.cnn.com/2013/08/07/health/charlotte-child-medical-marijuana/> (last visited on February 21, 2014).

<sup>17</sup> *Meet The Children Who Rely On Marijuana To Survive*, published 1/31/14, [http://www.huffingtonpost.com/2014/01/31/cannabis-for-children\\_n\\_4697135.html](http://www.huffingtonpost.com/2014/01/31/cannabis-for-children_n_4697135.html) (last visited on February 21, 2104).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of the bill. However, by excluding certain plants from the definition of "cannabis," the bill limits the application of the felony offenses contained in ch. 893, F.S. This will have a positive prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill excludes certain plants from the definition of "cannabis," which limits the application of the misdemeanor offenses contained in ch. 893, F.S. This will have a positive jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill allows persons to lawfully engage in the business of manufacturing and selling cannabis that meets the THC and CBD percentage thresholds.

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:

The bill excludes certain plants from the definition of "cannabis" for purposes of Florida law. However, under the federal Controlled Substances Act of 1970,<sup>20</sup> cannabis is classified as a Schedule I drug.<sup>21</sup> Just like Florida's Drug Control Act, the federal Controlled Substances Act imposes penalties on those who possess, sell, distribute, etc. cannabis.<sup>22</sup> A first misdemeanor offense for possession of cannabis in any amount can result in a \$1,000 fine and up to year in prison, climbing for subsequent offenses to as much as \$5,000 and three years.<sup>23</sup> Selling and cultivating cannabis are subject to even greater penalties.<sup>24</sup>

Despite the federal law, some states have legalized cannabis (for both recreational and medical use). However, in 2005, the United States Supreme Court decided *Gonzales vs. Raich*<sup>25</sup> and held that the federal government has the right to use the Commerce Clause of the United States Constitution<sup>26</sup> to regulate homegrown marijuana, even when it's for approved, via state law, medicinal use. This ruling means that the federal government cannot force states to criminalize

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<sup>20</sup> 21 U.S.C. ss. 801-971.

<sup>21</sup> 21 U.S.C. s. 812.

<sup>22</sup> 21 U.S.C. ss. 841-865.

<sup>23</sup> 21 U.S.C. s. 844.

<sup>24</sup> 21 U.S.C. ss. 841-865.

<sup>25</sup> 545 U.S. 1 (U.S. 2005).

<sup>26</sup> ART. I, SEC. 8, CL. 3, U.S. CONST.

something (cannabis, in this case), but can enforce its own laws.<sup>27</sup> However, in recent years, the federal government has softened its stance on cannabis.

On Aug. 29, 2013, United States Deputy Attorney General James Cole issued a memorandum to federal attorneys that appeared to relax the federal government's cannabis-related offense enforcement policies. The memo stated that the United States Department of Justice was committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational ways, and outlined eight areas of enforcement priorities. These enforcement priorities focused on offenses that would result in cannabis being distributed to minors, cannabis sale revenues going to criminal gangs or other similar organizations, and cannabis being grown on public lands.<sup>28</sup> The memo indicated that outside of the listed enforcement priorities, the federal government would not enforce federal cannabis-related laws in states that have legalized the drug and that have a robust regulatory scheme in place.<sup>29</sup>

The bill excludes certain plants from the definition of "cannabis" for purposes of Florida law. Given the above, it is unclear whether the federal government would enforce federal laws prohibiting the possession, sale, distribution, etc. of such plants.

**B. RULE-MAKING AUTHORITY:**

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

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

None.

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

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<sup>27</sup> Pam Bondi says medical marijuana is illegal under federal law, with or without amendment

<sup>28</sup> *Memorandum for all united States Attorneys*, "Guidance Regarding Marijuana Enforcement," August 29, 2013 (on file with the Criminal Justice Subcommittee).

<sup>29</sup> *Id.*

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1                   A bill to be entitled  
 2           An act relating to cannabis; amending s. 893.02, F.S.;  
 3           revising the definition of the term "cannabis" for  
 4           purposes of the Florida Comprehensive Drug Abuse  
 5           Prevention and Control Act and applicable to certain  
 6           criminal offenses proscribing the sale, manufacture,  
 7           delivery, possession, or purchase of cannabis, to  
 8           which penalties apply; providing an effective date.

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

11  
 12           Section 1. Subsection (3) of section 893.02, Florida  
 13   Statutes, is amended to read:

14           893.02 Definitions.—The following words and phrases as  
 15   used in this chapter shall have the following meanings, unless  
 16   the context otherwise requires:

17           (3) "Cannabis" means all parts of any plant of the genus  
 18   Cannabis, whether growing or not; the seeds thereof; the resin  
 19   extracted from any part of the plant; and every compound,  
 20   manufacture, salt, derivative, mixture, or preparation of the  
 21   plant or its seeds or resin. The term does not include any plant  
 22   of the genus Cannabis that contains 0.5 percent or less of  
 23   tetrahydrocannabinol and more than 15 percent of cannabidiol;  
 24   the seeds thereof; the resin extracted from any part of such  
 25   plant; or any compound, manufacture, salt, derivative, mixture,  
 26   or preparation of such plant or its seeds or resin.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice  
 2 Subcommittee  
 3 Representative Gaetz offered the following:

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
 7 Section 1. Section 893.131, Florida Statutes, is created  
 8 to read:

9 893.131 Affirmative defense to prohibited acts.-

10 (1) For purposes of this section, the term "cannabis" means  
 11 a plant of the genus Cannabis, the dried flowers of which  
 12 contain .5 percent or less of tetrahydrocannabinol and more than  
 13 15 percent of cannabidiol weight for weight; the seeds thereof;  
 14 the resin extracted from any part of such plant; or any  
 15 compound, manufacture, salt, derivative, mixture, or preparation  
 16 of such plant or its seeds or resin.



Amendment No. 1

17 (2) (a) The Legislature finds that research has shown that  
18 cannabis has significant health benefits to individuals  
19 suffering from medical conditions, such as seizure disorders  
20 among children, when ingested in a non-smoking manner.

21 (b) The Legislature intends to discourage law enforcement  
22 from arresting and state attorneys from prosecuting persons who  
23 commit violations of s. 893.13 and s. 893.147 when the violation  
24 only involves cannabis.

25 (3) It is an affirmative defense to a prosecution under s.  
26 893.13(1), (2), (3), (4), (5), (6), (7)(a)1., and (7)(a)4.; and  
27 s. 893.135(1) that:

28 (a) Cannabis was the only controlled substance involved in  
29 the violation;

30 (b) The person committing the offense intended that the  
31 cannabis be consumed in a non-smoking manner; and

32 (c) The person committing the offense intended that the  
33 cannabis be consumed by a person under the supervision of a  
34 physician licensed under chapters 458 or 459.

35 (4) It is an affirmative defense to a prosecution under s.  
36 893.147 that the person committing the offense intended that the  
37 drug paraphernalia involved in the offense was intended to only  
38 be used to:

39 (a) Plant, propagate, cultivate, grow, harvest,  
40 manufacture, compound, convert, produce, process, prepare, test,  
41 analyze, pack, repack, store, or contain, cannabis; or

42 (b) Introduce cannabis into the human body in a non-smoking

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43 manner.44 Section 2. Subsection (6) is added to section 943.0585,  
45 Florida Statutes, to read:46 943.0585 Court-ordered expunction of criminal history  
47 records.—The courts of this state have jurisdiction over their  
48 own procedures, including the maintenance, expunction, and  
49 correction of judicial records containing criminal history  
50 information to the extent such procedures are not inconsistent  
51 with the conditions, responsibilities, and duties established by  
52 this section. Any court of competent jurisdiction may order a  
53 criminal justice agency to expunge the criminal history record  
54 of a minor or an adult who complies with the requirements of  
55 this section. The court shall not order a criminal justice  
56 agency to expunge a criminal history record until the person  
57 seeking to expunge a criminal history record has applied for and  
58 received a certificate of eligibility for expunction pursuant to  
59 subsection (2). A criminal history record that relates to a  
60 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
61 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
62 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
63 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
64 any violation specified as a predicate offense for registration  
65 as a sexual predator pursuant to s. 775.21, without regard to  
66 whether that offense alone is sufficient to require such  
67 registration, or for registration as a sexual offender pursuant  
68 to s. 943.0435, may not be expunged, without regard to whether

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## Amendment No. 1

69 adjudication was withheld, if the defendant was found guilty of  
70 or pled guilty or nolo contendere to the offense, or if the  
71 defendant, as a minor, was found to have committed, or pled  
72 guilty or nolo contendere to committing, the offense as a  
73 delinquent act. The court may only order expunction of a  
74 criminal history record pertaining to one arrest or one incident  
75 of alleged criminal activity, except as provided in this  
76 section. The court may, at its sole discretion, order the  
77 expunction of a criminal history record pertaining to more than  
78 one arrest if the additional arrests directly relate to the  
79 original arrest. If the court intends to order the expunction of  
80 records pertaining to such additional arrests, such intent must  
81 be specified in the order. A criminal justice agency may not  
82 expunge any record pertaining to such additional arrests if the  
83 order to expunge does not articulate the intention of the court  
84 to expunge a record pertaining to more than one arrest. This  
85 section does not prevent the court from ordering the expunction  
86 of only a portion of a criminal history record pertaining to one  
87 arrest or one incident of alleged criminal activity.  
88 Notwithstanding any law to the contrary, a criminal justice  
89 agency may comply with laws, court orders, and official requests  
90 of other jurisdictions relating to expunction, correction, or  
91 confidential handling of criminal history records or information  
92 derived therefrom. This section does not confer any right to the  
93 expunction of any criminal history record, and any request for



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94 expunction of a criminal history record may be denied at the  
95 sole discretion of the court.

96 (6) Notwithstanding the eligibility requirements in  
97 subsection (2)(a)2., a person is eligible to apply for and  
98 receive a certificate of eligibility for expunction if the  
99 person is found not guilty at trial of an offense for which the  
100 person successfully raised an affirmative defense pursuant to s.  
101 893.131. A person applying for a certificate of eligibility  
102 pursuant to this subsection must obtain and submit to the  
103 department a written, certified statement from the appropriate  
104 state attorney or statewide prosecutor which indicates that the  
105 person was found not guilty at trial of an offense for which the  
106 person successfully raised an affirmative defense pursuant to s.  
107 893.131. This subsection does not confer any right to the  
108 expunction of a criminal history record, and any request for  
109 expunction of a criminal history record may be denied at the  
110 discretion of the court.

111 Section 3. (1) As used in this section, the term  
112 "cannabidiol" means an extract from the cannabis plant that has  
113 less than 0.5 percent tetrahydrocannabinol and the chemical  
114 signature 2-[(1R,6R)-6-isopropenyl-3-methylcyclohex-2-en-1-yl]-  
115 5-pentylbenzene-1,3-diol, or a derivative thereof, as determined  
116 by the International Union of Pure and Applied Chemistry.

117 (2) In the 2014-2015 fiscal year, \$1 million in non-  
118 recurring general revenue is appropriated to the Department of  
119 Health for the James and Esther King Biomedical Research Program

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120 and shall be deposited into the Biomedical Research Trust Fund.  
121 These funds shall be reserved for research of cannabidiol and  
122 its effect on intractable childhood epilepsy.

123 (3) Biomedical research funding for research of  
124 cannabidiol and its effect on intractable childhood epilepsy  
125 shall be awarded pursuant to s. 215.5602, except as otherwise  
126 provided in this section. An application for such funding may  
127 be submitted by any research university in the state which has  
128 obtained approval from the U.S. Food and Drug Administration for  
129 an exploratory investigational new drug study of cannabidiol and  
130 its effect on intractable childhood epilepsy. For the purposes  
131 of this section, the Biomedical Research Advisory Council  
132 created under s. 215.5602 shall advise the State Surgeon General  
133 as to the direction and scope of research of cannabidiol and its  
134 effect on intractable childhood epilepsy and the award of  
135 research funding.

136 Section 4. This act shall take effect upon becoming a law.  
137  
138

139 -----  
140 **T I T L E A M E N D M E N T**

141 Remove everything before the enacting clause and insert:  
142 An act relating to cannabis; creating s. 893.131, F.S.,  
143 providing definitions; providing legislative findings and  
144 intent; creating an affirmative defense for specified controlled  
145 substance offenses; creating an affirmative defense for



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146 specified drug paraphernalia offenses; amending s. 943.0585,  
147 F.S.; providing that a person is eligible to apply for and  
148 receive a certificate of eligibility for expunction,  
149 notwithstanding certain eligibility requirements, if the person  
150 is found not guilty at trial of an offense for which the person  
151 raised an affirmative defense pursuant to s. 893.131(4);  
152 providing an appropriation to the Department of Health for  
153 research of cannabidiol and its effect on intractable childhood  
154 epilepsy; specifying how biomedical research funding for  
155 research of cannabidiol and its effect on intractable childhood  
156 epilepsy shall be awarded; specifying who may apply for such  
157 funding; providing an effective date.



Amendment No. 1a

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 Van Zant offered the following:

**Amendment to Amendment (378091) by Representative Gaetz**

Remove lines 12-13 of the amendment and insert:

7 contain .8 percent or less of tetrahydrocannabinol and more than  
 8 10 percent of cannabidiol weight for weight; the seeds thereof;

