



Judiciary Committee

**Tuesday, April 14, 2015
9:00 AM – 12:00 PM
Sumner Hall (404 HOB)**

MEETING PACKET

**Steve Crisafulli
Speaker**

**Charles McBurney
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Tuesday, April 14, 2015 09:00 am
End Date and Time: Tuesday, April 14, 2015 12:00 pm
Location: Sumner Hall (404 HOB)
Duration: 3.00 hrs

Consideration of the following bill(s):

CS/CS/HB 57 Law Enforcement Officer Body Cameras by Appropriations Committee, Criminal Justice Subcommittee, Jones, S., Williams, A.
CS/CS/CS/HB 69 Missing Persons with Special Needs by Justice Appropriations Subcommittee, Children, Families & Seniors Subcommittee, Criminal Justice Subcommittee, Porter
CS/CS/HB 99 Juvenile Justice by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Clarke-Reed, Rouson
HB 137 Civil Liability of Farmers by Rader
CS/CS/HB 611 Residential Properties by Business & Professions Subcommittee, Civil Justice Subcommittee, Wood
CS/HB 845 Sexting by Criminal Justice Subcommittee, DuBose
CS/CS/HB 1127 Insurance Fraud by Appropriations Committee, Insurance & Banking Subcommittee, Sullivan
HM 1269 Regulation Freedom Amendment by Raulerson
CS/HB 7063 Child Pornography by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Spano
HB 7065 Pub. Rec./Child Pornography by Criminal Justice Subcommittee, Spano
HB 7103 Public Records/Juvenile Criminal History Records by Criminal Justice Subcommittee, Pritchett
CS/HB 7131 Corrections by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Trujillo, Bracy


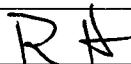
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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 57 Law Enforcement Officer Body Cameras

SPONSOR(S): Appropriations Committee; Criminal Justice Subcommittee; Jones, S.; Williams and others

TIED BILLS: IDEN./SIM. BILLS: SB 7080

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Keegan	Cunningham
2) Appropriations Committee	28 Y, 0 N, As CS	McAuliffe	Leznoff
3) Judiciary Committee		Keegan 	Havlicak 

SUMMARY ANALYSIS

A body camera is a portable electronic device, typically worn on the outside of a vest or a portion of clothing, which records audio and video data. Nationally, a small number of law enforcement agencies have opted to allow their law enforcement officers to wear body cameras. Preliminary studies on the effects of using body cameras on law enforcement officers indicated a reduction of citizen complaints against officers who wore the cameras while on duty.

Similar to the national trend, only a handful of Florida law enforcement agencies have elected to use body cameras. Currently, Florida law does not require such agencies to have policies in place that govern the use of such technology.

The bill requires law enforcement agencies that permit law enforcement officers to wear body cameras to develop policies and procedures governing the proper use, maintenance, and storage of body cameras and recorded data. The policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras;
- Any limitations on which law enforcement officers are permitted to wear body cameras;
- Any limitations on law enforcement-related encounters in which law enforcement officers are permitted to wear body cameras; and
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

The bill requires law enforcement agencies to provide policies and procedures training to all personnel who use, maintain, store, or release body camera recording data. The bill also requires law enforcement agencies to retain body camera recording data in compliance with s. 119.021, F.S., and to perform periodic reviews of agency practices to ensure compliance with the agency's policies and procedures. The bill also exempts body camera recordings from the requirements of ch. 934, F.S. This allows law enforcement officers to wear body cameras during their patrol duties without having to inform each individual they make contact with that they are being recorded.

The bill may have a minimal impact on state and local government expenditures because the bill creates a new requirement for law enforcement agencies that use body cameras to establish policies and procedures governing body cameras, and to train personnel accordingly.

The bill is effective January 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Law Enforcement Body Cameras

A body camera is a portable electronic device, typically worn on the outside of a vest or a portion of clothing, which records audio and video data. Nationally, a small number of law enforcement agencies have opted to allow their law enforcement officers to wear body cameras. The Police Executive Research Forum conducted a national study in 2013 to determine the number of law enforcement agencies currently using body cameras,¹ and only sixty-three agencies nationwide reported using them.²

A limited number of studies have been conducted in the United States to determine the positive and negative effects of using body cameras on law enforcement officers.³ The empirical studies that have been conducted in the United States focused on the effects of using body cameras in the Rialto Police Department (California) and the Mesa Police Department (Arizona).⁴ While the relative lack of peer-reviewed research makes it difficult to accurately identify the benefits and drawbacks of requiring the use of body cameras, the findings of the Rialto and Mesa studies indicated a significant reduction of citizen complaints against officers who wore the cameras while on duty.⁵

More extensive studies have been conducted on the effects of using in-car cameras, commonly referred to as “dash cams,” in law enforcement patrol vehicles. The International Association of Chiefs of Police (hereinafter “IACP”) published findings in 2003 from an extensive study of the effects of using cameras in patrol vehicles.⁶ The IACP study surveyed 47 agencies that owned a total of 31,498 patrol vehicles and 17,500 camera systems.⁷ The study found that the presence of a camera had a small impact on perceptions of officer safety.⁸ Only 33% of the officers surveyed reported increased personal safety on patrol due to the presence of a camera, while 64% reported no change in officer safety.⁹ Conversely, findings indicated that the presence of in-car cameras had a significant impact on resolving citizen complaints and internal affairs investigations.¹⁰ The outcomes of citizen complaints involving incidents that were videotaped resulted in exonerations for the officers in 93% of recorded incidents.¹¹ The immediate supervisors of patrol officers also reported that in at least half of complaints, when the complainant learned the incident was videotaped, the complaint was subsequently withdrawn.¹²

¹ Miller, Lindsay, & Jessica Toliver, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, POLICE EXECUTIVE RESEARCH FORUM, 2014.

² *Id.* (Note: The surveyor contacted 500 law enforcement agencies nationwide and received responses from 254 of those agencies. Of the 254 responding agencies, 63 agencies reported using body-worn cameras.)

³ White, Michael D., *Police Officer Body-Worn Cameras: Assessing the Evidence*, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, 2014.

⁴ *Id.*; Studies are currently being conducted in the Phoenix Police Department (Arizona), the Orlando Police Department (Florida), the Las Vegas Metro Police Department (Nevada), and the Los Angeles Police Department (California). (See White, Michael D., *Police Officer Body-Worn Cameras: Assessing the Evidence*, Office of Community Oriented Policing Services, 2014; Mora, Gema, *Department of Criminology to Study the Effectiveness of Body Cameras on Police Officers*, University of South Florida, <http://criminology.cbcs.usf.edu/NewsEvents/ViewNews.cfm?NewsID=908> (last visited Jan. 21, 2015); National Institute of Justice, *Research on Body-Worn Cameras and Law Enforcement*, <http://www.nij.gov/topics/law-enforcement/technology/pages/body-worn-cameras.aspx> (last visited Feb. 2, 2015).)

⁵ *Id.* (citing to Farrar, William. *Self-Awareness to Being Watched and Socially-Desirable Behavior: A Field Experiment on the Effect of Body-Worn Cameras and Police Use-of-Force*, MESA POLICE DEPARTMENT, 2013.)

⁶ International Association of Chiefs of Police, *The Impact of Video Evidence on Modern Policing: Research and Best Practices from the IACP Study on In-Car Cameras*, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, 2003.

⁷ *Id.* at 10.

⁸ *Id.* at 13.

⁹ *Id.*

¹⁰ *Id.* at 15.

¹¹ *Id.*

¹² *Id.*

Similar to the national trend, only a handful of Florida law enforcement agencies have elected to use body cameras. Currently, Florida law does not require such agencies to have policies in place that govern the use of such technology.

Privacy

Chapter 934, F.S., governs the security of various types of communications in the State, and limits the ability to intercept, monitor, and record such communications. The Chapter provides for criminal penalties¹³ and civil remedies¹⁴ in circumstances where communications are intercepted in violation of Chapter 934, F.S. Additionally, s. 934.03(2)(d), F.S., creates the “two party consent rule,” which requires that all parties to a communication or conversation must consent to having the communication recorded before it can be done so legally.¹⁵ Chapter 934, F.S., provides a limited exception for law enforcement-related recordings when “such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.”¹⁶

Public Records

Chapter 119, F.S., the Public Records Act, governs the maintenance and availability of state, county, and municipal records.¹⁷ While the intent of the Act was to make most records available for anyone to copy or inspect them, the public records laws in Florida exempt certain records from public view.¹⁸

There are several public records exemptions that may apply to law enforcement body camera recordings as a result of privacy or public policy concerns. One such exemption relates to criminal investigation records pursuant to s. 119.071(2)(c). This section exempts records related to active criminal intelligence information and active criminal investigations, as well as documentation of public records requests made by law enforcement agencies.¹⁹ A similar such exemption applies to information revealing surveillance techniques, procedures, or personnel.²⁰ Additionally, exemptions exist to protect private and personal information, such as certain personal identifying information²¹ or victim information.²² Data recorded by body cameras will have to be screened for confidential or exempt data before it is released pursuant to a public records request.

The General Records Schedule, issued by the Florida Department of State, Division of Library and Information Services, establishes the requirements and timelines for agencies to maintain public records.²³ General Records Schedule GS2 governs the records maintenance and retention requirements for law enforcement, correctional facilities, and district medical examiners.²⁴ Schedule GS2 does not currently specify a retention requirement for video or audio recordings from body cameras.²⁵ However, a recording from a body camera could fall under existing areas of the retention schedule, depending on what is recorded.

For example, if a body camera records a criminal incident, retention of the recording for most offenses is governed by Item # 129, Criminal Investigative Records, in the Retention Schedule, and must be

¹³ ss. 934.04, 934.21, 934.215, 934.31, and 934.43, F.S.

¹⁴ s. 934.05, F.S.;

¹⁵ See *State v. Walls*, 356 So. 2d 294 (Fla. 1978).

¹⁶ s. 934.03(2)(c), F.S.

¹⁷ s. 119.01, F.S.

¹⁸ s. 119.071-0713, F.S.; see also *Alice P. v. Miami Daily News, Inc.*, 440 So. 2d 1300 (Fla. 3d DCA 1983); *Patterson v. Tribune Co.*, 146 So. 2d 623 (Fla. 2d DCA 1962); *Staton v. McMillan*, 597 So. 2d 940 (Fla. 1st DCA 1992).

¹⁹ s. 119.071(2)(c), F.S.

²⁰ s. 119.071(2)(d), F.S.

²¹ s. 501.171, F.S.

²² s. 119.071(j), F.S.

²³ Rule 1B-24.003, F.A.C.

²⁴ Florida Dep’t of State, Div. of Library & Info. Servs., GENERAL RECORDS SCHEDULE GS2 (2010).

²⁵ *Id.*

retained for 4 anniversary years after the offense is committed.²⁶ If the recording documents a criminal incident that constitutes a capital or life felony, Item # 31, Criminal Investigative Records: Capital/Life Felony, requires that the recording be retained for 100 anniversary years after the incident.²⁷

Effect of the Bill

The bill requires law enforcement agencies that permit law enforcement officers to wear body cameras to develop policies and procedures governing the proper use, maintenance, and storage of body cameras and recorded data. The policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras;
- Any limitations on which law enforcement officers are permitted to wear body cameras;
- Any limitations on law enforcement-related encounters in which law enforcement officers are permitted to wear body cameras; and
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

The bill requires law enforcement agencies that permit law enforcement officers to wear body cameras to provide policies and procedures training to all personnel who use, maintain, store, or release body cameras or recording data. The bill also requires law enforcement agencies to retain body camera recording data in compliance with s. 119.021, F.S., and to perform periodic reviews of agency practices to ensure compliance with the agency's policies and procedures.

The bill specifies that ch. 934, F.S., does not apply to body camera recordings. This allows law enforcement officers to wear body cameras during their patrol duties without having to inform each individual they make contact with that they are being recorded.

The bill also creates the following definitions:

- "Body camera" means a portable electronic recording device that is worn on a law enforcement officer's person that records audio and video data of the officer's law enforcement-related encounters and activities;
- "Law enforcement agency" means an agency that has a primary mission of preventing and detecting crime and the enforcement of the penal, criminal, traffic, or highway laws of the state and that in furtherance of that primary mission employs law enforcement officers as defined in s. 943.10, F.S.

B. SECTION DIRECTORY:

Section 1. Creates s. 943.1718, F.S., body cameras; policies and procedures.

Section 2. Provides an effective date of January 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

²⁶ *Id.* at page 7.

²⁷ *Id.*

2. Expenditures:

According to 2014 Criminal Justice Agency Profile Survey, no state law enforcement agency reported using body cameras during the 2014 calendar year. If an agency chooses to use body cameras, the bill may have a minimal impact on state expenditures because the bill creates a new requirement for state law enforcement agencies that use body cameras to establish policies and procedures governing body cameras, and to train personnel accordingly.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill may have a minimal impact on local expenditures because the bill creates a new requirement for local law enforcement agencies that use body cameras to establish policies and procedures governing body cameras, and to train personnel accordingly.

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 county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill requires county and municipal governments to develop policies and procedures governing the proper use, maintenance, and storage of body cameras and recorded data, which may result in an indeterminate negative fiscal impact. However, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2015, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorable as a committee substitute. The committee substitute requires law enforcement agencies that use body cameras to establish policies and procedures that include the following:

- General guidelines for the proper use, maintenance, and storage of body cameras;

- Any limitations on which law enforcement officers are permitted to wear body cameras;
- Any limitations on the situations in which law enforcement officers are permitted to wear body cameras; and
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

The committee substitute also requires such law enforcement agencies to provide personnel training, to retain body camera data according to specified procedures, and perform periodic reviews of the practices of such agencies.

On March 19, 2015, the Appropriations Committee adopted one amendment to the committee substitute and reported the bill favorably as amended.

The amendment changes the definition of “body camera” to provide that it is a device worn on a law enforcement officer’s person that records audio and video data of the officer's activities. The amendment also changes one of the policies and procedures that law enforcement agencies utilizing body cameras must establish to include any limitations on the law enforcement-related encounters and activities in which law enforcement officers are permitted to wear body cameras.

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

27 citizen interactions allows law enforcement agencies to improve
 28 efforts to reduce crime and properly address citizen complaints,
 29 and

30 WHEREAS, establishing uniform procedural requirements for
 31 the use of body cameras by law enforcement will provide
 32 consistency and reliability throughout the state, and

33 WHEREAS, there are currently no statewide mandatory and
 34 uniform standards or guidelines that apply to use of body
 35 cameras by law enforcement officers, NOW, THEREFORE,

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

38
 39 Section 1. Section 943.1718, Florida Statutes, is created
 40 to read:

41 943.1718 Body cameras; policies and procedures.-

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

43 (a) "Body camera" means a portable electronic recording
 44 device that is worn on a law enforcement officer's person that
 45 records audio and video data of the officer's law-enforcement-
 46 related encounters and activities.

47 (b) "Law enforcement agency" means an agency that has a
 48 primary mission of preventing and detecting crime and enforcing
 49 the penal, criminal, traffic, and motor vehicle laws of the
 50 state and in furtherance of that primary mission employs law
 51 enforcement officers as defined in s. 943.10.

52 (2) A law enforcement agency that permits its law

53 enforcement officers to wear body cameras shall establish
 54 policies and procedures addressing the proper use, maintenance,
 55 and storage of body cameras and the data recorded by body
 56 cameras. The policies and procedures must include:

57 (a) General guidelines for the proper use, maintenance,
 58 and storage of body cameras.

59 (b) Any limitations on which law enforcement officers are
 60 permitted to wear body cameras.

61 (c) Any limitations on law-enforcement-related encounters
 62 and activities in which law enforcement officers are permitted
 63 to wear body cameras.

64 (d) General guidelines for the proper storage, retention,
 65 and release of audio and video data recorded by body cameras.

66 (3) A law enforcement agency that permits its law
 67 enforcement officers to wear body cameras shall:

68 (a) Ensure that all personnel who wear, use, maintain, or
 69 store body cameras are trained in the law enforcement agency's
 70 policies and procedures concerning them.

71 (b) Ensure that all personnel who use, maintain, store, or
 72 release audio or video data recorded by body cameras are trained
 73 in the law enforcement agency's policies and procedures.

74 (c) Retain audio and video data recorded by body cameras
 75 in accordance with the requirements of s. 119.021, except as
 76 otherwise provided by law.

77 (d) Perform a periodic review of actual agency body camera
 78 practices to ensure conformity with the agency's policies and

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79 | procedures.

80 | (4) Chapter 934 does not apply to body camera recordings
81 | made by law enforcement agencies that elect to use body cameras.

82 | Section 2. This act shall take effect January 1, 2016.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Jones, S. offered the following:

3
4 **Amendment**

5 Between lines 51 and 52, insert:

6 (c) "Law enforcement officer" has the same meaning as
7 provided in s. 943.10.



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	_____	

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Jones, S. offered the following:

3
4 **Amendment**
5 Remove line 82 and insert:
6 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 69 Missing Persons with Special Needs

SPONSOR(S): Justice Appropriations Subcommittee; Children, Families & Seniors Subcommittee; Criminal Justice Subcommittee; Porter and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cox	Cunningham
2) Children, Families & Seniors Subcommittee	10 Y, 0 N, As CS	Langston	Brazzell
3) Justice Appropriations Subcommittee	12 Y, 0 N, As CS	Schrader	Lloyd
4) Judiciary Committee		Cox <i>Kaa</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Elopement, which is defined as leaving an area without supervision or caregiver permission, is prevalent among persons with certain special needs and may expose them to dangerous situations. Individuals with Alzheimer's disease or with autism are two populations at higher risk to elope.

There are a number of personal devices on the market that aid in search and rescue of individuals who elope.

CS/CS/CS/HB 69 creates the "Project Leo" pilot program in Baker, Columbia, Hamilton, and Suwanee Counties to provide personal devices to aid in search-and-rescue for persons with special needs in case of elopement.

The project will be developed and administered by the Center for Autism and Related Disabilities at the University of Florida (CARD UF). The bill directs CARD UF to select participants on a first-come, first-served basis to receive a personal device to aid in search and rescue based on criteria it develops. Criteria must consider, at a minimum, the individual's risk of elopement. The number of participants shall be determined based on available funding within the center's existing resources. The respective county sheriff's offices will distribute these devices to the project participants.

The bill requires CARD UF to submit preliminary and final reports to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The final report must include recommendations for modifications or continued implementation of the program.

The bill provides that the act is subject to available funding within the center's existing resources and expires on June 30, 2017.

The bill is effective on July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Elopement of Individuals with Special Needs

Elopement, which is defined as leaving an area without supervision or caregiver permission, is prevalent among persons with certain special needs and may expose a person to dangerous situations.¹ Wandering and elopement are concerns in particular with children and adults with autism and seniors with Alzheimer's.²

Elopement and Wandering of Individuals with Autism

There are various reasons someone with autism may wander; more often than not, he or she will wander to something of interest (especially bodies of water) or away from something that is bothersome (such as uncomfortable noise or bright lights).³ Children and adults with autism wander from all types of settings, such as educational, therapeutic, residential, camp programs, outdoor, public places, and home settings.⁴

Approximately half of children with autism have a tendency to wander or elope.⁵ Families report that about half of those children who have a tendency to wander succeeded and went missing long enough to cause serious concern. A substantial portion of those children who wander are at risk for bodily harm.⁶ Of those children who went missing, 24% were in danger of drowning and 65% were in danger of a traffic injury.⁷

Elopement and Wandering of Individuals with Alzheimer's Disease

Wandering and elopement can also be dangerous for individuals with Alzheimer's disease and other forms of dementia, as the individual may not remember his or her name or address to assist rescuers; they can become disoriented, even in familiar places. An individual with Alzheimer's disease who wanders or elopes is most often looking for someone or something familiar, escaping a source of stress or anxiety, or may be reliving the past.⁸

¹ Russell Lang, et al., *Treatment of elopement in individuals with developmental disabilities: A systematic review*, RESEARCH IN DEVELOPMENTAL DISABILITIES 30 (2009) 670–681, http://scholar.google.com/scholar_url?url=http://www.researchgate.net/profile/Christina_Fragale/publication/23716164_Treatment_of_elopement_in_individuals_with_developmental_disabilities_a_systematic_review/links/53e3f99e0cf21cc29fc75814.pdf&hl=en&sa=X&scisig=AAGBfm33xLIMHakTS87tq_NEgw_oFixP4w&nossl=1&oi=scholar (last visited in April 10, 2015).

² *Autism & Wandering*, AWAARE COLLABORATION, <http://awaare.nationalautismassociation.org/autism-wandering/> (last visited April 10, 2015).

³ *Id.*

⁴ *Id.*

⁵ Michelle Diament, *Autism Wandering Poses "Critical Safety Issue," Survey Suggests*, DISABILITY SCOOP, (April 21, 2011), <http://www.disabilityscoop.com/2011/04/21/autism-wandering-survey/12953/> (last visited April 10, 2015).

⁶ Connie Anderston, et al., *Occurrence and Family Impact of Elopement in Children With Autism Spectrum Disorders*, PEDIATRICS, (October 8, 2012), available at <http://pediatrics.aappublications.org/content/early/2012/10/02/peds.2012-0762.full.pdf+html> (last visited April 10, 2015).

⁷ *Id.*

⁸ *Alzheimer's: Understand and control wandering*, MAYO CLINIC, <http://www.mayoclinic.org/healthy-living/caregivers/in-depth/alzheimers/art-20046222> (last visited April 10, 2015).

Statistics indicate that in the U.S., more than 34,000 individuals with Alzheimer's disease wander out of their homes or care facilities each year.⁹ Six in ten people with some form of dementia will wander or elope;¹⁰ additionally, it is estimated that 11-24% of institutionalized dementia patients wander.¹¹

Personal Devices for Individuals with Special Needs

Anti-wandering and GPS¹² tracking devices can be worn as a bracelet, attached to an individual's shoe or belt loop or even sewn into clothing. In the event that an individual goes missing, a caregiver can utilize products and services from the monitoring company for the device to pinpoint the wearer's location. There are a number of anti-wandering and GPS tracking devices on the market that can aid in search and rescue for individuals with special needs who are prone to wander. Two examples are the Protect and Locate (PAL) tracking system through Project Lifesaver and the Amber Alert GPS.

The PAL is a tracking device that is worn as a watch by the individual at risk of wandering and has a companion portable receiver which notifies the caregiver of a wandering event. Through the use of cell ID location and GPS technologies, it provides the location of a wearer accurate to nine feet.¹³ If an individual wearing a PAL device wanders outside of a set perimeter, the caregiver's receiver will receive an alert and the caregiver will receive an email alert and send a text message with the date and location of the wandering event.¹⁴ Additionally, a caregiver can press the "find" button on his or her receiver to have the location of the individual and the address displayed on the portable receiver. If the individual wearing the PAL watch/transmitter is lost, he or she can push the panic button on the PAL watch to have the current address shown on the caregiver's portable receiver.¹⁵ The PAL tracking system costs \$249.99 per unit and requires a monitoring/service plan of \$29.95 per month.¹⁶

The Amber Alert GPS is a small disk that can be put in an individual's purse or backpack or, with the purchase of an accessory, can be attached to the individual. The Amber Alert GPS syncs with an online tracking portal and mobile application for iPhone, Blackberry, and Droid cellular phones to provide the real-time location of the wearer.¹⁷ It allows the caregiver to designate up to 20 "safe zones" and receive an alert each time a wearer leaves one of the designated safe zones.¹⁸ It also has a two-way voice feature to allow the caregiver and wearer to talk to each other through the device and an SOS button that the wearer can push in the event of an emergency to notify the caregiver and up to ten additional individuals.¹⁹ Amber Alert GPS costs \$179 per unit and requires a monitoring/service plan of \$10-42 per month.²⁰

Center for Autism and Related Disabilities

The Center for Autism and Related Disabilities (CARD) works with families, caregivers and professionals to optimize the potential of people with autism and related disabilities.²¹ CARD serves

⁹ *Wandering and Elopement Resources*, NATIONAL COUNCIL OF CERTIFIED DEMENTIA PRACTITIONERS, <http://www.nccdp.org/wandering.htm> (last visited April 10, 2015).

¹⁰ *Wandering and Getting Lost*, ALZHEIMER'S ASSOCIATION, <http://www.alz.org/care/alzheimers-dementia-wandering.asp> (last visited April 10, 2015).

¹¹ *Supra*, note 9.

¹² A global positioning system (GPS) is a network of computers and earth-orbiting satellites that allows an earth-bound receiver to determine its precise location. BLACK'S LAW DICTIONARY (10th ed. 2014).

¹³ *PAL Info*, PROJECT LIFESAVER, <http://www.projectlifesaver.org/Pal-info/> (last visited April 10, 2015).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *10 Resources And Devices For Wandering Children With Autism*, FRIENDSHIP CIRCLE BLOG, (June 1, 2011; updated 2014) <http://www.friendshipcircle.org/blog/2011/06/01/10-resources-for-wandering-children-with-autism/> (last visited April 10, 2015).

¹⁷ *Amber Alert GPS Smart Locator*, AMBER ALERT GPS, <https://www.amberalertgps.com/products> (last visited April 10, 2015).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Supra*, Note 16.

²¹ CENTER FOR AUTISM AND RELATED DISABILITIES UNIVERSITY OF FLORIDA, *About CARD FAQ*, <http://card.ufl.edu/about-card/faq/> (last visited April 10, 2015).

children and adults of all levels of intellectual functioning who have autism, autistic-like disabilities, pervasive developmental disorder, dual sensory impairments (deaf-blindness), or a vision or hearing loss with another disabling condition.²²

There are seven non-residential CARD centers across the state; the Center for Autism and Related Disabilities at the University of Florida (CARD UF) serves fourteen counties in North Central Florida.²³ The counties served by CARD UF are Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Levy, Marion, Putnam, Suwannee, and Union.²⁴

Effect of Proposed Changes

CS/CS/CS/HB 69 creates the "Project Leo" pilot program in Baker, Columbia, Hamilton, and Suwannee Counties to provide personal devices to aid search-and-rescue for persons with special needs in case of elopement. The bill does not define the term "special needs."

The project will be developed and administered by CARD UF; the bill directs CARD UF to select participants based on criteria it develops, which must include, at a minimum, the individual's risk of elopement. The participants will be selected on a first-come, first-served basis. The number of participants must be determined based on available funding within the center's existing resources.

Participation in the project is voluntary. Participants will be provided a personal device to aid in search and rescue that is attachable to clothing or otherwise wearable. The center will fund any cost associated with the monitoring of the devices. The respective county sheriff's offices will distribute these devices to the project participants.

The bill requires CARD UF to submit preliminary and final reports to the Governor, the Speaker of the House of Representatives, and the President of the Senate. Both reports must include:

- The criteria used to select the participants;
- The number of participants;
- The age of the participants;
- The nature of the participants' special needs;
- The number of participants who elope;
- The amount of time taken to rescue a participant following elopement; and
- The outcome of any rescue attempts.

Additionally, the final report must include recommendations for modifications or continued implementation of the program.

The bill provides that the act is subject to available funding within CARD UF's existing resources and expires on June 30, 2017.

The bill provides that the act shall take effect July 1, 2015.

B. SECTION DIRECTORY:

Section 1. Creates s. 937.041, F.S., relating to the missing persons with special needs pilot program.

Section 2. Provides an effective date of July 1, 2015.

²² *Id.*

²³ *Id.*

²⁴ CENTER FOR AUTISM AND RELATED DISABILITIES UNIVERSITY OF FLORIDA, *About CARD*, <http://card.ufl.edu/about-card/> (last visited April 10, 2015).

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 is subject to available funding within the existing resources of the Center for Autism and Related Disabilities at the University of Florida (CARD UF).

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 and municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Deletes the requirement that FDLE and DCF provide electronic monitoring devices to specified individuals with special needs, as well as the requirement for APD to produce of a list of persons eligible for the electronic monitoring devices; and
- Removes the requirement that FDLE incorporate training on retrieving missing persons with special needs in its law enforcement officer training.

On March 24, 2015, the Children, Families, and Seniors Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Creates the "Project Leo" pilot program in Baker, Columbia, Hamilton, and Suwanee Counties to provide personal devices to aid in search-and-rescue for persons with special needs in case of elopement.
- Provides that the pilot project is to be developed and administered by the Center for Autism and Related Disabilities at the University of Florida and that the respective county sheriff's offices will distribute the personal devices.
- Requires the center to submit preliminary and final reports to the Governor, the Speaker of the House of Representatives, and the President of the Senate.
- Provides that the act is subject to available funding and expires on June 30, 2017.

On April 7, 2015, the Justice Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies available funding for participants selected on a first-served basis must remain within the center's existing resources; and
- Clarifies the center shall fund any costs associated with monitoring the devices; and
- Clarifies the project shall operate to the extent of available funding within the center's existing resources.

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

1 A bill to be entitled
 2 An act relating to missing persons with special needs;
 3 creating s. 937.041, F.S.; creating a pilot project in
 4 specified counties to provide personal devices to aid
 5 search-and-rescue efforts for persons with special
 6 needs; providing for administration of the project;
 7 requiring reports; providing for expiration; providing
 8 an effective date.

9

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

11

12 Section 1. Section 937.041, Florida Statutes, is created
 13 to read:

14 937.041 Missing persons with special needs pilot project.-

15 (1) There is created a pilot project in Baker, Columbia,
 16 Hamilton, and Suwannee Counties to be known as "Project Leo" to
 17 provide personal devices to aid search-and-rescue efforts for
 18 persons with special needs in the case of elopement.

19 (2) Participants for the pilot project shall be selected
 20 based on criteria developed by the Center for Autism and Related
 21 Disabilities at the University of Florida. Criteria for
 22 participation shall include, at a minimum, the person's risk of
 23 elopement. The qualifying participants shall be selected on a
 24 first-come, first-served basis by the center to the extent of
 25 available funding within the center's existing resources. The
 26 project shall be voluntary and free to participants.

27 (3) Under the pilot project, personal devices to aid
 28 search-and-rescue efforts that are attachable to clothing or
 29 otherwise worn shall be provided by the center to the sheriff's
 30 offices of the participating counties. The devices shall be
 31 distributed to project participants by the county sheriff's
 32 offices in conjunction with the center. The center shall fund
 33 any costs associated with monitoring the devices.

34 (4) The center shall submit a preliminary report by
 35 December 1, 2015, and a final report by December 15, 2016, to
 36 the Governor, the President of the Senate, and the Speaker of
 37 the House of Representatives describing the implementation and
 38 operation of the pilot project. At a minimum, the report shall
 39 include the criteria used to select participants, the number of
 40 participants, the age of the participants, the nature of the
 41 participants' special needs, the number of participants who
 42 elope, the amount of time taken to rescue such participants
 43 following elopement, and the outcome of any rescue attempts. The
 44 final report shall also provide recommendations for modification
 45 or continued implementation of the project.

46 (5) The project shall operate to the extent of available
 47 funding within the center's existing resources.

48 (6) This section expires June 30, 2017.

49 Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 99 Juvenile Justice

SPONSOR(S): Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Clarke-Reed; Rouson and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 378

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 3 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee	11 Y, 1 N, As CS	Schrader	Lloyd
3) Judiciary Committee		Cox <i>WCA</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Civil Citation Programs (CCPs) give law enforcement officers (LEO) an alternative to arresting youth who have committed non-serious delinquent acts. Under a CCP, a LEO has discretion to issue a civil citation to a juvenile who admits to having committed a first-time misdemeanor, assess not more than 50 community service hours, and require participation in intervention services appropriate to any identified needs of the juvenile.

As of October 2014, CCPs were operational in 59 of Florida's 67 counties.

The bill amends s. 985.12, F.S., to:

- Authorize a law enforcement officer to issue a warning or inform the juvenile's parent when a juvenile admits to having committed a misdemeanor;
- Gives the officer discretion to issue a civil citation or require participation in a similar diversion program if he or she decides not to issue a warning or notify the juvenile's parents;
- Gives the officer discretion to arrest the juvenile; if an arrest is made a LEO must provide written documentation as to why an arrest was warranted; and
- Authorize an officer to issue a civil citation for second or subsequent misdemeanors.

To the extent the bill prevents youth from being arrested and placed in detention at a Juvenile Assessment Center, the bill will result in a positive fiscal impact to local and state governments.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Juvenile Justice Process

The juvenile justice process usually starts when a law enforcement officer (LEO) arrests a youth¹ for a criminal offense.² Depending on the seriousness of the offense and the LEO's view of what is needed to appropriately address the offense, the LEO may:

- Deliver the youth to a Juvenile Assessment Center (JAC) for intake screening to further assess the youth's risk to the community and to determine if some type of detention is necessary;
- Call an "on call screener" to assess the youth's risk and determine if detention is necessary (this is done in localities where a JAC is not available);
- Release the youth to a parent or guardian and forward the charges to the local clerk of court and Department of Juvenile Justice (DJJ) Probation office; or
- Release the youth to parent or guardian with a direct referral to a diversion program.³

In lieu of arresting a youth, LEOs have the option of issuing certain youth a civil citation.

Civil Citation Program

The Civil Citation Program (CCP), created by s. 985.12, F.S., gives law enforcement an alternative to taking youth who have committed non-serious delinquent acts into custody while ensuring swift and appropriate consequences.⁴ Under a CCP, a LEO may issue a civil citation to a juvenile who admits to having committed a first-time misdemeanor,⁵ assess not more than 50 community service hours, and require participation in intervention services appropriate to identified needs of the juvenile.⁶ The statute requires the LEO issuing the civil citation⁷ to advise the child of his or her option to refuse the citation and instead be arrested and referred to a DJJ intake office.⁸

A child that elects to participate in the CCP must report to a community service performance monitor within seven working days after the date of issuance of the civil citation, and must complete the work assignment at a rate of not less than 5 hours per week.⁹ Upon completion of the program, the agency operating the CCP must report the outcome to DJJ.¹⁰

If the youth fails to report timely for a work assignment, complete a work assignment, comply with assigned intervention services within the prescribed time, or commits a subsequent misdemeanor, the LEO must issue a report alleging the child has committed a delinquent act.¹¹ A juvenile probation

¹ "Child" or "juvenile" or "youth" means any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years. s. 985.03(7), F.S.,

² Florida Department of Juvenile Justice, Probation and Community Intervention. <http://www.djj.state.fl.us/faqs/probation-community-intervention> (last visited February 23, 2015).

³ *Id.*

⁴ s. 985.12(1), F.S.

⁵ First time misdemeanor offenses are eligible for civil citation, with the exception of firearm, sexual offense, or gang related charges. Rule 63D-10.002(2)(a), F.A.C.

⁶ Such services may include family counseling, urinalysis monitoring, and substance abuse and mental health treatment services. s. 985.12(1), F.S. Additional sanctions or services could include a letter of apology to the victim(s), restitution, school progress monitoring, and pre-vocational skill services. *Florida Civil Citation, Civil Citation FAQs*, <http://www.djj.state.fl.us/partners/our-approach/florida-civil-citation> (last visited on February 23, 2015).

⁷ If the LEO issues a civil citation, a copy must be provided to the county sheriff, state attorney, the appropriate DJJ intake office or the community performance monitor designated by DJJ, the parents or guardian of the youth, and the victim. Section 985.12(1), F.S.

⁸ The youth has the right to opt out of the CCP and be referred to a DJJ intake office at any time before completion of the work assignment. s. 985.12(6), F.S.

⁹ s. 985.12(4), F.S.

¹⁰ s. 985.12(1), F.S.

¹¹ s. 985.12(5), F.S.

officer must then process the original delinquent act as a referral to DJJ and refer the report to the state attorney for review.¹²

Currently, s. 985.12, F.S., requires CCPs or another similar diversion program¹³ to be established at the local level with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency. The program may be operated by a law enforcement agency, DJJ, a JAC, a county or municipality, or an entity selected by a county or municipality.¹⁴ As of October 2014, CCPs were operational in 59 of Florida's 67 counties.¹⁵

Effect of the Bill

As noted above, a LEO who makes contact with a juvenile who admits to having committed a misdemeanor has the option to issue a youth a civil citation, rather than arrest the youth and refer him or her to DJJ.

The bill amends s. 985.12, F.S., to:

- Authorize a law enforcement officer to issue a warning or inform the juvenile's parent when a juvenile admits to having committed a misdemeanor;
- Gives the officer discretion to issue a civil citation or require participation in a similar diversion program if he or she decides not to issue a warning or notify the juvenile's parents;
- Gives the officer discretion to arrest the juvenile; if an arrest is made a LEO must provide written documentation as to why an arrest was warranted; and
- Authorize an officer to issue a civil citation for second or subsequent misdemeanors.

The bill also reenacts ss. 943.051 and 985.11, F.S., for purposes of incorporating the changes made by the act to s. 985.12, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 985.12, F.S., relating to civil citation.

Section 2. Reenacts s. 943.051, F.S., relating to criminal justice information; collection and storage; fingerprinting.

Section 3. Reenacts s. 985.11, F.S., relating to fingerprinting and photographing.

Section 4. Provides an effective date of October 1, 2015.

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.

¹² *Id.*

¹³ Diversion programs are non-judicial alternatives used to keep youth who have committed a delinquent act from being handled through the traditional juvenile justice system. Diversion programs may be pre-arrest or post-arrest programs and are established by law enforcement agencies or school districts in cooperation with state attorneys. See s. 985.125, F.S., and *DJJ Youth and Families, Glossary*, <http://www.djj.state.fl.us/youth-families/glossary> (last visited February 23, 2015).

¹⁴ s. 985.12(1), F.S.

¹⁵ Polk, Taylor, and Bradford counties are in the process of developing a CCP. Sarasota, Hardee, Gulf, Calhoun, and Washington counties do not have CCPs. Florida Department of Juvenile Justice, Probation and Community Intervention.

<http://www.djj.state.fl.us/faqs/probation-community-intervention> (last visited February 23, 2015).

2. Expenditures:

To the extent the bill prevents youth from being arrested and placed in detention at a JAC, the bill will result in a positive fiscal 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:

To the extent the bill prevents youth from being arrested and placed in detention at a JAC, the bill will result in a positive fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2015, the Criminal Justice Subcommittee a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorizes a law enforcement officer to issue a warning or inform the juvenile's parent when a juvenile admits to having committed a misdemeanor;
- Requires the officer to issue a civil citation or require participation in a similar diversion program if he or she decides not to issue a warning or notify the juvenile's parents;
- Gives the officer discretion to arrest the juvenile if the officer makes written findings that doing so protects the public; and
- Authorizes an officer to issue a civil citation for second or subsequent misdemeanors.

On March 30, 2015, the Justice Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Makes issuing a civil citation discretionary.

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

1 A bill to be entitled
2 An act relating to juvenile justice; amending s.
3 985.12, F.S.; authorizing a law enforcement officer to
4 issue a warning to a juvenile who admits having
5 committed a misdemeanor or to inform the child's
6 parent or guardian of the child's infraction; allowing
7 a law enforcement officer who does not exercise one of
8 these options to issue a civil citation or require
9 participation in a similar diversion program;
10 requiring a law enforcement officer to provide written
11 documentation in certain circumstances; providing that
12 repeat misdemeanor offenders may participate in the
13 civil citation program or a similar diversion program
14 under certain circumstances; reenacting ss.
15 943.051(3)(b) and 985.11(1)(b), F.S., relating to the
16 issuance of a civil citation, and the issuance of a
17 civil citation or similar diversion program,
18 respectively, to incorporate the amendments made to s.
19 985.12, F.S., in references thereto; providing an
20 effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsection (1) of section 985.12, Florida
25 Statutes, is amended to read:
26 985.12 Civil citation.—

27 (1) There is established a juvenile civil citation process
 28 for the purpose of providing an efficient and innovative
 29 alternative to custody by the Department of Juvenile Justice for
 30 children who commit nonserious delinquent acts and to ensure
 31 swift and appropriate consequences. The department shall
 32 encourage and assist in the implementation and improvement of
 33 civil citation programs or other similar diversion programs
 34 around the state. The civil citation or similar diversion
 35 program shall be established at the local level with the
 36 concurrence of the chief judge of the circuit, state attorney,
 37 public defender, and the head of each local law enforcement
 38 agency involved. The program may be operated by an entity such
 39 as a law enforcement agency, the department, a juvenile
 40 assessment center, the county or municipality, or another ~~some~~
 41 ~~other~~ entity selected by the county or municipality. An entity
 42 operating the civil citation or similar diversion program must
 43 do so in consultation and agreement with the state attorney and
 44 local law enforcement agencies. Under such a juvenile civil
 45 citation or similar diversion program, a any law enforcement
 46 officer, upon making contact with a juvenile who admits having
 47 committed a misdemeanor, may choose to issue a simple warning or
 48 inform the child's guardian or parent of the child's infraction,
 49 or may issue a civil citation or require participation in a
 50 similar diversion program, and assess up to ~~not more than~~ 50
 51 community service hours, and require participation in
 52 intervention services as indicated by an assessment of the needs

53 of the juvenile, including family counseling, urinalysis
 54 monitoring, and substance abuse and mental health treatment
 55 services. A copy of each citation issued under this section
 56 shall be provided to the department, and the department shall
 57 enter appropriate information into the juvenile offender
 58 information system. Use of the civil citation or similar
 59 diversion program is not limited to first-time misdemeanors and
 60 may be used in a second or subsequent misdemeanor. If an arrest
 61 is made, a law enforcement officer must provide written
 62 documentation as to why an arrest was warranted. ~~Only first-time~~
 63 ~~misdemeanor offenders are eligible for the civil citation or~~
 64 ~~similar diversion program.~~ At the conclusion of a juvenile's
 65 civil citation program or similar diversion program, the agency
 66 operating the program shall report the outcome to the
 67 department. The issuance of a civil citation is not considered a
 68 referral to the department.

69 Section 2. For the purpose of incorporating the amendment
 70 made by this act to section 985.12, Florida Statutes, in a
 71 reference thereto, paragraph (b) of subsection (3) of section
 72 943.051, Florida Statutes, is reenacted to read:

73 943.051 Criminal justice information; collection and
 74 storage; fingerprinting.-

75 (3)

76 (b) A minor who is charged with or found to have committed
 77 the following offenses shall be fingerprinted and the
 78 fingerprints shall be submitted electronically to the

79 department, unless the minor is issued a civil citation pursuant
 80 to s. 985.12:

- 81 1. Assault, as defined in s. 784.011.
- 82 2. Battery, as defined in s. 784.03.
- 83 3. Carrying a concealed weapon, as defined in s.
 84 790.01(1).
- 85 4. Unlawful use of destructive devices or bombs, as
 86 defined in s. 790.1615(1).
- 87 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 88 6. Assault or battery on a law enforcement officer, a
 89 firefighter, or other specified officers, as defined in s.
 90 784.07(2)(a) and (b).
- 91 7. Open carrying of a weapon, as defined in s. 790.053.
- 92 8. Exposure of sexual organs, as defined in s. 800.03.
- 93 9. Unlawful possession of a firearm, as defined in s.
 94 790.22(5).
- 95 10. Petit theft, as defined in s. 812.014(3).
- 96 11. Cruelty to animals, as defined in s. 828.12(1).
- 97 12. Arson, as defined in s. 806.031(1).
- 98 13. Unlawful possession or discharge of a weapon or
 99 firearm at a school-sponsored event or on school property, as
 100 provided in s. 790.115.

101 Section 3. For the purpose of incorporating the amendment
 102 made by this act to section 985.12, Florida Statutes, in a
 103 reference thereto, paragraph (b) of subsection (1) of section
 104 985.11, Florida Statutes, is reenacted to read:

105 985.11 Fingerprinting and photographing.—
 106 (1)
 107 (b) Unless the child is issued a civil citation or is
 108 participating in a similar diversion program pursuant to s.
 109 985.12, a child who is charged with or found to have committed
 110 one of the following offenses shall be fingerprinted, and the
 111 fingerprints shall be submitted to the Department of Law
 112 Enforcement as provided in s. 943.051(3)(b):
 113 1. Assault, as defined in s. 784.011.
 114 2. Battery, as defined in s. 784.03.
 115 3. Carrying a concealed weapon, as defined in s.
 116 790.01(1).
 117 4. Unlawful use of destructive devices or bombs, as
 118 defined in s. 790.1615(1).
 119 5. Neglect of a child, as defined in s. 827.03(1)(e).
 120 6. Assault on a law enforcement officer, a firefighter, or
 121 other specified officers, as defined in s. 784.07(2)(a).
 122 7. Open carrying of a weapon, as defined in s. 790.053.
 123 8. Exposure of sexual organs, as defined in s. 800.03.
 124 9. Unlawful possession of a firearm, as defined in s.
 125 790.22(5).
 126 10. Petit theft, as defined in s. 812.014.
 127 11. Cruelty to animals, as defined in s. 828.12(1).
 128 12. Arson, resulting in bodily harm to a firefighter, as
 129 defined in s. 806.031(1).
 130 13. Unlawful possession or discharge of a weapon or

131 firearm at a school-sponsored event or on school property as
 132 defined in s. 790.115.

133

134 A law enforcement agency may fingerprint and photograph a child
 135 taken into custody upon probable cause that such child has
 136 committed any other violation of law, as the agency deems
 137 appropriate. Such fingerprint records and photographs shall be
 138 retained by the law enforcement agency in a separate file, and
 139 these records and all copies thereof must be marked "Juvenile
 140 Confidential." These records are not available for public
 141 disclosure and inspection under s. 119.07(1) except as provided
 142 in ss. 943.053 and 985.04(2), but shall be available to other
 143 law enforcement agencies, criminal justice agencies, state
 144 attorneys, the courts, the child, the parents or legal
 145 custodians of the child, their attorneys, and any other person
 146 authorized by the court to have access to such records. In
 147 addition, such records may be submitted to the Department of Law
 148 Enforcement for inclusion in the state criminal history records
 149 and used by criminal justice agencies for criminal justice
 150 purposes. These records may, in the discretion of the court, be
 151 open to inspection by anyone upon a showing of cause. The
 152 fingerprint and photograph records shall be produced in the
 153 court whenever directed by the court. Any photograph taken
 154 pursuant to this section may be shown by a law enforcement
 155 officer to any victim or witness of a crime for the purpose of
 156 identifying the person who committed such crime.

CS/CS/HB 99

2015

157

Section 4. This act shall take effect October 1, 2015.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Clarke-Reed offered the following:

Amendment

5 Remove line 60 and insert:

6 may be used in a second or subsequent misdemeanor. However, a
 7 juvenile may not be issued a civil citation or be required to
 8 participate in a similar diversion program for more than three
 9 separate misdemeanor offenses. If an arrest

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 137 Civil Liability of Farmers
SPONSOR(S): Rader and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 158

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Bond	Bond
2) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Hastings	Blalock
3) Judiciary Committee		Bond	Havlicak

SUMMARY ANALYSIS

Removing produce or crops remaining in the fields after harvest, generally by hand, is commonly referred to as "gleaning."

A farmer who allows gleaning after harvest is exempt from some civil liability arising from any injury or death resulting from the condition of the land, or from the condition of the produce or crop harvested. The exemption from civil liability does not apply if injury or death results from gross negligence, intentional act, or a known dangerous condition not disclosed by the farmer.

The bill extends the current exemption from civil liability to farmers who allow gratuitous harvesting of crops at any time. The bill also provides that the exemption from civil liability does not apply if injury or death directly results from failure of the farmer to warn of a dangerous condition of which the farmer has actual knowledge unless the dangerous condition would be obvious to a person entering upon the farmer's land.

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

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Landowner Liability in General

A person who is injured on another person's land may sue the landowner in tort if the landowner breached a duty of care owed to the plaintiff, the plaintiff suffered damages as a result of the landowner's breach, and the damages were actually and proximately caused by the landowner's breach.¹ A landowner's duty of care to persons on his or her land is governed by the status of the injured person.

An "invitee" is a person who was invited to enter the land.² Florida law defines "invitation" to mean "that the visitor entering the premises has an objectively reasonable belief that he or she has been invited or is otherwise welcome on that portion of the real property where injury occurs."³ The duties owed to most invitees are the duty to keep property in reasonably safe condition and the duty to warn of concealed dangers that are known or should be known to the property holder and that the invitee cannot discover through the exercise of due care.⁴

Farms and Gleaning

The historical use of the term "gleaning" refers to the practice of allowing persons to pick up crops in the field after the normal harvest. Most of the food available for gleaning is food that was missed by mechanical harvesting implements and thus only available for harvest by hand. Gleaning by volunteers on behalf of local charities is a time-honored tradition in farming communities.

Farm Liability in Statute

Current law in s. 768.137, F.S., provides that any farmer who, without receiving compensation, allows persons to enter his or her land for the purpose of removing produce or crops remaining in the fields after harvest is exempt from civil liability arising from any injury or death resulting from the condition of the land, produce, or crop. However, this exemption from civil liability does not apply if injury or death directly results from the gross negligence, intentional act, or from a known dangerous condition not disclosed by the farmer.

The exemption from civil liability does not apply to a farmer who allows a gleaning at any time other than after harvest. The liability standard for such farmer would be that described above under *Landowner Liability in General*.

Effect of Proposed Changes

The bill amends s. 768.137, F.S., to:

- Extend the exemption from civil liability to farmers who allow gratuitous harvesting of crops at any time.
- Provide that the exemption from civil liability does not apply if injury or death directly results from the failure of the farmer to warn of a dangerous condition of which the farmer has actual

¹ 74 Am. Jur. 2d Torts s. 7 (2013).

² *Post v. Lunney*, 261 So.2d 147, 147-48 (Fla. 1972).

³ s. 768.075(3)(a)1., F.S.

⁴ See, e.g., *Dampier v. Morgan Tire & Auto, LLC*, 82 So.3d 204, 205 (Fla. 5th DCA 2012).

knowledge unless the dangerous condition would be obvious to a person entering upon the farmer's land.

- Make grammatical and style improvements.

B. SECTION DIRECTORY:

Section 1 amends s. 768.137, F.S., regarding the limitation of civil liability for certain farmers.

Section 2 provides an effective date of July 1, 2015.

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.⁵

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurance and litigation costs paid by farmers who allow gratuitous gleaning of crops at any time of the year may be reduced as a result of the expanded exemption from civil liability. In addition, farmers may be more likely to allow gratuitous gleaning of crops as a result of the extension.

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.

⁵ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2015 House Bill 137 (Jan. 12, 2015).

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to civil liability of farmers;
 3 amending s. 768.137, F.S.; revising an exemption from
 4 civil liability for farmers who gratuitously allow a
 5 person to enter upon their land for the purpose of
 6 removing farm produce or crops; revising applicability
 7 of the exemption; providing an effective date.

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

10
 11 Section 1. Subsections (2) and (3) of section 768.137,
 12 Florida Statutes, are amended to read:

13 768.137 Definition; limitation of civil liability for
 14 certain farmers; exception.—

15 (2) A ~~Any~~ farmer who gratuitously allows a person ~~persons~~
 16 to enter upon the farmer's ~~her or his own~~ land for the purpose
 17 of removing ~~any~~ farm produce or crops is remaining in the fields
 18 ~~following the harvesting thereof, shall be~~ exempt from civil
 19 liability:

20 (a) Arising out of any injury or the death of such person
 21 due to resulting from the nature or condition of the such land;
 22 or

23 (b) Arising out of any injury or death due to the nature,
 24 age, or condition of the any such farm produce or crops removed
 25 by such person ~~crop~~.

26 (3) The exemption from civil liability provided for in

HB 137

2015

27 | this section does ~~shall~~ not apply if injury or death directly
 28 | results from the gross negligence or~~7~~ intentional act of the
 29 | farmer~~7~~ or the failure of the farmer to warn of a dangerous
 30 | condition of which the farmer has actual knowledge unless the
 31 | dangerous condition would be obvious to a person entering upon
 32 | the farmer's land ~~from known dangerous conditions not disclosed~~
 33 | ~~by the farmer.~~

34 | Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 611 Residential Properties

SPONSOR(S): Business & Professions Subcommittee; Civil Justice Subcommittee; Wood and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 736

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Robinson	Bond
2) Business & Professions Subcommittee	9 Y, 4 N, As CS	Anstead	Luczynski
3) Judiciary Committee		Robinson <i>TK</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

When an ownership interest in a home, cooperative, or condominium is transferred, the new owner is jointly and severally liable with the previous owner for unpaid assessments owed to a homeowners', cooperative, or condominium association. Unpaid assessments may also become a lien on the parcel. To protect against undisclosed financial obligations and to transfer title that is free of any lien or encumbrance, buyers often request that the seller provide an estoppel certificate from any association of which the unit or parcel is a part. An estoppel certificate certifies the total debt owed to the association for unpaid financial obligations by a parcel owner, unit owner, or mortgagee as of a specified date.

The bill amends the law governing homeowners', cooperative and condominium associations (collectively referred to herein as "association") by:

- Providing standards for the issuance of an estoppel certificate from an association.
- Reducing the time that an association has to respond to a request for an estoppel certificate from 15 days to 10 days.
- Providing that an estoppel certificate may be delivered by mail, hand, or electronic means.
- Providing that an association waives the right to collect moneys owed in excess of those stated in the estoppel certificate and waives the right to collect or make a claim for any amounts owed if the association fails to issue the estoppel certificate.
- Establishing the maximum fee that an association may charge for the issuance of an estoppel certificate and permitting other fees in limited circumstances.
- Revising the time for payment of the estoppel certificate fee charged by an association for the preparation an estoppel certificate.
- Providing that a condominium association may only suspend voting rights in limited circumstances.

The changes reflect recommendations made to the Legislature by the Community Association Living Study Council.

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

The bill takes effect July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Condominium¹ and cooperative² associations are governed internally by an association whose members are the owners of units within the association. Many, but not all, residential communities are similarly governed by a homeowners' association³ made up of parcel owners. Associations are in effect a partnership between unit or parcel owners with a common interest in real property. To operate, an association must collect regular assessments from the unit owners and parcel owners in order to pay for common expenses, management, maintenance, insurance, and reserves for anticipated future major expenses. Sections 718.111(4), 719.104(5), and 720.308, F.S., provide for the assessment and collection of periodic and special assessments to fund an association. A unit or parcel owner is liable for all assessments that come due while he or she is the owner, and is jointly liable with past owners for any assessment owed by such previous owners.⁴ Unpaid assessments may also become a lien on the parcel.⁵

To protect against undisclosed financial obligations and to ensure that title is transferred free of any lien or encumbrance, buyers in an ordinary sale of a unit or parcel insist that all assessments be brought current through the date of sale, and an owner's title insurance company insures the buyer should the closing agent not properly see to payment of assessments through closing.

An estoppel certificate issued by an association certifies the total debt owed to the association for unpaid financial obligations by a parcel owner, unit owner, or mortgagee as of a specified date. Buyers, sellers, lenders, and other entities involved in the sale or refinance of a unit or parcel rely on estoppel certificates issued by an association to ascertain the amount to be collected and applied at closing. The association is legally bound⁶ by the amount in the estoppel certificate and is barred from asserting a claim of moneys due that contradicts the information provided in the estoppel certificate against any third party who relies on such certificate.⁷

Present Situation - Fees for Preparation of Estoppel Certificate

A homeowners' or condominium association may charge a fee for the preparation of an estoppel certificate as long as the fee is established by a written resolution adopted by the board, or provided by

¹ A condominium association means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership. s. 718.103(2), F.S.

² A cooperative association means the corporation for profit or not for profit that owns the record interest in the cooperative property or a leasehold of the property of a cooperative and that is responsible for the operation of the cooperative. s. 719.103(2), F.S.

³ A homeowners' association is a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. s. 720.301(9), F.S.

⁴ ss. 718.116(1), 719.108(1), and 720.3085(2)(b), F.S.

⁵ ss. 718.116(5), 719.108(4), and 720.3085, F.S.

⁶ "Estoppel" means a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true. *Black's Law Dictionary* (10th ed. 2014), available at Westlaw BLACKS.

⁷ ss. 718.116(8)(a), 719.108(6), and 720.30851(1), F.S.

a written management, bookkeeping, or maintenance contract.⁸ A cooperative association may also charge a fee, but there is currently no similar condition in ch. 719, F.S., for cooperative associations to establish such fee by written resolution. Current law also provides no limitation on the amount of the fee that may be charged by an association other than that such amount must be "reasonable."⁹ Neither the Legislature nor the courts have provided guidance on what constitutes a reasonable fee for an estoppel certificate. This has caused variations in the amount of the fee charged by associations for the preparation of an estoppel certificate.

Additionally, any fee charged by a homeowners' or condominium association for an estoppel certificate is payable upon preparation of the certificate.¹⁰ As estoppel certificates are generally required to close the sale or refinancing of a home and must be requested earlier than the time of closing, the funds must be paid solely by one party to the transaction, usually the seller, rather than from the closing settlement proceeds. However, current law does provide that if the certificate was requested in conjunction with the sale or mortgage of a unit or parcel but the sale does not occur, a homeowners' or condominium association must refund the fee, but only to a non-owner payor.¹¹ The refund becomes the obligation of the unit or parcel owner and the homeowners' or condominium association may collect it from the owner in the same manner as an assessment.¹² Accordingly, owners may be required to pay an estoppel fee even where closing does not occur due to the early payment requirement or the obligation to reimburse a homeowners' or condominium association for a fee refund given to a non-owner payor.

After a series of public meetings in 2014, the Community Association Living Study Council,¹³ by unanimous vote, recommended to the Legislature that a reasonable cap be established for estoppel certificate fees and that such fees be tiered.¹⁴ The Council proposed several additional factors that should be considered when determining the amount of the fee including whether or not the owner is current in fees, delinquent in fees, or estoppel certificates were requested in conjunction with a bulk purchase.¹⁵

Effect of Proposed Changes - Fees for Preparation of Estoppel Certificate

The bill amends ss. 718.116(8), 719.108(6), and 720.30851, F.S., to authorize an association to charge a fee for the delivery as well as the preparation of an estoppel certificate. The bill establishes a maximum fee, not to exceed \$300, for the preparation and delivery of an estoppel certificate. An association may charge an additional supplemental fee of up to \$50 under each of the following circumstances:

- The owner is delinquent with respect to moneys owed to the association and his or her account has been referred for collection;
- Expedited delivery of an estoppel certificate is requested and made; or

⁸ ss. 718.116(8)(d) and 720.30851(3), F.S.

⁹ ss. 718.116(8)(c) and 719.108(6), F.S. There is no corresponding requirement in ch. 720, F.S., that the fee charged by a homeowners' association be reasonable.

¹⁰ ss. 718.116(8)(d) and 720.30851(3), F.S.; The time for payment of the fee to a cooperative association is not provided under current law.

¹¹ *Id.*

¹² *Id.*

¹³ The Community Association Living Study Council was created by the Legislature in 2008 to receive input from the public regarding issues of concern with respect to community association living and to advise the Legislature concerning revisions and improvements to the laws relating to community associations. The council consisted of seven members appointed by the President of the Senate, the Speaker of the House Representatives, and the Governor. An ex officio nonvoting member was appointed by the Director of the Division of Florida Condominiums, Timeshares, and Mobile Homes. The Council was abolished by the Legislature in 2014. See s. 718.50151, F.S. (2013); Ch. 2014-133, L.O.F.

¹⁴ Community Association Living Study Council, *Final Report*, March 31, 2014, available at <http://www.myfloralicense.com/Dbpr/lsc/documents/2014CALSCReport.pdf> (last visited Feb. 26, 2015).

¹⁵ *Id.*

- An additional estoppel certificate is requested within 30 days after the most recently delivered estoppel certificate.

However, notwithstanding the authority to charge up to \$300 for an estoppel certificate, if a unit or parcel owner meets certain requirements and makes a simultaneous request for the estoppel certificate of multiple units owned by the unit or parcel owner, the association may deliver the statement of moneys due in one or more estoppel certificates and the total fee that may be charged may not exceed:

- \$750 for 25 or fewer units or parcels;
- \$1,000 for 26 to 50 units or parcels;
- \$1,500 for 51 to 100 units or parcels; or
- \$2,500 for more than 100 units or parcels.

The bill also repeals the requirement that the fee for an estoppel certificate be paid upon preparation by an association. Where an estoppel certificate is requested in conjunction with the sale or refinancing of a unit or parcel, the fee and any supplemental fees are due and payable to an association no earlier than the closing and must be paid from the closing settlement proceeds. Since the fees must be paid from the closing settlement proceeds, the bill repeals the provision authorizing a refund of fees by a homeowners' or condominium association to a non-owner payor as no fee will have previously been paid. However, if the sale does not occur within 60 days after the estoppel certificate is delivered, the fee is the obligation of the owner and may be collected by an association in the same manner as an assessment.

The preparation and delivery of an estoppel certificate may not be conditioned upon the payment of any other fees not authorized by the bill.

Present Situation - Form and Delivery of Estoppel Certificate

An association is required to provide an estoppel certificate within 15 days after receiving a request¹⁶ from a unit or parcel owner, unit or parcel mortgagee, or the designee of the owner or mortgagee.¹⁷ Although the certificate acts as a bar and prevents the association from later asserting a claim or right that contradicts the information in the certificate, current law is largely silent on the specific contents and form the certificate. An estoppel certificate issued by a homeowners' or condominium association must only set forth all assessments and other moneys owed to the association with respect to the unit or parcel, disclose any fee charged by the association for the preparation of such certificate, and be signed by an officer or authorized agent of the association.¹⁸ An estoppel certificate issued by a cooperative association must only set forth the amount of assessments or other moneys owed.¹⁹ Some associations provide the amount of assessments and other moneys owed to the association in one lump sum while others provide an itemized breakdown of assessments, late fees, interest, etc. The amount in the certificate may reflect the amount presently owed or the amount owed through a given date a few weeks or months into the future. Accordingly, the information provided in estoppel certificates varies among associations.

Additionally, although current law does not restrict the method in which an association may provide an estoppel certificate to an owner or mortgagee, the Community Association Living Study Council, by unanimous vote, recommended to the Legislature that the law governing community associations authorize the use of digital communications.²⁰

¹⁶ A request to a condominium association must be in writing. Section 718.116(8), F.S.

¹⁷ Sections 718.116(8), 719.108(6), and 720.30851, F.S. The cooperative act does not currently require that a cooperative association provide an estoppel certificate to the designee of the owner or mortgagee.

¹⁸ *Id.*

¹⁹ Section 719.108(6), F.S.

²⁰ *Supra* at note 14.

Effect of Proposed Changes - Form and Delivery of Estoppel Certificate

The bill amends ss. 720.30851 and 718.116(8), F.S., relating to homeowners' and condominium associations, to provide additional specific requirements for the form and content of an estoppel certificate. An estoppel certificate must be dated as of the date it is delivered and set forth all assessments and other moneys owed to the association, including costs and reasonable attorney fees incurred in collection of the unpaid assessments, as reflected in the official records of the association, through at least 30 days after the date of the estoppel certificate.

Section 719.108(6), F.S., is also amended to provide that an estoppel certificate issued by a cooperative association be in the same form provided in current law for an estoppel certificate issued by homeowners' and condominium associations with such additional information required for homeowners' and condominium estoppel certificates as provided by this bill.

The bill reduces the period of time in which an association must respond to a request for an estoppel certificate from 15 days to 10 days and specifies that the certificate may be delivered by mail, hand, or electronic means. All requests for an estoppel certificate from an association must be written and may also be made by the designee of an owner or mortgagee.

Present Situation - Estoppel Effect of Certificate

Any person, other than the owner of a unit or parcel, who relies upon an estoppel certificate issued by an association, is protected by the estoppel effect of the certificate.²¹ Accordingly, an association would be unable to assert a claim for an amount of unpaid assessments against a purchaser of a unit or parcel if that amount contradicted the amount of unpaid assessments provided by the association in an estoppel certificate during the closing of the sale. However, the protections of the estoppel effect extend only to such third parties and although an owner may pay a fee to obtain the certified amount of unpaid assessments and moneys owed to the association, the association is not estopped from asserting a contradictory claim in the future against the owner.

Effect of Proposed Changes - Estoppel Effect of Certificate

The bill provides that if an association fails to respond to a request for an estoppel certificate, the association waives any claim, including a claim of lien against the unit or parcel, for moneys owed to the association that should have been shown on the estoppel certificate against any person who in good faith would have relied on such certificate, as well as that person's successors and assigns.

The bill also amends current law to expressly provide that the association waives the right to collect any money owed in excess of the amount set forth in the estoppel certificate. Such waiver extends to any person, which would include any owner, who in good faith relied upon the certificate as well as the person's successors and assigns.

Present Situation - Compliance by Association

Under current law, a unit or parcel owner may compel compliance with the provisions governing the issuance of an estoppel certificate from a homeowners' or condominium association by bringing a summary procedure pursuant to s. 51.011, F.S.²² The prevailing party is entitled to recover reasonable attorney's fees and costs.²³

²¹ ss. 718.116(8)(a), 719.108(6), and 720.30851(1), F.S.

²² ss. 718.116(8)(b) and 720.30851(2), F.S.; s. 51.011, F.S., specifies a summary procedure for actions that specifically provide for this procedure by statute or rule. Under the summary procedure, all defenses of law or fact are required to be contained in the defendant's answer which must be filed within five days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. (Fla. R. Civ. Pro. 1.140, requires an answer, including any counterclaims, within 20 days after service of the complaint.) No other pleadings are permitted,

Effect of Proposed Changes - Compliance by Association

The bill repeals the authority to compel compliance from a homeowners' or condominium association by resort to the summary procedure specified in s. 51.011, F.S.

Present Situation – Suspension of Voting Rights for Delinquency

Section 718.106, F.S., provides that a condominium unit owner is entitled vote on association matters. An association may suspend the voting rights of a unit or member due to nonpayment of any monetary obligation due to the association which is more than 90 days delinquent.²⁴ The statute does not specify a minimum delinquency and a unit or member of the association may currently be suspended, regardless of amount, if a monetary obligation is more than 90 days delinquent. In addition, associations are currently permitted to place certain units in receivership and have a receiver appointed by the court to collect certain funds on behalf of the association.²⁵

Effect of Proposed Changes – Suspension of Voting Rights for Delinquency

The bill provides that a condominium association may only suspend the voting rights of a unit owner due to nonpayment of a monetary obligation over \$500 that is more than 90 days delinquent.

The bill also provides that a receiver may not exercise voting rights of any unit if it was placed in receivership for the benefit of the association.

B. SECTION DIRECTORY:

Section 1 amends s. 718.116, F.S., relating to assessments; liability; lien and priority; interest; collection.

Section 2 amends s. 718.303, F.S., relating to obligations of owners and occupants; remedies.

Section 3 amends s. 719.108, F.S., relating to rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.

Section 4 amends s. 720.30851, F.S., relating to estoppel certificates.

Section 5 provides an effective date of July 1, 2015.

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.

and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery, and the procedure also provides for an immediate trial, if requested.

²³ *Id.*

²⁴ s. 718.303(5), F.S.

²⁵ s. 718.111(5)(b)4, F.S.(abandoned unit); s. 718.116(6)(c), F.S.(foreclosure); and s. 718.116(11)(f), F.S.(past due assessments).

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:

To the extent that an association charges more than \$300 for the issuance of an estoppel certificate, the bill may have a positive economic impact on unit and parcel owners of such association by reducing the amount of fees required to obtain an estoppel certificate. In such instance there would be a corresponding negative reduction in such fees collected by associations.

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:

Article I, s. 10 of the United States Constitution, and art. I, s. 10 of the state constitution both prohibit the legislature from enacting any law impairing the obligation of contracts. Although written in terms of an absolute prohibition, the courts have long interpreted the provisions to prohibit enactment of any unreasonable impairment of contractual rights existing at the time that the law is enacted.

In *Allied Structural Steel Co. v. Spannaus*,²⁶ the United States Supreme Court set forth the following principles in examining a law under an impairment analysis, ruling:

[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.

The severity of an impairment of contractual obligations can be measured by the factors that reflect the high value the Framers placed on the protection of private contracts. Contracts enable individuals to order their personal and business affairs according to their particular needs and interests. Once arranged, those rights and obligations are binding under the law, and the parties are entitled to rely on them.

Referring to the *Allied* opinion, the Florida Supreme Court in *Pomponio v. Claridge of Pompano Condominium, Inc.*²⁷ added the following clarification to the analysis:

²⁶ *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 245 (1978).

(a) Was the law enacted to deal with a broad, generalized economic or social problem?

(b) Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by the state?

(c) Does the law effect a temporary alteration of the contractual relationships of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships irrevocably and retroactively?

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2015, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by:

- Permanently waiving an association's claim for amounts due if the association fails to provide an estoppel certificate, and extending such waiver to the successor and assigns of any person who in good faith relied or would have relied on such estoppel certificate.
- Specifying additional information that must be contained within an estoppel certificate.
- Reducing the time for payment of an estoppel certificate fee from 120 to 60 days after delivery.
- Removing a restriction on the imposition of supplemental fees for issuing an estoppel certificate to correct an error in a previously issued estoppel certificate.
- Repealing the authority to compel compliance from an association by use of a summary procedure.
- Requiring a written request to compel the issuance of an estoppel certificate.
- Removing a provision authorizing an association to collect reasonable attorney fees and costs in connection with the collection of past due moneys.
- Amending the Cooperative Act to require that cooperative associations adhere to the same standards and requirements as a homeowners or condominium association when issuing estoppel certificates.

On March 24, 2015, the Business & Professions Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute:

- Establishes a reasonable fee, not to exceed \$300, for the issuance of estoppel certificates by cooperative, condominium, and homeowners' associations.
- Provides that a condominium association may only suspend the voting rights of a unit owner due to nonpayment of a monetary obligation over \$500 that is more than 90 days delinquent; and provides that a receiver shall not exercise voting rights of any unit if it was placed in receivership for the benefit of the association.

This analysis is drafted to the committee substitute as passed by the Business & Professions Subcommittee.

²⁷ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774, 779 (Fla. 1979).

1 A bill to be entitled

2 An act relating to residential properties; amending
3 ss. 718.116, 719.108, and 720.30851, F.S.; providing
4 requirements relating to the request for an estoppel
5 certificate by a unit or parcel owner or a unit or
6 parcel mortgagee; providing that the association
7 waives the right to collect any moneys owed in excess
8 of the amounts set forth in the estoppel certificate
9 under certain conditions; providing that the
10 association waives any claim against a person or
11 entity who would have relied in good faith upon the
12 estoppel certificate under certain conditions;
13 providing and revising estoppel certificate fee and
14 supplemental fee requirements; deleting provisions
15 relating to expedited court action to compel issuance
16 of an estoppel certificate; amending s. 718.303, F.S.;
17 revising requirements for the suspension of a unit's
18 or member's voting rights; prohibiting a receiver from
19 exercising voting rights of any unit placed in
20 receivership; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsection (8) of section 718.116, Florida
25 Statutes, is amended to read:

26 718.116 Assessments; liability; lien and priority;

27 interest; collection.-

28 (8) Within 10 ~~15~~ days after receiving a written request
 29 for an estoppel certificate therefor from a unit owner or his or
 30 her designee, or a unit mortgagee or his or her designee, the
 31 association shall deliver by mail, hand, or electronic means an
 32 estoppel ~~provide a~~ certificate signed by an officer or agent of
 33 the association. The estoppel certificate must be dated as of
 34 the date it is delivered, must be valid for at least 30 days,
 35 and must state ~~stating~~ all assessments and other moneys,
 36 including costs and reasonable attorney fees incurred by the
 37 association incident to the collection process as authorized by
 38 subsection (3) and paragraph (5)(b), that are owed to the
 39 association by the unit owner with respect to the unit, as
 40 reflected in records maintained pursuant to s. 718.111(12),
 41 through a date that is at least 30 days after the date of the
 42 estoppel certificate ~~condominium parcel.~~

43 (a) An association waives the right to collect any moneys
 44 owed in excess of the amounts set forth in the estoppel
 45 certificate from any person who in good faith relies upon the
 46 estoppel certificate and from that person's successors and
 47 assigns ~~Any person other than the owner who relies upon such~~
 48 ~~certificate shall be protected thereby.~~

49 (b) If an association receives a written request for an
 50 estoppel certificate from a unit owner or his or her designee,
 51 or a unit mortgagee or his or her designee, and fails to deliver
 52 an estoppel certificate as required by this section, the

53 association waives, as to any person who would have in good
 54 faith relied on the estoppel certificate and as to that person's
 55 successors and assigns, any claim, including a claim for a lien
 56 against the unit, for any amounts owed to the association that
 57 should have been shown on the estoppel certificate ~~A summary~~
 58 ~~proceeding pursuant to s. 51.011 may be brought to compel~~
 59 ~~compliance with this subsection, and in any such action the~~
 60 ~~prevailing party is entitled to recover reasonable attorney's~~
 61 ~~fees.~~

62 (c) Notwithstanding any limitation on transfer fees
 63 contained in s. 718.112(2)(i), an ~~the~~ association or its
 64 ~~authorized~~ agent may charge an estoppel certificate ~~a reasonable~~
 65 ~~fee~~ as provided in this paragraph for the preparation and
 66 delivery of the estoppel certificate. The amount of the estoppel
 67 certificate fee must be included on the estoppel certificate. If
 68 the estoppel certificate is requested in conjunction with the
 69 sale or refinancing of a unit, the estoppel certificate fee and
 70 any supplemental estoppel certificate fees pursuant to this
 71 paragraph shall be due and payable no earlier than the closing
 72 of the sale or refinancing, and shall be paid from closing
 73 settlement proceeds. If the closing does not occur within 60
 74 days after the date the estoppel certificate is delivered, the
 75 estoppel certificate fee is the obligation of the unit owner and
 76 the association may collect the estoppel certificate fee only in
 77 the same manner as an assessment against the unit owner as set
 78 forth in this section. The preparation and delivery of an

79 estoppel certificate may not be conditioned upon the payment of
 80 any other fees. The estoppel certificate fee shall be a
 81 reasonable amount, not to exceed \$300, to be determined by the
 82 cost of providing the information. However, one or more of the
 83 following supplemental estoppel certificate fees may be added:

84 1. If the unit owner is delinquent with respect to moneys
 85 owed to the association, and the association has referred the
 86 account to an attorney or other agent for collection, an
 87 additional estoppel certificate fee not to exceed \$50 may be
 88 charged.

89 2. If a request to expedite delivery of the estoppel
 90 certificate is made and the estoppel certificate is delivered no
 91 later than the date requested, an additional estoppel
 92 certificate fee not to exceed \$50 may be charged.

93 3. If an additional estoppel certificate is requested
 94 within 30 days after the most recently delivered estoppel
 95 certificate, an additional estoppel certificate fee not to
 96 exceed \$50 for each such estoppel certificate may be charged.

97 (d) If estoppel certificates for multiple units owned by
 98 the same unit owner are simultaneously requested from the same
 99 association and there are no past due monetary obligations owed
 100 to the association, the statement of moneys due for those units
 101 may be delivered in one or more estoppel certificates, and,
 102 though the estoppel certificate fee for each unit shall be
 103 computed as set forth in paragraph (c), the total estoppel
 104 certificate fee that the association may charge for the

105 preparation and delivery of the estoppel certificate or estoppel
 106 certificates may not exceed, in the aggregate:

- 107 1. For 25 or fewer units, \$750.
- 108 2. For 26 to 50 units, \$1,000.
- 109 3. For 51 to 100 units, \$1,500.
- 110 4. For more than 100 units, \$2,500.

111 ~~(e)(d)~~ The authority to charge a fee for the estoppel
 112 certificate shall be established by a written resolution adopted
 113 by the board or provided by a written management, bookkeeping,
 114 or maintenance contract ~~and is payable upon the preparation of~~
 115 ~~the certificate. If the certificate is requested in conjunction~~
 116 ~~with the sale or mortgage of a unit but the closing does not~~
 117 ~~occur and no later than 30 days after the closing date for which~~
 118 ~~the certificate was sought the preparer receives a written~~
 119 ~~request, accompanied by reasonable documentation, that the sale~~
 120 ~~did not occur from a payor that is not the unit owner, the fee~~
 121 ~~shall be refunded to that payor within 30 days after receipt of~~
 122 ~~the request. The refund is the obligation of the unit owner, and~~
 123 ~~the association may collect it from that owner in the same~~
 124 ~~manner as an assessment as provided in this section.~~

125 Section 2. Subsection (5) of section 718.303, Florida
 126 Statutes, is amended, and subsection (7) is added to that
 127 section, to read:

128 718.303 Obligations and rights of owners and occupants;
 129 remedies.—

130 (5) An association may suspend the voting rights of a unit

131 or member due to nonpayment of any monetary obligation due to
 132 the association which is more than \$500 and more than 90 days
 133 delinquent. A voting interest or consent right allocated to a
 134 unit or member which has been suspended by the association may
 135 not be counted towards the total number of voting interests
 136 necessary to constitute a quorum, the number of voting interests
 137 required to conduct an election, or the number of voting
 138 interests required to approve an action under this chapter or
 139 pursuant to the declaration, articles of incorporation, or
 140 bylaws. The suspension ends upon full payment of all obligations
 141 currently due or overdue the association. The notice and hearing
 142 requirements under subsection (3) do not apply to a suspension
 143 imposed under this subsection.

144 (7) A receiver may not exercise voting rights of any unit
 145 placed in receivership for the benefit of the association
 146 pursuant to this chapter.

147 Section 3. Subsection (6) of section 719.108, Florida
 148 Statutes, is amended to read:

149 719.108 Rents and assessments; liability; lien and
 150 priority; interest; collection; cooperative ownership.—

151 (6) Within 10 ~~15~~ days after receiving a written request
 152 for an estoppel certificate from ~~by~~ a unit owner or his or her
 153 designee, or a unit mortgagee or his or her designee, the
 154 association shall deliver by mail, hand, or electronic means an
 155 estoppel ~~provide a~~ certificate signed by an officer or agent of
 156 the association. The estoppel certificate must be dated as of

157 the date it is delivered, must be valid for at least 30 days,
 158 and must state ~~stating~~ all assessments and other moneys,
 159 including costs and reasonable attorney fees incurred by the
 160 association incident to the collection process as authorized by
 161 subsection (3) and paragraph (4)(b), that are owed to the
 162 association by the unit owner with respect to the cooperative
 163 parcel, as reflected in records maintained pursuant to s.
 164 719.104(2), through a date that is at least 30 days after the
 165 date of the estoppel certificate.

166 (a) An association waives the right to collect any moneys
 167 owed in excess of the amounts set forth in the estoppel
 168 certificate from any person who in good faith relies upon the
 169 estoppel certificate, and from that person's successors and
 170 assigns ~~Any person other than the unit owner who relies upon~~
 171 ~~such certificate shall be protected thereby.~~

172 (b) If an association receives a written request for an
 173 estoppel certificate from a unit owner or his or her designee,
 174 or a unit mortgagee or his or her designee, and fails to deliver
 175 an estoppel certificate as required by this section, the
 176 association waives, as to any person who would have in good
 177 faith relied on the estoppel certificate and as to that person's
 178 successors and assigns, any claim, including a claim for a lien
 179 against the unit, for any amounts owed to the association that
 180 should have been shown on the estoppel certificate.

181 (c) Notwithstanding any limitation on transfer fees
 182 contained in s. 719.106(1)(i), an ~~the~~ association or its

183 ~~authorized~~ agent may charge an estoppel certificate ~~a reasonable~~
 184 fee as provided in this paragraph for the preparation and
 185 delivery of the estoppel certificate. The amount of the estoppel
 186 certificate fee must be included on the estoppel certificate. If
 187 the estoppel certificate is requested in conjunction with the
 188 sale or refinancing of a unit, the estoppel certificate fee and
 189 any supplemental estoppel certificate fees pursuant to this
 190 paragraph shall be due and payable no earlier than the closing
 191 of the sale or refinancing, and shall be paid from closing
 192 settlement proceeds. If the closing does not occur within 60
 193 days after the date the estoppel certificate is delivered, the
 194 estoppel certificate fee is the obligation of the unit owner and
 195 the association may collect the estoppel certificate fee only in
 196 the same manner as an assessment against the unit owner as set
 197 forth in this section. The preparation and delivery of an
 198 estoppel certificate may not be conditioned upon the payment of
 199 any other fees. The estoppel certificate fee shall be a
 200 reasonable amount, not to exceed \$300, to be determined by the
 201 cost of providing the information. However, one or more of the
 202 following supplemental estoppel certificate fees may be added:
 203 1. If the unit owner is delinquent with respect to moneys
 204 owed to the association, and the association has referred the
 205 account to an attorney or other agent for collection, an
 206 additional estoppel certificate fee not to exceed \$50 may be
 207 charged.
 208 2. If a request to expedite delivery of the estoppel

209 certificate is made and the estoppel certificate is delivered no
 210 later than the date requested, an additional estoppel
 211 certificate fee not to exceed \$50 may be charged.

212 3. If an additional estoppel certificate is requested
 213 within 30 days after the most recently delivered estoppel
 214 certificate, an additional estoppel certificate fee not to
 215 exceed \$50 for each such estoppel certificate may be charged.

216 (d) If estoppel certificates for multiple units owned by
 217 the same unit owner are simultaneously requested from the same
 218 association and there are no past due monetary obligations owed
 219 to the association, the statement of moneys due for those units
 220 may be delivered in one or more estoppel certificates, and,
 221 though the estoppel certificate fee for each unit shall be
 222 computed as set forth in paragraph (c), the total estoppel
 223 certificate fee that the association may charge for the
 224 preparation and delivery of the estoppel certificate or estoppel
 225 certificates may not exceed, in the aggregate:

- 226 1. For 25 or fewer units, \$750.
- 227 2. For 26 to 50 units, \$1,000.
- 228 3. For 51 to 100 units, \$1,500.
- 229 4. For more than 100 units, \$2,500.

230 (e) The authority to charge a fee for the estoppel
 231 certificate shall be established by a written resolution adopted
 232 by the board or provided by a written management, bookkeeping,
 233 or maintenance contract.

234 Section 4. Section 720.30851, Florida Statutes, is amended

235 to read:

236 720.30851 Estoppel certificates.—Within 10 ~~15~~ days after
 237 receiving the date on which a written request for an estoppel
 238 certificate is received from a parcel owner or his or her
 239 designee, or a parcel mortgagee, or his or her designee, the
 240 association shall deliver by mail, hand, or electronic means an
 241 estoppel ~~provide a~~ certificate signed by an officer or
 242 ~~authorized~~ agent of the association. The estoppel certificate
 243 must be dated as of the date it is delivered, must be valid for
 244 at least 30 days, and must state ~~stating~~ all assessments and
 245 other moneys, including costs and reasonable attorney fees
 246 incurred by the association incident to the collection process
 247 as authorized by s. 720.3085, that are owed to the association
 248 by the parcel owner or parcel mortgagee with respect to the
 249 parcel, as reflected in records maintained pursuant to s.
 250 720.303(4), through a date that is at least 30 days after the
 251 date of the estoppel certificate. An association may charge a
 252 fee for the preparation of such certificate, and the amount of
 253 such fee must be stated on the certificate.

254 (1) An association waives the right to collect any moneys
 255 owed in excess of the amounts set forth in the estoppel
 256 certificate from any person who in good faith relies upon the
 257 estoppel certificate, and from that person's successors and
 258 assigns ~~Any person other than a parcel owner who relies upon a~~
 259 ~~certificate receives the benefits and protection thereof.~~

260 (2) If an association receives a written request for an

261 estoppel certificate from a parcel owner or his or her designee,
 262 or a parcel mortgagee or his or her designee, and fails to
 263 deliver an estoppel certificate as required by this section, the
 264 association waives, as to any person who would have in good
 265 faith relied on the estoppel certificate and as to that person's
 266 successors and assigns, any claim, including a claim for a lien
 267 against the parcel, for any amounts owed to the association that
 268 should have been shown on the estoppel certificate ~~A summary~~
 269 ~~proceeding pursuant to s. 51.011 may be brought to compel~~
 270 ~~compliance with this section, and the prevailing party is~~
 271 ~~entitled to recover reasonable attorney's fees.~~

272 (3) An association or its agent may charge an estoppel
 273 certificate fee as provided in this subsection for the
 274 preparation and delivery of the estoppel certificate. The amount
 275 of the estoppel certificate fee must be included on the estoppel
 276 certificate. If the estoppel certificate is requested in
 277 conjunction with the sale or refinancing of a parcel, the
 278 estoppel certificate fee and any supplemental estoppel
 279 certificate fees pursuant to this subsection shall be due and
 280 payable no earlier than the closing of the sale or refinancing,
 281 and shall be paid from the closing settlement proceeds. If the
 282 closing does not occur within 60 days after the date the
 283 estoppel certificate is delivered, the estoppel certificate fee
 284 is the obligation of the parcel owner and the association may
 285 collect the estoppel certificate fee only in the same manner as
 286 an assessment against the parcel owner as set forth in s.

287 720.3085. The preparation and delivery of an estoppel
 288 certificate may not be conditioned upon the payment of any other
 289 fees. The estoppel certificate fee shall be a reasonable amount,
 290 not to exceed \$300, to be determined by the cost of providing
 291 the information. However, one or more of the following
 292 supplemental estoppel certificate fees may be added:

293 (a) If the parcel owner is delinquent with respect to
 294 moneys owed to the association, and the association has referred
 295 the account to an attorney or other agent for collection, an
 296 additional estoppel certificate fee not to exceed \$50 may be
 297 charged.

298 (b) If a request to expedite delivery of the estoppel
 299 certificate is made and the estoppel certificate is delivered no
 300 later than the date requested, an additional estoppel
 301 certificate fee not to exceed \$50 may be charged.

302 (c) If an additional estoppel certificate is requested
 303 within 30 days after the most recently delivered estoppel
 304 certificate, an additional estoppel certificate fee not to
 305 exceed \$50 for each such estoppel certificate may be charged.

306 (4) If estoppel certificates for multiple parcels owned by
 307 the same parcel owner are simultaneously requested from the same
 308 association and there are no past due monetary obligations owed
 309 to the association, the statement of moneys due for those
 310 parcels may be delivered in one or more estoppel certificates,
 311 and, though the estoppel certificate fee for each parcel shall
 312 be computed as set forth in subsection (3), the total estoppel

313 certificate fee that the association may charge for the
 314 preparation and delivery of the estoppel certificate or estoppel
 315 certificates may not exceed, in the aggregate:

- 316 (a) For 25 or fewer parcels, \$750.
- 317 (b) For 26 to 50 parcels, \$1,000.
- 318 (c) For 51 to 100 parcels, \$1,500.
- 319 (d) For more than 100 parcels, \$2,500.

320 (5) The authority to charge a fee for the estoppel
 321 certificate shall be established by a written resolution adopted
 322 by the board or provided by a written management, bookkeeping,
 323 or maintenance contract and is payable upon the preparation of
 324 the certificate. If the certificate is requested in conjunction
 325 with the sale or mortgage of a parcel but the closing does not
 326 occur and no later than 30 days after the closing date for which
 327 the certificate was sought the preparer receives a written
 328 request, accompanied by reasonable documentation, that the sale
 329 did not occur from a payor that is not the parcel owner, the fee
 330 shall be refunded to that payor within 30 days after receipt of
 331 the request. The refund is the obligation of the parcel owner,
 332 and the association may collect it from that owner in the same
 333 manner as an assessment as provided in this section.

334 Section 5. This act shall take effect July 1, 2015.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsection (8) of section 718.116, Florida
 7 Statutes, is amended to read:

8 718.116 Assessments; liability; lien and priority;
 9 interest; collection.-

10 (8) An association shall issue an estoppel certificate to
 11 a unit owner or the unit owner's designee or a unit mortgagee or
 12 the unit mortgagee's designee within 10 business ~~15~~ days after
 13 receiving a written or electronic request for the certificate.
 14 The estoppel certificate must be delivered by mail, by hand
 15 delivery, or by electronic means to the requester on the date of
 16 issuance.



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17 (a) The estoppel certificate must contain all of the
18 following:

19 1. The date of issuance.

20 2. The amount of all assessments and other moneys owed to
21 the association by the unit owner for a specific unit on the
22 date of issuance. This amount is limited to amounts authorized
23 by statute to be recorded in the official records of the
24 association under s. 718.111(12).

25 3. The amount of any additional assessments and other
26 moneys that are scheduled to become due for each day after the
27 date of issuance for the 30-day or 35-day effective period of
28 the estoppel certificate. This amount is limited to amounts
29 authorized by statute to be recorded in the official records of
30 the association under s. 718.111(12). In calculating the amounts
31 that are scheduled to become due, the association may assume
32 that any delinquent amounts will remain delinquent during the
33 effective period of the estoppel certificate.

34 4. The amount of any fee charged by the association for
35 preparing and delivering the estoppel certificate. This fee is
36 in addition to any other amounts on the estoppel certificate.

37 5. The signature of an officer or agent of the
38 association.

39 (b) An estoppel certificate that is delivered on the date
40 of issuance has a 30-day effective period. An estoppel
41 certificate that is mailed to the requester has a 35-day
42 effective period.

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43 (c) An association waives the right to collect any moneys
44 owed in excess of the amounts specified in the estoppel
45 certificate from any person who in good faith relies upon the
46 estoppel certificate and from the person's successors and
47 assigns. therefor from a unit owner or his or her designee, or a
48 unit mortgagee or his or her designee, the association shall
49 provide a certificate signed by an officer or agent of the
50 association stating all assessments and other moneys owed to the
51 association by the unit owner with respect to the condominium
52 parcel.

53 ~~(a) Any person other than the owner who relies upon such~~
54 ~~certificate shall be protected thereby.~~

55 (d)(b) A summary proceeding pursuant to s. 51.011 may be
56 brought to compel compliance with this subsection, and in any
57 such action the prevailing party is entitled to recover
58 reasonable attorney attorney's fees.

59 (e)1.(e) Notwithstanding any limitation on transfer fees
60 contained in s. 718.112(2)(i), an the association or its
61 authorized agent may charge a reasonable fee, which may not
62 exceed its reasonable costs to prepare and deliver for the
63 preparation of the estoppel certificate. However, the fee for
64 the estoppel certificate may not exceed \$250 if on the date the
65 certificate is issued, no delinquent amounts are owed to the
66 association for the applicable unit. If an estoppel certificate
67 is requested on an expedited basis and delivered within 3
68 business days after the request, the association may charge an

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69 additional fee of \$100. If delinquent amounts are owed to the
70 association for the applicable unit, an additional fee for the
71 estoppel certificate may not exceed \$100. The association may
72 not charge a fee for an estoppel certificate that is issued more
73 than 10 business days after it receives the request for the
74 certificate. The amount of the fee must be included on the
75 certificate.

76 2. If the estoppel certificate is requested in conjunction
77 with the sale or refinancing of a unit, the fee for the
78 certificate shall be paid to the association from the closing or
79 settlement proceeds. If the closing does not occur within 60
80 days after the issuance of the estoppel certificate, the fee for
81 the certificate is the obligation of the unit owner, and the
82 association may collect the fee in the same manner as an
83 assessment against the unit. An association may not require the
84 payment of any other fees as a condition for the preparation or
85 delivery of an estoppel certificate.

86 (f) ~~(d)~~ The authority to charge a fee for the estoppel
87 certificate ~~shall~~ must be established by a written resolution
88 adopted by the board or provided by a written management,
89 bookkeeping, or maintenance contract and ~~is payable upon the~~
90 preparation of the certificate. If the certificate is requested
91 in conjunction with the sale or mortgage of a unit but the
92 closing does not occur and no later than 30 days after the
93 closing date for which the certificate was sought the preparer
94 receives a written request, accompanied by reasonable

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95 ~~documentation, that the sale did not occur from a payor that is~~
96 ~~not the unit owner, the fee shall be refunded to that payor~~
97 ~~within 30 days after receipt of the request. The refund is the~~
98 ~~obligation of the unit owner, and the association may collect it~~
99 ~~from that owner in the same manner as an assessment as provided~~
100 ~~in this section.~~

101 Section 2. Subsection (6) of section 719.108, Florida
102 Statutes, is amended to read:

103 719.108 Rents and assessments; liability; lien and
104 priority; interest; collection; cooperative ownership.-

105 (6) An association shall issue an estoppel certificate to
106 a unit owner or the unit owner's designee or a unit mortgagee or
107 the unit mortgagee's designee within 10 business 15 days after
108 receiving a written or electronic request for the certificate.
109 The estoppel certificate must be delivered by mail, by hand
110 delivery, or by electronic means to the requester on the date of
111 issuance.

112 (a) The estoppel certificate must contain all of the
113 following:

114 1. The date of issuance.

115 2. The amount of all assessments and other moneys owed to
116 the association by the unit owner for a specific unit on the
117 date of issuance. This amount is limited to the amounts
118 authorized to be recorded in the official records of the
119 association under s. 719.104(2).



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120 3. The amount of any additional assessments and other
121 moneys that are scheduled to become due for each day after the
122 date of issuance for the 30-day or 35-day effective period of
123 the estoppel certificate. This amount is limited to the amounts
124 authorized to be recorded in the official records of the
125 association under s. 719.104(2). In calculating the amounts that
126 are scheduled to become due, the association may assume that any
127 delinquent amounts will remain delinquent during the effective
128 period of the estoppel certificate.

129 4. The amount of any fee charged by the association for
130 preparing and delivering the estoppel certificate. This fee is
131 in addition to any other amounts on the estoppel certificate.

132 5. The signature of an officer or agent of the
133 association.

134 (b) An estoppel certificate that is delivered on the date
135 of issuance has a 30-day effective period. An estoppel
136 certificate that is mailed to the requester has a 35-day
137 effective period.

138 (c) An association waives the right to collect any moneys
139 owed in excess of the amounts specified in the estoppel
140 certificate from any person who in good faith relies upon the
141 estoppel certificate and from that person's successors and
142 assigns.

143 (d) A summary proceeding pursuant to s. 51.011 may be
144 brought to compel compliance with this subsection, and in any
145 such action the prevailing party is entitled to recover

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146 reasonable attorney fees. ~~by a unit owner or mortgagee, the~~
147 ~~association shall provide a certificate stating all assessments~~
148 ~~and other moneys owed to the association by the unit owner with~~
149 ~~respect to the cooperative parcel. Any person other than the~~
150 ~~unit owner who relies upon such certificate shall be protected~~
151 ~~thereby.~~

152 (e)1. Notwithstanding any limitation on transfer fees
153 contained in s. 719.106(1)(i), an the association or its
154 authorized agent may charge a reasonable fee, which may not
155 exceed its reasonable costs to prepare and deliver for the
156 preparation of the estoppel certificate. However, the fee for
157 the estoppel certificate may not exceed \$250 if on the date the
158 certificate is issued, no delinquent amounts are owed to the
159 association for the applicable unit. If an estoppel certificate
160 is requested on an expedited basis and delivered within 3
161 business days after the request, the association may charge an
162 additional fee of \$100. If delinquent amounts are owed to the
163 association for the applicable unit, an additional fee for the
164 estoppel certificate may not exceed \$100. The association may
165 not charge a fee for an estoppel certificate that is issued more
166 than 10 business days after it receives a request for the
167 certificate.

168 2. If the estoppel certificate is requested in conjunction
169 with the sale or refinancing of a unit, the fee for the
170 certificate shall be paid to the association from the closing or
171 settlement proceeds. If the closing does not occur within 60



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172 days after the issuance of the estoppel certificate, the fee for
173 the certificate is the obligation of the unit owner, and the
174 association may collect the fee in the same manner as an
175 assessment against the unit. An association may not require the
176 payment of any other fees as a condition for the preparation or
177 delivery of an estoppel certificate.

178 (f) The authority to charge a fee for the estoppel
179 certificate must be established by a written resolution adopted
180 by the board or provided by a written management, bookkeeping,
181 or maintenance contract.

182 Section 3. Section 720.30851, Florida Statutes, is amended
183 to read:

184 720.30851 Estoppel certificates.—An association shall
185 issue an estoppel certificate to a parcel owner or the parcel
186 owner's designee or a mortgagee or the mortgagee's designee
187 within ~~15~~ 10 business days after receiving a written or
188 electronic request for the certificate. The estoppel certificate
189 must be delivered by mail, by hand delivery, or by electronic
190 means to the requester on the date of issuance.

191 (1) The estoppel certificate must contain all of the
192 following:

193 (a) The date of issuance.

194 (b) The amount of all assessments and other moneys owed to
195 the association by the parcel owner for a specific parcel as
196 recorded on the date of issuance. This amount is limited to



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197 amounts authorized by statute to be recorded in the official
198 records of the association under s. 720.303(4).

199 (c) The amount of any additional assessments and other
200 moneys that are scheduled to become due for each day after the
201 date of issuance for the 30-day or 35-day effective period of
202 the estoppel certificate. This amount is limited to amounts
203 authorized by statute to be recorded in the official records of
204 the association under s. 720.303(4). In calculating the amounts
205 that are scheduled to become due, the association may assume
206 that any delinquent amounts will remain delinquent during the
207 effective period of the estoppel certificate.

208 (d) The amount of any fee charged by the association for
209 preparing and delivering the estoppel certificate. This fee is
210 in addition to any other amounts on the certificate.

211 (e) The signature of an officer or agent of the
212 association.

213 (2) An estoppel certificate that is delivered on the date
214 of issuance has a 30-day effective period. An estoppel
215 certificate that is mailed to the requester has a 35-day
216 effective period.

217 (3) An association waives the right to collect any moneys
218 owed in excess of the amounts specified in the estoppel
219 certificate from any person who in good faith relies upon the
220 estoppel certificate and from that person's successors and
221 assigns. ~~the date on which a request for an estoppel certificate~~
222 ~~is received from a parcel owner or mortgagee, or his or her~~

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223 ~~designee, the association shall provide a certificate signed by~~
224 ~~an officer or authorized agent of the association stating all~~
225 ~~assessments and other moneys owed to the association by the~~
226 ~~parcel owner or mortgagee with respect to the parcel. An~~
227 ~~association may charge a fee for the preparation of such~~
228 ~~certificate, and the amount of such fee must be stated on the~~
229 ~~certificate.~~

230 ~~(1) Any person other than a parcel owner who relies upon a~~
231 ~~certificate receives the benefits and protection thereof.~~

232 ~~(4)(2)~~ A summary proceeding pursuant to s. 51.011 may be
233 brought to compel compliance with this section, and the
234 prevailing party is entitled to recover reasonable attorney
235 attorney's fees.

236 (5) (a) An association or its agent may charge a fee, which
237 may not exceed its reasonable costs to prepare and deliver the
238 estoppel certificate. However, the fee for the estoppel
239 certificate may not exceed \$250 if on the date the certificate
240 is issued, no delinquent amounts are owed to the association for
241 the applicable parcel. If an estoppel certificate is requested
242 on an expedited basis and delivered within 3 business days after
243 the request, the association may charge an additional fee of
244 \$100. If delinquent amounts are owed to the association for the
245 applicable parcel, an additional fee for the certificate may not
246 exceed \$100. The association may not charge a fee for an
247 estoppel certificate that is issued more than 10 business days
248 after it receives the request for the certificate.

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249 (b) If the estoppel certificate is requested in
250 conjunction with the sale or refinancing of a parcel, the fee
251 for the certificate shall be paid to the association from the
252 closing or settlement proceeds. If the closing does not occur
253 within 60 days after the issuance of the estoppel certificate,
254 the fee for the certificate is the obligation of the parcel
255 owner, and the association may collect the fee in the same
256 manner as an assessment against the parcel. An association may
257 not require the payment of any other fees as a condition for the
258 preparation or delivery of an estoppel certificate.

259 (6)(3) The authority to charge a fee for the estoppel
260 certificate ~~must shall~~ be established by a written resolution
261 adopted by the board or provided by a written management,
262 bookkeeping, or maintenance contract ~~and is payable upon the~~
263 ~~preparation of the certificate. If the certificate is requested~~
264 ~~in conjunction with the sale or mortgage of a parcel but the~~
265 ~~closing does not occur and no later than 30 days after the~~
266 ~~closing date for which the certificate was sought the preparer~~
267 ~~receives a written request, accompanied by reasonable~~
268 ~~documentation, that the sale did not occur from a payor that is~~
269 ~~not the parcel owner, the fee shall be refunded to that payor~~
270 ~~within 30 days after receipt of the request. The refund is the~~
271 ~~obligation of the parcel owner, and the association may collect~~
272 ~~it from that owner in the same manner as an assessment as~~
273 ~~provided in this section.~~

274 Section 4. This act shall take effect July 1, 2015.



Amendment No. 1

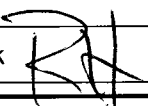
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T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:
An act relating to residential properties; amending ss. 718.116,
719.108, and 720.30851, F.S.; revising requirements relating to
the issuance of an estoppel certificate to specified persons;
requiring that an estoppel certificate contain certain
information; providing an effective period for a certificate
based upon the date of issuance and form of delivery; providing
that the association waives a specified claim against a person
or such person's successors or assigns who rely on the
certificate in good faith; authorizing a summary proceeding to
be brought to compel an association to prepare or deliver an
estoppel certificate; specifying the maximum amounts an
association may charge for an estoppel certificate; providing
that the authority to charge a fee for the estoppel certificate
must be established by a specified written resolution or
provided by a written management, bookkeeping, or maintenance
contract; deleting obsolete provisions; conforming provisions to
changes made by the act; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 845 Sexting
SPONSOR(S): Criminal Justice Subcommittee; DuBose and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1112

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cunningham	Cunningham
2) Justice Appropriations Subcommittee	11 Y, 0 N	Schrader	Lloyd
3) Judiciary Committee		Cunningham	Havlicak 

SUMMARY ANALYSIS

The bill amends s. 847.0141 F.S., which specifies that a minor commits sexting if he or she knowingly:

- Uses a computer, or any other electronic device, to transmit or distribute to another minor any photograph or video of any person which depicts nudity and is harmful to minors; or
- Possess a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity and is harmful to minors.

The bill amends s. 985.0301 F.S., to specify that that a circuit court has exclusive original jurisdiction of proceedings in which a child is alleged to have committed a noncriminal violation that has been assigned to juvenile court by law.

The bill changes penalties associated with first-time violations of the sexting statute and:

- Specifies that a first-time sexting violation remains a noncriminal violation;
- Provides that a minor who commits a first-time sexting violation must sign and accept a citation indicating a promise to appear before the juvenile court;
- Provides that in lieu of appearing in court, the minor may complete 8 hours of community service work, pay a \$60 civil penalty, or participate in a cyber-safety program, if such program is locally available;
- Provides that the minor must satisfy any penalty within 30 days after receipt of the citation. A minor who fails to comply with the citation waives his or her right to contest it, and authorizes the court to: order the minor to perform 8 hours of community service, pay a \$60 civil penalty, or participate in a cyber-safety program (or any combination thereof); or issue an order to show cause.

If the minor opts to appear in court (rather than complete community service, etc.) and the court finds that the minor committed the noncriminal violation, the court may order the minor to perform 8 hours of community service, pay a \$60 civil penalty, or participate in a cyber-safety program (or any combination thereof).

Upon a finding of contempt, the court may impose additional penalties, which may include issuance of an order to the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend the driver license or driving privilege of, the minor for 30 consecutive days. The court may not impose incarceration.

The bill may have a positive fiscal impact on state and local government because it allocates specified percentages of all civil penalties received by a juvenile court pursuant to the citation process to the clerk of court and to the county commission.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Sexting

The act of electronically sending sexually explicit messages or photos of oneself to another is generally referred to as sexting. Sexting among youth is more prevalent than previously thought, according to a new study from Drexel University that was based on a survey of undergraduate students at a large northeastern university.¹ More than 50 percent of those surveyed reported that they had exchanged sexually explicit text messages, with or without photographic images, as minors.

2011 Legislation

In 2011, the Legislature passed HB 75,² which created s. 847.0141, F.S., relating to sexting. This statute specifies that a minor commits sexting if he or she knowingly:

- Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity³ and is harmful to minors⁴; or
- Possess a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity and is harmful to minors.

A minor who *possesses* a prohibited photograph or video does not commit sexting if:

- The minor did not solicit the photograph or video;
- The minor took reasonable steps to report the photograph or video to the minor's legal guardian or to a school or law enforcement official; and
- The minor did not transmit or distribute the photograph or video to a third party.⁵

The statute specifies that the transmission or distribution of multiple photographs or videos is a single offense if the photographs or videos were transmitted or distributed within the same 24-hour period. Additionally, the possession of multiple photographs or videos that were transmitted or distributed by a minor is a single offense if the photographs or videos were transmitted or distributed within the same 24-hour period.⁶

The following penalties apply to sexting:

- A minor's first violation is a noncriminal violation punishable by 8 hours of community service or, if ordered by the court in lieu of community service, a \$60 fine. Additionally, the court may order the minor to participate in suitable training or instruction in lieu of, or in addition to, community service or a fine.

¹ *Sexting among youth more prevalent than thought? Minors unaware of harsh legal consequences, survey shows*, Science Daily, June 18, 2014, <http://www.sciencedaily.com/releases/2014/06/140618122259.htm> (last visited March 13, 2015).

² Ch. 2011-180, L.O.F.

³ Section 847.001(9), F.S., defines the term "nudity" as "the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute 'nudity,' irrespective of whether or not the nipple is covered during or incidental to feeding."

⁴ The term "harmful to minors" is defined by s. 847.001, F.S., as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it predominantly appeals to a prurient, shameful, or morbid interest; is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

⁵ s. 847.0141(1)(b), F.S.

⁶ s. 847.0141(2), F.S.

- A minor commits a first degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine, for a violation that occurs after being found to have committed⁷ a noncriminal sexting offense.
- A minor commits a third degree felony, punishable by up to five years imprisonment and a \$5,000 fine, for a violation that occurs after being found to have committed a first degree misdemeanor sexting offense.⁸

State v. C.M.

In January 2015, Florida's Fourth District Court of Appeal (DCA) decided *State v. C.M.*⁹ The case involved a minor who was charged via a delinquency petition with committing a first-time violation of the sexting statute – a noncriminal violation. At trial, the defense filed a motion to dismiss arguing that because the minor did not commit a delinquent act, she could not be subject to prosecution through a petition for delinquency. The trial court agreed and granted the motion.¹⁰

On appeal, the Fourth DCA recognized that under the delinquency statutes, the state attorney files a petition for delinquency to obtain a finding that a child has committed a delinquent act or violation of law.¹¹ The court held that because a first offense of sexting (a noncriminal violation) does not fit within the definition of “delinquent act” or “violation of law,” a petition for delinquency was not the proper method to prosecute such offense.¹²

The state argued that the trial court's dismissal left them without a remedy, and asserted that the court should authorize the use of a petition for delinquency because it was the only method to determine if a noncriminal first offense of sexting occurred.¹³ The Fourth DCA disagreed reasoning that courts “are not at liberty to add words to statutes that were not placed there by the Legislature.”¹⁴ The court went on to state:

[O]nly the legislature can add to the sexting statute to set out the procedure for the prosecution and determination if there has been a violation of the first offense. Until that is effectuated by the legislature, we are bound to the letter of the law and “must apply a statute as [we] find it, leaving to the legislature the correction of assorted inconsistencies and inequalities in its operation.”¹⁵

Effect of the Bill

The bill addresses the holding in *State v. C.M.* by amending s. 985.0301, F.S., to specify that a circuit court has exclusive original jurisdiction of proceedings in which a child is alleged to have committed a noncriminal violation that has been assigned to juvenile court by law.

The bill also addresses the holding in *State v. C.M.* by making a multitude of changes to the penalties associated with a first-time violation of the sexting statute.¹⁶ For example, the bill specifies that first-time sexting violations remain a noncriminal violation. However, the bill requires a minor who commits a first-time sexting violation to sign and accept a citation indicating a promise to appear before the juvenile court. If the citation is contested and the court determines that the minor committed a noncriminal violation, the court may order the minor to perform 8 hours of community service, pay a \$60 civil penalty, or participate in a cyber-safety program (or any combination thereof).

⁷ Section 847.0141(5), F.S., defines the term “found to have committed” as a determination of guilt that is the result of a plea or trial, or a finding of delinquency that is the result of a plea or an adjudicatory hearing, regardless of whether adjudication is withheld.

⁸ s. 847.0141(3), F.S.

⁹ 154 So. 3d 1177 (Fla. 4th DCA 2015).

¹⁰ *Id.*

¹¹ *Id.* at 1179.

¹² *Id.* at 1179-1180.

¹³ *Id.* at 1180.

¹⁴ *Id.* (citing *Bay Holdings, Inc. v. 2000 Island Blvd. Condo. Ass'n*, 895 So. 2d 1197, 1197 (Fla. 3d DCA 2005)).

¹⁵ *Id.* (citing *Guilder v. State*, 899 So. 2d 412, 419 (Fla. 4th DCA 2005) (quoting *State v. Aiuppa*, 298 So. 2d 391, 404 (Fla. 1974)).

¹⁶ The penalties associated with second and subsequent sexting offenses remain unchanged.

In lieu of appearing in court, the minor may:

- Complete 8 hours of community service work;
- Pay a \$60 civil penalty; or
- Participate in a cyber-safety program, if such a program is locally available.

The minor must satisfy any penalty within 30 days after receipt of the citation. A minor who fails to comply with the citation waives his or her right to contest it, and authorizes the court to:

- Order the minor to perform 8 hours of community service, pay a \$60 civil penalty, or participate in a cyber-safety program (or any combination thereof); or
- Issue an order to show cause.

Upon a finding of contempt, the court may impose additional age-appropriate penalties, which may include issuance of an order to the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend the driver license or driving privilege of, the minor for 30 consecutive days. The bill prohibits the court from imposing incarceration.

The bill requires the citation issued to a minor to be in a form prescribed by the issuing law enforcement agency, be signed by the minor, and to contain:

- The date and time of issuance;
- The name and address of the minor to whom the citation is issued;
- A thumbprint of the minor to whom the citation is issued;
- Identification of the noncriminal violation and the time it was committed;
- The facts constituting reasonable cause;
- The specific section of law violated;
- The name and authority of the citing officer; and
- The procedures that the minor must follow to contest the citation, perform the required community service, pay the civil penalty, and participate in a cyber-safety program.

The bill requires 80 percent of all civil penalties received by a juvenile court pursuant to the citation process outlined above to be remitted by the clerk of the court to the county commission to provide training on cyber safety for minors. The remaining 20 percent must remain with the clerk of the court to defray administrative costs.

B. SECTION DIRECTORY:

Section 1. Amends s. 847.0141, F.S., relating to sexting; prohibited acts; penalties.

Section 2. Amends s. 985.0301, F.S., relating to jurisdiction.

Section 3. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill requires 20 percent of all civil penalties received by a juvenile court pursuant to the citation process outlined above to be retained by the clerk of the court to defray administrative costs.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill requires 80 percent of all civil penalties received by a juvenile court pursuant to the citation process outlined above to be remitted by the clerk of the court to the county commission to provide training on cyber safety for minors.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill as favorable as a committee substitute. The amendment removed the provision requiring records relating to noncriminal sexting violations to be confidential. The amendment also made the bill effective upon becoming a law.

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

1 A bill to be entitled
2 An act relating to sexting; amending s. 847.0141,
3 F.S.; removing the court's discretion to impose a
4 specified penalty for a first violation of sexting;
5 requiring a minor cited for a first violation to sign
6 and accept a citation to appear before juvenile court
7 or, in lieu of appearing in court, to complete
8 community service work, pay a civil penalty, or
9 participate in a cyber-safety program within a certain
10 period of time, if such program is locally available;
11 requiring the citation to be in a form prescribed by
12 the issuing law enforcement agency; requiring such
13 citation to include certain information; authorizing a
14 court to order certain penalties under certain
15 circumstances; authorizing a court to order specified
16 additional penalties in certain circumstances;
17 prohibiting the court from imposing incarceration;
18 conforming provisions to changes made by the act;
19 requiring that a specified percentage of civil
20 penalties received by a juvenile court be remitted by
21 the clerk of court to the county commission to provide
22 cyber-safety training for minors; requiring that the
23 remaining percentage remain with the clerk of the
24 court to cover administrative costs; amending s.
25 985.0301, F.S.; creating exclusive original
26 jurisdiction in the circuit court when a child is

27 alleged to have committed a noncriminal violation that
 28 is assigned to juvenile court; providing an effective
 29 date.

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

33 Section 1. Subsections (3) and (5) of section 847.0141,
 34 Florida Statutes, are amended, and subsection (6) is added to
 35 that section, to read:

36 847.0141 Sexting; prohibited acts; penalties.—

37 (3) A minor who violates subsection (1):

38 (a) Commits a noncriminal violation for a first violation,
 39 ~~punishable by 8 hours of community service or, if ordered by the~~
 40 ~~court in lieu of community service, a \$60 fine. The court may~~
 41 ~~also order the minor to participate in suitable training or~~
 42 ~~instruction in lieu of, or in addition to, community service or~~
 43 ~~a fine. The minor must sign and accept a citation indicating a~~
 44 promise to appear before the juvenile court. In lieu of
 45 appearing in court, the minor may complete 8 hours of community
 46 service work, pay a \$60 civil penalty, or participate in a
 47 cyber-safety program, if such a program is locally available.
 48 The minor must satisfy any penalty within 30 days after receipt
 49 of the citation.

50 1. A citation issued to a minor under this subsection must
 51 be in a form prescribed by the issuing law enforcement agency,
 52 must be signed by the minor, and must contain all of the

53 following:

54 a. The date and time of issuance.

55 b. The name and address of the minor to whom the citation
 56 is issued.

57 c. A thumbprint of the minor to whom the citation is
 58 issued.

59 d. Identification of the noncriminal violation and the
 60 time it was committed.

61 e. The facts constituting reasonable cause.

62 f. The specific section of law violated.

63 g. The name and authority of the citing officer.

64 h. The procedures that the minor must follow to contest
 65 the citation, perform the required community service, pay the
 66 civil penalty, and participate in a cyber-safety program.

67 2. If the citation is contested and the court determines
 68 that the minor committed a noncriminal violation under this
 69 section, the court may order the minor to perform 8 hours of
 70 community service, pay a \$60 civil penalty, or participate in a
 71 cyber-safety program, or any combination thereof.

72 3. A minor who fails to comply with the citation waives
 73 his or her right to contest it, and the court may impose any of
 74 the penalties identified in subparagraph 2. or issue an order to
 75 show cause. Upon a finding of contempt, the court may impose
 76 additional age-appropriate penalties, which may include issuance
 77 of an order to the Department of Highway Safety and Motor
 78 Vehicles to withhold issuance of, or suspend the driver license

79 or driving privilege of, the minor for 30 consecutive days.
 80 However, the court may not impose incarceration.

81 (b) Commits a misdemeanor of the first degree for a
 82 violation that occurs after the minor has been ~~being~~ found to
 83 have committed a noncriminal violation for sexting or has
 84 satisfied the penalty imposed in lieu of a court appearance as
 85 provided in paragraph (a), punishable as provided in s. 775.082
 86 or s. 775.083.

87 (c) Commits a felony of the third degree for a violation
 88 that occurs after the minor has been ~~being~~ found to have
 89 committed a misdemeanor of the first degree for sexting,
 90 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

91 (5) As used in this section, the term "found to have
 92 committed" means a determination of guilt that is the result of
 93 a plea or trial, or a finding of delinquency that is the result
 94 of a plea or an adjudicatory hearing, regardless of whether
 95 adjudication is withheld.

96 (6) Eighty percent of all civil penalties received by a
 97 juvenile court pursuant to this section shall be remitted by the
 98 clerk of the court to the county commission to provide training
 99 on cyber safety for minors. The remaining 20 percent shall
 100 remain with the clerk of the court to defray administrative
 101 costs.

102 Section 2. Subsection (1) of section 985.0301, Florida
 103 Statutes, is amended to read:

104 985.0301 Jurisdiction.--

CS/HB 845

2015

105 (1) The circuit court has exclusive original jurisdiction
106 of proceedings in which a child is alleged to have committed:

107 (a) ~~to have committed~~ A delinquent act or violation of
108 law.

109 (b) A noncriminal violation that has been assigned to
110 juvenile court by law.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1127 Insurance Fraud
SPONSOR(S): Appropriations Committee; Insurance & Banking Subcommittee; Sullivan
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1306

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Lloyd	Cooper
2) Appropriations Committee	26 Y, 0 N, As CS	Keith	Leznoff
3) Judiciary Committee		Weber <i>WJ</i>	Havlicak <i>RJ</i>

SUMMARY ANALYSIS

The Department of Financial Services (DFS) is responsible for regulating certain insurance activities under the Insurance Code (such as eligibility and conduct of insurance agents and agencies and policing fraud). The DFS, Division of Insurance Fraud (DIF), is charged with investigating fraudulent insurance activities and employs sworn law enforcement investigators with arrest powers. While health care facilities operating in the state are generally licensed and regulated by the Agency for Health Care Administration (AHCA), the DIF has the authority to police fraudulent insurance claims and activities that may occur in health care facilities.

Health care clinics are regulated under the Health Care Clinic Act. The Act's purpose is to "provide for the licensure, establishment, and enforcement of basic standards for health care clinics and to provide administrative oversight by the Agency for Health Care Administration." A "clinic" under the act is defined as "an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider." However, there is an extensive list of entities that are exempt from the definition and licensure requirements established by the act. There are 1,849 licensed health care clinics and 10,009 clinics that have received a certificate of exemption. Despite the availability of an exemption, "an entity shall be deemed a clinic and must be licensed under this [the Health Care Clinic Act] in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless exempted under s. 627.736(5)(h)." The list of exempt clinics under the No-Fault Law is much shorter and includes clinics owned, operated by, or affiliated with separately licensed facilities or providers.

The charges and reimbursement claims made by an unlicensed health care clinic operating in violation of statute are unlawful, noncompensable, and unenforceable. The bill expands the effect of this provision to include charges and reimbursement claims by clinics that are violating AHCA rules. The bill expressly identifies such prohibited charging and reimbursement claiming as theft, regardless of whether payments are made.

Section 400.993, F.S., and subsection 400.9935(4), F.S., establish offenses related to unlicensed clinic activities that are punishable as a felony. The bill combines these provisions into a single subsection of statute and establishes an additional felony offense for knowingly failing to update certain required information within 21 days.

The DIF is authorized to establish a direct-support organization to support the prosecution, investigation, and prevention of motor vehicle insurance fraud. The Automobile Insurance Fraud Strike Force (Strike Force) filed its incorporation with the Department of State on April 25, 2012. The Strike Force has engaged in limited organizational activity during its existence. The bill repeals the statute authorizing the Strike Force. It also removes cross-references regarding Strike Force deposits to and appropriations from the Insurance Regulatory Trust Fund. The DIF's rulemaking authority related to the Strike Force is removed.

The bill amends the Criminal Punishment Code to reflect the changes made by the bill.

The Criminal Justice Impact Conference (CJIC) met April 1, 2015, and determined this bill will have an insignificant impact on state prison beds. According to the CJIC, an insignificant impact estimates that this bill may increase the state's prison bed population by less than 10 inmates annually.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Department of Financial Services (DFS) is responsible for regulating the certain insurance activities under the Insurance Code¹ (such as eligibility and conduct of insurance agents and agencies and policing fraud). The Financial Services Commission and Office of Insurance Regulation also have responsibilities concerning insurance related to licensing insurance companies, ratemaking, and market conduct, among other things. The DFS is required to maintain a Division of Insurance Fraud (DIF).² The DIF is charged with investigating all manner of fraudulent insurance activities and employs armed law enforcement officers with statewide authority and arrest powers.³ Annual reports of the DIF and other public record information, including summaries of fraud referral, investigation, arrests and convictions, are available on the DIF's web site.⁴ While the many types of health care facilities operating in the state are generally licensed and regulated by the Agency for Health Care Administration (AHCA), the DIF has the authority to police fraudulent insurance claims and activities that may occur among health care facilities.

Health Care Clinic Licensing, Charges by Unlicensed Clinics, and Criminal Penalties

Licensing

Health care clinics are regulated under the Health Care Clinic Act.⁵ The purpose of the Act is to “provide for the licensure, establishment, and enforcement of basic standards for health care clinics and to provide administrative oversight by the Agency for Health Care Administration.”⁶ A “clinic” under the act is defined as “an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider.”⁷ However, there is an extensive list of entities that are exempt from the definition and licensure requirements established by the act.⁸ According to the AHCA web site,⁹ there are 1,849 licensed Health Care Clinics and 10,009 clinics that have voluntarily received a certificate of exemption from Health Care Clinic licensure.^{10, 11}

Despite the availability of an exemption to clinic licensure, “an entity shall be deemed a clinic and must be licensed under this part in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, s. 627.730-627.7405, unless exempted under s. 627.736(5)(h).”¹² The list of exempt clinics under the No-Fault Law is much shorter and includes clinics owned, operated by, or affiliated with separately licensed facilities or providers. The following entities do not have to be licensed as a health care clinic to make charges or receive reimbursement under the No-Fault Law:

¹ Ch. 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the Florida Insurance Code. s. 624.01, F.S.

² s. 20.121(2)(e), F.S.

³ s. 626.989, F.S.

⁴ Insurance Fraud, <http://www.myfloridacfo.com/division/fraud/> (last visited Apr. 10, 2015).

⁵ Part X, chapter 400, F.S.

⁶ s. 400.990(2), F.S.

⁷ s. 400.9905(4), F.S.

⁸ s. 400.9905(4)(a)-(n), F.S.

⁹ AGENCY FOR HEALTH CARE ADMINISTRATION, *Facility/Provider Location*, <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last visited Apr. 10, 2015).

¹⁰ Data obtained from <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx>, with search limited to Facility/Provider Type - “Health Care Clinic” or “Health Care Clinic Exemption.”

¹¹ A Health Care Clinic that is exempt from the licensure requirements of 400.9905, F.S., may choose to obtain a certificate of exemption from the AHCA. Rule 59A-33.006, F.A.C.

¹² s. 400.9905(4), F.S.

- An entity wholly owned by a physician licensed under chapter 458 or chapter 459, or by the physician and the spouse, parent, child, or sibling of the physician;
- An entity wholly owned by a dentist licensed under chapter 466, or by the dentist and the spouse, parent, child, or sibling of the dentist;
- An entity wholly owned by a chiropractic physician licensed under chapter 460, or by the chiropractic physician and the spouse, parent, child, or sibling of the chiropractic physician;
- A hospital or ambulatory surgical center licensed under chapter 395;
- An entity that wholly owns or is wholly owned, directly or indirectly, by a hospital or hospitals licensed under chapter 395; or
- An entity that is a clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

Charges by Unlicensed Clinics

The charges and reimbursement claims made by a health care clinic that is required to be licensed under sections 400.990-995, F.S., but is not licensed or is operating in violation of the referenced statutes, are unlawful, noncompensable, and unenforceable. The bill includes health care clinics that are operating in violation of AHCA rules in this provision. In addition, the bill applies this standard whether or not the charge or claim is paid. The bill expressly defines the making of such charges or claims as theft within the meaning of s. 812.014, F.S., and subject to the punishments found therein.¹³ Depending upon the circumstances, theft is punished as a misdemeanor of the first or second degree or a felony of the first, second, or third degree.¹⁴ This does not establish a new criminal offense; rather, it makes it plain that such activities are criminal theft.

Criminal Penalties

Section 400.993, F.S., and subsection 400.9935(4), F.S., establish offenses related to unlicensed clinic activities that are punishable as a felony. A person who offers or advertises unlicensed health care services, performs unlicensed health care services, or owns, operates, or maintains an unlicensed health care clinic, as specified in s. 408.812, F.S., commits a felony of the third degree.¹⁵ A second or subsequent such offense is a second degree felony.¹⁶ Also, knowingly filing false or misleading information in a license application or renewal application for health clinic licensure, including information related to an applicable rule, is a third degree felony. To help identify unlicensed clinic activity, health care providers, who know of an unlicensed health care clinic, are required to report such clinics to the AHCA.¹⁷ Those providers that fail to do so, when they knew or should have known that the clinic was unlicensed, must be reported to their licensing board.¹⁸

The bill consolidates these existing criminal offense provisions into a single subsection of statute by repealing s. 400.993, F.S., and revising subsection 400.9935(4), F.S.

The bill creates a new third degree felony offense applicable to any person who knowingly fails to report a change in information contained in the most recent health care clinic license application or a

¹³ Section 812.014(1), F.S., defines theft as follows:

- (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
 - (a) Deprive the other person of a right to the property or a benefit from the property.
 - (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

¹⁴ s. 812.014, F.S.

¹⁵ 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.

¹⁶ 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.

¹⁷ s. 400.993(3), F.S.

¹⁸ Individual health care providers are regulated by one or more of the boards at the Department of Health. FLORIDA HEALTH, *Licensing and Regulation*, <http://www.floridahealth.gov/licensing-and-regulation/> (last visited Apr. 10, 2015).

change regarding the required insurance or bonds.^{19, 20} Such changes must be reported within 21 days of their occurrence.²¹

Direct-Support Organization to Fight Automobile Insurance Fraud

The DIF is authorized to establish a direct-support organization to support the prosecution, investigation, and prevention of motor vehicle insurance fraud, known as the "Automobile Insurance Fraud Strike Force" (Strike Force).²² The Strike Force is a not-for-profit corporation incorporated under ch. 617, F.S. It is authorized to be organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make grants and expenditures to or for the direct or indirect benefit of the division, state attorneys' offices, the statewide prosecutor, the Agency for Health Care Administration, and the Department of Health to the extent that such grants and expenditures are used exclusively to advance the prosecution, investigation, or prevention of motor vehicle insurance fraud. Grants and expenditures may include the cost of salaries or benefits of motor vehicle insurance fraud investigators, prosecutors, or support personnel if such grants and expenditures do not interfere with prosecutorial independence or otherwise create conflicts of interest which threaten the success of prosecutions.²³ The Strike Force is precluded from engaging in lobbying activities or from using grants and expenditures for advertising using the likeness or name of any elected official.

The Strike Force is required to operate under a written contract with the DIF, which must provide for:

- DIF approval of the Strike Force's articles of incorporation and bylaws, and its annual budget (which begins on July 1 and ends on June 30th of the following year).
- DIF certification of the Strike Force's compliance with contract terms and that it is acting in a manner consistent with its goals and purposes of the department and in the best interest of the State.
- Allocation of funds to address motor vehicle insurance fraud, and reversion of moneys and property to DIF if the Strike Force ceases to exist, or to the state if DIF ceases to exist.
- Criteria to be used by the Strike Force's board of directors in evaluating the effectiveness of funding to combat insurance fraud.
- Disclosure of material provisions of the contract, including disclosure on all promotional and fundraising publications of the Strike Force.²⁴

The Strike Force's board of directors consists of 11 members as follows: the Chief Financial Officer (CFO) or a designee of the CFO, who serves as the chair; two state attorneys (one appointed by the CFO and the other by the Attorney General); two representatives of motor vehicle insurers appointed by the CFO; two representatives of local law enforcement agencies (one appointed by the CFO and the other by the Attorney General); two representatives of the types of health care providers who regularly make claims for PIP benefits (one appointed by Speaker of the House of Representatives and one appointed by the President of the Senate); a private attorney that has experience representing PIP claimants (appointed by the President of the Senate); and a private attorney with experience representing PIP insurers (appointed by the Speaker of the House of Representatives).²⁵

¹⁹ The required reports go to the AHCA. *See* s. 400.810, F.S.

²⁰ s. 408.810(3), F.S. There are no express insurance requirements for health care clinic licensure, but an applicant can offer a bond of at least \$500,000, payable to the AHCA, as surety for compliance with the law, as an alternative to showing the financial responsibility required under s. 400.810(8), F.S. The AHCA has implemented the financial responsibility requirements for licensure through Rule 59A-35.062, F.A.C.

²¹ s. 408.810(3), F.S.

²² s. 626.9895(2), F.S.

²³ s. 626.9895(2)(b), F.S.

²⁴ s. 626.9895(3), F.S.

²⁵ s. 626.9895(4), F.S.

The DFS is required to adopt rules prescribing the procedures by which the Strike Force is to be governed.²⁶ For regulatory purposes, insurer contributions to the Strike Force are allowed as appropriate business expenses.²⁷ The Strike Force may place its receipts in a separate depository account in its name, subject to its contract with DIF. Any moneys that DIF receives from the Strike Force are required to be deposited into the Insurance Regulatory Trust Fund.²⁸

The Strike Force filed its incorporation with the Department of State on April 25, 2012.²⁹ The Strike Force has engaged in limited organizational activity during its existence.³⁰ The DFS reports³¹ that the Strike Force has not: taken in any donations, paid any grants, established a bank account,³² or made any transfers into the Insurance Regulatory Trust Fund.

The bill repeals the statute authorizing the Strike Force. It also removes cross-references to the Strike Force's authorizing statute regarding deposits to and appropriations from the Insurance Regulatory Trust Fund for Strike Force purposes. This bill also repeals the DIF's rulemaking authority related to the Strike Force.

Criminal Punishment Code Offense Severity Ranking Chart

The Criminal Punishment Code³³ applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart"³⁴ 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.³⁵ A defendant's sentence is calculated based on points assigned for factors (e.g., the offense for which the defendant is being sentenced and injury to the victim).³⁶ The points are added in order to determine the "lowest permissible sentence" for the offense.³⁷

The bill amends the offense severity ranking chart to reflect the changes made by the bill. The titles relevant offenses are updated consistent with the bill and additions are made to the chart consistent with the bill. Filing a false license application or other required information or failing to report information³⁸ is classified as a Level 3 offense.³⁹ A second or subsequent conviction of operating a clinic, or offering services requiring licensure, without a license⁴⁰ is classified as a Level 6 offense.⁴¹ While such second or subsequent offenses are currently second degree felonies under section

²⁶ s. 626.9895(5)(c), F.S. The authorized rules were adopted as ch. 69D-3, F.A.C.

²⁷ s. 626.9895(6), F.S.

²⁸ s. 626.9895(7), F.S.

²⁹ FLORIDA DEPARTMENT OF FINANCIAL SERVICES, <http://www.myfloridacfo.com/autofraud/docs/Articles%20of%20Incorporation.pdf> (last visited Apr. 10, 2015).

³⁰ The Strike Force held four board meetings; August 7, 2012, January 24, 2013, July 9, 2013, and December 9, 2013. FLORIDA DEPARTMENT OF FINANCIAL SERVICES, *Auto Insurance Fraud Strike Force*, <http://www.myfloridacfo.com/autofraud/meetings.html> (last visited Apr. 10, 2015) [hereinafter *Auto Insurance Fraud Strike Force*].

³¹ Email from Legislative Affairs, Department of Financial Services, RE: HB 1127 – new proposed strike all (Mar. 23, 2015).

³² The minutes of the board of directors of the Strike Force meeting on July 9, 2013, reflect that a depository account was authorized but do not indicate where or if the account was established. See *Auto Insurance Fraud Strike Force*. Strike Force meeting records are available on the Internet at <http://www.myfloridacfo.com/autofraud/meetings.html>.

³³ s. 921.002, F.S.

³⁴ s. 921.0022, F.S.

³⁵ s. 921.0024, F.S.

³⁶ See generally, THE FLORIDA DEPARTMENT OF CORRECTIONS & THE OFFICE OF THE STATE COURTS ADMINISTRATOR, *Florida Criminal Punishment Code Scoresheet Preparation Manual*, Oct. 1, 2014, available at http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf.

³⁷ *Id.*

³⁸ s. 400.9935(4)(e), F.S., as revised by the bill.

³⁹ Level 3 offenses carry 16 sentencing points for the primary offense and 2.4 sentencing points for each additional offense. s. 921.0024(1)(a), F.S.

⁴⁰ s. 400.9935(4)(c), F.S., as revised by the bill.

⁴¹ Level 6 offenses carry 36 sentencing points for the primary offense and 18 sentencing points for each additional offense. s. 921.0024(1)(a), F.S.

400.993(2), F.S., this offense does not appear on the offense severity ranking chart and is added to the chart by the bill.

B. SECTION DIRECTORY:

Section 1: Repeals s. 400.993, F.S., relating to unlicensed clinics; reporting.

Section 2: Amends s. 400.9935, F.S., relating to clinic responsibilities.

Section 3: Amends s. 626.9894, F.S., relating to gifts and grants.

Section 4: Repeals s. 626.9895, F.S., relating to motor vehicle insurance fraud direct-support organization.

Section 5: Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity chart.

Section 6: Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met April 1, 2015, and determined this bill will have an insignificant impact on state prison beds. According to the CJIC, an insignificant impact estimates that this bill may increase the state's prison bed population by less than 10 inmates annually.⁴²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate impact on the private sector. The private sector will benefit from increased enforcement activities, including restitution orders, due to the criminal penalty provisions of the bill. Savings realized by the insurance industry should be passed on to consumers.

D. FISCAL COMMENTS:

None.

⁴² Criminal Justice Impact Conference results can be located at:

<http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSHB1127.pdf> (last accessed April 6, 2013)

STORAGE NAME: h1127c.JDC.docx

DATE: 4/10/2015

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 Department of Financial Services, Division of Insurance Fraud, loses the rulemaking authority to adopt rules related to the Strike Force.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2015, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute reflects multiple changes, as follows:

- Removed a revision to the Insurance Code that would have required insurers in the state to submit required information annually to the Department of Financial Services, Division of Insurance Fraud, concerning fraud investigation activities and the structure, operations, and training of required Special Investigation Units.
- Removed a provision that would have required health care clinics that are exempt from licensure to obtain a certificate of exemption from the Agency for Health Care Administration in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law.

On April 7, 2015, the Appropriations Committee adopted one amendment and reported the bill favorable with committee substitute. The amendment clarifies the effective date of the bill to be October 1, 2015.

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

1 A bill to be entitled
 2 An act relating to insurance fraud; repealing s.
 3 400.993, F.S., relating to criminal penalties
 4 applicable to unlicensed health care clinics and the
 5 reporting of unlicensed health care clinics; amending
 6 s. 400.9935, F.S.; revising provisions related to
 7 unlawful, noncompensable, and unenforceable health
 8 care clinic charges or reimbursement claims; revising
 9 and providing criminal penalties for making unlawful
 10 charges, operating or failing to report an unlicensed
 11 clinic, filing false or misleading information related
 12 to a clinic license application, and other violations;
 13 defining the term "convicted"; amending s. 626.9894,
 14 F.S.; conforming provisions to changes made by the
 15 act; repealing s. 626.9895, F.S., relating to the
 16 establishment of a motor vehicle insurance fraud
 17 direct-support organization; amending s. 921.0022,
 18 F.S.; conforming provisions of the offense severity
 19 ranking chart of the Criminal Punishment Code to
 20 changes made by the act; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

- 23
 24 Section 1. Section 400.993, Florida Statutes, is repealed.
 25 Section 2. Subsections (3) and (4) of section 400.9935,
 26 Florida Statutes, are amended to read:

27 400.9935 Clinic responsibilities.-

28 (3) A charge ~~All charges~~ or reimbursement claim ~~claims~~
 29 made by or on behalf of a clinic that is required to be licensed
 30 under this part, but that is not so licensed, or that is
 31 otherwise operating in violation of this part or rules of the
 32 agency, regardless of whether a service is rendered or whether
 33 the charge or reimbursement claim is paid, is an, ~~are~~ unlawful
 34 charge ~~charges,~~ and is ~~therefore are~~ noncompensable and
 35 unenforceable. A person who knowingly makes or causes to be made
 36 an unlawful charge commits theft within the meaning of, and
 37 punishable as provided in, s. 812.014.

38 (4) (a) Regardless of whether notification is provided by
 39 the agency under ~~In addition to the requirements of s. 408.812,~~
 40 a any person commits a felony of the third degree, punishable as
 41 provided in s. 775.082, s. 775.083, or s. 775.084, if the person
 42 knowingly:

43 1. Establishes, owns, operates, manages, or maintains
 44 establishing, operating, or managing an unlicensed clinic
 45 ~~otherwise~~ required to be licensed under this part or part II of
 46 chapter 408; ~~or~~

47 2. Offers or advertises services that require licensure as
 48 a clinic under this part or part II of chapter 408 without a
 49 license.

50 (b) If the agency provides notification under s. 408.812
 51 of, or if a person is arrested for, a violation of subparagraph
 52 (a)1. or subparagraph (a)2., each day during which a violation

53 of subparagraph (a)1. or subparagraph (a)2. occurs constitutes a
 54 separate offense.

55 (c) A person convicted of a second or subsequent violation
 56 of subparagraph (a)1. or subparagraph (a)2. commits a felony of
 57 the second degree, punishable as provided in s. 775.082, s.
 58 775.083, or s. 775.084. If the agency provides notification of,
 59 or if a person is arrested for, a violation of this paragraph,
 60 each day that this paragraph is violated thereafter constitutes
 61 a separate offense. For purposes of this paragraph, the term
 62 "convicted" means a determination of guilt which is the result
 63 of a trial or the entry of a plea of guilty or nolo contendere,
 64 regardless of whether adjudication is withheld.

65 (d) In addition to the requirements of part II of chapter
 66 408, a health care provider who is aware of the operation of an
 67 unlicensed clinic shall report the clinic to the agency. The
 68 agency shall report to the provider's licensing board a failure
 69 to report a clinic that the provider knows or has reasonable
 70 cause to suspect is unlicensed.

71 (e) A person commits a felony of the third degree,
 72 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 73 if the ~~any~~ person ~~who~~ knowingly:

74 1. Files a false or misleading license application or
 75 license renewal application, ~~or~~ files false or misleading
 76 information related to such application or agency ~~department~~
 77 rule; or

78 2. Fails to report information to the agency as required

79 ~~by s. 408.810(3), commits a felony of the third degree,~~
 80 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

81 Section 3. Subsection (5) of section 626.9894, Florida
 82 Statutes, is amended to read:

83 626.9894 Gifts and grants.—

84 (5) Notwithstanding s. 216.301 and pursuant to s. 216.351,
 85 any balance of moneys deposited into the Insurance Regulatory
 86 Trust Fund pursuant to this section ~~or s. 626.9895~~ remaining at
 87 the end of any fiscal year is available for carrying out the
 88 duties and responsibilities of the division. The department may
 89 request annual appropriations from the grants and donations
 90 received pursuant to this section ~~or s. 626.9895~~ and cash
 91 balances in the Insurance Regulatory Trust Fund for the purpose
 92 of carrying out its duties and responsibilities related to the
 93 division's anti-fraud efforts, including the funding of
 94 dedicated prosecutors and related personnel.

95 Section 4. Section 626.9895, Florida Statutes, is
 96 repealed.

97 Section 5. Paragraphs (c) and (f) of subsection (3) of
 98 section 921.0022, Florida Statutes, are amended to read:

99 921.0022 Criminal Punishment Code; offense severity
 100 ranking chart.—

101 (3) OFFENSE SEVERITY RANKING CHART

102 (c) LEVEL 3

103

104

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	Florida Statute	Felony Degree	Description
105	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
106	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
107	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
108	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
109	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
110	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
111	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.

112	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
113	327.35(2)(b)	3rd	Felony BUI.
114	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
115	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
116	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
117	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine

118	379.2431 (1) (e) 6.	3rd	turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
119	400.9935(4) <u>(a)</u> <u>or (b)</u>	3rd	Operating a clinic, <u>or offering services requiring licensure,</u> without a license or filing false license application or other required information.
120	<u>400.9935(4) (e)</u>	3rd	<u>Filing a false license application or other required information or failing to report information.</u>
121	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
122			

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123	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
124	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
125	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
126	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
127	697.08	3rd	Equity skimming.
128	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
129	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.

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130	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
131	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
132	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
133	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
134	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
135	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
136	817.233	3rd	Burning to defraud insurer.

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137	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
138	817.234(11) (a)	3rd	Insurance fraud; property value less than \$20,000.
139	817.236	3rd	Filing a false motor vehicle insurance application.
140	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
141	817.413(2)	3rd	Sale of used goods as new.
142	817.505(4)	3rd	Patient brokering.
143	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
	831.28(2) (a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.

144	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
145	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
146	843.19	3rd	Injure, disable, or kill police dog or horse.
147	860.15(3)	3rd	Overcharging for repairs and parts.
148	870.01(2)	3rd	Riot; inciting or encouraging.
149	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
150	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5.,

			(2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
151	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
152	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
153	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
154	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
155	893.13(7)(a)10.	3rd	Affix false or forged label to

156	893.13(7)(a)11.	3rd	<p>package of controlled substance.</p> <p>Furnish false or fraudulent material information on any document or record required by chapter 893.</p>
157	893.13(8)(a)1.	3rd	<p>Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.</p>
158	893.13(8)(a)2.	3rd	<p>Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.</p>
159	893.13(8)(a)3.	3rd	<p>Knowingly write a prescription for a controlled substance for a fictitious person.</p>
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161	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
162	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
163	944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
164	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
165	985.721 (f) LEVEL 6	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
166			
167	Florida Statute	Felony Degree	Description

168	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
169	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
170	<u>400.9935(4)(c)</u>	<u>2nd</u>	<u>Operating a clinic, or offering services requiring licensure, without a license.</u>
171	499.0051(3)	2nd	Knowing forgery of pedigree papers.
172	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
173	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
174	775.0875(1)	3rd	Taking firearm from law enforcement officer.
175	784.021(1)(a)	3rd	Aggravated assault; deadly

			weapon without intent to kill.
176	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
177	784.041	3rd	Felony battery; domestic battery by strangulation.
178	784.048(3)	3rd	Aggravated stalking; credible threat.
179	784.048(5)	3rd	Aggravated stalking of person under 16.
180	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
181	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
182	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
183	784.081(2)	2nd	Aggravated assault on specified official or employee.

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184	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
185	784.083(2)	2nd	Aggravated assault on code inspector.
186	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
187	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
188	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
189	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
190	790.19	2nd	Shooting or throwing deadly

			missiles into dwellings, vessels, or vehicles.
191	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
192	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
193	800.04 (5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
194	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
195	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
196	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
197			

198	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
199	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
200	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
201	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
202	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
203	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
204	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.

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205	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
206	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
207	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
208	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
209	827.03(2)(c)	3rd	Abuse of a child.
210	827.03(2)(d)	3rd	Neglect of a child.
211	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
212	836.05	2nd	Threats; extortion.
	836.10	2nd	Written threats to kill or do bodily injury.

213	843.12	3rd	Aids or assists person to escape.
214	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
215	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
216	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
217	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
218	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

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219			bodily harm.
220	944.40	2nd	Escapes.
221	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
222	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
223	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
224	Section 6. This act shall take effect October 1, 2015.		

.....

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1269 Regulation Freedom Amendment
SPONSOR(S): Raulerson and others
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	10 Y, 5 N	Renner	Kiner
2) Judiciary Committee		Patton	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Article V of the U.S. Constitution prescribes two methods for amending the Constitution. One method is for both houses of Congress, by two-thirds vote, to propose an amendment that becomes effective when ratified by three-fourths of the states (38 states). All 27 amendments to the Constitution were adopted through this procedure.

The other method, which has never been used, requires Congress to call a constitutional convention (Article V convention) to propose amendments when two-thirds of the states (34 states) apply for such a convention. These proposed amendments would require approval of three-fourths of the states in order to be ratified.

HM 1269 petitions the U.S. Congress to propose to the states an amendment to the U.S. Constitution entitled the "Regulation Freedom Amendment." The amendment would require the House and Senate to adopt proposed federal regulations by majority vote, whenever one quarter of either body objects to the proposed regulation.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law—they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

This memorial does not have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Methods of Amending the U.S. Constitution

Article V of the U.S. Constitution prescribes two methods for amending the Constitution. One method is for Congress to propose an amendment that is ratified by the states. All 27 amendments to the Constitution were adopted through this procedure. The other method, which has never been used, is for states to apply for a constitutional convention that proposes amendments.¹

Congressional Amendments

Congress, by a two-thirds vote in both houses, may propose a constitutional amendment in the form of a joint resolution. After Congress proposes an amendment, the Archivist of the U.S. is responsible for administering the ratification process.² Since the President does not have a constitutional role in the amendment process, the joint resolution does not go to the White House for signature or approval. The Office of the Federal Register (OFR) assembles an information package for the states which includes copies of the joint resolution and the statutory procedure for ratification under 1 U.S.C. 106b.³ The Archivist submits the proposed amendment to the states for their consideration by sending a letter of notification and the OFR informational material to each governor. The governors then formally submit the amendment to their state legislatures.⁴

When a state ratifies a proposed amendment, it sends a certified copy of the state action to the Archivist. A proposed amendment becomes part of the Constitution as soon as it is ratified by three-fourths of the states (38 states). The OFR verifies the ratification documents and drafts a formal proclamation for the Archivist to certify that the amendment is valid and has become part of the U.S. Constitution. This certification is published in the Federal Register and U.S. Statutes at Large and serves as official notice that the amendment process has been completed.⁵

Since 1789, Congress has proposed 33 amendments by this method, 27 of which have been adopted.⁶

Constitutional Convention Amendments

A constitutional amendment may also be proposed by a constitutional convention (Article V convention) applied for by two-thirds of the state legislatures (34 states). This method has never been used. If 34 states apply, Congress must call an Article V convention to consider and propose amendments. These proposed amendments must be ratified by three-fourths of the states (38 states). Records of the Philadelphia Convention of 1787 indicate that the founders intended to balance Congress's amendatory power by providing the Article V convention method to empower the people to propose amendments. Article V identifies these methods as equal and requires the same ratification for all proposed amendments.⁷

¹ Erwin Chemerinsky, *Constitutional Law*, pg. 6 (3rd ed. 2006).

² 1 U.S.C. 106b.

³ *The Constitutional Amendment Process*, U.S. National Archives and Records Administration, <http://www.archives.gov/federal-register/constitution/> (last visited March 27, 2015).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 2.

Though the specific procedures for an Article V convention are not specified in the Constitution, Congress has historically taken on broad responsibilities in connection with a convention by administering state applications, establishing procedures to summon a convention, setting the amount of time allotted to its deliberations, determining the number and selection process of its delegates, setting internal convention procedures, and providing arrangement for the formal transmission of any proposed amendments to the states.⁸

Although never used in full, this method has been a useful tool to provoke congressional action. The most successful incidence of using the threat of a constitutional convention to induce change was the movement for the direct election of Senators, which prodded Congress to propose the 17th Amendment.⁹

Federal Administrative Law

The scope of the federal administrative state expanded greatly during the 20th century. In the 1930's, President Franklin Delano Roosevelt's New Deal programs designed to combat the Great Depression led to the creation of a wave of new administrative agencies such as the National Labor Relations Board, the Securities and Exchange Commission, the Social Security Administration, the Federal Communications Commission, and the Tennessee Valley Authority. Critics of this expansion of federal administrative authority charged that it jeopardized the separation of powers in the U.S. Constitution and created a "fourth branch" of government. In response to the criticisms of the expansion of administrative power in the 1930's, Congress passed the Administrative Procedures Act (APA) in 1946. The APA has been described as a "bill of rights" for the regulatory state. Administrative agencies must follow procedures established by the APA when exercising their rulemaking and adjudicatory powers.

Since the 1930's, the scope of the federal administrative state continued to expand. In the 1970's for instance, a wave of quality of life oriented regulations lead to the creation of the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the Consumer Product Safety Commission (CPSC).

Federal administrative agencies of the federal government of the United States of America are controlled by the executive branch. The legislative branch has the power to create, abolish or modify the powers and structure of administrative agencies. Laws passed by the legislative branch and actions taken by the executive branch are subject to review by the judicial branch. Federal administrative agencies have quasi-legislative (rulemaking) and quasi-judicial (adjudicatory) powers to assist them in carrying out their executive functions. The rule-making and adjudicatory powers of federal agencies are regulated by the APA.

Administrative agencies adopt rules through the rulemaking procedures set forth in the APA. When adopting a new rule an agency must publish the proposed rule in the Federal Register, allow interested parties an opportunity to submit comments on the proposal, and incorporate in the final rule a concise general statement of the basis and purpose of the rule.¹⁰

Presently, the executive branch of the federal government is comprised of 15 cabinet level executive departments which oversee 137 dependent agencies, in addition to 70 independent agencies and government corporations which are listed below.

Cabinet Level Departments and Related Agencies

- Department of Agriculture (USDA)
 - Agricultural Marketing Service

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ Koch, C., et al. *Administrative Law: Cases and Material*, 6th ed., Ch. 1, part B.

- Agricultural Research Service
- Animal and Plant Health Inspection Service
- Center for Nutrition Policy and Promotion (CNPP)
- Economic Research Service
- Farm Service Agency
- Food and Nutrition Service
- Food Safety and Inspection Service
- Forest Service
- Grain Inspection, Packers and Stockyards Administration
- Marketing and Regulatory Programs (Agriculture Department)
- National Agricultural Statistics Service
- National Institute of Food and Agriculture
- Natural Resources Conservation Service
- Risk Management Agency (Agriculture Department)
- Rural Development

- Department of Commerce (DOC)
 - Bureau of Economic Analysis (BEA)
 - Bureau of Industry and Security
 - Committee for the Implementation of Textile Agreements
 - Economics and Statistics Administration
 - Economic Development Administration (EDA)
 - International Trade Administration (ITA)
 - Minority Business Development Agency
 - National Institute of Standards and Technology (NIST)
 - National Oceanic and Atmospheric Administration (NOAA)
 - National Technical Information Service
 - National Telecommunications and Information Administration
 - Bureau of the Census
 - U.S. Patent and Trademark Office

- Department of Defense (DOD)
 - Department of Defense Inspector General
 - National Defense University
 - National Geospatial-Intelligence Agency
 - National Security Agency (NSA)
 - U.S. Navy
 - Pentagon Force Protection Agency
 - Prisoner of War/Missing Personnel Office
 - TRICARE Management
 - U.S. Air Force
 - U.S. Army
 - U.S. Fleet Forces Command
 - U.S. Military Academy, West Point
 - Unified Combatant Commands (Defense Department)
 - Uniformed Services University of the Health Sciences
 - Washington Headquarters Services
 - Federal Voting Assistance Program

- Department of Education (ED)
 - The Education Publications Center (EDPUBS)
 - Office for Civil Rights, Department of Education
 - Office of Elementary and Secondary Education (OESE)
 - Office of Postsecondary Education (OPE)
 - Office of Special Education and Rehabilitative Services (OSERS)

- Office of Vocational and Adult Education (OVAE)
- White House Commission on Presidential Scholars
- Department of Energy (DOE)
 - Energy Efficiency and Renewable Energy (EERE)
 - Fossil Energy
 - National Laboratories (Energy Department)
 - National Nuclear Security Administration
 - Nuclear Energy, Science and Technology
 - Power Administrations
 - Public Affairs
 - Science Office (Energy Department)
- Department of Health and Human Services (HHS)
 - Administration for Children and Families (ACF)
 - Administration for Community Living
 - Centers for Disease Control and Prevention (CDC)
 - Centers for Medicare and Medicaid Services (CMS)
 - Food and Drug Administration (FDA)
 - National Institutes of Health (NIH)
 - Substance Abuse and Mental Health Services Administration
 - Agency for Healthcare Research and Quality (AHRQ)
 - Agency for Toxic Substances and Disease Registry
 - Health Resources and Services Administration
 - Indian Health Service
- Department of Homeland Security (DHS)
 - Computer Emergency Readiness Team (US CERT)
 - Federal Emergency Management Agency (FEMA)
 - FEMA Disaster Assistance
 - Federal Law Enforcement Training Center
 - Secret Service
 - Transportation Security Administration (TSA)
 - U.S. Citizenship and Immigration Services
 - U.S. Coast Guard
 - U.S. Customs and Border Protection
 - U.S. Immigration and Customs Enforcement
- Department of Housing and Urban Development (HUD)
 - Federal Housing Administration (FHA)
 - Multifamily Housing Office
 - Office of Community Planning and Development
 - Office of Fair Housing and Equal Opportunity
 - Policy Development and Research (HUD)
 - Public and Indian Housing
- Department of Justice (DOJ)
 - Antitrust Division
 - Bureau of Alcohol, Tobacco, Firearms, and Explosives
 - Bureau of Justice Statistics
 - Bureau of Prisons
 - Community Oriented Policing Services (COPS)
 - Drug Enforcement Administration
 - Executive Office for Immigration Review
 - Federal Bureau of Investigation (FBI)

- Marshals Service
- Office of Justice Programs
- Office of the Pardon Attorney
- Parole Commission
- U.S. National Central Bureau - Interpol
- U.S. Trustee Program
- Department of Labor (DOL)
 - Employee Benefits Security Administration (EBSA)
 - Job Corps
 - Mine Safety and Health Administration
 - National Contact Center
 - Occupational Safety and Health Administration (OSHA)
 - Office of Disability Employment Policy
 - Veterans' Employment and Training Service
 - Women's Bureau (Labor Department)
- Department of State (DOS)
 - U.S. Mission to the United Nations
- Department of the Interior (DOI)
 - Bureau of Indian Affairs (BIA)
 - Bureau of Land Management (BLM)
 - Bureau of Reclamation
 - Fish and Wildlife Service
 - National Park Service (NPS)
 - Surface Mining, Reclamation and Enforcement
 - U.S. Geological Survey (USGS)
 - Bureau of Ocean Energy Management
 - Bureau of Safety and Environmental Enforcement
 - National Park Service
- Department of the Treasury
 - Alcohol and Tobacco Tax and Trade Bureau
 - Bureau of the Public Debt
 - Internal Revenue Service (IRS)
 - Office of the Comptroller of the Currency (OCC)
 - Taxpayer Advocacy Panel
 - United States Mint
 - Financial Management Service
- Department of Transportation (DOT)
 - Federal Aviation Administration (FAA)
 - Maritime Administration
 - National Highway Traffic Safety Administration
 - Pipeline and Hazardous Materials Safety Administration
 - Research and Innovative Technology Administration
 - Saint Lawrence Seaway Development Corporation
 - Surface Transportation Board
- Department of Veterans Affairs (VA)
 - National Cemetery Administration (NCA)
 - Veterans Benefits Administration
 - Veterans Day National Committee

Independent Agencies and Government Corporations

- Administrative Conference of the United States
- Advisory Council on Historic Preservation
- African Development Foundation
- AMTRAK (National Railroad Passenger Corporation)
- Broadcasting Board of Governors
- Central Intelligence Agency (CIA)
- Commission on Civil Rights
- Commodity Futures Trading Commission
- Consumer Product Safety Commission (CPSC)
- Corporation for National and Community Service
- Court Services and Offender Supervision Agency for the District of Columbia
- Defense Nuclear Facilities Safety Board
- Director of National Intelligence
- Environmental Protection Agency (EPA)
- Equal Employment Opportunity Commission (EEOC)
- Export-Import Bank of the United States
- Farm Credit Administration
- Farm Credit System Insurance Corporation
- Federal Communications Commission (FCC)
- Federal Deposit Insurance Corporation (FDIC)
- Federal Election Commission (FEC)
- Federal Energy Regulatory Commission
- Federal Housing Finance Agency
- Federal Labor Relations Authority
- Federal Maritime Commission
- Federal Mediation and Conciliation Service
- Federal Mine Safety and Health Review Commission
- Federal Reserve System
- Federal Retirement Thrift Investment Board
- Federal Trade Commission (FTC)
- General Services Administration (GSA)
- Institute of Museum and Library Services
- Inter-American Foundation
- Merit Systems Protection Board
- Millennium Challenge Corporation
- National Aeronautics and Space Administration (NASA)
- National Archives and Records Administration (NARA)
- National Capital Planning Commission
- National Council on Disability
- National Credit Union Administration (NCUA)
- National Endowment for the Arts
- National Endowment for the Humanities
- National Labor Relations Board (NLRB)
- National Mediation Board
- National Railroad Passenger Corporation (AMTRAK)
- National Science Foundation (NSF)
- National Transportation Safety Board
- Nuclear Regulatory Commission (NRC)
- Occupational Safety and Health Review Commission

- Office of Compliance
- Office of Government Ethics
- Office of Personnel Management
- Office of Special Counsel
- Office of the Director of National Intelligence
- Office of the National Counterintelligence Executive
- Overseas Private Investment Corporation
- Panama Canal Commission
- Peace Corps
- Pension Benefit Guaranty Corporation
- Postal Regulatory Commission
- Railroad Retirement Board
- Securities and Exchange Commission (SEC)
- Selective Service System
- Small Business Administration (SBA)
- Social Security Administration (SSA)
- Tennessee Valley Authority
- U.S. Trade and Development Agency
- United States Agency for International Development (USAID)
- United States International Trade Commission
- United States Postal Service (USPS)¹¹

Regulations from the Executive in Need of Scrutiny (REINS) Act

Congress has made attempts to curb executive agency powers by introducing the REINS Act in 2013.¹² The purpose of the REINS Act is to increase accountability and transparency in the federal regulatory process by requiring Congress to approve all new major regulations. The Act sets forth procedures federal agencies must follow, including preparing a report to Congress which classifies rules as major or non-major, list agency actions designed to implement a statutory provision or objective, list the aggregate economic impact of those actions, and include a complete copy of any cost-benefit analysis of a rule.

On August 2, 2013, the Act passed the House of Representatives but was never heard by the Senate. The Act was introduced again in 2015.¹³ The Act has been referred to committees in both the House of Representatives and the Senate; however, neither bill has yet to be heard in those committees.¹⁴

Effect of Proposed Changes

HM 1269 petitions the United States Congress to propose to the states an amendment to the U.S. Constitution entitled the “Regulation Freedom Amendment.” Under the amendment, whenever one quarter of either the House of Representatives or the Senate objects to a proposed regulation, and transmits their written declaration of opposition to the President, a majority vote of the House and Senate would be required to adopt the proposed federal regulation.

Legislative memorials are not subject to the Governor’s veto power and are not presented to the Governor for review. Memorials have no force of law—they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject. This memorial does not have a fiscal impact.

¹¹ *Federal Executive Branch*, available at <http://www.usa.gov/Agencies/Federal/Executive.shtml> (last visited March, 27, 2015).

¹² H.R. 367, 113th Cong. (2013).

¹³ H.R. 427 and S 226, 114th Cong. (2015).

¹⁴ See GovTrack.us, available at <https://www.govtrack.us/events/track-something?feed=bill&search:text=Executive%20in%20Need%20of%20Scrutiny%20Act>, (last visited March 27, 2015)

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

House Memorial

A memorial to the Congress of the United States,
 urging Congress to propose to the states an amendment
 to the Constitution of the United States entitled the
 "Regulation Freedom Amendment," which would require a
 federal regulation be adopted by a majority vote of
 both houses of Congress if opposed by a specified
 percentage of the membership of either house.

WHEREAS, the growth and abuse of federal regulatory
 authority threaten our constitutional liberties, including those
 guaranteed by the Bill of Rights in the First, Second, Fourth,
 and Fifth Amendments to the Constitution of the United States,
 and

WHEREAS, federal regulators must be more accountable to the
 elected representatives of the people and not immune from such
 accountability, and

WHEREAS, the Declaration of Independence decried the
 imposition of the central government of "absolute Tyranny over
 these States" that "erected a multitude of New Offices, and sent
 hither swarms of Officers to harass our people, and eat out
 their substance," and

WHEREAS, the states too often find themselves in a similar
 position today, and

WHEREAS, the United States House of Representatives has
 passed with bipartisan support the Regulations from the

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27 Executive in Need of Scrutiny (REINS) Act of 2013, H.R. 367, to
 28 require that Congress approve major new federal regulations
 29 before they may take effect, and

30 WHEREAS, the President of the United States has
 31 unfortunately shown no inclination to sign the REINS Act if it
 32 were passed by both houses of Congress, and

33 WHEREAS, even if enacted, the law may be repealed or not
 34 enforced by a future Congress or the President, and

35 WHEREAS, an amendment to the United States Constitution
 36 does not require the President's approval and cannot be waived
 37 by a future Congress or the President, NOW, THEREFORE,

38

39 Be It Resolved by the Legislature of the State of Florida:

40

41 That the Florida Legislature respectfully petitions the
 42 Congress of the United States to propose to the states an
 43 amendment to the Constitution of the United States entitled the
 44 "Regulation Freedom Amendment," as follows:

45

46 "Whenever one-quarter of the Members of the United
 47 States House or the United States Senate transmit to
 48 the President their written declaration of opposition
 49 to a proposed federal regulation, it shall require a
 50 majority vote of the House and Senate to adopt that
 51 regulation."

52

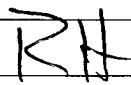
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53 BE IT FURTHER RESOLVED that copies of this memorial be
54 dispatched to the President of the United States, to the
55 President of the United States Senate, to the Speaker of the
56 United States House of Representatives, and to each member of
57 the Florida delegation to the United States Congress.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7063 PCB CRJS 15-02 Child Pornography
SPONSOR(S): Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Spano
TIED BILLS: HB 7065 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Cunningham	Cunningham
1) Justice Appropriations Subcommittee	12 Y, 0 N, As CS	McAuliffe	Lloyd
2) Judiciary Committee		Cunningham	Havlicak 

SUMMARY ANALYSIS

“Morphing” refers to a process in which a computer user distorts or transforms one picture into another. It is a relatively simple technique using inexpensive and readily available software. In recent years, individuals have started using this technique to create “morphed” child pornography (e.g., images depicting sexually explicit conduct in which an actual child’s head has been superimposed onto an adult’s body).

While the possession, distribution, transmission, etc., of traditional child pornography has long been illegal, criminalizing such acts that involve morphed child pornography has been more problematic. Congress first attempted to do so in 1996, when they passed the Child Pornography Prevention Action (CPPA). In the years that followed, portions of the CPPA were deemed unconstitutional as violating one’s First Amendment rights. Congress’s latest attempt to criminalize morphed child pornography came in 2003, with the passage of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act (Protect Act). While this legislation has been challenged, it has thus far been upheld by the courts.

In upholding the federal legislation, courts cite the exceptionally detailed definitions and prohibitions contained in the Protect Act. These provisions specifically refer to computer-generated images and images that have been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

Unlike the federal statutes, Florida’s child pornography laws are not as specific in addressing morphed child pornography. As a result, courts have determined that persons that possess, distribute, transmit, etc. such images cannot be held criminally liable.

The bill amends the definitions of the terms “sexual conduct” and “child pornography” in ch. 847, F.S., to include morphed images of child pornography. As a result, persons who possess, promote, transmit, etc., morphed child pornography can be held criminally liable.

The bill reorganizes Florida’s laws relating to “sexual performance by a child” and Florida’s child pornography laws so that they are all located in ch. 847, F.S. The bill also provides that each act of transmitting child pornography is a separate offense.

The Criminal Justice Impact Conference met March 11, 2015, and determined this bill will have an indeterminate impact on state prison beds. This means this bill may increase the number of offenders sentenced to state prison beds but the extent is unquantifiable. This bill may increase the number of offenders sentenced to local jail beds because the bill expands the definition of “sexual conduct,” and expands the application of numerous misdemeanor offenses. See Fiscal Comments section.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Morphed Child Pornography

"Morphing," which refers to a process in which a computer user distorts or transforms one picture into another, is a relatively simple technique using inexpensive and readily available software. In recent years, individuals have started using this technique to create "morphed" child pornography (e.g., images depicting sexually explicit conduct in which an actual child's head has been superimposed onto an adult's body).

Federal Statutes and Case Law

Generally speaking, the First Amendment does not protect child pornography. In *New York v. Ferber*,¹ the United States Supreme Court recognized that states have a compelling interest in safeguarding the physical and psychological well-being of minors and in preventing their sexual exploitation and abuse. The Court noted that it was "unlikely that visual depictions of children ... lewdly exhibiting their genitals would often constitute an important and necessary part of a literary performance or scientific or educational work."² Under these principles, states have constitutionally been able to criminalize the possession, distribution, etc., of child pornography. However, the constitutionality of criminalizing such acts is less clear when the images at issue are morphed pornography.

Child Pornography Prevention Action of 1996

Prior to 1996, federal law criminalized a variety of acts relating to child pornography.³ At that time, the statutes described such material as images created using an actual minor.⁴ In 1996, Congress passed the Child Pornography Prevention Action of 1996 (CPPA),⁵ which created a definition of "child pornography" that for the first time criminalized acts relating to morphed child pornography. Under the CPPA, "child pornography" was defined as:

- (8) Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct,⁶ where:
- (A) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
 - (B) Such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct (i.e., virtual child pornography – created without using an actual child);
 - (C) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor⁷ is engaging in sexually explicit conduct (i.e., morphed child pornography); or

¹ 458 U.S. 747 (1982).

² *Id.* at 762-763.

³ *See, e.g.*, 18 U.S.C. §2252 (1994 ed.).

⁴ *U.S. v. Hotaling*, 599 F.Supp.2d 306, 309 (N.D.N.Y. 2008); *see also* 18 U.S.C. §§ 2252 and 2256 (1994 ed.).

⁵ Pub. L. No. 104-208.

⁶ 18 U.S.C. §2256(2) (1996 ed.) defined the term "sexually explicit conduct" as actual or simulated sexual intercourse (including genital-genital, oral-genital, anal-genital, or oral-anal) whether between persons of the same or opposite sex; bestiality; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the genitals or pubic area of any person.

⁷ 18 U.S.C. §2556(9) (1996 ed.) defined the term "identifiable minor" as a person who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature, and:

- Who was a minor at the time the visual depiction was created, adapted, or modified; or
- Whose image as a minor was used in creating, adapting, or modifying the visual depiction.

The term was not be construed to require proof of the actual identity of the identifiable minor.

(D) Such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct.⁸

Caselaw Subsequent to the Passage of the CPPA

In 2002, the United States Supreme Court decided *Ashcroft v. Free Speech Coalition*,⁹ a case in which a California trade association for the adult-entertainment industry challenged section 2256(8)(B) of the CPPA as unconstitutionally overbroad. As noted above, section 2256(8)(B) made it a crime to possess or distribute images depicting sexually explicit conduct which could be created by using advanced computer imaging techniques to “create realistic images of children who do not exist” (i.e., virtual child pornography).¹⁰ The court held that the “speech” criminalized in the challenged provision of the CPPA violated the First Amendment since it extended the federal prohibition against child pornography to sexually explicit images that “appeared to” depict minors but were “produced without using any real children.”¹¹ The court decided that “by prohibiting child pornography that did not depict an actual child,” section 2256(8)(B) of the CPPA “abridged the freedom to engage in a substantial amount of lawful speech” and was therefore overbroad and unconstitutional.¹²

While the *Ashcroft* decision did not specifically address the constitutionality of 18 U.S.C. 2256(8)(C) (prohibiting *morphed* child pornography), it did note, in dictum, that “[a]lthough morphed images may fall within the definition of virtual child pornography, they implicate the interests of real children...”¹³ This suggests that the *Ashcroft* court would have deemed morphed child pornography as not protected by the First Amendment.¹⁴

Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act

Congress attempted to remedy the constitutional issues raised in *Ashcroft* by passing the “Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act” (Protect Act) in 2003.¹⁵ The Protect Act, in part, narrowed the definition of “virtual” child pornography in section (8)(B) of the CPPA to include virtual or computer-generated images that are “indistinguishable from” images of actual minors engaging in sexually explicit conduct.¹⁶

Notably, the definition of “morphed” child pornography contained in section 2256(8)(C) remained unchanged between the CPPA and the Protect Act.

Federal Case Law since the Passage of the Protect Act

To date, the federal statutes relating to morphed child pornography have been upheld.¹⁷ In *United States v. Bach*,¹⁸ the defendant was convicted of possessing morphed child pornography. The image at issue showed a young nude boy sitting in a tree, grinning, with his pelvis tilted upward, his legs opened wide, and a full erection.¹⁹ The photograph of a well-known child entertainer’s head had been “skillfully inserted onto the photograph of the nude boy so that the resulting image appeared to be a nude picture of the child entertainer sitting in the tree.”²⁰ The defendant appealed arguing that his conviction was invalid because the definition of morphed child pornography violated the First

⁸ 18 U.S.C. §2556(8) (1996 ed.).

⁹ 535 U.S. 234 (2002).

¹⁰ 18 U.S.C. §2556(8) (1996 ed.).

¹¹ *Ashcroft*, 535 U.S. at 256.

¹² *Id.*

¹³ *Id.* at 242.

¹⁴ *McFadden v. Alabama*, 67 So. 3d 169, 181-182 (Ala. Crim. App. 2010).

¹⁵ Pub. L. No. 108-21.

¹⁶ 18 U.S.C. §2256(8)(B).

¹⁷ See *United States v. Ramos*, 685 F.3d 120, 134 (2d Cir. 2012), *cert. denied*, 133 S.Ct. 567 (2012); see also *Doe v. Boland*, 630 F.3d 491, 497 (6th Cir. 2011).

¹⁸ 400 F.3d 622 (8th Cir. 2005).

¹⁹ *Id.* at 625.

²⁰ *Id.*

Amendment. The United States Court of Appeals for the Eighth Circuit disagreed holding that morphed child pornography “implicate the interests of real children,” and creates a lasting record of an identifiable minor child seemingly engaged in sexually explicit activity.²¹ However, the court noted that:

Although there may well be instances in which the application of § 2256(8)(C) violates the First Amendment, this is not such a case. The interests of real children are implicated in the image received by Bach showing a boy with the identifiable face of AC in a lascivious pose. This image involves the type of harm which can constitutionally be prosecuted under *Free Speech Coalition and Ferber*.²²

Subsequent to the *Bach* decision, the United States Court of Appeals for the Second Circuit heard a case with a similar fact pattern. In *United States v. Hotaling*,²³ the defendant was charged with possession of morphed child pornography relating to images in which the heads of minor females had been cut from their original, non-pornographic photographs and superimposed over the heads of images of nude and partially nude adult females engaged in sexually explicit conduct.²⁴ The defendant argued that the definition of morphed child pornography was unconstitutionally vague and overbroad, and that because no actual minor was harmed by the creation of the images, they were protected speech under the First Amendment.²⁵ The court, citing the decision in *Bach*, disagreed and held that “child pornography created by digitally altering sexually explicit photographs of adults to display the face of a child is not protected expressive speech under the First Amendment.”²⁶

Most recently, the United States Court of Appeals for the Eighth Circuit decided *United States v. Anderson*.²⁷ In *Anderson*, the defendant was charged with distribution of morphed child pornography relating to an image in which the face of a minor female was superimposed over the face of an adult female engaging in sex with an adult male.²⁸ The defendant moved to dismiss the charge, arguing that the definition of morphed child pornography was unconstitutionally overbroad.²⁹ The court noted that the image at issue was different than the one in *Bach* in that “no minor was sexually abused.”³⁰ However, the court held that because such images falsely portray identifiable children engaging in sexual activity, such images implicate the government’s compelling interest in protecting minors.³¹ Using this reasoning, the court held that the definition of morphed child pornography was constitutional.

Florida Statutes

Florida law currently contains a variety of statutes that prohibit acts relating to child pornography. Currently, these statutes are found in two different chapters. A summary of these laws follows.

Section 827.071, F.S. - Sexual Performance by a Child

Section 827.071(4), F.S., makes it a second degree felony³² for a person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.³³

²¹ *Id.* at 632.

²² *Id.*

²³ 634 F.3d 725 (2d Cir. 2008), *cert. denied*, 132 S.Ct. 843 (2011).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 726.

²⁷ 759 F.3d 891 (8th Cir. 2014).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 895.

³¹ *Id.* at 896.

³² A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

³³ Possession of 3 or more copies of such photographs, etc., is prima facie evidence of intent to promote.

Section 827.071(5), F.S., makes it a third degree felony³⁴ for any person to knowingly possess, control, or intentionally view³⁵ a photograph, motion picture, etc., which, in whole or in part, he or she knows to include any sexual conduct by a child.³⁶

The following definitions apply to the above-described offenses:

- “Child” means any person under the age of 18 years;
- “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same;
- “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed; and
- “Simulated” means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.³⁷

Section 847.0137, F.S. – Transmitting Child Pornography Electronically

Section 847.0137, F.S., specifies that any person who knew or reasonably should have known that he or she was transmitting child pornography to another person commits a third degree felony.

The following definitions apply to the above-described offense:

- “Child pornography” means any image depicting a minor engaged in sexual conduct;
- “Minor” means any person under the age of 18 years;
- “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed; and
- “Simulated” means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.³⁸

Notably, the terms used in the above-described statutes do not specifically include morphed pornography.

Florida Case Law

In 2010, Florida’s Second District Court of Appeal (DCA) decided *Stelmack v. State*,³⁹ a case in which the defendant was charged with violating s. 827.071(5), F.S. (possession of child pornography). The images at issue showed the faces and heads of two girls, ages 11 and 12, which were cut and pasted onto images of a 19-year old woman lewdly exhibiting her genitals.⁴⁰ The court closely examined the definition of “sexual conduct,” and determined that it requires images to include actual lewd exhibition of

³⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

³⁵ Section 827.071(1)(b), F.S., defines “intentionally view” as to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time.

³⁶ The statute also specifies that the possession, control, or intentional viewing of each such photograph, etc., is a separate offense. If such photograph, etc., includes sexual conduct by more than one child, then each child in each photograph, etc., that is knowingly possessed, controlled, or intentionally viewed is a separate offense.

³⁷ ss. 827.01(2) and 827.071(1), F.S.

³⁸ s. 847.001, F.S.

³⁹ 58 So. 3d 874 (Fla. 2d DCA 2010).

⁴⁰ *Id.* at 875.

the genitals *by a child*.⁴¹ Because the only sexual conduct in the images at issue was performed by an adult, the court held that the images were not prohibited by s. 827.071(5), F.S.⁴²

The court also noted that the images depicted *simulated* lewd exhibition of the genitals by a child. The state, citing the *Bach* decision (discussed above), argued that s. 827.071(5), F.S., proscribed such images because they were photographs or representations “which ... *in part* ... include ... sexual conduct by a child.”⁴³ The court disagreed and noted that the legislature specifically excluded *simulated* lewd exhibition from the definition of “sexual conduct.” In discussing this point, the court stated:

We do not mean to suggest that the possession of composite images of real children that simulate lewd and lascivious exhibition of the children’s genitals should not be criminalized. However, there is no indication in either the plain language of section 827.071(5) or its legislative history that the legislature intended to do so. If the legislature had intended to proscribe the possession of composite images that simulate lewd and lascivious exhibition of the genitals, it could have included a provision doing so.⁴⁴ In fact, child pornography has been defined in the federal statutes to specifically include composite images...⁴⁵

Shortly after the *Stelmack* decision, the Second DCA reviewed another case in which the defendant was convicted of possessing child pornography in violation of s. 827.071(5), F.S.⁴⁶ In this case, the images at issue were morphed images in which photographs of children’s heads were pasted onto photographs of nude women engaged in sexual intercourse, deviate sexual intercourse, or masturbation. After extensively reviewing the definition of “sexual conduct” and the elements of the offense, the court reversed the lower court’s decision holding that “no child engaged in the sexual conduct” and that “no matter how one parses the words, section 827.071 requires that the depicted sexual conduct be that of a child.”⁴⁷

In reversing the trial court’s decision, the Second District Court of Appeal also reviewed the legislative history of the relevant federal statutes. The court noted that Congress had enacted child pornography legislation three times (in 1994, 1996, and 2003), each time broadening the definition of child pornography.⁴⁸ The latest iteration, the Protect Act, defines child pornography to include not only images of actual children engaged in sexually explicit conduct, but also images created by computer that are “indistinguishable” from images of actual minors engaging in such conduct and images that are created or modified to appear as though an identifiable minor was involved in the production of the depiction.⁴⁹ After noting that Congress specifically removed the defense that no actual minor was involved in the production of the depiction, the court stated that “if our legislature wants to follow Congress’s example and prohibit the possession of the types of photographs involved here, we are confident that it can, and perhaps should, craft an appropriate statute.”⁵⁰

Effect of the Bill

As noted above, s. 827.071, F.S., currently contains provisions relating to sexual performance by a child, as well as provisions relating to child pornography. The bill repeals this section of statute and moves all of its provisions to statutes in ch. 847, F.S. (relating to obscenity and child pornography).

⁴¹ *Id.* at 877

⁴² *Id.*

⁴³ *Id.*

⁴⁴ In a footnote, the court noted that they would “leave for another day a discussion of the constitutionality of such a provision.” *Id.* at 876.

⁴⁵ *Id.*

⁴⁶ *Parker v. State*, 81 So. 3d 451 (Fla. 2d DCA 2011).

⁴⁷ *Id.* at 453.

⁴⁸ *Id.* at 455-57.

⁴⁹ *Id.*

⁵⁰ *Id.* at 457.

The bill moves the provisions of s. 827.071(2) and (3), F.S. (relating to sexual performance by a child), to s. 847.003, F.S. The bill does not change the elements of these offenses.

The bill moves the provisions of s. 827.071(4) and (5), F.S. (criminalizing the possession and promotion of child pornography), into s. 847.0137, F.S., and defines a variety of terms in accordance with federal law to include morphed images. For example:

- "Child pornography" is defined as a visual depiction of sexual conduct, where:
 - The production of such visual depiction involves the use of a minor engaging in sexual conduct; or
 - Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.
- "Identifiable minor" is defined as a person who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature and:
 - Who was a minor at the time the visual depiction was created, adapted, or modified; or
 - Whose image as a minor was used in creating, adapting, or modifying the visual depiction.
- "Visual depiction" is defined to include any photograph, picture, motion picture, film, video, representation, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means. The term also includes undeveloped film and videotape, data stored on computer disk or by electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format.

The bill expands the definition of "sexual conduct" applicable to all of ch. 847, F.S., to include "simulated" lewd exhibition of the genitals. The bill also provides that each act of transmitting child pornography is a separate offense.

Cumulatively, the above-described changes make it a crime to possess, promote, and transmit morphed child pornography in Florida.

The bill also makes a multitude of conforming changes that reflect the repeal of s. 827.071, F.S., the creation of s. 847.003, F.S., and the expansion of s. 847.0137, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 16.56, relating to Office of Statewide Prosecution.

Section 2. Amends s. 39.01, F.S., relating to definitions.

Section 3. Amends s. 39.0132, F.S., relating to oaths, records, and confidential information.

Section 4. Amends s. 39.0139, F.S., relating to visitation or other contact; restrictions.

Section 5. Amends s. 39.301, F.S., relating to initiation of protective investigations.

Section 6. Amends s. 39.509, F.S., relating to grandparents rights.

Section 7. Amends s. 90.404, F.S., relating to character evidence; when admissible.

Section 8. Amends s. 92.56, F.S., relating to judicial proceedings and court records involving sexual offenses and human trafficking.

Section 9. Amends s. 92.561, F.S., relating to prohibition on reproduction of child pornography.

- Section 10. Amends s. 92.565, F.S., relating to admissibility of confession in sexual abuse cases.
- Section 11. Amends s. 435.04, F.S., relating to level 2 screening standards.
- Section 12. Amends s. 456.074, F.S., relating to certain health care practitioners; immediate suspension of license.
- Section 13. Amends s. 480.041, F.S., relating to massage therapists; qualifications; licensure; endorsement.
- Section 14. Amends s. 480.043, F.S., relating to message establishments; requisites; licensure; inspection.
- Section 15. Amends s. 743.067, F.S., relating to unaccompanied homeless youths.
- Section 16. Amends s. 772.102, F.S., relating to definitions.
- Section 17. Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.
- Section 18. Amends s. 775.0847, F.S., relating to possession or promotion of certain images of child pornography; reclassification.
- Section 19. Amends s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.
- Section 20. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.
- Section 21. Amends s. 775.215, F.S., relating to residency restrictions for persons convicted of certain sex offenses.
- Section 22. 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 23. Amends s. 794.0115, F.S., relating to dangerous sexual felony offender; mandatory sentencing.
- Section 24. Amends s. 794.024, F.S., relating to unlawful to disclose identifying information.
- Section 25. Amends s. 794.056, F.S., relating to Rape Crisis Program Trust Fund.
- Section 26. Amends s. 796.001, F.S., relating to offenses by adults involving minors; intent.
- Section 27. Repeals s. 827.071, F.S., relating to sexual performance by a child; penalties.
- Section 28. Amends s. 847.001, F.S., relating to definitions.
- Section 29. Creates s. 847.003, F.S., relating to sexual performance by a child; penalties.
- Section 30. Amends s. 847.0135, F.S., relating to computer pornography; prohibited computer usage; traveling to meet minor; penalties.
- Section 31. Amends s. 847.01357, F.S., relating to exploited children's civil remedy.

- Section 32. Amends s. 847.0137, F.S., relating to transmission of pornography by electronic device or equipment prohibited; penalties.
- Section 33. Amends s. 856.022, F.S., relating to loitering or prowling by certain offenders in close proximity to children; penalty.
- Section 34. Amends s. 895.02, F.S., relating to definitions.
- Section 35. Amends s. 905.34, F.S., relating to powers and duties; law applicable.
- Section 36. Amends s. 934.07, F.S., relating to authorization for interception of wire, oral, or electronic communications.
- Section 37. Amends s. 938.085, F.S., relating to additional cost to fund rape crisis centers.
- Section 38. Amends s. 938.10, F.S., relating to additional court cost imposed in cases of certain crimes.
- Section 39. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.
- Section 40. Amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances.
- Section 41. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.
- Section 42. Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.
- Section 43. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.
- Section 44. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.
- Section 45. Amends s. 947.1405, F.S., relating to conditional release program.
- Section 46. Amends s. 948.013, F.S., relating to administrative probation.
- Section 47. Amends s. 948.03, F.S., relating to terms and conditions of probation.
- Section 48. Amends s. 948.04, F.S., relating to period of probation; duty of probationer; early termination.
- Section 49. Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.
- Section 50. Amends s. 948.062, F.S., relating to reviewing and reporting serious offenses committed by offenders placed on probation or community control.
- Section 51. Amends s. 948.101, F.S., relating to terms and conditions of community control.
- Section 52. Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.
- Section 53. Amends s. 948.32, F.S., relating to requirements of law enforcement agency upon arrest of persons for certain sex offenses.

Section 54. Amends s. 960.03, F.S., relating to definitions; ss 960.01-960.28.

Section 55. Amends s. 960.197, F.S., relating to assistance to victims of online sexual exploitation and child pornography.

Section 56. Amends s. 985.04, F.S., relating to oaths; records; confidential information.

Section 57. Amends s. 985.475, F.S., relating to juvenile sexual offenders.

Section 58. Amends s. 1012.315, F.S., relating to disqualification from employment.

Section 59. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 60. Reenacts s. 944.11, F.S., relating to department to regulate admission of books.

Section 61. Directs the Division of Law Revision and Information to rename chapter 847, F.S., as "Obscenity; Child Pornography".

Section 62. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met March 11, 2015, and determined this bill will have an indeterminate impact on state prison beds. This means this bill may increase the number of offenders sentenced to state prison beds but the extent is unquantifiable.

This bill repeals s. 827.071, F.S., and moves the provisions relating to sexual performance by a child and child pornography into ch. 847, F.S. This bill also defines a variety of terms to include "morphing," conforming to those in federal law. This expands the definition of both "sexual conduct," through "simulated" lewd expression of the genitals, and child pornography, through a visual depiction that has been "created, adapted, or modified." By including this type of conduct and these types of images for violations such as producing, directing, possession, transmission, there is potential for additional offenders to be prosecuted for the felonies currently in place.

According to the Department of Corrections, in Fiscal Year 2013-14, there were 336 offenders sentenced under both s. 827.071, F.S., and s. 847.0137, F.S., and 230 of these offenders were sentenced to prison (mean sentence length is 74.4 months, incarceration rate is 68.4 percent).

It is unknown how many more offenders will be included with the addition of "morphing."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

This bill may increase the number of offenders sentenced to local jail beds because the bill expands the definition of "sexual conduct," and expands the application of numerous misdemeanor offenses.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2015 the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that each act of transmitting child pornography is a separate offense.

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

27 | pornography is a separate offense; amending ss.
 28 | 856.022, 895.02, 905.34, 934.07, 938.085, 938.10,
 29 | 943.0435, 943.04354, 943.0585, 943.059, 944.606, and
 30 | 944.607, F.S.; conforming provisions to changes made
 31 | by the act; amending s. 947.1405, F.S.; requiring
 32 | certain conditions of supervision to be imposed on
 33 | conditional releasees convicted of specified offenses;
 34 | amending s. 948.013, F.S.; prohibiting certain
 35 | offenders from being placed on administrative
 36 | probation; amending ss. 948.03, 948.04, 948.06,
 37 | 948.062, and 948.101, F.S.; conforming provisions to
 38 | changes made by the act; amending s. 948.30, F.S.;
 39 | requiring that certain conditions of supervision be
 40 | imposed on offenders convicted of specified offenses;
 41 | amending ss. 948.32, 960.03, 960.197, 985.04, 985.475,
 42 | 1012.315, and 921.0022, F.S.; conforming provisions to
 43 | changes made by the act; reenacting s. 944.11(2),
 44 | F.S., to incorporate the amendment made by the act to
 45 | s. 847.001, F.S., in a reference thereto; providing a
 46 | directive to the Division of Law Revision and
 47 | Information; providing an effective date.

48 |
 49 | Be It Enacted by the Legislature of the State of Florida:
 50 |

51 | Section 1. Paragraph (a) of subsection (1) of section
 52 | 16.56, Florida Statutes, is amended to read:

53 16.56 Office of Statewide Prosecution.—

54 (1) There is created in the Department of Legal Affairs an
55 Office of Statewide Prosecution. The office shall be a separate
56 "budget entity" as that term is defined in chapter 216. The
57 office may:

58 (a) Investigate and prosecute the offenses of:

59 1. Bribery, burglary, criminal usury, extortion, gambling,
60 kidnapping, larceny, murder, prostitution, perjury, robbery,
61 carjacking, and home-invasion robbery;

62 2. Any crime involving narcotic or other dangerous drugs;

63 3. Any violation of ~~the provisions of~~ the Florida RICO
64 (Racketeer Influenced and Corrupt Organization) Act, including
65 any offense listed in the definition of racketeering activity in
66 s. 895.02(1)(a), providing such listed offense is investigated
67 in connection with a violation of s. 895.03 and is charged in a
68 separate count of an information or indictment containing a
69 count charging a violation of s. 895.03, the prosecution of
70 which listed offense may continue independently if the
71 prosecution of the violation of s. 895.03 is terminated for any
72 reason;

73 4. Any violation of ~~the provisions of~~ the Florida Anti-
74 Fencing Act;

75 5. Any violation of ~~the provisions of~~ the Florida
76 Antitrust Act of 1980, as amended;

77 6. Any crime involving, or resulting in, fraud or deceit
78 upon any person;

79 7. Any violation of s. 847.0135, relating to computer
80 pornography and child exploitation prevention, or any offense
81 related to a violation of former s. 827.071, s. 847.003, s.
82 847.0135, or s. 847.0137 ~~any violation of chapter 827~~ where the
83 crime is facilitated by or connected to the use of the Internet
84 or any device capable of electronic data storage or
85 transmission;

86 8. Any violation of ~~the provisions of~~ chapter 815;

87 9. Any criminal violation of part I of chapter 499;

88 10. Any violation of ~~the provisions of~~ the Florida Motor
89 Fuel Tax Relief Act of 2004;

90 11. Any criminal violation of s. 409.920 or s. 409.9201;

91 12. Any crime involving voter registration, voting, or
92 candidate or issue petition activities;

93 13. Any criminal violation of the Florida Money Laundering
94 Act;

95 14. Any criminal violation of the Florida Securities and
96 Investor Protection Act; or

97 15. Any violation of ~~the provisions of~~ chapter 787, as
98 well as any and all offenses related to a violation of ~~the~~
99 ~~provisions of~~ chapter 787;

100

101 or any attempt, solicitation, or conspiracy to commit any of the
102 crimes specifically enumerated above. The office shall have such
103 power only when any such offense is occurring, or has occurred,
104 in two or more judicial circuits as part of a related

105 transaction, or when any such offense is connected with an
 106 organized criminal conspiracy affecting two or more judicial
 107 circuits. Informations or indictments charging such offenses
 108 shall contain general allegations stating the judicial circuits
 109 and counties in which crimes are alleged to have occurred or the
 110 judicial circuits and counties in which crimes affecting such
 111 circuits or counties are alleged to have been connected with an
 112 organized criminal conspiracy.

113 Section 2. Paragraph (c) of subsection (30) and paragraph
 114 (g) of subsection (69) of section 39.01, Florida Statutes, are
 115 amended to read:

116 39.01 Definitions.—When used in this chapter, unless the
 117 context otherwise requires:

118 (30) "Harm" to a child's health or welfare can occur when
 119 any person:

120 (c) Allows, encourages, or forces the sexual exploitation
 121 of a child, which includes allowing, encouraging, or forcing a
 122 child to:

- 123 1. Solicit for or engage in prostitution; or
- 124 2. Engage in a sexual performance, as defined by former s.
 125 827.081 or s. 847.003 ~~chapter 827.~~

126 (69) "Sexual abuse of a child" for purposes of finding a
 127 child to be dependent means one or more of the following acts:

128 (g) The sexual exploitation of a child, which includes the
 129 act of a child offering to engage in or engaging in
 130 prostitution, provided that the child is not under arrest or is

131 not being prosecuted in a delinquency or criminal proceeding for
 132 a violation of any offense in chapter 796 based on such
 133 behavior; or allowing, encouraging, or forcing a child to:

- 134 1. Solicit for or engage in prostitution;
- 135 2. Engage in a sexual performance, as defined by former s.
 136 827.071 or s. 847.003 ~~chapter 827~~; or
- 137 3. Participate in the trade of human trafficking as
 138 provided in s. 787.06(3)(g).

139 Section 3. Paragraph (b) of subsection (4) of section
 140 39.0132, Florida Statutes, is amended to read:

141 39.0132 Oaths, records, and confidential information.-
 142 (4)

143 (b) The department shall disclose to the school
 144 superintendent the presence of any child in the care and custody
 145 or under the jurisdiction or supervision of the department who
 146 has a known history of criminal sexual behavior with other
 147 juveniles; is an alleged juvenile sex offender, as defined in s.
 148 39.01; or has pled guilty or nolo contendere to, or has been
 149 found to have committed, a violation of chapter 794, chapter
 150 796, chapter 800, former s. 827.071, s. 847.003, ~~or s. 847.0133~~,
 151 or s. 847.0137, regardless of adjudication. Any employee of a
 152 district school board who knowingly and willfully discloses such
 153 information to an unauthorized person commits a misdemeanor of
 154 the second degree, punishable as provided in s. 775.082 or s.
 155 775.083.

156 Section 4. Paragraph (a) of subsection (3) of section

157 39.0139, Florida Statutes, is amended to read:

158 39.0139 Visitation or other contact; restrictions.—

159 (3) PRESUMPTION OF DETRIMENT.—

160 (a) A rebuttable presumption of detriment to a child is
161 created when:

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

165 2. A parent or caregiver has been found guilty of,
166 regardless of adjudication, or has entered a plea of guilty or
167 nolo contendere to, charges under the following statutes or
168 substantially similar statutes of other jurisdictions:

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

171 b. Section 794.011, relating to sexual battery;

172 c. Section 798.02, relating to lewd and lascivious
173 behavior;

174 d. Chapter 800, relating to lewdness and indecent
175 exposure;

176 e. Section 826.04, relating to incest; ~~or~~

177 f. Chapter 827, relating to the abuse of children; ~~or~~

178 g. Section 847.003, relating to sexual performance by a
179 child; or

180 h. Section 847.0137, relating to child pornography; or

181 3. A court of competent jurisdiction has determined a
182 parent or caregiver to be a sexual predator as defined in s.

183 775.21 or a parent or caregiver has received a substantially
 184 similar designation under laws of another jurisdiction.

185 Section 5. Paragraph (b) of subsection (2) of section
 186 39.301, Florida Statutes, is amended to read:

187 39.301 Initiation of protective investigations.—

188 (2)

189 (b) As used in this subsection, the term "criminal
 190 conduct" means:

191 1. A child is known or suspected to be the victim of child
 192 abuse, as defined in s. 827.03, or of neglect of a child, as
 193 defined in s. 827.03.

194 2. A child is known or suspected to have died as a result
 195 of abuse or neglect.

196 3. A child is known or suspected to be the victim of
 197 aggravated child abuse, as defined in s. 827.03.

198 4. A child is known or suspected to be the victim of
 199 sexual battery, as defined in s. 847.001 ~~827.071~~, or of sexual
 200 abuse, as defined in s. 39.01.

201 5. A child is known or suspected to be the victim of
 202 institutional child abuse or neglect, as defined in s. 39.01,
 203 and as provided for in s. 39.302(1).

204 6. A child is known or suspected to be a victim of human
 205 trafficking, as provided in s. 787.06.

206 Section 6. Paragraph (a) of subsection (6) of section
 207 39.509, Florida Statutes, is amended to read:

208 39.509 Grandparents rights.—Notwithstanding any other

209 provision of law, a maternal or paternal grandparent as well as
 210 a stepgrandparent is entitled to reasonable visitation with his
 211 or her grandchild who has been adjudicated a dependent child and
 212 taken from the physical custody of the parent unless the court
 213 finds that such visitation is not in the best interest of the
 214 child or that such visitation would interfere with the goals of
 215 the case plan. Reasonable visitation may be unsupervised and,
 216 where appropriate and feasible, may be frequent and continuing.
 217 Any order for visitation or other contact must conform to the
 218 provisions of s. 39.0139.

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

222 (a) The finding of guilt, regardless of adjudication, or
 223 entry or plea of guilty or nolo contendere to charges under the
 224 following statutes, or similar statutes of other jurisdictions:
 225 s. 787.04, relating to removing minors from the state or
 226 concealing minors contrary to court order; s. 794.011, relating
 227 to sexual battery; s. 798.02, relating to lewd and lascivious
 228 behavior; chapter 800, relating to lewdness and indecent
 229 exposure; s. 826.04, relating to incest; ~~or~~ chapter 827,
 230 relating to the abuse of children, s. 847.003, relating to
 231 sexual performance by a child; or s. 847.0137, relating to child
 232 pornography.

233 Section 7. Paragraphs (b) and (c) of subsection (2) of
 234 section 90.404, Florida Statutes, are amended to read:

235 90.404 Character evidence; when admissible.—

236 (2) OTHER CRIMES, WRONGS, OR ACTS.—

237 (b)1. In a criminal case in which the defendant is charged
 238 with a crime involving child molestation, evidence of the
 239 defendant's commission of other crimes, wrongs, or acts of child
 240 molestation is admissible and may be considered for its bearing
 241 on any matter to which it is relevant.

242 2. For the purposes of this paragraph, the term "child
 243 molestation" means conduct proscribed by s. 787.025(2)(c), s.
 244 787.06(3)(g), former s. 787.06(3)(h), s. 794.011, excluding s.
 245 794.011(10), s. 794.05, former s. 796.03, former s. 796.035, s.
 246 800.04, former s. 827.071, s. 847.003, s. 847.0135(5), s.
 247 847.0137, s. 847.0145, or s. 985.701(1) when committed against a
 248 person 16 years of age or younger.

249 (c)1. In a criminal case in which the defendant is charged
 250 with a sexual offense, evidence of the defendant's commission of
 251 other crimes, wrongs, or acts involving a sexual offense is
 252 admissible and may be considered for its bearing on any matter
 253 to which it is relevant.

254 2. For the purposes of this paragraph, the term "sexual
 255 offense" means conduct proscribed by s. 787.025(2)(c), s.
 256 787.06(3)(b), (d), (f), or (g), former s. 787.06(3)(h), s.
 257 794.011, excluding s. 794.011(10), s. 794.05, former s. 796.03,
 258 former s. 796.035, s. 825.1025(2)(b), former s. 827.071, s.
 259 847.003, s. 847.0135(5), s. 847.0137, s. 847.0145, or s.
 260 985.701(1).

261 Section 8. Subsections (2), (3), and (5) of section 92.56,
 262 Florida Statutes, are amended to read:

263 92.56 Judicial proceedings and court records involving
 264 sexual offenses and human trafficking.—

265 (2) A defendant charged with a crime described in s.
 266 787.06(3)(a)1., (c)1., or (e)1.; s. 787.06(3)(b), (d), (f), or
 267 (g); chapter 794; or chapter 800; ~~or with child abuse or~~
 268 ~~aggravated child abuse, or sexual performance by a child as~~
 269 ~~described in chapter 827; or with sexual performance by a child~~
 270 ~~as described in former s. 827.071 or s. 847.003~~; may apply to
 271 the trial court for an order of disclosure of information in
 272 court records held confidential and exempt pursuant to s.
 273 119.0714(1)(h) or maintained as confidential and exempt pursuant
 274 to court order under this section. Such identifying information
 275 concerning the victim may be released to the defendant or his or
 276 her attorney in order to prepare the defense. The confidential
 277 and exempt status of this information may not be construed to
 278 prevent the disclosure of the victim's identity to the
 279 defendant; however, the defendant may not disclose the victim's
 280 identity to any person other than the defendant's attorney or
 281 any other person directly involved in the preparation of the
 282 defense. A willful and knowing disclosure of the identity of the
 283 victim to any other person by the defendant constitutes
 284 contempt.

285 (3) The state may use a pseudonym instead of the victim's
 286 name to designate the victim of a crime described in s.

287 787.06(3)(a)1., (c)1., or (e)1.;~~in s. 787.06(3)(b), (d), (f),~~
 288 or (g);~~or in chapter 794; or chapter 800;~~~~or~~ of child abuse
 289 or aggravated child abuse,~~or sexual performance by a child~~ as
 290 described in chapter 827; of sexual performance by a child as
 291 described in former s. 827.071 or s. 847.003;~~or~~ of any crime
 292 involving the production, possession, or promotion of child
 293 pornography as described in chapter 847, in all court records
 294 and records of court proceedings, both civil and criminal.

295 (5) This section does not prohibit the publication or
 296 broadcast of the substance of trial testimony in a prosecution
 297 for an offense described in s. 787.06(3)(a)1., (c)1., or (e)1.;~~in~~
 298 s. 787.06(3)(b), (d), (f), or (g);~~in~~ chapter 794;~~in~~ or chapter
 299 800;~~in~~~~or~~ a crime of child abuse or aggravated child abuse,~~or~~
 300 ~~sexual performance by a child,~~ as described in chapter 827; or
 301 sexual performance by a child as described in former s. 827.071
 302 or s. 847.003, but the publication or broadcast may not include
 303 an identifying photograph, an identifiable voice, or the name or
 304 address of the victim, unless the victim has consented in
 305 writing to the publication and filed such consent with the court
 306 or unless the court has declared such records not confidential
 307 and exempt as provided for in subsection (1).

308 Section 9. Subsection (1) of section 92.561, Florida
 309 Statutes, is amended to read:

310 92.561 Prohibition on reproduction of child pornography.—

311 (1) In a criminal proceeding, any property or material
 312 that portrays sexual performance by a child as defined in former

313 s. 827.071 or s. 847.003, or constitutes child pornography as
 314 defined in s. 847.0137 ~~847.001~~, must remain secured or locked in
 315 the care, custody, and control of a law enforcement agency, the
 316 state attorney, or the court.

317 Section 10. Subsection (2) of section 92.565, Florida
 318 Statutes, is amended to read:

319 92.565 Admissibility of confession in sexual abuse cases.—

320 (2) In any criminal action in which the defendant is
 321 charged with a crime against a victim under s. 794.011; s.
 322 794.05; s. 800.04; s. 826.04; s. 827.03, involving sexual abuse;
 323 s. 827.04, involving sexual abuse; former s. 827.071; s.
 324 847.003; ~~or~~ s. 847.0135(5); or s. 847.0137, or any other crime
 325 involving sexual abuse of another, or with any attempt,
 326 solicitation, or conspiracy to commit any of these crimes, the
 327 defendant's memorialized confession or admission is admissible
 328 during trial without the state having to prove a corpus delicti
 329 of the crime if the court finds in a hearing conducted outside
 330 the presence of the jury that the state is unable to show the
 331 existence of each element of the crime, and having so found,
 332 further finds that the defendant's confession or admission is
 333 trustworthy. Factors which may be relevant in determining
 334 whether the state is unable to show the existence of each
 335 element of the crime include, but are not limited to, the fact
 336 that, at the time the crime was committed, the victim was:

337 (a) Physically helpless, mentally incapacitated, or
 338 mentally defective, as those terms are defined in s. 794.011;

339 (b) Physically incapacitated due to age, infirmity, or any
 340 other cause; or

341 (c) Less than 12 years of age.

342 Section 11. Paragraphs (ll) and (qq) of subsection (2) of
 343 section 435.04, Florida Statutes, are amended to read:

344 435.04 Level 2 screening standards.—

345 (2) The security background investigations under this
 346 section must ensure that no persons subject to the provisions of
 347 this section have been arrested for and are awaiting final
 348 disposition of, have been found guilty of, regardless of
 349 adjudication, or entered a plea of nolo contendere or guilty to,
 350 or have been adjudicated delinquent and the record has not been
 351 sealed or expunged for, any offense prohibited under any of the
 352 following provisions of state law or similar law of another
 353 jurisdiction:

354 (ll) Former s. Section 827.071, relating to sexual
 355 performance by a child.

356 (qq) Chapter 847, relating to obscenity and child
 357 pornography ~~obscene literature~~.

358 Section 12. Paragraph (o) of subsection (5) of section
 359 456.074, Florida Statutes, is amended, paragraphs (r) and (s) of
 360 that subsection are redesignated as paragraphs (s) and (t),
 361 respectively, and a new paragraph (r) is added to that
 362 subsection, to read:

363 456.074 Certain health care practitioners; immediate
 364 suspension of license.—

365 (5) The department shall issue an emergency order
 366 suspending the license of a massage therapist or establishment
 367 as defined in chapter 480 upon receipt of information that the
 368 massage therapist, a person with an ownership interest in the
 369 establishment, or, for a corporation that has more than \$250,000
 370 of business assets in this state, the owner, officer, or
 371 individual directly involved in the management of the
 372 establishment has been convicted or found guilty of, or has
 373 entered a plea of guilty or nolo contendere to, regardless of
 374 adjudication, a felony offense under any of the following
 375 provisions of state law or a similar provision in another
 376 jurisdiction:

377 (o) Former s. ~~Section~~ 827.071 or s. 847.003, relating to
 378 sexual performance by a child.

379 (r) Section 847.0137, relating to child pornography.

380 Section 13. Paragraph (o) of subsection (7) of section
 381 480.041, Florida Statutes, is amended, paragraphs (r) and (s) of
 382 that subsection are redesignated as paragraphs (s) and (t),
 383 respectively, and a new paragraph (r) is added to that
 384 subsection, to read:

385 480.041 Massage therapists; qualifications; licensure;
 386 endorsement.—

387 (7) The board shall deny an application for a new or
 388 renewal license if an applicant has been convicted or found
 389 guilty of, or enters a plea of guilty or nolo contendere to,
 390 regardless of adjudication, a felony offense under any of the

391 following provisions of state law or a similar provision in
 392 another jurisdiction:

393 (o) Former s. ~~Section~~ 827.071 or s. 847.003, relating to
 394 sexual performance by a child.

395 (r) Section 847.0137, relating to child pornography.

396 Section 14. Paragraph (o) of subsection (8) of section
 397 480.043, Florida Statutes, is amended, paragraphs (r) and (s) of
 398 that subsection are redesignated as paragraphs (s) and (t),
 399 respectively, and a new paragraph (r) is added to that
 400 subsection, to read:

401 480.043 Massage establishments; requisites; licensure;
 402 inspection.—

403 (8) The department shall deny an application for a new or
 404 renewal license if a person with an ownership interest in the
 405 establishment or, for a corporation that has more than \$250,000
 406 of business assets in this state, the owner, officer, or
 407 individual directly involved in the management of the
 408 establishment has been convicted or found guilty of, or entered
 409 a plea of guilty or nolo contendere to, regardless of
 410 adjudication, a felony offense under any of the following
 411 provisions of state law or a similar provision in another
 412 jurisdiction:

413 (o) Former s. ~~Section~~ 827.071 or s. 847.003, relating to
 414 sexual performance by a child.

415 (r) Section 847.0137, relating to child pornography.

416 Section 15. Paragraph (b) of subsection (3) of section

417 743.067, Florida Statutes, is amended to read:

418 743.067 Unaccompanied homeless youths.—

419 (3) An unaccompanied homeless youth may:

420 (b) Notwithstanding s. 394.4625(1), consent to medical,
 421 dental, psychological, substance abuse, and surgical diagnosis
 422 and treatment, including preventative care and care by a
 423 facility licensed under chapter 394, chapter 395, or chapter 397
 424 and any forensic medical examination for the purpose of
 425 investigating any felony offense under chapter 784, chapter 787,
 426 chapter 794, chapter 800, ~~or~~ chapter 827, s. 847.003, or s.
 427 847.0137, for:

428 1. Himself or herself; or

429 2. His or her child, if the unaccompanied homeless youth
 430 is unmarried, is the parent of the child, and has actual custody
 431 of the child.

432 Section 16. Paragraph (a) of subsection (1) of section
 433 772.102, Florida Statutes, is amended to read:

434 772.102 Definitions.—As used in this chapter, the term:

435 (1) "Criminal activity" means to commit, to attempt to
 436 commit, to conspire to commit, or to solicit, coerce, or
 437 intimidate another person to commit:

438 (a) Any crime that is chargeable by indictment or
 439 information under the following provisions:

440 1. Section 210.18, relating to evasion of payment of
 441 cigarette taxes.

442 2. Section 414.39, relating to public assistance fraud.

- 443 3. Section 440.105 or s. 440.106, relating to workers'
- 444 compensation.
- 445 4. Part IV of chapter 501, relating to telemarketing.
- 446 5. Chapter 517, relating to securities transactions.
- 447 6. Section 550.235 or s. 550.3551, relating to dogracing
- 448 and horseracing.
- 449 7. Chapter 550, relating to jai alai frontons.
- 450 8. Chapter 552, relating to the manufacture, distribution,
- 451 and use of explosives.
- 452 9. Chapter 562, relating to beverage law enforcement.
- 453 10. Section 624.401, relating to transacting insurance
- 454 without a certificate of authority, s. 624.437(4)(c)1., relating
- 455 to operating an unauthorized multiple-employer welfare
- 456 arrangement, or s. 626.902(1)(b), relating to representing or
- 457 aiding an unauthorized insurer.
- 458 11. Chapter 687, relating to interest and usurious
- 459 practices.
- 460 12. Section 721.08, s. 721.09, or s. 721.13, relating to
- 461 real estate timeshare plans.
- 462 13. Chapter 782, relating to homicide.
- 463 14. Chapter 784, relating to assault and battery.
- 464 15. Chapter 787, relating to kidnapping or human
- 465 trafficking.
- 466 16. Chapter 790, relating to weapons and firearms.
- 467 17. Former s. 796.03, s. 796.04, s. 796.05, or s. 796.07,
- 468 relating to prostitution.

- 469 18. Chapter 806, relating to arson.
- 470 19. Section 810.02(2)(c), relating to specified burglary
- 471 of a dwelling or structure.
- 472 20. Chapter 812, relating to theft, robbery, and related
- 473 crimes.
- 474 21. Chapter 815, relating to computer-related crimes.
- 475 22. Chapter 817, relating to fraudulent practices, false
- 476 pretenses, fraud generally, and credit card crimes.
- 477 23. Former s. Section 827.071, relating to commercial
- 478 sexual exploitation of children.
- 479 24. Chapter 831, relating to forgery and counterfeiting.
- 480 25. Chapter 832, relating to issuance of worthless checks
- 481 and drafts.
- 482 26. Section 836.05, relating to extortion.
- 483 27. Chapter 837, relating to perjury.
- 484 28. Chapter 838, relating to bribery and misuse of public
- 485 office.
- 486 29. Chapter 843, relating to obstruction of justice.
- 487 30. Section 847.003, relating to sexual performance by a
- 488 child.
- 489 ~~31.30.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,
- 490 or s. 847.07, relating to obscene literature and profanity.
- 491 ~~32.31.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or
- 492 s. 849.25, relating to gambling.
- 493 ~~33.32.~~ Chapter 893, relating to drug abuse prevention and
- 494 control.

495 ~~34.33.~~ Section 914.22 or s. 914.23, relating to witnesses,
 496 victims, or informants.

497 ~~35.34.~~ Section 918.12 or s. 918.13, relating to tampering
 498 with jurors and evidence.

499 Section 17. Paragraph (a) of subsection (9) of section
 500 775.082, Florida Statutes, is amended to read:

501 775.082 Penalties; applicability of sentencing structures;
 502 mandatory minimum sentences for certain reoffenders previously
 503 released from prison.—

504 (9)(a)1. "Prison releasee reoffender" means any defendant
 505 who commits, or attempts to commit:

- 506 a. Treason;
- 507 b. Murder;
- 508 c. Manslaughter;
- 509 d. Sexual battery;
- 510 e. Carjacking;
- 511 f. Home-invasion robbery;
- 512 g. Robbery;
- 513 h. Arson;
- 514 i. Kidnapping;
- 515 j. Aggravated assault with a deadly weapon;
- 516 k. Aggravated battery;
- 517 l. Aggravated stalking;
- 518 m. Aircraft piracy;
- 519 n. Unlawful throwing, placing, or discharging of a
 520 destructive device or bomb;

521 o. Any felony that involves the use or threat of physical
522 force or violence against an individual;

523 p. Armed burglary;

524 q. Burglary of a dwelling or burglary of an occupied
525 structure; or

526 r. Any felony violation of s. 790.07, s. 800.04, s.
527 827.03, former s. 827.071, s. 847.003, ~~or~~ s. 847.0135(5), or s.
528 847.0137;

529

530 within 3 years after being released from a state correctional
531 facility operated by the Department of Corrections or a private
532 vendor or within 3 years after being released from a
533 correctional institution of another state, the District of
534 Columbia, the United States, any possession or territory of the
535 United States, or any foreign jurisdiction, following
536 incarceration for an offense for which the sentence is
537 punishable by more than 1 year in this state.

538 2. "Prison releasee reoffender" also means any defendant
539 who commits or attempts to commit any offense listed in sub-
540 subparagraphs (a)1.a.-r. while the defendant was serving a
541 prison sentence or on escape status from a state correctional
542 facility operated by the Department of Corrections or a private
543 vendor or while the defendant was on escape status from a
544 correctional institution of another state, the District of
545 Columbia, the United States, any possession or territory of the
546 United States, or any foreign jurisdiction, following

547 incarceration for an offense for which the sentence is
 548 punishable by more than 1 year in this state.

549 3. If the state attorney determines that a defendant is a
 550 prison releasee reoffender as defined in subparagraph 1., the
 551 state attorney may seek to have the court sentence the defendant
 552 as a prison releasee reoffender. Upon proof from the state
 553 attorney that establishes by a preponderance of the evidence
 554 that a defendant is a prison releasee reoffender as defined in
 555 this section, such defendant is not eligible for sentencing
 556 under the sentencing guidelines and must be sentenced as
 557 follows:

558 a. For a felony punishable by life, by a term of
 559 imprisonment for life;

560 b. For a felony of the first degree, by a term of
 561 imprisonment of 30 years;

562 c. For a felony of the second degree, by a term of
 563 imprisonment of 15 years; and

564 d. For a felony of the third degree, by a term of
 565 imprisonment of 5 years.

566 Section 18. Paragraphs (b) and (f) of subsection (1) and
 567 subsection (2) of section 775.0847, Florida Statutes, are
 568 amended to read:

569 775.0847 Possession or promotion of certain visual
 570 depictions ~~images~~ of child pornography; reclassification.-

571 (1) For purposes of this section:

572 (b) "Child pornography" has the same meaning as provided

573 ~~in s. 847.0137 means any image depicting a minor engaged in~~
 574 ~~sexual conduct.~~

575 (f) "Sexual conduct" means actual or simulated sexual
 576 intercourse, deviate sexual intercourse, sexual bestiality,
 577 masturbation, or sadomasochistic abuse; actual or simulated lewd
 578 exhibition of the genitals; actual physical contact with a
 579 person's clothed or unclothed genitals, pubic area, buttocks,
 580 or, if such person is a female, breast with the intent to arouse
 581 or gratify the sexual desire of either party; or any act or
 582 conduct which constitutes sexual battery or simulates that
 583 sexual battery is being or will be committed. A mother's
 584 breastfeeding of her baby does not under any circumstance
 585 constitute "sexual conduct."

586 (2) A violation of former s. 827.071, s. 847.003, s.
 587 847.0135, s. 847.0137, or s. 847.0138 shall be reclassified to
 588 the next higher degree as provided in subsection (3) if:

589 (a) The offender possesses 10 or more visual depictions or
 590 images of any form of child pornography regardless of content;
 591 and

592 (b) The content of at least one visual depiction or image
 593 contains one or more of the following:

- 594 1. A child who is younger than the age of 5.
- 595 2. Sadomasochistic abuse involving a child.
- 596 3. Sexual battery involving a child.
- 597 4. Sexual bestiality involving a child.
- 598 5. Any movie involving a child, regardless of length and

599 regardless of whether the movie contains sound.

600 Section 19. Paragraph (1) of subsection (1) of section
601 775.0877, Florida Statutes, is amended to read:

602 775.0877 Criminal transmission of HIV; procedures;
603 penalties.—

604 (1) In any case in which a person has been convicted of or
605 has pled nolo contendere or guilty to, regardless of whether
606 adjudication is withheld, any of the following offenses, or the
607 attempt thereof, which offense or attempted offense involves the
608 transmission of body fluids from one person to another:

609 (1) ~~Former s. Section~~ 827.071 or s. 847.003, relating to
610 sexual performance by a child ~~person less than 18 years of age;~~

611
612 the court shall order the offender to undergo HIV testing, to be
613 performed under the direction of the Department of Health in
614 accordance with s. 381.004, unless the offender has undergone
615 HIV testing voluntarily or pursuant to procedures established in
616 s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or
617 rule providing for HIV testing of criminal offenders or inmates,
618 subsequent to her or his arrest for an offense enumerated in
619 paragraphs (a)-(n) for which she or he was convicted or to which
620 she or he pled nolo contendere or guilty. The results of an HIV
621 test performed on an offender pursuant to this subsection are
622 not admissible in any criminal proceeding arising out of the
623 alleged offense.

624 Section 20. Paragraph (a) of subsection (4) and paragraph

625 (b) of subsection (10) of section 775.21, Florida Statutes, are
 626 amended to read:

627 775.21 The Florida Sexual Predators Act.—

628 (4) SEXUAL PREDATOR CRITERIA.—

629 (a) For a current offense committed on or after October 1,
 630 1993, upon conviction, an offender shall be designated as a
 631 "sexual predator" under subsection (5), and subject to
 632 registration under subsection (6) and community and public
 633 notification under subsection (7) if:

634 1. The felony is:

635 a. A capital, life, or first degree felony violation, or
 636 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
 637 is a minor and the defendant is not the victim's parent or
 638 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a
 639 violation of a similar law of another jurisdiction; or

640 b. Any felony violation, or any attempt thereof, of s.
 641 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 642 787.025(2)(c), where the victim is a minor and the defendant is
 643 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),
 644 or (g); former s. 787.06(3)(h); s. 794.011, excluding s.
 645 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.
 646 800.04; s. 810.145(8)(b); s. 825.1025; former s. 827.071; s.
 647 847.003; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.
 648 847.0145; s. 916.1075(2); or s. 985.701(1); or a violation of a
 649 similar law of another jurisdiction, and the offender has
 650 previously been convicted of or found to have committed, or has

651 pled nolo contendere or guilty to, regardless of adjudication,
 652 any violation of s. 393.135(2); s. 394.4593(2); s. 787.01, s.
 653 787.02, or s. 787.025(2)(c), where the victim is a minor and the
 654 defendant is not the victim's parent or guardian; s.
 655 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.
 656 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
 657 former s. 796.035; s. 800.04; s. 825.1025; former s. 827.071; s.
 658 847.003; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 659 847.0137; s. 847.0145; s. 916.1075(2); or s. 985.701(1); or a
 660 violation of a similar law of another jurisdiction;

661 2. The offender has not received a pardon for any felony
 662 or similar law of another jurisdiction that is necessary for the
 663 operation of this paragraph; and

664 3. A conviction of a felony or similar law of another
 665 jurisdiction necessary to the operation of this paragraph has
 666 not been set aside in any postconviction proceeding.

667 (10) PENALTIES.—

668 (b) A sexual predator who has been convicted of or found
 669 to have committed, or has pled nolo contendere or guilty to,
 670 regardless of adjudication, any violation, or attempted
 671 violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 672 the victim is a minor and the defendant is not the victim's
 673 parent or guardian; s. 794.011, excluding s. 794.011(10); s.
 674 794.05; former s. 796.03; former s. 796.035; s. 800.04; former
 675 s. 827.071; s. 847.003; s. 847.0133; s. 847.0135(5); s.
 676 847.0137; s. 847.0145; or s. 985.701(1); or a violation of a

677 similar law of another jurisdiction when the victim of the
 678 offense was a minor, and who works, whether for compensation or
 679 as a volunteer, at any business, school, child care facility,
 680 park, playground, or other place where children regularly
 681 congregate, commits a felony of the third degree, punishable as
 682 provided in s. 775.082, s. 775.083, or s. 775.084.

683 Section 21. Subsection (2) and paragraphs (a) and (c) of
 684 subsection (3) of section 775.215, Florida Statutes, are amended
 685 to read:

686 775.215 Residency restriction for persons convicted of
 687 certain sex offenses.—

688 (2) (a) A person who has been convicted of a violation of
 689 s. 794.011, s. 800.04, former s. 827.071, s. 847.003, s.
 690 847.0135(5), or s. 847.0145, regardless of whether adjudication
 691 has been withheld, in which the victim of the offense was less
 692 than 16 years of age, may not reside within 1,000 feet of any
 693 school, child care facility, park, or playground. However, a
 694 person does not violate this subsection and may not be forced to
 695 relocate if he or she is living in a residence that meets the
 696 requirements of this subsection and a school, child care
 697 facility, park, or playground is subsequently established within
 698 1,000 feet of his or her residence.

699 (b) A person who violates this subsection and whose
 700 conviction under s. 794.011, s. 800.04, former s. 827.071, s.
 701 847.003, s. 847.0135(5), or s. 847.0145 was classified as a
 702 felony of the first degree or higher commits a felony of the

703 third degree, punishable as provided in s. 775.082 or s.
 704 775.083. A person who violates this subsection and whose
 705 conviction under s. 794.011, s. 800.04, former s. 827.071, s.
 706 847.003, s. 847.0135(5), or s. 847.0145 was classified as a
 707 felony of the second or third degree commits a misdemeanor of
 708 the first degree, punishable as provided in s. 775.082 or s.
 709 775.083.

710 (c) This subsection applies to any person convicted of a
 711 violation of s. 794.011, s. 800.04, former s. 827.071, s.
 712 847.003, s. 847.0135(5), or s. 847.0145 for offenses that occur
 713 on or after October 1, 2004, excluding persons who have been
 714 removed from the requirement to register as a sexual offender or
 715 sexual predator pursuant to s. 943.04354.

716 (3)(a) A person who has been convicted of an offense in
 717 another jurisdiction that is similar to a violation of s.
 718 794.011, s. 800.04, former s. 827.071, s. 847.003, s.
 719 847.0135(5), or s. 847.0145, regardless of whether adjudication
 720 has been withheld, in which the victim of the offense was less
 721 than 16 years of age, may not reside within 1,000 feet of any
 722 school, child care facility, park, or playground. However, a
 723 person does not violate this subsection and may not be forced to
 724 relocate if he or she is living in a residence that meets the
 725 requirements of this subsection and a school, child care
 726 facility, park, or playground is subsequently established within
 727 1,000 feet of his or her residence.

728 (c) This subsection applies to any person convicted of an

729 offense in another jurisdiction that is similar to a violation
 730 of s. 794.011, s. 800.04, former s. 827.071, s. 847.003, s.
 731 847.0135(5), or s. 847.0145 if such offense occurred on or after
 732 May 26, 2010, excluding persons who have been removed from the
 733 requirement to register as a sexual offender or sexual predator
 734 pursuant to s. 943.04354.

735 Section 22. Paragraph (c) of subsection (1) of section
 736 784.046, Florida Statutes, is amended to read:

737 784.046 Action by victim of repeat violence, sexual
 738 violence, or dating violence for protective injunction; dating
 739 violence investigations, notice to victims, and reporting;
 740 pretrial release violations; public records exemption.—

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

742 (c) "Sexual violence" means any one incident of:

- 743 1. Sexual battery, as defined in chapter 794;
- 744 2. A lewd or lascivious act, as defined in chapter 800,
 745 committed upon or in the presence of a person younger than 16
 746 years of age;
- 747 3. Luring or enticing a child, as described in chapter
 748 787;
- 749 4. Sexual performance by a child, as described in former
 750 s. 827.071 or s. 847.003 ~~chapter 827~~; or
- 751 5. Any other forcible felony wherein a sexual act is
 752 committed or attempted,

753
 754 regardless of whether criminal charges based on the incident

755 were filed, reduced, or dismissed by the state attorney.

756 Section 23. Subsection (2) of section 794.0115, Florida
757 Statutes, is amended to read:

758 794.0115 Dangerous sexual felony offender; mandatory
759 sentencing.—

760 (2) Any person who is convicted of a violation of s.
761 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
762 800.04(4) or (5); s. 825.1025(2) or (3); former s. 827.071(2),
763 (3), or (4); s. 847.003; s. 847.0137(2)(a); or s. 847.0145; or
764 of any similar offense under a former designation, which offense
765 the person committed when he or she was 18 years of age or
766 older, and the person:

767 (a) Caused serious personal injury to the victim as a
768 result of the commission of the offense;

769 (b) Used or threatened to use a deadly weapon during the
770 commission of the offense;

771 (c) Victimized more than one person during the course of
772 the criminal episode applicable to the offense;

773 (d) Committed the offense while under the jurisdiction of
774 a court for a felony offense under the laws of this state, for
775 an offense that is a felony in another jurisdiction, or for an
776 offense that would be a felony if that offense were committed in
777 this state; or

778 (e) Has previously been convicted of a violation of s.
779 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
780 800.04(4) or (5); s. 825.1025(2) or (3); former s. 827.071(2),

781 (3), or (4); s. 847.003; s. 847.0137(2)(a); or s. 847.0145; of
 782 any offense under a former statutory designation which is
 783 similar in elements to an offense described in this paragraph;
 784 or of any offense that is a felony in another jurisdiction, or
 785 would be a felony if that offense were committed in this state,
 786 and which is similar in elements to an offense described in this
 787 paragraph,

788
 789 is a dangerous sexual felony offender, who must be sentenced to
 790 a mandatory minimum term of 25 years imprisonment up to, and
 791 including, life imprisonment. If the offense described in this
 792 subsection was committed on or after October 1, 2014, a person
 793 who qualifies as a dangerous sexual felony offender pursuant to
 794 this subsection must be sentenced to a mandatory minimum term of
 795 50 years imprisonment up to, and including, life imprisonment.

796 Section 24. Subsection (1) of section 794.024, Florida
 797 Statutes, is amended to read:

798 794.024 Unlawful to disclose identifying information.—

799 (1) A public employee or officer who has access to the
 800 photograph, name, or address of a person who is alleged to be
 801 the victim of an offense described in this chapter, chapter 800,
 802 s. 827.03, s. 827.04, former ~~or~~ s. 827.071, s. 847.003, or s.
 803 847.0137 may not willfully and knowingly disclose it to a person
 804 who is not assisting in the investigation or prosecution of the
 805 alleged offense or to any person other than the defendant, the
 806 defendant's attorney, a person specified in an order entered by

807 the court having jurisdiction of the alleged offense, or
 808 organizations authorized to receive such information made exempt
 809 by s. 119.071(2)(h), or to a rape crisis center or sexual
 810 assault counselor, as defined in s. 90.5035(1)(b), who will be
 811 offering services to the victim.

812 Section 25. Subsection (1) of section 794.056, Florida
 813 Statutes, is amended to read:

814 794.056 Rape Crisis Program Trust Fund.—

815 (1) The Rape Crisis Program Trust Fund is created within
 816 the Department of Health for the purpose of providing funds for
 817 rape crisis centers in this state. Trust fund moneys shall be
 818 used exclusively for the purpose of providing services for
 819 victims of sexual assault. Funds credited to the trust fund
 820 consist of those funds collected as an additional court
 821 assessment in each case in which a defendant pleads guilty or
 822 nolo contendere to, or is found guilty of, regardless of
 823 adjudication, an offense provided in s. 775.21(6) and (10)(a),
 824 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.
 825 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.
 826 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.
 827 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;
 828 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.
 829 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s.
 830 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.
 831 825.1025; former s. 827.071; s. 836.10; s. 847.003; s. 847.0133;
 832 s. 847.0135(2); s. 847.0137; s. 847.0145; s. 943.0435(4)(c),

833 (7), (8), (9)(a), (13), and (14)(c); or s. 985.701(1). Funds
 834 credited to the trust fund also shall include revenues provided
 835 by law, moneys appropriated by the Legislature, and grants from
 836 public or private entities.

837 Section 26. Section 796.001, Florida Statutes, is amended
 838 to read:

839 796.001 Offenses by adults involving minors; intent.—It is
 840 the intent of the Legislature that adults who involve minors in
 841 any behavior prohibited under this chapter be prosecuted under
 842 other laws of this state, such as, but not limited to, s.
 843 787.06, chapter 794, chapter 800, s. 810.145, former s. 827.071
 844 ~~chapter 827~~, and chapter 847. The Legislature finds that
 845 prosecution of such adults under this chapter is inappropriate
 846 since a minor is unable to consent to such behavior.

847 Section 27. Section 827.071, Florida Statutes, is
 848 repealed.

849 Section 28. Subsections (3) and (16) of section 847.001,
 850 Florida Statutes, are amended to read:

851 847.001 Definitions.—As used in this chapter, the term:

852 (3) "Child pornography" has the same meaning as provided
 853 in s. 847.0137 ~~means any image depicting a minor engaged in~~
 854 ~~sexual conduct.~~

855 (16) "Sexual conduct" means actual or simulated sexual
 856 intercourse, deviate sexual intercourse, sexual bestiality,
 857 masturbation, or sadomasochistic abuse; actual or simulated lewd
 858 exhibition of the genitals; actual physical contact with a

859 person's clothed or unclothed genitals, pubic area, buttocks,
 860 or, if such person is a female, breast with the intent to arouse
 861 or gratify the sexual desire of either party; or any act or
 862 conduct which constitutes sexual battery or simulates that
 863 sexual battery is being or will be committed. A mother's
 864 breastfeeding of her baby does not under any circumstance
 865 constitute "sexual conduct."

866 Section 29. Section 847.003, Florida Statutes, is created
 867 to read:

868 847.003 Sexual performance by a child; penalties.-

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

870 (a) "Performance" means any play, motion picture,
 871 photograph, or dance or any other visual representation
 872 exhibited before an audience.

873 (b) "Promote" means to procure, manufacture, issue, sell,
 874 give, provide, lend, mail, deliver, transfer, transmute,
 875 publish, distribute, circulate, disseminate, present, exhibit,
 876 or advertise or to offer or agree to do the same.

877 (c) "Sexual performance" means any performance or part
 878 thereof which includes sexual conduct by a minor.

879 (2) A person who, knowing the character and content
 880 thereof, employs, authorizes, or induces a minor to engage in a
 881 sexual performance or, being a parent, legal guardian, or
 882 custodian of such minor, consents to the participation by such
 883 minor in a sexual performance commits the offense of use of a
 884 child in a sexual performance, a felony of the second degree,

885 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

886 (3) A person who, knowing the character and content
 887 thereof, produces, directs, or promotes any performance that
 888 includes sexual conduct by a minor commits the offense of
 889 promoting a sexual performance by a child, a felony of the
 890 second degree, punishable as provided in s. 775.082, s. 775.083,
 891 or s. 775.084.

892 Section 30. Subsections (3) and (4) of section 847.0135,
 893 Florida Statutes, are amended to read:

894 847.0135 Computer pornography; prohibited computer usage;
 895 traveling to meet minor; penalties.—

896 (3) CERTAIN USES OF COMPUTER SERVICES OR DEVICES
 897 PROHIBITED.—Any person who knowingly uses a computer online
 898 service, Internet service, local bulletin board service, or any
 899 other device capable of electronic data storage or transmission
 900 to:

901 (a) Seduce, solicit, lure, or entice, or attempt to
 902 seduce, solicit, lure, or entice, a child or another person
 903 believed by the person to be a child, to commit any illegal act
 904 described in chapter 794, chapter 800, former s. 827.071 ~~or~~
 905 ~~chapter 827,~~ s. 847.003, or s. 847.0137 or to otherwise engage
 906 in any unlawful sexual conduct with a child or with another
 907 person believed by the person to be a child; or

908 (b) Solicit, lure, or entice, or attempt to solicit, lure,
 909 or entice a parent, legal guardian, or custodian of a child or a
 910 person believed to be a parent, legal guardian, or custodian of

911 a child to consent to the participation of such child in any act
 912 described in chapter 794, chapter 800, former s. 827.071 ~~or~~
 913 ~~chapter 827, s. 847.003, or s. 847.0137,~~ or to otherwise engage
 914 in any sexual conduct,

915
 916 commits a felony of the third degree, punishable as provided in
 917 s. 775.082, s. 775.083, or s. 775.084. Any person who, in
 918 violating this subsection, misrepresents his or her age, commits
 919 a felony of the second degree, punishable as provided in s.
 920 775.082, s. 775.083, or s. 775.084. Each separate use of a
 921 computer online service, Internet service, local bulletin board
 922 service, or any other device capable of electronic data storage
 923 or transmission wherein an offense described in this section is
 924 committed may be charged as a separate offense.

925 (4) TRAVELING TO MEET A MINOR.—Any person who travels any
 926 distance either within this state, to this state, or from this
 927 state by any means, who attempts to do so, or who causes another
 928 to do so or to attempt to do so for the purpose of engaging in
 929 any illegal act described in chapter 794, chapter 800, former s.
 930 827.071 ~~or chapter 827, s. 847.003, or s. 847.0137,~~ or to
 931 otherwise engage in other unlawful sexual conduct with a child
 932 or with another person believed by the person to be a child
 933 after using a computer online service, Internet service, local
 934 bulletin board service, or any other device capable of
 935 electronic data storage or transmission to:

936 (a) Seduce, solicit, lure, or entice or attempt to seduce,

937 solicit, lure, or entice a child or another person believed by
 938 the person to be a child, to engage in any illegal act described
 939 in chapter 794, chapter 800, former s. 827.071 ~~or chapter 827,~~
 940 s. 847.003, or s. 847.0137, or to otherwise engage in other
 941 unlawful sexual conduct with a child; or

942 (b) Solicit, lure, or entice or attempt to solicit, lure,
 943 or entice a parent, legal guardian, or custodian of a child or a
 944 person believed to be a parent, legal guardian, or custodian of
 945 a child to consent to the participation of such child in any act
 946 described in chapter 794, chapter 800, former s. 827.071 ~~or~~
 947 ~~chapter 827,~~ s. 847.003, or s. 847.0137, or to otherwise engage
 948 in any sexual conduct,

949
 950 commits a felony of the second degree, punishable as provided in
 951 s. 775.082, s. 775.083, or s. 775.084.

952 Section 31. Subsection (1) of section 847.01357, Florida
 953 Statutes, is amended to read:

954 847.01357 Exploited children's civil remedy.—

955 (1) Any person who, while under the age of 18, was a
 956 victim of a sexual abuse crime listed in chapter 794, chapter
 957 800, former s. 827.071 ~~chapter 827,~~ or chapter 847, where any
 958 portion of such abuse was used in the production of child
 959 pornography, and who suffers personal or psychological injury as
 960 a result of the production, promotion, or possession of such
 961 images or movies, may bring an action in an appropriate state
 962 court against the producer, promoter, or possessor of such

963 images or movies, regardless of whether the victim is now an
 964 adult. In any action brought under this section, a prevailing
 965 plaintiff shall recover the actual damages such person sustained
 966 and the cost of the suit, including reasonable attorney
 967 ~~attorney's~~ fees. Any victim who is awarded damages under this
 968 section shall be deemed to have sustained damages of at least
 969 \$150,000.

970 Section 32. Section 847.0137, Florida Statutes, is amended
 971 to read:

972 847.0137 Child pornography; Transmission of pornography by
 973 ~~electronic device or equipment~~ prohibited acts; penalties.-

974 (1) For purposes of this section:

975 (a) "Child pornography" means a visual depiction of sexual
 976 conduct, where:

977 1. The production of such visual depiction involves the
 978 use of a minor engaging in sexual conduct; or

979 2. Such visual depiction has been created, adapted, or
 980 modified to appear that an identifiable minor is engaging in
 981 sexual conduct.

982 (b) "Identifiable minor" means a person who is
 983 recognizable as an actual person by the person's face, likeness,
 984 or other distinguishing characteristic, such as a unique
 985 birthmark, or other recognizable feature and:

986 1. Who was a minor at the time the visual depiction was
 987 created, adapted, or modified; or

988 2. Whose image as a minor was used in creating, adapting,

989 or modifying the visual depiction.

990 (c) "Intentionally view" means to deliberately,
 991 purposefully, and voluntarily view. Proof of intentional viewing
 992 requires establishing that a person deliberately, purposefully,
 993 and voluntarily viewed more than one visual depiction over any
 994 period of time.

995 (d)~~(a)~~ "Minor" means any person less than 18 years of age.

996 (e) "Promote" means to procure, manufacture, issue, sell,
 997 give, provide, lend, mail, deliver, transfer, transmute,
 998 publish, distribute, circulate, disseminate, present, exhibit,
 999 or advertise or to offer or agree to do the same.

1000 (f)~~(b)~~ "Transmit" means the act of sending and causing to
 1001 be delivered any visual depiction ~~image~~, information, or data
 1002 from one or more persons or places to one or more other persons
 1003 or places over or through any medium, including the Internet, by
 1004 use of any electronic equipment or device.

1005 (g) "Visual depiction" includes, but is not limited to,
 1006 any photograph, picture, motion picture, film, video,
 1007 representation, or computer or computer-generated image or
 1008 picture, whether made or produced by electronic, mechanical, or
 1009 other means. The term also includes undeveloped film and
 1010 videotape, data stored on computer disk or by electronic means
 1011 which is capable of conversion into a visual image, and data
 1012 that is capable of conversion into a visual image that has been
 1013 transmitted by any means, whether stored in a permanent or
 1014 nonpermanent format.

1015 (2) (a) It is unlawful for a person to possess, with the
 1016 intent to promote, child pornography. The possession of three or
 1017 more visual depictions of child pornography is prima facie
 1018 evidence of an intent to promote. A person who violates this
 1019 paragraph commits a felony of the second degree, punishable as
 1020 provided in s. 775.082, s. 775.083, or s. 775.084.

1021 (b) It is unlawful for a person to knowingly possess,
 1022 control, or intentionally view child pornography. The
 1023 possession, control, or intentional viewing of each visual
 1024 depiction of child pornography is a separate offense. If such
 1025 visual depiction includes sexual conduct by more than one minor,
 1026 each such minor in each such visual depiction that is knowingly
 1027 possessed, controlled, or intentionally viewed is a separate
 1028 offense. A person who violates this paragraph commits a felony
 1029 of the third degree, punishable as provided in s. 775.082, s.
 1030 775.083, or s. 775.084.

1031 (c) This subsection does not apply to child pornography
 1032 possessed, controlled, or intentionally viewed as part of a law
 1033 enforcement investigation.

1034 (d) Prosecution of a person for an offense under this
 1035 subsection does not prohibit prosecution of that person in this
 1036 state for a violation of any law of this state, including a law
 1037 providing for greater penalties than prescribed in this section
 1038 or any other crime punishing the sexual performance or sexual
 1039 exploitation of children.

1040 (3) (a) ~~(2)~~ Notwithstanding ss. 847.012 and 847.0133, a any

1041 person in this state who knew or reasonably should have known
 1042 that he or she was transmitting child pornography, ~~as defined in~~
 1043 ~~s. 847.001~~, to another person in this state or in another
 1044 jurisdiction commits a felony of the third degree, punishable as
 1045 provided in s. 775.082, s. 775.083, or s. 775.084.

1046 (b)(3) Notwithstanding ss. 847.012 and 847.0133, a any
 1047 person in any jurisdiction other than this state who knew or
 1048 reasonably should have known that he or she was transmitting
 1049 child pornography, ~~as defined in s. 847.001~~, to another any
 1050 person in this state commits a felony of the third degree,
 1051 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1052 (c)(4) This subsection does ~~section shall not be construed~~
 1053 ~~to~~ prohibit prosecution of a person in this state or another
 1054 jurisdiction for a violation of any law of this state, including
 1055 a law providing for greater penalties than prescribed in this
 1056 subsection ~~section~~, for the transmission of child pornography,
 1057 ~~as defined in s. 847.001~~, to another any person in this state.

1058 (d)(5) A person is subject to prosecution in this state
 1059 pursuant to chapter 910 for any act or conduct proscribed by
 1060 this subsection ~~section~~, including a person in a jurisdiction
 1061 other than this state, if the act or conduct violates paragraph
 1062 (b) subsection (3).

1063 (e) This subsection does ~~The provisions of this section do~~
 1064 not apply to subscription-based transmissions such as list
 1065 servers.

1066 (f) For purposes of this subsection, each act of

1067 transmitting child pornography is a separate offense.

1068 Section 33. Subsection (1) of section 856.022, Florida
 1069 Statutes, is amended to read:

1070 856.022 Loitering or prowling by certain offenders in
 1071 close proximity to children; penalty.-

1072 (1) Except as provided in subsection (2), this section
 1073 applies to a person convicted of committing, or attempting,
 1074 soliciting, or conspiring to commit, any of the criminal
 1075 offenses proscribed in the following statutes in this state or
 1076 similar offenses in another jurisdiction against a victim who
 1077 was under 18 years of age at the time of the offense: s. 787.01,
 1078 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 1079 the offender was not the victim's parent or guardian; s.
 1080 787.06(3)(g); s. 794.011, excluding s. 794.011(10); s. 794.05;
 1081 former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025;
 1082 former s. 827.071; s. 847.003; s. 847.0133; s. 847.0135,
 1083 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
 1084 s. 985.701(1); or any similar offense committed in this state
 1085 which has been redesignated from a former statute number to one
 1086 of those listed in this subsection, if the person has not
 1087 received a pardon for any felony or similar law of another
 1088 jurisdiction necessary for the operation of this subsection and
 1089 a conviction of a felony or similar law of another jurisdiction
 1090 necessary for the operation of this subsection has not been set
 1091 aside in any postconviction proceeding.

1092 Section 34. Paragraph (a) of subsection (1) of section

1093 895.02, Florida Statutes, is amended to read:

1094 895.02 Definitions.—As used in ss. 895.01-895.08, the
 1095 term:

1096 (1) "Racketeering activity" means to commit, to attempt to
 1097 commit, to conspire to commit, or to solicit, coerce, or
 1098 intimidate another person to commit:

1099 (a) Any crime that is chargeable by petition, indictment,
 1100 or information under the following provisions of the Florida
 1101 Statutes:

1102 1. Section 210.18, relating to evasion of payment of
 1103 cigarette taxes.

1104 2. Section 316.1935, relating to fleeing or attempting to
 1105 elude a law enforcement officer and aggravated fleeing or
 1106 eluding.

1107 3. Section 403.727(3)(b), relating to environmental
 1108 control.

1109 4. Section 409.920 or s. 409.9201, relating to Medicaid
 1110 fraud.

1111 5. Section 414.39, relating to public assistance fraud.

1112 6. Section 440.105 or s. 440.106, relating to workers'
 1113 compensation.

1114 7. Section 443.071(4), relating to creation of a
 1115 fictitious employer scheme to commit reemployment assistance
 1116 fraud.

1117 8. Section 465.0161, relating to distribution of medicinal
 1118 drugs without a permit as an Internet pharmacy.

- 1119 | 9. Section 499.0051, relating to crimes involving
- 1120 | contraband and adulterated drugs.
- 1121 | 10. Part IV of chapter 501, relating to telemarketing.
- 1122 | 11. Chapter 517, relating to sale of securities and
- 1123 | investor protection.
- 1124 | 12. Section 550.235 or s. 550.3551, relating to dogracing
- 1125 | and horseracing.
- 1126 | 13. Chapter 550, relating to jai alai frontons.
- 1127 | 14. Section 551.109, relating to slot machine gaming.
- 1128 | 15. Chapter 552, relating to the manufacture,
- 1129 | distribution, and use of explosives.
- 1130 | 16. Chapter 560, relating to money transmitters, if the
- 1131 | violation is punishable as a felony.
- 1132 | 17. Chapter 562, relating to beverage law enforcement.
- 1133 | 18. Section 624.401, relating to transacting insurance
- 1134 | without a certificate of authority, s. 624.437(4)(c)1., relating
- 1135 | to operating an unauthorized multiple-employer welfare
- 1136 | arrangement, or s. 626.902(1)(b), relating to representing or
- 1137 | aiding an unauthorized insurer.
- 1138 | 19. Section 655.50, relating to reports of currency
- 1139 | transactions, when such violation is punishable as a felony.
- 1140 | 20. Chapter 687, relating to interest and usurious
- 1141 | practices.
- 1142 | 21. Section 721.08, s. 721.09, or s. 721.13, relating to
- 1143 | real estate timeshare plans.
- 1144 | 22. Section 775.13(5)(b), relating to registration of

1145 persons found to have committed any offense for the purpose of
 1146 benefiting, promoting, or furthering the interests of a criminal
 1147 gang.

1148 23. Section 777.03, relating to commission of crimes by
 1149 accessories after the fact.

1150 24. Chapter 782, relating to homicide.

1151 25. Chapter 784, relating to assault and battery.

1152 26. Chapter 787, relating to kidnapping or human
 1153 trafficking.

1154 27. Chapter 790, relating to weapons and firearms.

1155 28. Chapter 794, relating to sexual battery, but only if
 1156 such crime was committed with the intent to benefit, promote, or
 1157 further the interests of a criminal gang, or for the purpose of
 1158 increasing a criminal gang member's own standing or position
 1159 within a criminal gang.

1160 29. Former section 796.03, former s. 796.035, s. 796.04,
 1161 s. 796.05, or s. 796.07, relating to prostitution.

1162 30. Chapter 806, relating to arson and criminal mischief.

1163 31. Chapter 810, relating to burglary and trespass.

1164 32. Chapter 812, relating to theft, robbery, and related
 1165 crimes.

1166 33. Chapter 815, relating to computer-related crimes.

1167 34. Chapter 817, relating to fraudulent practices, false
 1168 pretenses, fraud generally, and credit card crimes.

1169 35. Chapter 825, relating to abuse, neglect, or
 1170 exploitation of an elderly person or disabled adult.

- 1171 36. Former s. Section 827.071, relating to commercial
 1172 sexual exploitation of children.
- 1173 37. Section 828.122, relating to fighting or baiting
 1174 animals.
- 1175 38. Chapter 831, relating to forgery and counterfeiting.
- 1176 39. Chapter 832, relating to issuance of worthless checks
 1177 and drafts.
- 1178 40. Section 836.05, relating to extortion.
- 1179 41. Chapter 837, relating to perjury.
- 1180 42. Chapter 838, relating to bribery and misuse of public
 1181 office.
- 1182 43. Chapter 843, relating to obstruction of justice.
- 1183 44. Section 847.003, relating to sexual performance by a
 1184 child.
- 1185 ~~45.44.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,
 1186 or s. 847.07, relating to obscene literature and profanity.
- 1187 ~~46.45.~~ Chapter 849, relating to gambling, lottery,
 1188 gambling or gaming devices, slot machines, or any of the
 1189 provisions within that chapter.
- 1190 ~~47.46.~~ Chapter 874, relating to criminal gangs.
- 1191 ~~48.47.~~ Chapter 893, relating to drug abuse prevention and
 1192 control.
- 1193 ~~49.48.~~ Chapter 896, relating to offenses related to
 1194 financial transactions.
- 1195 ~~50.49.~~ Sections 914.22 and 914.23, relating to tampering
 1196 with or harassing a witness, victim, or informant, and

1197 retaliation against a witness, victim, or informant.
 1198 ~~51.50.~~ Sections 918.12 and 918.13, relating to tampering
 1199 with jurors and evidence.
 1200 Section 35. Subsection (8) of section 905.34, Florida
 1201 Statutes, is amended to read:
 1202 905.34 Powers and duties; law applicable.—The jurisdiction
 1203 of a statewide grand jury impaneled under this chapter shall
 1204 extend throughout the state. The subject matter jurisdiction of
 1205 the statewide grand jury shall be limited to the offenses of:
 1206 (8) Any violation of s. 847.003, s. 847.0135, s. 847.0137,
 1207 or s. 847.0138 relating to computer pornography and child
 1208 exploitation prevention, or any offense related to a violation
 1209 of s. 847.003, s. 847.0135, s. 847.0137, or s. 847.0138 or any
 1210 violation of former s. 827.071 ~~chapter 827~~ where the crime is
 1211 facilitated by or connected to the use of the Internet or any
 1212 device capable of electronic data storage or transmission;
 1213
 1214 or any attempt, solicitation, or conspiracy to commit any
 1215 violation of the crimes specifically enumerated above, when any
 1216 such offense is occurring, or has occurred, in two or more
 1217 judicial circuits as part of a related transaction or when any
 1218 such offense is connected with an organized criminal conspiracy
 1219 affecting two or more judicial circuits. The statewide grand
 1220 jury may return indictments and presentments irrespective of the
 1221 county or judicial circuit where the offense is committed or
 1222 triable. If an indictment is returned, it shall be certified and

1223 transferred for trial to the county where the offense was
 1224 committed. The powers and duties of, and law applicable to,
 1225 county grand juries shall apply to a statewide grand jury except
 1226 when such powers, duties, and law are inconsistent with the
 1227 provisions of ss. 905.31-905.40.

1228 Section 36. Paragraph (a) of subsection (1) of section
 1229 934.07, Florida Statutes, is amended to read:

1230 934.07 Authorization for interception of wire, oral, or
 1231 electronic communications.—

1232 (1) The Governor, the Attorney General, the statewide
 1233 prosecutor, or any state attorney may authorize an application
 1234 to a judge of competent jurisdiction for, and such judge may
 1235 grant in conformity with ss. 934.03-934.09 an order authorizing
 1236 or approving the interception of, wire, oral, or electronic
 1237 communications by:

1238 (a) The Department of Law Enforcement or any law
 1239 enforcement agency as defined in s. 934.02 having responsibility
 1240 for the investigation of the offense as to which the application
 1241 is made when such interception may provide or has provided
 1242 evidence of the commission of the offense of murder, kidnapping,
 1243 aircraft piracy, arson, gambling, robbery, burglary, theft,
 1244 dealing in stolen property, criminal usury, bribery, or
 1245 extortion; any felony violation of ss. 790.161-790.166,
 1246 inclusive; any violation of s. 787.06; any violation of chapter
 1247 893; any violation of the provisions of the Florida Anti-Fencing
 1248 Act; any violation of chapter 895; any violation of chapter 896;

1249 any violation of chapter 815; any violation of chapter 847; any
 1250 violation of former s. 827.071; any violation of s. 944.40; or
 1251 any conspiracy or solicitation to commit any violation of the
 1252 laws of this state relating to the crimes specifically
 1253 enumerated in this paragraph.

1254 Section 37. Section 938.085, Florida Statutes, is amended
 1255 to read:

1256 938.085 Additional cost to fund rape crisis centers.—In
 1257 addition to any sanction imposed when a person pleads guilty or
 1258 nolo contendere to, or is found guilty of, regardless of
 1259 adjudication, a violation of s. 775.21(6) and (10)(a), (b), and
 1260 (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;
 1261 s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.
 1262 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.
 1263 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.
 1264 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s.
 1265 796.07(2)(a)–(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.
 1266 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; former
 1267 s. 827.071; s. 836.10; s. 847.003; s. 847.0133; s. 847.0135(2);
 1268 s. 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a),
 1269 (13), and (14)(c); or s. 985.701(1), the court shall impose a
 1270 surcharge of \$151. Payment of the surcharge shall be a condition
 1271 of probation, community control, or any other court-ordered
 1272 supervision. The sum of \$150 of the surcharge shall be deposited
 1273 into the Rape Crisis Program Trust Fund established within the
 1274 Department of Health by chapter 2003-140, Laws of Florida. The

1275 clerk of the court shall retain \$1 of each surcharge that the
 1276 clerk of the court collects as a service charge of the clerk's
 1277 office.

1278 Section 38. Subsection (1) of section 938.10, Florida
 1279 Statutes, is amended to read:

1280 938.10 Additional court cost imposed in cases of certain
 1281 crimes.—

1282 (1) If a person pleads guilty or nolo contendere to, or is
 1283 found guilty of, regardless of adjudication, any offense against
 1284 a minor in violation of s. 784.085, chapter 787, chapter 794,
 1285 former s. 796.03, former s. 796.035, s. 800.04, chapter 827,
 1286 former s. 827.071, s. 847.003, s. 847.012, s. 847.0133, s.
 1287 847.0135(5), s. 847.0137, s. 847.0138, s. 847.0145, s.
 1288 893.147(3), or s. 985.701, or any offense in violation of s.
 1289 775.21, s. 823.07, s. 847.0125, s. 847.0134, or s. 943.0435, the
 1290 court shall impose a court cost of \$151 against the offender in
 1291 addition to any other cost or penalty required by law.

1292 Section 39. Paragraph (a) of subsection (1) of section
 1293 943.0435, Florida Statutes, is amended to read:

1294 943.0435 Sexual offenders required to register with the
 1295 department; penalty.—

1296 (1) As used in this section, the term:

1297 (a)1. "Sexual offender" means a person who meets the
 1298 criteria in sub-subparagraph a., sub-subparagraph b., sub-
 1299 subparagraph c., or sub-subparagraph d., as follows:

1300 a.(I) Has been convicted of committing, or attempting,

1301 soliciting, or conspiring to commit, any of the criminal
 1302 offenses proscribed in the following statutes in this state or
 1303 similar offenses in another jurisdiction: s. 393.135(2); s.
 1304 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 1305 the victim is a minor and the defendant is not the victim's
 1306 parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s.
 1307 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05;
 1308 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);
 1309 s. 825.1025; former s. 827.071; s. 847.003; s. 847.0133; s.
 1310 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.
 1311 847.0145; s. 916.1075(2); or s. 985.701(1); or any similar
 1312 offense committed in this state which has been redesignated from
 1313 a former statute number to one of those listed in this sub-sub-
 1314 subparagraph; and

1315 (II) Has been released on or after October 1, 1997, from
 1316 the sanction imposed for any conviction of an offense described
 1317 in sub-sub-subparagraph (I). For purposes of sub-sub-
 1318 subparagraph (I), a sanction imposed in this state or in any
 1319 other jurisdiction includes, but is not limited to, a fine,
 1320 probation, community control, parole, conditional release,
 1321 control release, or incarceration in a state prison, federal
 1322 prison, private correctional facility, or local detention
 1323 facility;

1324 b. Establishes or maintains a residence in this state and
 1325 who has not been designated as a sexual predator by a court of
 1326 this state but who has been designated as a sexual predator, as

1327 a sexually violent predator, or by another sexual offender
 1328 designation in another state or jurisdiction and was, as a
 1329 result of such designation, subjected to registration or
 1330 community or public notification, or both, or would be if the
 1331 person were a resident of that state or jurisdiction, without
 1332 regard to whether the person otherwise meets the criteria for
 1333 registration as a sexual offender;

1334 c. Establishes or maintains a residence in this state who
 1335 is in the custody or control of, or under the supervision of,
 1336 any other state or jurisdiction as a result of a conviction for
 1337 committing, or attempting, soliciting, or conspiring to commit,
 1338 any of the criminal offenses proscribed in the following
 1339 statutes or similar offense in another jurisdiction: s.
 1340 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 1341 787.025(2)(c), where the victim is a minor and the defendant is
 1342 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),
 1343 or (g); former s. 787.06(3)(h); s. 794.011, excluding s.
 1344 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.
 1345 800.04; s. 810.145(8); s. 825.1025; former s. 827.071; s.
 1346 847.003; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 1347 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.
 1348 985.701(1); or any similar offense committed in this state which
 1349 has been redesignated from a former statute number to one of
 1350 those listed in this sub-subparagraph; or

1351 d. On or after July 1, 2007, has been adjudicated
 1352 delinquent for committing, or attempting, soliciting, or

1353 conspiring to commit, any of the criminal offenses proscribed in
 1354 the following statutes in this state or similar offenses in
 1355 another jurisdiction when the juvenile was 14 years of age or
 1356 older at the time of the offense:

1357 (I) Section 794.011, excluding s. 794.011(10);

1358 (II) Section 800.04(4)(a)2. where the victim is under 12
 1359 years of age or where the court finds sexual activity by the use
 1360 of force or coercion;

1361 (III) Section 800.04(5)(c)1. where the court finds
 1362 molestation involving unclothed genitals; or

1363 (IV) Section 800.04(5)(d) where the court finds the use of
 1364 force or coercion and unclothed genitals.

1365 2. For all qualifying offenses listed in sub-subparagraph
 1366 (1)(a)1.d., the court shall make a written finding of the age of
 1367 the offender at the time of the offense.

1368
 1369 For each violation of a qualifying offense listed in this
 1370 subsection, except for a violation of s. 794.011, the court
 1371 shall make a written finding of the age of the victim at the
 1372 time of the offense. For a violation of s. 800.04(4), the court
 1373 shall also make a written finding indicating whether the offense
 1374 involved sexual activity and indicating whether the offense
 1375 involved force or coercion. For a violation of s. 800.04(5), the
 1376 court shall also make a written finding that the offense did or
 1377 did not involve unclothed genitals or genital area and that the
 1378 offense did or did not involve the use of force or coercion.

1379 Section 40. Paragraph (a) of subsection (1) and subsection
 1380 (3) of section 943.04354, Florida Statutes, are amended to read:

1381 943.04354 Removal of the requirement to register as a
 1382 sexual offender or sexual predator in special circumstances.—

1383 (1) For purposes of this section, a person shall be
 1384 considered for removal of the requirement to register as a
 1385 sexual offender or sexual predator only if the person:

1386 (a) Was convicted, regardless of adjudication, or
 1387 adjudicated delinquent of a violation of s. 794.011, s. 800.04,
 1388 former s. 827.071, s. 847.003, ~~or~~ s. 847.0135(5), or s. 847.0137
 1389 or of a similar offense in another jurisdiction and if the
 1390 person does not have any other conviction, regardless of
 1391 adjudication, or adjudication of delinquency for a violation of
 1392 s. 794.011, s. 800.04, former s. 827.071, s. 847.003, ~~or~~ s.
 1393 847.0135(5), or s. 847.0137 or for a similar offense in another
 1394 jurisdiction;

1395 (3) If a person provides to the Department of Law
 1396 Enforcement a certified copy of the court's order removing the
 1397 requirement that the person register as a sexual offender or
 1398 sexual predator for the violation of s. 794.011, s. 800.04,
 1399 former s. 827.071, s. 847.003, ~~or~~ s. 847.0135(5), or s. 847.0137
 1400 or a similar offense in another jurisdiction, the registration
 1401 requirement will not apply to the person and the department
 1402 shall remove all information about the person from the public
 1403 registry of sexual offenders and sexual predators maintained by
 1404 the department. However, the removal of this information from

1405 the public registry does not mean that the public is denied
 1406 access to information about the person's criminal history or
 1407 record that is otherwise available as a public record.

1408 Section 41. Section 943.0585, Florida Statutes, is amended
 1409 to read:

1410 943.0585 Court-ordered expunction of criminal history
 1411 records.—The courts of this state have jurisdiction over their
 1412 own procedures, including the maintenance, expunction, and
 1413 correction of judicial records containing criminal history
 1414 information to the extent such procedures are not inconsistent
 1415 with the conditions, responsibilities, and duties established by
 1416 this section. Any court of competent jurisdiction may order a
 1417 criminal justice agency to expunge the criminal history record
 1418 of a minor or an adult who complies with the requirements of
 1419 this section. The court shall not order a criminal justice
 1420 agency to expunge a criminal history record until the person
 1421 seeking to expunge a criminal history record has applied for and
 1422 received a certificate of eligibility for expunction pursuant to
 1423 subsection (2) or subsection (5). A criminal history record that
 1424 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
 1425 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
 1426 s. 825.1025, former s. 827.071, chapter 839, s. 847.003, s.
 1427 847.0133, s. 847.0135, s. 847.0137, s. 847.0145, s. 893.135, s.
 1428 916.1075, a violation enumerated in s. 907.041, or any violation
 1429 specified as a predicate offense for registration as a sexual
 1430 predator pursuant to s. 775.21, without regard to whether that

1431 offense alone is sufficient to require such registration, or for
 1432 registration as a sexual offender pursuant to s. 943.0435, may
 1433 not be expunged, without regard to whether adjudication was
 1434 withheld, if the defendant was found guilty of or pled guilty or
 1435 nolo contendere to the offense, or if the defendant, as a minor,
 1436 was found to have committed, or pled guilty or nolo contendere
 1437 to committing, the offense as a delinquent act. The court may
 1438 only order expunction of a criminal history record pertaining to
 1439 one arrest or one incident of alleged criminal activity, except
 1440 as provided in this section. The court may, at its sole
 1441 discretion, order the expunction of a criminal history record
 1442 pertaining to more than one arrest if the additional arrests
 1443 directly relate to the original arrest. If the court intends to
 1444 order the expunction of records pertaining to such additional
 1445 arrests, such intent must be specified in the order. A criminal
 1446 justice agency may not expunge any record pertaining to such
 1447 additional arrests if the order to expunge does not articulate
 1448 the intention of the court to expunge a record pertaining to
 1449 more than one arrest. This section does not prevent the court
 1450 from ordering the expunction of only a portion of a criminal
 1451 history record pertaining to one arrest or one incident of
 1452 alleged criminal activity. Notwithstanding any law to the
 1453 contrary, a criminal justice agency may comply with laws, court
 1454 orders, and official requests of other jurisdictions relating to
 1455 expunction, correction, or confidential handling of criminal
 1456 history records or information derived therefrom. This section

1457 does not confer any right to the expunction of any criminal
 1458 history record, and any request for expunction of a criminal
 1459 history record may be denied at the sole discretion of the
 1460 court.

1461 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
 1462 petition to a court to expunge a criminal history record is
 1463 complete only when accompanied by:

1464 (a) A valid certificate of eligibility for expunction
 1465 issued by the department pursuant to subsection (2).

1466 (b) The petitioner's sworn statement attesting that the
 1467 petitioner:

1468 1. Has never, prior to the date on which the petition is
 1469 filed, been adjudicated guilty of a criminal offense or
 1470 comparable ordinance violation, or been adjudicated delinquent
 1471 for committing any felony or a misdemeanor specified in s.
 1472 943.051(3)(b).

1473 2. Has not been adjudicated guilty of, or adjudicated
 1474 delinquent for committing, any of the acts stemming from the
 1475 arrest or alleged criminal activity to which the petition
 1476 pertains.

1477 3. Has never secured a prior sealing or expunction of a
 1478 criminal history record under this section, s. 943.059, former
 1479 s. 893.14, former s. 901.33, or former s. 943.058, unless
 1480 expunction is sought of a criminal history record previously
 1481 sealed for 10 years pursuant to paragraph (2)(h) and the record
 1482 is otherwise eligible for expunction.

1483 4. Is eligible for such an expunction to the best of his
 1484 or her knowledge or belief and does not have any other petition
 1485 to expunge or any petition to seal pending before any court.

1486
 1487 Any person who knowingly provides false information on such
 1488 sworn statement to the court commits a felony of the third
 1489 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1490 775.084.

1491 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
 1492 petitioning the court to expunge a criminal history record, a
 1493 person seeking to expunge a criminal history record shall apply
 1494 to the department for a certificate of eligibility for
 1495 expunction. The department shall, by rule adopted pursuant to
 1496 chapter 120, establish procedures pertaining to the application
 1497 for and issuance of certificates of eligibility for expunction.
 1498 A certificate of eligibility for expunction is valid for 12
 1499 months after the date stamped on the certificate when issued by
 1500 the department. After that time, the petitioner must reapply to
 1501 the department for a new certificate of eligibility. Eligibility
 1502 for a renewed certification of eligibility must be based on the
 1503 status of the applicant and the law in effect at the time of the
 1504 renewal application. The department shall issue a certificate of
 1505 eligibility for expunction to a person who is the subject of a
 1506 criminal history record if that person:

1507 (a) Has obtained, and submitted to the department, a
 1508 written, certified statement from the appropriate state attorney

1509 or statewide prosecutor which indicates:

1510 1. That an indictment, information, or other charging
1511 document was not filed or issued in the case.

1512 2. That an indictment, information, or other charging
1513 document, if filed or issued in the case, was dismissed or nolle
1514 prosequi by the state attorney or statewide prosecutor, or was
1515 dismissed by a court of competent jurisdiction, and that none of
1516 the charges related to the arrest or alleged criminal activity
1517 to which the petition to expunge pertains resulted in a trial,
1518 without regard to whether the outcome of the trial was other
1519 than an adjudication of guilt.

1520 3. That the criminal history record does not relate to a
1521 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
1522 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
1523 former s. 827.071, chapter 839, s. 847.003, s. 847.0133, s.
1524 847.0135, s. 847.0137, s. 847.0145, s. 893.135, s. 916.1075, a
1525 violation enumerated in s. 907.041, or any violation specified
1526 as a predicate offense for registration as a sexual predator
1527 pursuant to s. 775.21, without regard to whether that offense
1528 alone is sufficient to require such registration, or for
1529 registration as a sexual offender pursuant to s. 943.0435, where
1530 the defendant was found guilty of, or pled guilty or nolo
1531 contendere to any such offense, or that the defendant, as a
1532 minor, was found to have committed, or pled guilty or nolo
1533 contendere to committing, such an offense as a delinquent act,
1534 without regard to whether adjudication was withheld.

1535 (b) Remits a \$75 processing fee to the department for
 1536 placement in the Department of Law Enforcement Operating Trust
 1537 Fund, unless such fee is waived by the executive director.

1538 (c) Has submitted to the department a certified copy of
 1539 the disposition of the charge to which the petition to expunge
 1540 pertains.

1541 (d) Has never, prior to the date on which the application
 1542 for a certificate of eligibility is filed, been adjudicated
 1543 guilty of a criminal offense or comparable ordinance violation,
 1544 or been adjudicated delinquent for committing any felony or a
 1545 misdemeanor specified in s. 943.051(3)(b).

1546 (e) Has not been adjudicated guilty of, or adjudicated
 1547 delinquent for committing, any of the acts stemming from the
 1548 arrest or alleged criminal activity to which the petition to
 1549 expunge pertains.

1550 (f) Has never secured a prior sealing or expunction of a
 1551 criminal history record under this section, s. 943.059, former
 1552 s. 893.14, former s. 901.33, or former s. 943.058, unless
 1553 expunction is sought of a criminal history record previously
 1554 sealed for 10 years pursuant to paragraph (h) and the record is
 1555 otherwise eligible for expunction.

1556 (g) Is no longer under court supervision applicable to the
 1557 disposition of the arrest or alleged criminal activity to which
 1558 the petition to expunge pertains.

1559 (h) Has previously obtained a court order sealing the
 1560 record under this section, former s. 893.14, former s. 901.33,

1561 or former s. 943.058 for a minimum of 10 years because
 1562 adjudication was withheld or because all charges related to the
 1563 arrest or alleged criminal activity to which the petition to
 1564 expunge pertains were not dismissed prior to trial, without
 1565 regard to whether the outcome of the trial was other than an
 1566 adjudication of guilt. The requirement for the record to have
 1567 previously been sealed for a minimum of 10 years does not apply
 1568 when a plea was not entered or all charges related to the arrest
 1569 or alleged criminal activity to which the petition to expunge
 1570 pertains were dismissed prior to trial.

1571 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

1572 (a) In judicial proceedings under this section, a copy of
 1573 the completed petition to expunge shall be served upon the
 1574 appropriate state attorney or the statewide prosecutor and upon
 1575 the arresting agency; however, it is not necessary to make any
 1576 agency other than the state a party. The appropriate state
 1577 attorney or the statewide prosecutor and the arresting agency
 1578 may respond to the court regarding the completed petition to
 1579 expunge.

1580 (b) If relief is granted by the court, the clerk of the
 1581 court shall certify copies of the order to the appropriate state
 1582 attorney or the statewide prosecutor and the arresting agency.
 1583 The arresting agency is responsible for forwarding the order to
 1584 any other agency to which the arresting agency disseminated the
 1585 criminal history record information to which the order pertains.
 1586 The department shall forward the order to expunge to the Federal

1587 Bureau of Investigation. The clerk of the court shall certify a
 1588 copy of the order to any other agency which the records of the
 1589 court reflect has received the criminal history record from the
 1590 court.

1591 (c) For an order to expunge entered by a court prior to
 1592 July 1, 1992, the department shall notify the appropriate state
 1593 attorney or statewide prosecutor of an order to expunge which is
 1594 contrary to law because the person who is the subject of the
 1595 record has previously been convicted of a crime or comparable
 1596 ordinance violation or has had a prior criminal history record
 1597 sealed or expunged. Upon receipt of such notice, the appropriate
 1598 state attorney or statewide prosecutor shall take action, within
 1599 60 days, to correct the record and petition the court to void
 1600 the order to expunge. The department shall seal the record until
 1601 such time as the order is voided by the court.

1602 (d) On or after July 1, 1992, the department or any other
 1603 criminal justice agency is not required to act on an order to
 1604 expunge entered by a court when such order does not comply with
 1605 the requirements of this section. Upon receipt of such an order,
 1606 the department must notify the issuing court, the appropriate
 1607 state attorney or statewide prosecutor, the petitioner or the
 1608 petitioner's attorney, and the arresting agency of the reason
 1609 for noncompliance. The appropriate state attorney or statewide
 1610 prosecutor shall take action within 60 days to correct the
 1611 record and petition the court to void the order. No cause of
 1612 action, including contempt of court, shall arise against any

1613 criminal justice agency for failure to comply with an order to
 1614 expunge when the petitioner for such order failed to obtain the
 1615 certificate of eligibility as required by this section or such
 1616 order does not otherwise comply with the requirements of this
 1617 section.

1618 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
 1619 criminal history record of a minor or an adult which is ordered
 1620 expunged by a court of competent jurisdiction pursuant to this
 1621 section must be physically destroyed or obliterated by any
 1622 criminal justice agency having custody of such record; except
 1623 that any criminal history record in the custody of the
 1624 department must be retained in all cases. A criminal history
 1625 record ordered expunged that is retained by the department is
 1626 confidential and exempt from the provisions of s. 119.07(1) and
 1627 s. 24(a), Art. I of the State Constitution and not available to
 1628 any person or entity except upon order of a court of competent
 1629 jurisdiction. A criminal justice agency may retain a notation
 1630 indicating compliance with an order to expunge.

1631 (a) The person who is the subject of a criminal history
 1632 record that is expunged under this section or under other
 1633 provisions of law, including former s. 893.14, former s. 901.33,
 1634 and former s. 943.058, may lawfully deny or fail to acknowledge
 1635 the arrests covered by the expunged record, except when the
 1636 subject of the record:

1637 1. Is a candidate for employment with a criminal justice
 1638 agency;

- 1639 2. Is a defendant in a criminal prosecution;
- 1640 3. Concurrently or subsequently petitions for relief under
- 1641 this section, s. 943.0583, or s. 943.059;
- 1642 4. Is a candidate for admission to The Florida Bar;
- 1643 5. Is seeking to be employed or licensed by or to contract
- 1644 with the Department of Children and Families, the Division of
- 1645 Vocational Rehabilitation within the Department of Education,
- 1646 the Agency for Health Care Administration, the Agency for
- 1647 Persons with Disabilities, the Department of Health, the
- 1648 Department of Elderly Affairs, or the Department of Juvenile
- 1649 Justice or to be employed or used by such contractor or licensee
- 1650 in a sensitive position having direct contact with children, the
- 1651 disabled, or the elderly;
- 1652 6. Is seeking to be employed or licensed by the Department
- 1653 of Education, any district school board, any university
- 1654 laboratory school, any charter school, any private or parochial
- 1655 school, or any local governmental entity that licenses child
- 1656 care facilities;
- 1657 7. Is seeking to be licensed by the Division of Insurance
- 1658 Agent and Agency Services within the Department of Financial
- 1659 Services; or
- 1660 8. Is seeking to be appointed as a guardian pursuant to s.
- 1661 744.3125.
- 1662 (b) Subject to the exceptions in paragraph (a), a person
- 1663 who has been granted an expunction under this section, former s.
- 1664 893.14, former s. 901.33, or former s. 943.058 may not be held

1665 under any provision of law of this state to commit perjury or to
 1666 be otherwise liable for giving a false statement by reason of
 1667 such person's failure to recite or acknowledge an expunged
 1668 criminal history record.

1669 (c) Information relating to the existence of an expunged
 1670 criminal history record which is provided in accordance with
 1671 paragraph (a) is confidential and exempt from the provisions of
 1672 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 1673 except that the department shall disclose the existence of a
 1674 criminal history record ordered expunged to the entities set
 1675 forth in subparagraphs (a)1., 4., 5., 6., 7., and 8. for their
 1676 respective licensing, access authorization, and employment
 1677 purposes, and to criminal justice agencies for their respective
 1678 criminal justice purposes. It is unlawful for any employee of an
 1679 entity set forth in subparagraph (a)1., subparagraph (a)4.,
 1680 subparagraph (a)5., subparagraph (a)6., subparagraph (a)7., or
 1681 subparagraph (a)8. to disclose information relating to the
 1682 existence of an expunged criminal history record of a person
 1683 seeking employment, access authorization, or licensure with such
 1684 entity or contractor, except to the person to whom the criminal
 1685 history record relates or to persons having direct
 1686 responsibility for employment, access authorization, or
 1687 licensure decisions. Any person who violates this paragraph
 1688 commits a misdemeanor of the first degree, punishable as
 1689 provided in s. 775.082 or s. 775.083.

1690 (5) EXCEPTION FOR LAWFUL SELF-DEFENSE.—Notwithstanding the

1691 eligibility requirements prescribed in paragraph (1)(b) and
 1692 subsection (2), the department shall issue a certificate of
 1693 eligibility for expunction under this subsection to a person who
 1694 is the subject of a criminal history record if that person:

1695 (a) Has obtained, and submitted to the department, on a
 1696 form provided by the department, a written, certified statement
 1697 from the appropriate state attorney or statewide prosecutor
 1698 which states whether an information, indictment, or other
 1699 charging document was not filed or was dismissed by the state
 1700 attorney, or dismissed by the court, because it was found that
 1701 the person acted in lawful self-defense pursuant to the
 1702 provisions related to justifiable use of force in chapter 776.

1703 (b) Each petition to a court to expunge a criminal history
 1704 record pursuant to this subsection is complete only when
 1705 accompanied by:

1706 1. A valid certificate of eligibility for expunction
 1707 issued by the department pursuant to this subsection.

1708 2. The petitioner's sworn statement attesting that the
 1709 petitioner is eligible for such an expunction to the best of his
 1710 or her knowledge or belief.

1711
 1712 Any person who knowingly provides false information on such
 1713 sworn statement to the court commits a felony of the third
 1714 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1715 775.084.

1716 (c) This subsection does not confer any right to the

1717 expunction of a criminal history record, and any request for
 1718 expunction of a criminal history record may be denied at the
 1719 discretion of the court.

1720 (d) Subsections (3) and (4) shall apply to expunction
 1721 ordered under this subsection.

1722 (e) The department shall, by rule adopted pursuant to
 1723 chapter 120, establish procedures pertaining to the application
 1724 for and issuance of certificates of eligibility for expunction
 1725 under this subsection.

1726 (6) STATUTORY REFERENCES.—Any reference to any other
 1727 chapter, section, or subdivision of the Florida Statutes in this
 1728 section constitutes a general reference under the doctrine of
 1729 incorporation by reference.

1730 Section 42. Section 943.059, Florida Statutes, is amended
 1731 to read:

1732 943.059 Court-ordered sealing of criminal history
 1733 records.—The courts of this state shall continue to have
 1734 jurisdiction over their own procedures, including the
 1735 maintenance, sealing, and correction of judicial records
 1736 containing criminal history information to the extent such
 1737 procedures are not inconsistent with the conditions,
 1738 responsibilities, and duties established by this section. Any
 1739 court of competent jurisdiction may order a criminal justice
 1740 agency to seal the criminal history record of a minor or an
 1741 adult who complies with the requirements of this section. The
 1742 court shall not order a criminal justice agency to seal a

1743 criminal history record until the person seeking to seal a
 1744 criminal history record has applied for and received a
 1745 certificate of eligibility for sealing pursuant to subsection
 1746 (2). A criminal history record that relates to a violation of s.
 1747 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
 1748 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, former s.
 1749 827.071, chapter 839, s. 847.003, s. 847.0133, s. 847.0135, s.
 1750 847.0137, s. 847.0145, s. 893.135, s. 916.1075, a violation
 1751 enumerated in s. 907.041, or any violation specified as a
 1752 predicate offense for registration as a sexual predator pursuant
 1753 to s. 775.21, without regard to whether that offense alone is
 1754 sufficient to require such registration, or for registration as
 1755 a sexual offender pursuant to s. 943.0435, may not be sealed,
 1756 without regard to whether adjudication was withheld, if the
 1757 defendant was found guilty of or pled guilty or nolo contendere
 1758 to the offense, or if the defendant, as a minor, was found to
 1759 have committed or pled guilty or nolo contendere to committing
 1760 the offense as a delinquent act. The court may only order
 1761 sealing of a criminal history record pertaining to one arrest or
 1762 one incident of alleged criminal activity, except as provided in
 1763 this section. The court may, at its sole discretion, order the
 1764 sealing of a criminal history record pertaining to more than one
 1765 arrest if the additional arrests directly relate to the original
 1766 arrest. If the court intends to order the sealing of records
 1767 pertaining to such additional arrests, such intent must be
 1768 specified in the order. A criminal justice agency may not seal

1769 any record pertaining to such additional arrests if the order to
 1770 seal does not articulate the intention of the court to seal
 1771 records pertaining to more than one arrest. This section does
 1772 not prevent the court from ordering the sealing of only a
 1773 portion of a criminal history record pertaining to one arrest or
 1774 one incident of alleged criminal activity. Notwithstanding any
 1775 law to the contrary, a criminal justice agency may comply with
 1776 laws, court orders, and official requests of other jurisdictions
 1777 relating to sealing, correction, or confidential handling of
 1778 criminal history records or information derived therefrom. This
 1779 section does not confer any right to the sealing of any criminal
 1780 history record, and any request for sealing a criminal history
 1781 record may be denied at the sole discretion of the court.

1782 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each
 1783 petition to a court to seal a criminal history record is
 1784 complete only when accompanied by:

1785 (a) A valid certificate of eligibility for sealing issued
 1786 by the department pursuant to subsection (2).

1787 (b) The petitioner's sworn statement attesting that the
 1788 petitioner:

1789 1. Has never, prior to the date on which the petition is
 1790 filed, been adjudicated guilty of a criminal offense or
 1791 comparable ordinance violation, or been adjudicated delinquent
 1792 for committing any felony or a misdemeanor specified in s.
 1793 943.051(3)(b).

1794 2. Has not been adjudicated guilty of or adjudicated

1795 delinquent for committing any of the acts stemming from the
 1796 arrest or alleged criminal activity to which the petition to
 1797 seal pertains.

1798 3. Has never secured a prior sealing or expunction of a
 1799 criminal history record under this section, s. 943.0585, former
 1800 s. 893.14, former s. 901.33, or former s. 943.058.

1801 4. Is eligible for such a sealing to the best of his or
 1802 her knowledge or belief and does not have any other petition to
 1803 seal or any petition to expunge pending before any court.

1804
 1805 Any person who knowingly provides false information on such
 1806 sworn statement to the court commits a felony of the third
 1807 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1808 775.084.

1809 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
 1810 petitioning the court to seal a criminal history record, a
 1811 person seeking to seal a criminal history record shall apply to
 1812 the department for a certificate of eligibility for sealing. The
 1813 department shall, by rule adopted pursuant to chapter 120,
 1814 establish procedures pertaining to the application for and
 1815 issuance of certificates of eligibility for sealing. A
 1816 certificate of eligibility for sealing is valid for 12 months
 1817 after the date stamped on the certificate when issued by the
 1818 department. After that time, the petitioner must reapply to the
 1819 department for a new certificate of eligibility. Eligibility for
 1820 a renewed certification of eligibility must be based on the

1821 status of the applicant and the law in effect at the time of the
 1822 renewal application. The department shall issue a certificate of
 1823 eligibility for sealing to a person who is the subject of a
 1824 criminal history record provided that such person:

1825 (a) Has submitted to the department a certified copy of
 1826 the disposition of the charge to which the petition to seal
 1827 pertains.

1828 (b) Remits a \$75 processing fee to the department for
 1829 placement in the Department of Law Enforcement Operating Trust
 1830 Fund, unless such fee is waived by the executive director.

1831 (c) Has never, prior to the date on which the application
 1832 for a certificate of eligibility is filed, been adjudicated
 1833 guilty of a criminal offense or comparable ordinance violation,
 1834 or been adjudicated delinquent for committing any felony or a
 1835 misdemeanor specified in s. 943.051(3)(b).

1836 (d) Has not been adjudicated guilty of or adjudicated
 1837 delinquent for committing any of the acts stemming from the
 1838 arrest or alleged criminal activity to which the petition to
 1839 seal pertains.

1840 (e) Has never secured a prior sealing or expunction of a
 1841 criminal history record under this section, s. 943.0585, former
 1842 s. 893.14, former s. 901.33, or former s. 943.058.

1843 (f) Is no longer under court supervision applicable to the
 1844 disposition of the arrest or alleged criminal activity to which
 1845 the petition to seal pertains.

1846 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.—

1847 (a) In judicial proceedings under this section, a copy of
 1848 the completed petition to seal shall be served upon the
 1849 appropriate state attorney or the statewide prosecutor and upon
 1850 the arresting agency; however, it is not necessary to make any
 1851 agency other than the state a party. The appropriate state
 1852 attorney or the statewide prosecutor and the arresting agency
 1853 may respond to the court regarding the completed petition to
 1854 seal.

1855 (b) If relief is granted by the court, the clerk of the
 1856 court shall certify copies of the order to the appropriate state
 1857 attorney or the statewide prosecutor and to the arresting
 1858 agency. The arresting agency is responsible for forwarding the
 1859 order to any other agency to which the arresting agency
 1860 disseminated the criminal history record information to which
 1861 the order pertains. The department shall forward the order to
 1862 seal to the Federal Bureau of Investigation. The clerk of the
 1863 court shall certify a copy of the order to any other agency
 1864 which the records of the court reflect has received the criminal
 1865 history record from the court.

1866 (c) For an order to seal entered by a court prior to July
 1867 1, 1992, the department shall notify the appropriate state
 1868 attorney or statewide prosecutor of any order to seal which is
 1869 contrary to law because the person who is the subject of the
 1870 record has previously been convicted of a crime or comparable
 1871 ordinance violation or has had a prior criminal history record
 1872 sealed or expunged. Upon receipt of such notice, the appropriate

1873 state attorney or statewide prosecutor shall take action, within
 1874 60 days, to correct the record and petition the court to void
 1875 the order to seal. The department shall seal the record until
 1876 such time as the order is voided by the court.

1877 (d) On or after July 1, 1992, the department or any other
 1878 criminal justice agency is not required to act on an order to
 1879 seal entered by a court when such order does not comply with the
 1880 requirements of this section. Upon receipt of such an order, the
 1881 department must notify the issuing court, the appropriate state
 1882 attorney or statewide prosecutor, the petitioner or the
 1883 petitioner's attorney, and the arresting agency of the reason
 1884 for noncompliance. The appropriate state attorney or statewide
 1885 prosecutor shall take action within 60 days to correct the
 1886 record and petition the court to void the order. No cause of
 1887 action, including contempt of court, shall arise against any
 1888 criminal justice agency for failure to comply with an order to
 1889 seal when the petitioner for such order failed to obtain the
 1890 certificate of eligibility as required by this section or when
 1891 such order does not comply with the requirements of this
 1892 section.

1893 (e) An order sealing a criminal history record pursuant to
 1894 this section does not require that such record be surrendered to
 1895 the court, and such record shall continue to be maintained by
 1896 the department and other criminal justice agencies.

1897 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
 1898 history record of a minor or an adult which is ordered sealed by

1899 a court pursuant to this section is confidential and exempt from
 1900 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
 1901 Constitution and is available only to the person who is the
 1902 subject of the record, to the subject's attorney, to criminal
 1903 justice agencies for their respective criminal justice purposes,
 1904 which include conducting a criminal history background check for
 1905 approval of firearms purchases or transfers as authorized by
 1906 state or federal law, to judges in the state courts system for
 1907 the purpose of assisting them in their case-related
 1908 decisionmaking responsibilities, as set forth in s. 943.053(5),
 1909 or to those entities set forth in subparagraphs (a)1., 4., 5.,
 1910 6., 8., 9., and 10. for their respective licensing, access
 1911 authorization, and employment purposes.

1912 (a) The subject of a criminal history record sealed under
 1913 this section or under other provisions of law, including former
 1914 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 1915 deny or fail to acknowledge the arrests covered by the sealed
 1916 record, except when the subject of the record:

- 1917 1. Is a candidate for employment with a criminal justice
 1918 agency;
- 1919 2. Is a defendant in a criminal prosecution;
- 1920 3. Concurrently or subsequently petitions for relief under
 1921 this section, s. 943.0583, or s. 943.0585;
- 1922 4. Is a candidate for admission to The Florida Bar;
- 1923 5. Is seeking to be employed or licensed by or to contract
 1924 with the Department of Children and Families, the Division of

1925 Vocational Rehabilitation within the Department of Education,
 1926 the Agency for Health Care Administration, the Agency for
 1927 Persons with Disabilities, the Department of Health, the
 1928 Department of Elderly Affairs, or the Department of Juvenile
 1929 Justice or to be employed or used by such contractor or licensee
 1930 in a sensitive position having direct contact with children, the
 1931 disabled, or the elderly;

1932 6. Is seeking to be employed or licensed by the Department
 1933 of Education, a district school board, a university laboratory
 1934 school, a charter school, a private or parochial school, or a
 1935 local governmental entity that licenses child care facilities;

1936 7. Is attempting to purchase a firearm from a licensed
 1937 importer, licensed manufacturer, or licensed dealer and is
 1938 subject to a criminal history check under state or federal law;

1939 8. Is seeking to be licensed by the Division of Insurance
 1940 Agent and Agency Services within the Department of Financial
 1941 Services;

1942 9. Is seeking to be appointed as a guardian pursuant to s.
 1943 744.3125; or

1944 10. Is seeking to be licensed by the Bureau of License
 1945 Issuance of the Division of Licensing within the Department of
 1946 Agriculture and Consumer Services to carry a concealed weapon or
 1947 concealed firearm. This subparagraph applies only in the
 1948 determination of an applicant's eligibility under s. 790.06.

1949 (b) Subject to the exceptions in paragraph (a), a person
 1950 who has been granted a sealing under this section, former s.

1951 893.14, former s. 901.33, or former s. 943.058 may not be held
 1952 under any provision of law of this state to commit perjury or to
 1953 be otherwise liable for giving a false statement by reason of
 1954 such person's failure to recite or acknowledge a sealed criminal
 1955 history record.

1956 (c) Information relating to the existence of a sealed
 1957 criminal record provided in accordance with the provisions of
 1958 paragraph (a) is confidential and exempt from the provisions of
 1959 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 1960 except that the department shall disclose the sealed criminal
 1961 history record to the entities set forth in subparagraphs (a)1.,
 1962 4., 5., 6., 8., 9., and 10. for their respective licensing,
 1963 access authorization, and employment purposes. An employee of an
 1964 entity set forth in subparagraph (a)1., subparagraph (a)4.,
 1965 subparagraph (a)5., subparagraph (a)6., subparagraph (a)8.,
 1966 subparagraph (a)9., or subparagraph (a)10. may not disclose
 1967 information relating to the existence of a sealed criminal
 1968 history record of a person seeking employment, access
 1969 authorization, or licensure with such entity or contractor,
 1970 except to the person to whom the criminal history record relates
 1971 or to persons having direct responsibility for employment,
 1972 access authorization, or licensure decisions. A person who
 1973 violates the provisions of this paragraph commits a misdemeanor
 1974 of the first degree, punishable as provided in s. 775.082 or s.
 1975 775.083.

1976 (5) STATUTORY REFERENCES.—Any reference to any other

1977 chapter, section, or subdivision of the Florida Statutes in this
 1978 section constitutes a general reference under the doctrine of
 1979 incorporation by reference.

1980 Section 43. Paragraph (b) of subsection (1) of section
 1981 944.606, Florida Statutes, is amended to read:

1982 944.606 Sexual offenders; notification upon release.-

1983 (1) As used in this section:

1984 (b) "Sexual offender" means a person who has been
 1985 convicted of committing, or attempting, soliciting, or
 1986 conspiring to commit, any of the criminal offenses proscribed in
 1987 the following statutes in this state or similar offenses in
 1988 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,
 1989 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 1990 the defendant is not the victim's parent or guardian; s.
 1991 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.
 1992 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
 1993 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; former
 1994 s. 827.071; s. 847.003; s. 847.0133; s. 847.0135, excluding s.
 1995 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.
 1996 916.1075(2); or s. 985.701(1); or any similar offense committed
 1997 in this state which has been redesignated from a former statute
 1998 number to one of those listed in this subsection, when the
 1999 department has received verified information regarding such
 2000 conviction; an offender's computerized criminal history record
 2001 is not, in and of itself, verified information.

2002 Section 44. Paragraph (a) of subsection (1) of section

2003 944.607, Florida Statutes, is amended to read:
 2004 944.607 Notification to Department of Law Enforcement of
 2005 information on sexual offenders.—
 2006 (1) As used in this section, the term:
 2007 (a) "Sexual offender" means a person who is in the custody
 2008 or control of, or under the supervision of, the department or is
 2009 in the custody of a private correctional facility:
 2010 1. On or after October 1, 1997, as a result of a
 2011 conviction for committing, or attempting, soliciting, or
 2012 conspiring to commit, any of the criminal offenses proscribed in
 2013 the following statutes in this state or similar offenses in
 2014 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,
 2015 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 2016 the defendant is not the victim's parent or guardian; s.
 2017 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.
 2018 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
 2019 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; former
 2020 s. 827.071; s. 847.003; s. 847.0133; s. 847.0135, excluding s.
 2021 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.
 2022 916.1075(2); or s. 985.701(1); or any similar offense committed
 2023 in this state which has been redesignated from a former statute
 2024 number to one of those listed in this paragraph; or
 2025 2. Who establishes or maintains a residence in this state
 2026 and who has not been designated as a sexual predator by a court
 2027 of this state but who has been designated as a sexual predator,
 2028 as a sexually violent predator, or by another sexual offender

2029 designation in another state or jurisdiction and was, as a
 2030 result of such designation, subjected to registration or
 2031 community or public notification, or both, or would be if the
 2032 person were a resident of that state or jurisdiction, without
 2033 regard as to whether the person otherwise meets the criteria for
 2034 registration as a sexual offender.

2035 Section 45. Subsections (7), (10), and (14) of section
 2036 947.1405, Florida Statutes, are amended, and subsection (15) is
 2037 added to that section, to read:

2038 947.1405 Conditional release program.—

2039 (7)(a) Any inmate who is convicted of a crime committed on
 2040 or after October 1, 1995, or who has been previously convicted
 2041 of a crime committed on or after October 1, 1995, in violation
 2042 of chapter 794, s. 800.04, former s. 827.071, s. 847.0135(5), or
 2043 s. 847.0145, and is subject to conditional release supervision,
 2044 shall have, in addition to any other conditions imposed, the
 2045 following special conditions imposed by the commission:

2046 1. A mandatory curfew from 10 p.m. to 6 a.m. The
 2047 commission may designate another 8-hour period if the offender's
 2048 employment precludes the above specified time, and such
 2049 alternative is recommended by the Department of Corrections. If
 2050 the commission determines that imposing a curfew would endanger
 2051 the victim, the commission may consider alternative sanctions.

2052 2. If the victim was under the age of 18, a prohibition on
 2053 living within 1,000 feet of a school, child care facility, park,
 2054 playground, designated public school bus stop, or other place

2055 where children regularly congregate. A releasee who is subject
 2056 to this subparagraph may not relocate to a residence that is
 2057 within 1,000 feet of a public school bus stop. Beginning October
 2058 1, 2004, the commission or the department may not approve a
 2059 residence that is located within 1,000 feet of a school, child
 2060 care facility, park, playground, designated school bus stop, or
 2061 other place where children regularly congregate for any releasee
 2062 who is subject to this subparagraph. On October 1, 2004, the
 2063 department shall notify each affected school district of the
 2064 location of the residence of a releasee 30 days prior to release
 2065 and thereafter, if the releasee relocates to a new residence,
 2066 shall notify any affected school district of the residence of
 2067 the releasee within 30 days after relocation. If, on October 1,
 2068 2004, any public school bus stop is located within 1,000 feet of
 2069 the existing residence of such releasee, the district school
 2070 board shall relocate that school bus stop. Beginning October 1,
 2071 2004, a district school board may not establish or relocate a
 2072 public school bus stop within 1,000 feet of the residence of a
 2073 releasee who is subject to this subparagraph. The failure of the
 2074 district school board to comply with this subparagraph shall not
 2075 result in a violation of conditional release supervision. A
 2076 releasee who is subject to this subparagraph may not be forced
 2077 to relocate and does not violate his or her conditional release
 2078 supervision if he or she is living in a residence that meets the
 2079 requirements of this subparagraph and a school, child care
 2080 facility, park, playground, designated public school bus stop,

2081 or other place where children regularly congregate is
 2082 subsequently established within 1,000 feet of his or her
 2083 residence.

2084 3. Active participation in and successful completion of a
 2085 sex offender treatment program with qualified practitioners
 2086 specifically trained to treat sex offenders, at the releasee's
 2087 own expense. If a qualified practitioner is not available within
 2088 a 50-mile radius of the releasee's residence, the offender shall
 2089 participate in other appropriate therapy.

2090 4. A prohibition on any contact with the victim, directly
 2091 or indirectly, including through a third person, unless approved
 2092 by the victim, a qualified practitioner in the sexual offender
 2093 treatment program, and the sentencing court.

2094 5. If the victim was under the age of 18, a prohibition
 2095 against contact with children under the age of 18 without review
 2096 and approval by the commission. The commission may approve
 2097 supervised contact with a child under the age of 18 if the
 2098 approval is based upon a recommendation for contact issued by a
 2099 qualified practitioner who is basing the recommendation on a
 2100 risk assessment. Further, the sex offender must be currently
 2101 enrolled in or have successfully completed a sex offender
 2102 therapy program. The commission may not grant supervised contact
 2103 with a child if the contact is not recommended by a qualified
 2104 practitioner and may deny supervised contact with a child at any
 2105 time. When considering whether to approve supervised contact
 2106 with a child, the commission must review and consider the

2107 following:

2108 a. A risk assessment completed by a qualified
 2109 practitioner. The qualified practitioner must prepare a written
 2110 report that must include the findings of the assessment and
 2111 address each of the following components:

2112 (I) The sex offender's current legal status;

2113 (II) The sex offender's history of adult charges with
 2114 apparent sexual motivation;

2115 (III) The sex offender's history of adult charges without
 2116 apparent sexual motivation;

2117 (IV) The sex offender's history of juvenile charges,
 2118 whenever available;

2119 (V) The sex offender's offender treatment history,
 2120 including a consultation from the sex offender's treating, or
 2121 most recent treating, therapist;

2122 (VI) The sex offender's current mental status;

2123 (VII) The sex offender's mental health and substance abuse
 2124 history as provided by the Department of Corrections;

2125 (VIII) The sex offender's personal, social, educational,
 2126 and work history;

2127 (IX) The results of current psychological testing of the
 2128 sex offender if determined necessary by the qualified
 2129 practitioner;

2130 (X) A description of the proposed contact, including the
 2131 location, frequency, duration, and supervisory arrangement;

2132 (XI) The child's preference and relative comfort level

2133 with the proposed contact, when age-appropriate;

2134 (XII) The parent's or legal guardian's preference
 2135 regarding the proposed contact; and

2136 (XIII) The qualified practitioner's opinion, along with
 2137 the basis for that opinion, as to whether the proposed contact
 2138 would likely pose significant risk of emotional or physical harm
 2139 to the child.

2140
 2141 The written report of the assessment must be given to the
 2142 commission.

2143 b. A recommendation made as a part of the risk-assessment
 2144 report as to whether supervised contact with the child should be
 2145 approved;

2146 c. A written consent signed by the child's parent or legal
 2147 guardian, if the parent or legal guardian is not the sex
 2148 offender, agreeing to the sex offender having supervised contact
 2149 with the child after receiving full disclosure of the sex
 2150 offender's present legal status, past criminal history, and the
 2151 results of the risk assessment. The commission may not approve
 2152 contact with the child if the parent or legal guardian refuses
 2153 to give written consent for supervised contact;

2154 d. A safety plan prepared by the qualified practitioner,
 2155 who provides treatment to the offender, in collaboration with
 2156 the sex offender, the child's parent or legal guardian, and the
 2157 child, when age appropriate, which details the acceptable
 2158 conditions of contact between the sex offender and the child.

2159 The safety plan must be reviewed and approved by the Department
 2160 of Corrections before being submitted to the commission; and

2161 e. Evidence that the child's parent or legal guardian, if
 2162 the parent or legal guardian is not the sex offender,
 2163 understands the need for and agrees to the safety plan and has
 2164 agreed to provide, or to designate another adult to provide,
 2165 constant supervision any time the child is in contact with the
 2166 offender.

2167

2168 The commission may not appoint a person to conduct a risk
 2169 assessment and may not accept a risk assessment from a person
 2170 who has not demonstrated to the commission that he or she has
 2171 met the requirements of a qualified practitioner as defined in
 2172 this section.

2173 6. If the victim was under age 18, a prohibition on
 2174 working for pay or as a volunteer at any school, child care
 2175 facility, park, playground, or other place where children
 2176 regularly congregate, as prescribed by the commission.

2177 7. Unless otherwise indicated in the treatment plan
 2178 provided by a qualified practitioner in the sexual offender
 2179 treatment program, a prohibition on viewing, owning, or
 2180 possessing any obscene, pornographic, or sexually stimulating
 2181 visual or auditory material, including telephone, electronic
 2182 media, computer programs, or computer services that are relevant
 2183 to the offender's deviant behavior pattern.

2184 8. Effective for a releasee whose crime is committed on or

2185 after July 1, 2005, a prohibition on accessing the Internet or
 2186 other computer services until a qualified practitioner in the
 2187 offender's sex offender treatment program, after a risk
 2188 assessment is completed, approves and implements a safety plan
 2189 for the offender's accessing or using the Internet or other
 2190 computer services.

2191 9. A requirement that the releasee must submit two
 2192 specimens of blood to the Department of Law Enforcement to be
 2193 registered with the DNA database.

2194 10. A requirement that the releasee make restitution to
 2195 the victim, as determined by the sentencing court or the
 2196 commission, for all necessary medical and related professional
 2197 services relating to physical, psychiatric, and psychological
 2198 care.

2199 11. Submission to a warrantless search by the community
 2200 control or probation officer of the probationer's or community
 2201 controllee's person, residence, or vehicle.

2202 (b) For a releasee whose crime was committed on or after
 2203 October 1, 1997, in violation of chapter 794, s. 800.04, former
 2204 s. 827.071, s. 847.0135(5), or s. 847.0145, and who is subject
 2205 to conditional release supervision, in addition to any other
 2206 provision of this subsection, the commission shall impose the
 2207 following additional conditions of conditional release
 2208 supervision:

2209 1. As part of a treatment program, participation in a
 2210 minimum of one annual polygraph examination to obtain

2211 information necessary for risk management and treatment and to
 2212 reduce the sex offender's denial mechanisms. The polygraph
 2213 examination must be conducted by a polygrapher who is a member
 2214 of a national or state polygraph association and who is
 2215 certified as a postconviction sex offender polygrapher, where
 2216 available, and at the expense of the releasee. The results of
 2217 the examination shall be provided to the releasee's probation
 2218 officer and qualified practitioner and may not be used as
 2219 evidence in a hearing to prove that a violation of supervision
 2220 has occurred.

2221 2. Maintenance of a driving log and a prohibition against
 2222 driving a motor vehicle alone without the prior approval of the
 2223 supervising officer.

2224 3. A prohibition against obtaining or using a post office
 2225 box without the prior approval of the supervising officer.

2226 4. If there was sexual contact, a submission to, at the
 2227 releasee's expense, an HIV test with the results to be released
 2228 to the victim or the victim's parent or guardian.

2229 5. Electronic monitoring of any form when ordered by the
 2230 commission. Any person who has been placed under supervision and
 2231 is electronically monitored by the department must pay the
 2232 department for the cost of the electronic monitoring service at
 2233 a rate that may not exceed the full cost of the monitoring
 2234 service. Funds collected under this subparagraph shall be
 2235 deposited into the General Revenue Fund. The department may
 2236 exempt a person from the payment of all or any part of the

2237 electronic monitoring service cost if the department finds that
 2238 any of the factors listed in s. 948.09(3) exist.

2239 (10) Effective for a releasee whose crime was committed on
 2240 or after September 1, 2005, in violation of chapter 794, s.
 2241 800.04(4), (5), or (6), former s. 827.071, or s. 847.0145, and
 2242 the unlawful activity involved a victim who was 15 years of age
 2243 or younger and the offender is 18 years of age or older or for a
 2244 releasee who is designated as a sexual predator pursuant to s.
 2245 775.21, in addition to any other provision of this section, the
 2246 commission must order electronic monitoring for the duration of
 2247 the releasee's supervision.

2248 (14) Effective for a releasee whose crime was committed on
 2249 or after October 1, 2014, in violation of chapter 794, s.
 2250 800.04, former s. 827.071, s. 847.0135(5), or s. 847.0145, in
 2251 addition to any other provision of this section, the commission
 2252 must impose a condition prohibiting the releasee from viewing,
 2253 accessing, owning, or possessing any obscene, pornographic, or
 2254 sexually stimulating visual or auditory material unless
 2255 otherwise indicated in the treatment plan provided by a
 2256 qualified practitioner in the sexual offender treatment program.
 2257 Visual or auditory material includes, but is not limited to,
 2258 telephone, electronic media, computer programs, and computer
 2259 services.

2260 (15) (a) Effective for a releasee whose crime was committed
 2261 on or after October 1, 2015, in violation of s. 847.003 or s.
 2262 847.0135(4), in addition to any other provision of this section,

2263 the commission must impose the conditions specified in
 2264 subsections (7), (10), (12), and (14).

2265 (b) Effective for a releasee whose crime was committed on
 2266 or after October 1, 2015, in violation of s. 847.0137, in
 2267 addition to any other provision of this section, the commission
 2268 must impose the conditions specified in subsections (7) and
 2269 (14).

2270 Section 46. Subsection (2) of section 948.013, Florida
 2271 Statutes, is amended, and subsection (3) is added to that
 2272 section, to read:

2273 948.013 Administrative probation.—

2274 (2) Effective for an offense committed on or after July 1,
 2275 1998, a person is ineligible for placement on administrative
 2276 probation if the person is sentenced to or is serving a term of
 2277 probation or community control, regardless of the conviction or
 2278 adjudication, for committing, or attempting, conspiring, or
 2279 soliciting to commit, any of the felony offenses described in s.
 2280 787.01 or s. 787.02, where the victim is a minor and the
 2281 defendant is not the victim's parent; s. 787.025; s.
 2282 787.06(3)(g); chapter 794; former s. 796.03; s. 800.04; s.
 2283 825.1025(2)(b); former s. 827.071; s. 847.0133; s. 847.0135; or
 2284 s. 847.0145.

2285 (3) Effective for an offense committed on or after October
 2286 1, 2015, a person is ineligible for placement on administrative
 2287 probation if the person is sentenced to or is serving a term of
 2288 probation or community control, regardless of the conviction or

2289 adjudication, for committing, or attempting, conspiring, or
 2290 soliciting to commit, any of the felony offenses described in s.
 2291 847.003 or s. 847.0137.

2292 Section 47. Subsection (2) of section 948.03, Florida
 2293 Statutes, is amended to read:

2294 948.03 Terms and conditions of probation.—

2295 (2) The enumeration of specific kinds of terms and
 2296 conditions shall not prevent the court from adding thereto such
 2297 other or others as it considers proper. However, the sentencing
 2298 court may only impose a condition of supervision allowing an
 2299 offender convicted of s. 794.011, s. 800.04, former s. 827.071,
 2300 s. 847.003, s. 847.0135(5), or s. 847.0145, to reside in another
 2301 state, if the order stipulates that it is contingent upon the
 2302 approval of the receiving state interstate compact authority.
 2303 The court may rescind or modify at any time the terms and
 2304 conditions theretofore imposed by it upon the probationer.
 2305 However, if the court withholds adjudication of guilt or imposes
 2306 a period of incarceration as a condition of probation, the
 2307 period shall not exceed 364 days, and incarceration shall be
 2308 restricted to either a county facility, a probation and
 2309 restitution center under the jurisdiction of the Department of
 2310 Corrections, a probation program drug punishment phase I secure
 2311 residential treatment institution, or a community residential
 2312 facility owned or operated by any entity providing such
 2313 services.

2314 Section 48. Subsection (1) of section 948.04, Florida

2315 Statutes, is amended to read:

2316 948.04 Period of probation; duty of probationer; early
2317 termination.—

2318 (1) Defendants found guilty of felonies who are placed on
2319 probation shall be under supervision not to exceed 2 years
2320 unless otherwise specified by the court. No defendant placed on
2321 probation pursuant to s. 948.012(1) is subject to the probation
2322 limitations of this subsection. A defendant who is placed on
2323 probation or community control for a violation of chapter 794,
2324 ~~or~~ chapter 827, or s. 847.003 is subject to the maximum level of
2325 supervision provided by the supervising agency, and that
2326 supervision shall continue through the full term of the court-
2327 imposed probation or community control.

2328 Section 49. Subsection (4) and paragraph (c) of subsection
2329 (8) of section 948.06, Florida Statutes, are amended to read:

2330 948.06 Violation of probation or community control;
2331 revocation; modification; continuance; failure to pay
2332 restitution or cost of supervision.—

2333 (4) Notwithstanding any other provision of this section, a
2334 felony probationer or an offender in community control who is
2335 arrested for violating his or her probation or community control
2336 in a material respect may be taken before the court in the
2337 county or circuit in which the probationer or offender was
2338 arrested. That court shall advise him or her of the charge of a
2339 violation and, if such charge is admitted, shall cause him or
2340 her to be brought before the court that granted the probation or

2341 community control. If the violation is not admitted by the
 2342 probationer or offender, the court may commit him or her or
 2343 release him or her with or without bail to await further
 2344 hearing. However, if the probationer or offender is under
 2345 supervision for any criminal offense proscribed in chapter 794,
 2346 s. 800.04(4), (5), (6), former s. 827.071, or s. 847.0145; or is
 2347 a registered sexual predator or a registered sexual offender, or
 2348 is under supervision for a criminal offense for which he or she
 2349 would meet the registration criteria in s. 775.21, s. 943.0435,
 2350 or s. 944.607 but for the effective date of those sections, the
 2351 court must make a finding that the probationer or offender is
 2352 not a danger to the public prior to release with or without
 2353 bail. In determining the danger posed by the offender's or
 2354 probationer's release, the court may consider the nature and
 2355 circumstances of the violation and any new offenses charged; the
 2356 offender's or probationer's past and present conduct, including
 2357 convictions of crimes; any record of arrests without conviction
 2358 for crimes involving violence or sexual crimes; any other
 2359 evidence of allegations of unlawful sexual conduct or the use of
 2360 violence by the offender or probationer; the offender's or
 2361 probationer's family ties, length of residence in the community,
 2362 employment history, and mental condition; his or her history and
 2363 conduct during the probation or community control supervision
 2364 from which the violation arises and any other previous
 2365 supervisions, including disciplinary records of previous
 2366 incarcerations; the likelihood that the offender or probationer

2367 will engage again in a criminal course of conduct; the weight of
 2368 the evidence against the offender or probationer; and any other
 2369 facts the court considers relevant. The court, as soon as is
 2370 practicable, shall give the probationer or offender an
 2371 opportunity to be fully heard on his or her behalf in person or
 2372 by counsel. After the hearing, the court shall make findings of
 2373 fact and forward the findings to the court that granted the
 2374 probation or community control and to the probationer or
 2375 offender or his or her attorney. The findings of fact by the
 2376 hearing court are binding on the court that granted the
 2377 probation or community control. Upon the probationer or offender
 2378 being brought before it, the court that granted the probation or
 2379 community control may revoke, modify, or continue the probation
 2380 or community control or may place the probationer into community
 2381 control as provided in this section. However, the probationer or
 2382 offender shall not be released and shall not be admitted to
 2383 bail, but shall be brought before the court that granted the
 2384 probation or community control if any violation of felony
 2385 probation or community control other than a failure to pay costs
 2386 or fines or make restitution payments is alleged to have been
 2387 committed by:

- 2388 (a) A violent felony offender of special concern, as
 2389 defined in this section;
- 2390 (b) A person who is on felony probation or community
 2391 control for any offense committed on or after the effective date
 2392 of this act and who is arrested for a qualifying offense as

2393 defined in this section; or

2394 (c) A person who is on felony probation or community
 2395 control and has previously been found by a court to be a
 2396 habitual violent felony offender as defined in s. 775.084(1)(b),
 2397 a three-time violent felony offender as defined in s.
 2398 775.084(1)(c), or a sexual predator under s. 775.21, and who is
 2399 arrested for committing a qualifying offense as defined in this
 2400 section on or after the effective date of this act.

2401 (8)

2402 (c) For purposes of this section, the term "qualifying
 2403 offense" means any of the following:

2404 1. Kidnapping or attempted kidnapping under s. 787.01,
 2405 false imprisonment of a child under the age of 13 under s.
 2406 787.02(3), or luring or enticing a child under s. 787.025(2)(b)
 2407 or (c).

2408 2. Murder or attempted murder under s. 782.04, attempted
 2409 felony murder under s. 782.051, or manslaughter under s. 782.07.

2410 3. Aggravated battery or attempted aggravated battery
 2411 under s. 784.045.

2412 4. Sexual battery or attempted sexual battery under s.
 2413 794.011(2), (3), (4), or (8)(b) or (c).

2414 5. Lewd or lascivious battery or attempted lewd or
 2415 lascivious battery under s. 800.04(4), lewd or lascivious
 2416 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious
 2417 conduct under s. 800.04(6)(b), lewd or lascivious exhibition
 2418 under s. 800.04(7)(b), or lewd or lascivious exhibition on

- 2419 computer under s. 847.0135(5)(b).
- 2420 6. Robbery or attempted robbery under s. 812.13,
- 2421 carjacking or attempted carjacking under s. 812.133, or home
- 2422 invasion robbery or attempted home invasion robbery under s.
- 2423 812.135.
- 2424 7. Lewd or lascivious offense upon or in the presence of
- 2425 an elderly or disabled person or attempted lewd or lascivious
- 2426 offense upon or in the presence of an elderly or disabled person
- 2427 under s. 825.1025.
- 2428 8. Sexual performance by a child or attempted sexual
- 2429 performance by a child under former s. 827.071 or s. 847.003.
- 2430 9. Computer pornography under s. 847.0135(2) or (3),
- 2431 ~~transmission of~~ child pornography under s. 847.0137, or selling
- 2432 or buying of minors under s. 847.0145.
- 2433 10. Poisoning food or water under s. 859.01.
- 2434 11. Abuse of a dead human body under s. 872.06.
- 2435 12. Any burglary offense or attempted burglary offense
- 2436 that is either a first degree felony or second degree felony
- 2437 under s. 810.02(2) or (3).
- 2438 13. Arson or attempted arson under s. 806.01(1).
- 2439 14. Aggravated assault under s. 784.021.
- 2440 15. Aggravated stalking under s. 784.048(3), (4), (5), or
- 2441 (7).
- 2442 16. Aircraft piracy under s. 860.16.
- 2443 17. Unlawful throwing, placing, or discharging of a
- 2444 destructive device or bomb under s. 790.161(2), (3), or (4).

2445 18. Treason under s. 876.32.

2446 19. Any offense committed in another jurisdiction which
 2447 would be an offense listed in this paragraph if that offense had
 2448 been committed in this state.

2449 Section 50. Paragraph (c) of subsection (1) of section
 2450 948.062, Florida Statutes, is amended to read:

2451 948.062 Reviewing and reporting serious offenses committed
 2452 by offenders placed on probation or community control.—

2453 (1) The department shall review the circumstances related
 2454 to an offender placed on probation or community control who has
 2455 been arrested while on supervision for the following offenses:

2456 (c) Any sexual performance by a child as provided in
 2457 former s. 827.071 or s. 847.003;

2458 Section 51. Subsection (2) of section 948.101, Florida
 2459 Statutes, is amended to read:

2460 948.101 Terms and conditions of community control.—

2461 (2) The enumeration of specific kinds of terms and
 2462 conditions does not prevent the court from adding any other
 2463 terms or conditions that the court considers proper. However,
 2464 the sentencing court may only impose a condition of supervision
 2465 allowing an offender convicted of s. 794.011, s. 800.04, former
 2466 s. 827.071, s. 847.003, s. 847.0135(5), or s. 847.0145 to reside
 2467 in another state if the order stipulates that it is contingent
 2468 upon the approval of the receiving state interstate compact
 2469 authority. The court may rescind or modify at any time the terms
 2470 and conditions theretofore imposed by it upon the offender in

2471 community control. However, if the court withholds adjudication
 2472 of guilt or imposes a period of incarceration as a condition of
 2473 community control, the period may not exceed 364 days, and
 2474 incarceration shall be restricted to a county facility, a
 2475 probation and restitution center under the jurisdiction of the
 2476 Department of Corrections, a probation program drug punishment
 2477 phase I secure residential treatment institution, or a community
 2478 residential facility owned or operated by any entity providing
 2479 such services.

2480 Section 52. Subsections (1) and (2), paragraphs (a) and
 2481 (c) of subsection (3), and subsection (5) of section 948.30,
 2482 Florida Statutes, are amended, and subsection (6) is added to
 2483 that section, to read:

2484 948.30 Additional terms and conditions of probation or
 2485 community control for certain sex offenses.—Conditions imposed
 2486 pursuant to this section do not require oral pronouncement at
 2487 the time of sentencing and shall be considered standard
 2488 conditions of probation or community control for offenders
 2489 specified in this section.

2490 (1) Effective for probationers or community controllees
 2491 whose crime was committed on or after October 1, 1995, and who
 2492 are placed under supervision for violation of chapter 794, s.
 2493 800.04, former s. 827.071, s. 847.0135(5), or s. 847.0145, the
 2494 court must impose the following conditions in addition to all
 2495 other standard and special conditions imposed:

2496 (a) A mandatory curfew from 10 p.m. to 6 a.m. The court

2497 may designate another 8-hour period if the offender's employment
 2498 precludes the above specified time, and the alternative is
 2499 recommended by the Department of Corrections. If the court
 2500 determines that imposing a curfew would endanger the victim, the
 2501 court may consider alternative sanctions.

2502 (b) If the victim was under the age of 18, a prohibition
 2503 on living within 1,000 feet of a school, child care facility,
 2504 park, playground, or other place where children regularly
 2505 congregate, as prescribed by the court. The 1,000-foot distance
 2506 shall be measured in a straight line from the offender's place
 2507 of residence to the nearest boundary line of the school, child
 2508 care facility, park, playground, or other place where children
 2509 congregate. The distance may not be measured by a pedestrian
 2510 route or automobile route. A probationer or community controllee
 2511 who is subject to this paragraph may not be forced to relocate
 2512 and does not violate his or her probation or community control
 2513 if he or she is living in a residence that meets the
 2514 requirements of this paragraph and a school, child care
 2515 facility, park, playground, or other place where children
 2516 regularly congregate is subsequently established within 1,000
 2517 feet of his or her residence.

2518 (c) Active participation in and successful completion of a
 2519 sex offender treatment program with qualified practitioners
 2520 specifically trained to treat sex offenders, at the
 2521 probationer's or community controllee's own expense. If a
 2522 qualified practitioner is not available within a 50-mile radius

2523 of the probationer's or community controllee's residence, the
 2524 offender shall participate in other appropriate therapy.

2525 (d) A prohibition on any contact with the victim, directly
 2526 or indirectly, including through a third person, unless approved
 2527 by the victim, a qualified practitioner in the sexual offender
 2528 treatment program, and the sentencing court.

2529 (e) If the victim was under the age of 18, a prohibition
 2530 on contact with a child under the age of 18 except as provided
 2531 in this paragraph. The court may approve supervised contact with
 2532 a child under the age of 18 if the approval is based upon a
 2533 recommendation for contact issued by a qualified practitioner
 2534 who is basing the recommendation on a risk assessment. Further,
 2535 the sex offender must be currently enrolled in or have
 2536 successfully completed a sex offender therapy program. The court
 2537 may not grant supervised contact with a child if the contact is
 2538 not recommended by a qualified practitioner and may deny
 2539 supervised contact with a child at any time. When considering
 2540 whether to approve supervised contact with a child, the court
 2541 must review and consider the following:

2542 1. A risk assessment completed by a qualified
 2543 practitioner. The qualified practitioner must prepare a written
 2544 report that must include the findings of the assessment and
 2545 address each of the following components:

- 2546 a. The sex offender's current legal status;
- 2547 b. The sex offender's history of adult charges with
- 2548 apparent sexual motivation;

2549 c. The sex offender's history of adult charges without
 2550 apparent sexual motivation;
 2551 d. The sex offender's history of juvenile charges,
 2552 whenever available;
 2553 e. The sex offender's offender treatment history,
 2554 including consultations with the sex offender's treating, or
 2555 most recent treating, therapist;
 2556 f. The sex offender's current mental status;
 2557 g. The sex offender's mental health and substance abuse
 2558 treatment history as provided by the Department of Corrections;
 2559 h. The sex offender's personal, social, educational, and
 2560 work history;
 2561 i. The results of current psychological testing of the sex
 2562 offender if determined necessary by the qualified practitioner;
 2563 j. A description of the proposed contact, including the
 2564 location, frequency, duration, and supervisory arrangement;
 2565 k. The child's preference and relative comfort level with
 2566 the proposed contact, when age appropriate;
 2567 l. The parent's or legal guardian's preference regarding
 2568 the proposed contact; and
 2569 m. The qualified practitioner's opinion, along with the
 2570 basis for that opinion, as to whether the proposed contact would
 2571 likely pose significant risk of emotional or physical harm to
 2572 the child.
 2573
 2574 The written report of the assessment must be given to the court;

2575 2. A recommendation made as a part of the risk assessment
 2576 report as to whether supervised contact with the child should be
 2577 approved;

2578 3. A written consent signed by the child's parent or legal
 2579 guardian, if the parent or legal guardian is not the sex
 2580 offender, agreeing to the sex offender having supervised contact
 2581 with the child after receiving full disclosure of the sex
 2582 offender's present legal status, past criminal history, and the
 2583 results of the risk assessment. The court may not approve
 2584 contact with the child if the parent or legal guardian refuses
 2585 to give written consent for supervised contact;

2586 4. A safety plan prepared by the qualified practitioner,
 2587 who provides treatment to the offender, in collaboration with
 2588 the sex offender, the child's parent or legal guardian, if the
 2589 parent or legal guardian is not the sex offender, and the child,
 2590 when age appropriate, which details the acceptable conditions of
 2591 contact between the sex offender and the child. The safety plan
 2592 must be reviewed and approved by the court; and

2593 5. Evidence that the child's parent or legal guardian
 2594 understands the need for and agrees to the safety plan and has
 2595 agreed to provide, or to designate another adult to provide,
 2596 constant supervision any time the child is in contact with the
 2597 offender.

2598
 2599 The court may not appoint a person to conduct a risk assessment
 2600 and may not accept a risk assessment from a person who has not

2601 demonstrated to the court that he or she has met the
 2602 requirements of a qualified practitioner as defined in this
 2603 section.

2604 (f) If the victim was under age 18, a prohibition on
 2605 working for pay or as a volunteer at any place where children
 2606 regularly congregate, including, but not limited to, schools,
 2607 child care facilities, parks, playgrounds, pet stores,
 2608 libraries, zoos, theme parks, and malls.

2609 (g) Unless otherwise indicated in the treatment plan
 2610 provided by a qualified practitioner in the sexual offender
 2611 treatment program, a prohibition on viewing, accessing, owning,
 2612 or possessing any obscene, pornographic, or sexually stimulating
 2613 visual or auditory material, including telephone, electronic
 2614 media, computer programs, or computer services that are relevant
 2615 to the offender's deviant behavior pattern.

2616 (h) Effective for probationers and community controllees
 2617 whose crime is committed on or after July 1, 2005, a prohibition
 2618 on accessing the Internet or other computer services until a
 2619 qualified practitioner in the offender's sex offender treatment
 2620 program, after a risk assessment is completed, approves and
 2621 implements a safety plan for the offender's accessing or using
 2622 the Internet or other computer services.

2623 (i) A requirement that the probationer or community
 2624 controllee must submit a specimen of blood or other approved
 2625 biological specimen to the Department of Law Enforcement to be
 2626 registered with the DNA data bank.

2627 (j) A requirement that the probationer or community
 2628 controllee make restitution to the victim, as ordered by the
 2629 court under s. 775.089, for all necessary medical and related
 2630 professional services relating to physical, psychiatric, and
 2631 psychological care.

2632 (k) Submission to a warrantless search by the community
 2633 control or probation officer of the probationer's or community
 2634 controllee's person, residence, or vehicle.

2635 (2) Effective for a probationer or community controllee
 2636 whose crime was committed on or after October 1, 1997, and who
 2637 is placed on community control or sex offender probation for a
 2638 violation of chapter 794, s. 800.04, former s. 827.071, s.
 2639 847.0135(5), or s. 847.0145, in addition to any other provision
 2640 of this section, the court must impose the following conditions
 2641 of probation or community control:

2642 (a) As part of a treatment program, participation at least
 2643 annually in polygraph examinations to obtain information
 2644 necessary for risk management and treatment and to reduce the
 2645 sex offender's denial mechanisms. A polygraph examination must
 2646 be conducted by a polygrapher who is a member of a national or
 2647 state polygraph association and who is certified as a
 2648 postconviction sex offender polygrapher, where available, and
 2649 shall be paid for by the probationer or community controllee.
 2650 The results of the polygraph examination shall be provided to
 2651 the probationer's or community controllee's probation officer
 2652 and qualified practitioner and shall not be used as evidence in

2653 court to prove that a violation of community supervision has
 2654 occurred.

2655 (b) Maintenance of a driving log and a prohibition against
 2656 driving a motor vehicle alone without the prior approval of the
 2657 supervising officer.

2658 (c) A prohibition against obtaining or using a post office
 2659 box without the prior approval of the supervising officer.

2660 (d) If there was sexual contact, a submission to, at the
 2661 probationer's or community controllee's expense, an HIV test
 2662 with the results to be released to the victim or the victim's
 2663 parent or guardian.

2664 (e) Electronic monitoring when deemed necessary by the
 2665 community control or probation officer and his or her
 2666 supervisor, and ordered by the court at the recommendation of
 2667 the Department of Corrections.

2668 (3) Effective for a probationer or community controllee
 2669 whose crime was committed on or after September 1, 2005, and
 2670 who:

2671 (a) Is placed on probation or community control for a
 2672 violation of chapter 794, s. 800.04(4), (5), or (6), former s.
 2673 827.071, or s. 847.0145 and the unlawful sexual activity
 2674 involved a victim 15 years of age or younger and the offender is
 2675 18 years of age or older;

2676 (c) Has previously been convicted of a violation of
 2677 chapter 794, s. 800.04(4), (5), or (6), former s. 827.071, or s.
 2678 847.0145 and the unlawful sexual activity involved a victim 15

2679 | years of age or younger and the offender is 18 years of age or
 2680 | older,

2681 |

2682 | the court must order, in addition to any other provision of this
 2683 | section, mandatory electronic monitoring as a condition of the
 2684 | probation or community control supervision.

2685 | (5) Effective for a probationer or community controllee
 2686 | whose crime was committed on or after October 1, 2014, and who
 2687 | is placed on probation or community control for a violation of
 2688 | chapter 794, s. 800.04, former s. 827.071, s. 847.0135(5), or s.
 2689 | 847.0145, in addition to all other conditions imposed, the court
 2690 | must impose a condition prohibiting the probationer or community
 2691 | controllee from viewing, accessing, owning, or possessing any
 2692 | obscene, pornographic, or sexually stimulating visual or
 2693 | auditory material unless otherwise indicated in the treatment
 2694 | plan provided by a qualified practitioner in the sexual offender
 2695 | treatment program. Visual or auditory material includes, but is
 2696 | not limited to, telephone, electronic media, computer programs,
 2697 | and computer services.

2698 | (6) Effective for a probationer or community controllee
 2699 | whose crime was committed on or after October 1, 2015, and who
 2700 | is placed under supervision for violation of s. 847.003, s.
 2701 | 847.0135(4), or s. 847.0137, the court must impose the
 2702 | conditions specified in subsections (1)-(5) in addition to all
 2703 | other standard and special conditions imposed.

2704 | Section 53. Subsection (1) of section 948.32, Florida

2705 Statutes, is amended to read:

2706 948.32 Requirements of law enforcement agency upon arrest
2707 of persons for certain sex offenses.—

2708 (1) When any state or local law enforcement agency
2709 investigates or arrests a person for committing, or attempting,
2710 soliciting, or conspiring to commit, a violation of s.
2711 787.025(2)(c), s. 787.06(3)(g), chapter 794, former s. 796.03,
2712 s. 800.04, former s. 827.071, s. 847.003, s. 847.0133, s.
2713 847.0135, or s. 847.0145, the law enforcement agency shall
2714 contact the Department of Corrections to verify whether the
2715 person under investigation or under arrest is on probation,
2716 community control, parole, conditional release, or control
2717 release.

2718 Section 54. Paragraph (d) of subsection (3) and subsection
2719 (10) of section 960.03, Florida Statutes, are amended to read:

2720 960.03 Definitions; ss. 960.01-960.28.—As used in ss.
2721 960.01-960.28, unless the context otherwise requires, the term:

2722 (3) "Crime" means:

2723 (d) A violation of former s. 827.071, s. 847.003, s.
2724 847.0135, s. 847.0137, or s. 847.0138, related to online sexual
2725 exploitation and child pornography.

2726 (10) "Identified victim of child pornography" means any
2727 person who, while under the age of 18, is depicted in any visual
2728 depiction ~~image or movie~~ of child pornography, as defined in s.
2729 847.0137, and who is identified through a report generated by a
2730 law enforcement agency and provided to the National Center for

2731 Missing and Exploited Children's Child Victim Identification
 2732 Program.

2733 Section 55. Section 960.197, Florida Statutes, is amended
 2734 to read:

2735 960.197 Assistance to victims of online sexual
 2736 exploitation and child pornography.—

2737 (1) Notwithstanding the criteria set forth in s. 960.13
 2738 for crime victim compensation awards, the department may award
 2739 compensation for counseling and other mental health services to
 2740 treat psychological injury or trauma to:

2741 (a) A child younger than 18 years of age who suffers
 2742 psychiatric or psychological injury as a direct result of online
 2743 sexual exploitation under former ~~any provision of~~ s. 827.071, s.
 2744 847.003, s. 847.0135, s. 847.0137, or s. 847.0138~~7~~ and who does
 2745 not otherwise sustain a personal injury or death; or

2746 (b) Any person who, while younger than age 18, was
 2747 depicted in any visual depiction ~~image or movie, regardless of~~
 2748 ~~length~~, of child pornography as defined in s. 847.0137 ~~847.001~~,
 2749 who has been identified by a law enforcement agency or the
 2750 National Center for Missing and Exploited Children as an
 2751 identified victim of child pornography, who suffers psychiatric
 2752 or psychological injury as a direct result of the crime, and who
 2753 does not otherwise sustain a personal injury or death.

2754 (2) Compensation under this section is not contingent upon
 2755 pursuit of a criminal investigation or prosecution.

2756 Section 56. Paragraph (d) of subsection (4) of section

2757 985.04, Florida Statutes, is amended to read:

2758 985.04 Oaths; records; confidential information.—

2759 (4)

2760 (d) The department shall disclose to the school
 2761 superintendent the presence of any child in the care and custody
 2762 or under the jurisdiction or supervision of the department who
 2763 has a known history of criminal sexual behavior with other
 2764 juveniles; is alleged to have committed juvenile sexual abuse as
 2765 defined in s. 39.01; or has pled guilty or nolo contendere to,
 2766 or has been found to have committed, a violation of chapter 794,
 2767 chapter 796, chapter 800, former s. 827.071, s. 847.003, ~~or~~ s.
 2768 847.0133, or s. 847.0137, regardless of adjudication. Any
 2769 employee of a district school board who knowingly and willfully
 2770 discloses such information to an unauthorized person commits a
 2771 misdemeanor of the second degree, punishable as provided in s.
 2772 775.082 or s. 775.083.

2773 Section 57. Paragraph (a) of subsection (1) of section
 2774 985.475, Florida Statutes, is amended to read:

2775 985.475 Juvenile sexual offenders.—

2776 (1) CRITERIA.—A "juvenile sexual offender" means:

2777 (a) A juvenile who has been found by the court under s.
 2778 985.35 to have committed a violation of chapter 794, chapter
 2779 796, chapter 800, former s. 827.071, s. 847.003, ~~or~~ s. 847.0133,
 2780 or s. 847.0137;

2781 Section 58. Paragraph (mm) of subsection (1) of section
 2782 1012.315, Florida Statutes, is amended to read:

2783 1012.315 Disqualification from employment.—A person is
 2784 ineligible for educator certification, and instructional
 2785 personnel and school administrators, as defined in s. 1012.01,
 2786 are ineligible for employment in any position that requires
 2787 direct contact with students in a district school system,
 2788 charter school, or private school that accepts scholarship
 2789 students under s. 1002.39 or s. 1002.395, if the person,
 2790 instructional personnel, or school administrator has been
 2791 convicted of:

2792 (1) Any felony offense prohibited under any of the
 2793 following statutes:

2794 (mm) Former s. Section 827.071, relating to sexual
 2795 performance by a child.

2796 Section 59. Paragraphs (e), (f), and (h) of subsection (3)
 2797 of section 921.0022, Florida Statutes, are amended to read:

2798 921.0022 Criminal Punishment Code; offense severity
 2799 ranking chart.—

2800 (3) OFFENSE SEVERITY RANKING CHART

2801 (e) LEVEL 5

2802

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop;

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			leaving scene.
2804	316.1935(4) (a)	2nd	Aggravated fleeing or eluding.
2805	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
2806	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
2807	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
2808	379.3671 (2) (c) 3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
2809	381.0041(11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
2810	440.10(1) (g)	2nd	Failure to obtain workers'

2811			compensation coverage.
	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
2812			
	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
2813			
	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
2814			
	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
2815			
	790.01 (2)	3rd	Carrying a concealed firearm.
2816			
	790.162	2nd	Threat to throw or discharge destructive device.
2817			
	790.163 (1)	2nd	False report of deadly

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			explosive or weapon of mass destruction.
2818	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
2819	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
2820	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
2821	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
2822	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
2823	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
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2825	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
2826	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
2827	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
2828	812.131(2)(b)	3rd	Robbery by sudden snatching.
2829	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
2830	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
2831	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or

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2832	817.568(2)(b)	2nd	<p>false statements regarding property values relating to the solvency of an insuring entity.</p> <p>Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.</p>
2833	817.625(2)(b)	2nd	<p>Second or subsequent fraudulent use of scanning device or reencoder.</p>
2834	825.1025(4)	3rd	<p>Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.</p>
2835	827.071(4)	2nd	<p>Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a</p>

2836			child.
	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
2837	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.
2838	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
2839	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
2840	<u>847.0137(2)(a)</u>	<u>2nd</u>	<u>Possess child pornography with intent to promote.</u>
2841	<u>847.0137(2)(b)</u>	<u>3rd</u>	<u>Possess, control, or</u>

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			<u>intentionally view child</u> <u>pornography.</u>
2842	<u>847.0137(3)</u> 847.0137 (2) & (3)	3rd	Transmission of <u>child</u> pornography by electronic device or equipment.
2843	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
2844	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
2845	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
2846	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
2847			

	893.13(1)(c)2.	2nd	<p>Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.</p>
2848	893.13(1)(d)1.	1st	<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) within 1,000 feet of university.</p>
2849	893.13(1)(e)2.	2nd	<p>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.,</p>

2850			(2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
2851			
	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).
2852			
	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
2853			
2854	(f) LEVEL 6		
2855			
	Florida	Felony	Description

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	Statute	Degree	
2856	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
2857	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
2858	499.0051(3)	2nd	Knowing forgery of pedigree papers.
2859	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
2860	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
2861	775.0875(1)	3rd	Taking firearm from law enforcement officer.
2862	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
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2864	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
2865	784.041	3rd	Felony battery; domestic battery by strangulation.
2866	784.048(3)	3rd	Aggravated stalking; credible threat.
2867	784.048(5)	3rd	Aggravated stalking of person under 16.
2868	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
2869	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
2870	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
2871	784.081(2)	2nd	Aggravated assault on specified official or employee.
	784.082(2)	2nd	Aggravated assault by detained

			person on visitor or other detainee.
2872	784.083(2)	2nd	Aggravated assault on code inspector.
2873	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
2874	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
2875	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
2876	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
2877	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.

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2878	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
2879	794.05(1)	2nd	Unlawful sexual activity with specified minor.
2880	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
2881	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
2882	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
2883	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
2884	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent

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			offense.
2885	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
2886	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
2887	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
2888	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
2889	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
2890	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
2891	825.102(1)	3rd	Abuse of an elderly person or

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			disabled adult.
2892	825.102 (3) (c)	3rd	Neglect of an elderly person or disabled adult.
2893	825.1025 (3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
2894	825.103 (3) (c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
2895	827.03 (2) (c)	3rd	Abuse of a child.
2896	827.03 (2) (d)	3rd	Neglect of a child.
2897	827.071 (2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
2898	836.05	2nd	Threats; extortion.
2899	836.10	2nd	Written threats to kill or do bodily injury.
2900			

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2901	843.12	3rd	Aids or assists person to escape.
2902	<u>847.003</u>	<u>2nd</u>	<u>Use or induce a child in a sexual performance, or promote or direct such performance.</u>
2903	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
2904	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
2905	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
2906	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or

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2907			inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
2908	944.40	2nd	Escapes.
2909	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
2910	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
2911	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
2912	(h) LEVEL 8		
2913	Florida Statute	Felony Degree	Description
2914	316.193	2nd	DUI manslaughter.
2915	(3)(c)3.a.		

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2916	316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
2917	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
2918	499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
2919	499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
2920	560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
2921	560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
	655.50(10)(b)2.	2nd	Failure to report financial

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

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			transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
2922	777.03(2)(a)	1st	Accessory after the fact, capital felony.
2923	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
2924	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
2925	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.

2926

782.072(2) 1st Committing vessel homicide and failing to render aid or give information.

2927

787.06(3)(a)1. 1st Human trafficking for labor and services of a child.

2928

787.06(3)(b) 1st Human trafficking using coercion for commercial sexual activity of an adult.

2929

787.06(3)(c)2. 1st Human trafficking using coercion for labor and services of an unauthorized alien adult.

2930

787.06(3)(e)1. 1st Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.

2931

787.06(3)(f)2. 1st Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from

2932	790.161(3)	1st	outside Florida to within the state. Discharging a destructive device which results in bodily harm or property damage.
2933	794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.
2934	794.011(5)(b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.
2935	794.011(5)(c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.
2936			

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2937	794.011(5)(d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.
2938	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
2939	800.04(4)(b)	2nd	Lewd or lascivious battery.
2940	800.04(4)(c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.
2941	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
2942	810.02(2)(a)	1st, PBL	Burglary with assault or battery.

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2943	810.02(2)(b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
2944	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
2945	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
2946	812.13(2)(b)	1st	Robbery with a weapon.
2947	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
2948	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.

2949

817.535(4)(a)1. 2nd Filing false lien or other
unauthorized document;
defendant is incarcerated or
under supervision.

2950

817.535(5)(a) 2nd Filing false lien or other
unauthorized document; owner of
the property incurs financial
loss as a result of the false
instrument.

2951

817.568(6) 2nd Fraudulent use of personal
identification information of
an individual under the age of
18.

2952

825.102(2) 1st Aggravated abuse of an elderly
person or disabled adult.

2953

825.1025(2) 2nd Lewd or lascivious battery upon
an elderly person or disabled
adult.

2954

825.103(3)(a) 1st Exploiting an elderly person or
disabled adult and property is

			valued at \$50,000 or more.
2955	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
2956	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
2957	<u>847.0135 (3)</u>	<u>2nd</u>	<u>Solicitation of a child, via a computer service, to commit an unlawful sex act while misrepresenting one's age.</u>
2958	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
2959	860.16	1st	Aircraft piracy.
2960	893.13 (1) (b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03 (1) (a) or

2961			(b).
2961	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
2962	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
2963	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
2964	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
2965	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
2966	893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
2967			

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2968	893.135 (1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
2969	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
2970	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
2971	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
2972	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
2973	893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
	893.135	1st	Trafficking in 1,4-Butanediol,

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2974	(1) (j) 1.b.		5 kilograms or more, less than 10 kilograms.
2975	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
2976	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
2977	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
2978	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
2979	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
2979	896.101(5) (b)	2nd	Money laundering, financial

2980 transactions totaling or
 exceeding \$20,000, but less
 than \$100,000.

2981

2982 896.104(4)(a)2. 2nd Structuring transactions to
 2983 evade reporting or registration
 2984 requirements, financial
 2985 transactions totaling or
 2986 exceeding \$20,000 but less than
 2987 \$100,000.

2988

2989 Section 60. For the purpose of incorporating the amendment
 2990 made by this act to section 847.001, Florida Statutes, in a
 2991 reference thereto, subsection (2) of section 944.11, Florida
 2992 Statutes, is reenacted to read:

2993 944.11 Department to regulate admission of books.—

2994 (2) The department shall have the authority to prohibit
 2995 admission of reading materials or publications with content
 2996 which depicts sexual conduct as defined by s. 847.001 or
 presents nudity in such a way as to create the appearance that
 sexual conduct is imminent. The department shall have the
 authority to prohibit admission of such materials at a
 particular state correctional facility upon a determination by
 the department that such material or publications would be
 detrimental to the safety, security, order or rehabilitative
 interests of a particular state correctional facility or would

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2997 create a risk of disorder at a particular state correctional
2998 facility.

2999 Section 61. The Division of Law Revision and Information
3000 is directed to rename chapter 847, Florida Statutes, as
3001 "Obscenity; Child Pornography."

3002 Section 62. This act shall take effect October 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7065 PCB CRJS 15-03 Pub. Rec./Child Pornography
SPONSOR(S): Criminal Justice Subcommittee; Spano
TIED BILLS: CS/HB 7063 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Cunningham	Cunningham
1) Government Operations Subcommittee	10 Y, 0 N	Williamson	Williamson
2) Judiciary Committee		Cunningham	Havlicak RH

SUMMARY ANALYSIS

Current law provides a public record exemption for the following criminal intelligence information and criminal investigative information:

- Information which may reveal the identity of a victim of any sexual offense, including an offense proscribed in ch. 794, 796, 800, 827, or 847, F.S.;
- Photographs, videotapes, or images of any part of the body of the victim of a sexual offenses prohibited by ch. 794, 796, 800, 827, or 847, F.S., and s. 810.145, F.S., regardless of whether it identifies the victim; and
- Information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in ch. 800, F.S., or ss. 794.011, 827.071, 847.012, 847.0125, 847.013, 847.0133, or 847.0145, F.S.

CS/HB 7063, which is tied to this bill, repeals s. 827.071, F.S., which relates to sexual performance by a child, and moves its provisions to ss. 847.003, and 847.0137, F.S.

This bill amends the above-described public records exemptions to remove references to s. 827.071, F.S., and add references to ss. 847.003 and 847.0137, F.S. These changes conform to the changes made by CS/HB 7063.

This bill provides for repeal of the reenacted exemptions on October 2, 2020, unless they are reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

The bill also reenacts sections of law pertaining to judicial proceedings, court records, and the unlawful disclosure of identifying information to incorporate the changes made by the bill.

Article I, section 24(c) of the Florida 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 a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no more broad than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁴ provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.⁵

The Act also requires the automatic repeal of a public records exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶ Specified questions must be considered by the Legislature during the review process.⁷

Public Records Exemptions for Certain Victim Information

Current law provides a public records exemption for the following criminal intelligence information⁸ and criminal investigative information:⁹

- Information which may reveal the identity of a victim of any sexual offense, including an offense proscribed in ch. 794,¹⁰ 796,¹¹ 800,¹² 827,¹³ or 847,¹⁴ F.S.;

¹ FLA. CONST. art. I, s. 24(c).

² This portion of a public records exemption is commonly referred to as a "public necessity statement."

³ FLA. CONST. art. I, s. 24(c).

⁴ s. 119.15, F.S.

⁵ s. 119.15(6)(b), F.S.

⁶ s. 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S. requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁸ Section 119.011(3)(a), F.S., defines "criminal intelligence information" as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

⁹ Section 119.011(3)(b), F.S., defines "criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

¹⁰ Chapter 794, F.S., relates to sexual battery.

¹¹ Chapter 796, F.S., relates to prostitution.

¹² Chapter 800, F.S., relates to lewdness and indecent exposure.

- Photographs, videotapes, or images of any part of the body of the victim of a sexual offenses prohibited by ch. 794, 796, 800, 827, or 847, F.S., and s. 810.145,¹⁵ F.S., regardless of whether it identifies the victim; and
- Information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in ch. 800, F.S., or ss. 794.011,¹⁶ 827.071,¹⁷ 847.012,¹⁸ 847.0125,¹⁹ 847.013,²⁰ 847.0133,²¹ or 847.0145,²² F.S.²³

Current law also requires the confidential and exempt status of criminal investigative information and criminal intelligence information to be maintained in court records and in court proceedings. If a petition for access to such confidential and exempt information is filed with the trial court having jurisdiction over the alleged offense, the confidential and exempt status must be maintained by the court if the state or the victim demonstrates that certain criteria are met.²⁴

In addition, information or records that have been made part of a court file and that may reveal the identity of a person who is a victim of a sexual offense is exempt from public records requirements as provided in s. 119.071(2)(h), F.S.²⁵

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CS/HB 7063, which is tied to this bill, repeals s. 827.071, F.S., which relates to sexual performance by a child, and moves its provisions to ss. 847.003 and 847.0137, F.S.

Effect of the Bill

The bill amends the above-described public records exemptions to remove references to s. 827.071, F.S.,²⁶ and add references to ss. 847.003 and 847.0137, F.S. These changes conform to the changes made by CS/HB 7063.

The bill provides for repeal of the reenacted exemptions on October 2, 2020, unless they are reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

The bill also reenacts sections of law pertaining to judicial proceedings, court records, and the unlawful disclosure of identifying information to incorporate the changes made by the bill.

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.

¹³ Chapter 827, F.S., relates to abuse of children.

¹⁴ Chapter 847, F.S., relates to obscenity.

¹⁵ Section 810.145, F.S., relates to video voyeurism.

¹⁶ Section 794.011, F.S., relates to sexual battery.

¹⁷ Section 827.071, F.S., relates to sexual performance by a child.

¹⁸ Section 847.012, F.S., relates to harmful materials and sale of distribution to minors or using minors in production prohibited.

¹⁹ Section 847.0125, F.S., relates to retail display of materials harmful to minors prohibited.

²⁰ Section 847.013, F.S., relates to exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations.

²¹ Section 847.0133, F.S., relates to protection of minors and prohibition of certain acts in connection with obscenity.

²² Section 847.0145, F.S. relates to selling or buying of minors.

²³ s. 119.071(2)(h)2. and (j)2.a., F.S.

²⁴ s. 92.56, F.S.

²⁵ s. 119.0714(1)(h), F.S.

²⁶ Section 119.15(7), F.S., provides that records made before the date of a repeal of an exemption under this section may not be made public unless otherwise provided by law.

Section 3. Reenacts s. 92.56, F.S., relating to judicial proceedings and court records involving sexual offenses and human trafficking.

Section 4. Reenacts s. 119.0714, F.S., relating to court files; court records; official records.

Section 5. Reenacts s. 794.024, F.S., relating to unlawful to disclose identifying information.

Section 6. Provides an effective date to be the same as that of House Bill 7063 or similar legislation, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida 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 a public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's expanded public records exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; expanding the exemption from public
 4 records requirements for criminal intelligence
 5 information and criminal investigative information to
 6 include information, photographs, videotapes, or
 7 images of victims of specified offenses; providing for
 8 future review and repeal of the exemption; providing a
 9 statement of public necessity; reenacting s.
 10 92.56(1)(a), F.S., relating to judicial proceedings
 11 and court records involving sexual offenses, s.
 12 119.0714(1)(h), F.S., relating to court files and
 13 records, and s. 794.024(1), F.S., relating to the
 14 unlawful disclosure of identifying information, to
 15 incorporate the amendment made by the act to s.
 16 119.071, F.S., in references thereto; providing a
 17 contingent effective date.

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

20
 21 Section 1. Paragraphs (h) and (j) of subsection (2) of
 22 section 119.071, Florida Statutes, are amended to read:

23 119.071 General exemptions from inspection or copying of
 24 public records.—

25 (2) AGENCY INVESTIGATIONS.—

26 (h)1. The following criminal intelligence information or

27 criminal investigative information is confidential and exempt
 28 from s. 119.07(1) and s. 24(a), Art. I of the State
 29 Constitution:

30 a. Any information, including the photograph, name,
 31 address, or other fact, which reveals the identity of the victim
 32 of the crime of child abuse as defined by chapter 827.

33 b. Any information which may reveal the identity of a
 34 person who is a victim of any sexual offense, including a sexual
 35 offense proscribed in chapter 794, chapter 796, chapter 800,
 36 ~~chapter 827~~, or chapter 847.

37 c. A photograph, videotape, or image of any part of the
 38 body of the victim of a sexual offense prohibited under chapter
 39 794, chapter 796, chapter 800, s. 810.145, ~~chapter 827~~, or
 40 chapter 847, regardless of whether the photograph, videotape, or
 41 image identifies the victim.

42 2. Criminal investigative information and criminal
 43 intelligence information made confidential and exempt under this
 44 paragraph may be disclosed by a law enforcement agency:

45 a. In the furtherance of its official duties and
 46 responsibilities.

47 b. For print, publication, or broadcast if the law
 48 enforcement agency determines that such release would assist in
 49 locating or identifying a person that such agency believes to be
 50 missing or endangered. The information provided should be
 51 limited to that needed to identify or locate the victim and not
 52 include the sexual nature of the offense committed against the

53 person.

54 c. To another governmental agency in the furtherance of
55 its official duties and responsibilities.

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

60 4. This paragraph is subject to the Open Government Sunset
61 Review Act in accordance with s. 119.15~~7~~ and shall stand
62 repealed on October 2, 2020 ~~2016~~, unless reviewed and saved from
63 repeal through reenactment by the Legislature.

64 (j)1. Any document that reveals the identity, home or
65 employment telephone number, home or employment address, or
66 personal assets of the victim of a crime and identifies that
67 person as the victim of a crime, which document is received by
68 any agency that regularly receives information from or
69 concerning the victims of crime, is exempt from s. 119.07(1) and
70 s. 24(a), Art. I of the State Constitution. Any information not
71 otherwise held confidential or exempt from s. 119.07(1) which
72 reveals the home or employment telephone number, home or
73 employment address, or personal assets of a person who has been
74 the victim of sexual battery, aggravated child abuse, aggravated
75 stalking, harassment, aggravated battery, or domestic violence
76 is exempt from s. 119.07(1) and s. 24(a), Art. I of the State
77 Constitution, upon written request by the victim, which must
78 include official verification that an applicable crime has

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79 occurred. Such information shall cease to be exempt 5 years
80 after the receipt of the written request. Any state or federal
81 agency that is authorized to have access to such documents by
82 any provision of law shall be granted such access in the
83 furtherance of such agency's statutory duties, notwithstanding
84 this section.

85 2.a. Any information in a videotaped statement of a minor
86 who is alleged to be or who is a victim of sexual battery, lewd
87 acts, or other sexual misconduct proscribed in chapter 800 or in
88 s. 794.011, s. 847.003, former s. 827.071, s. 847.012, s.
89 847.0125, s. 847.013, s. 847.0133, s. 847.0137, or s. 847.0145,
90 which reveals that minor's identity, including, but not limited
91 to, the minor's face; the minor's home, school, church, or
92 employment telephone number; the minor's home, school, church,
93 or employment address; the name of the minor's school, church,
94 or place of employment; or the personal assets of the minor; and
95 which identifies that minor as the victim of a crime described
96 in this subparagraph, held by a law enforcement agency, is
97 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
98 of the State Constitution. Any governmental agency that is
99 authorized to have access to such statements by any provision of
100 law shall be granted such access in the furtherance of the
101 agency's statutory duties, notwithstanding the provisions of
102 this section.

103 b. A public employee or officer who has access to a
104 videotaped statement of a minor who is alleged to be or who is a

105 victim of sexual battery, lewd acts, or other sexual misconduct
 106 proscribed in chapter 800 or in s. 794.011, s. 847.003, former
 107 s. 827.071, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, s.
 108 847.0137, or s. 847.0145 may not willfully and knowingly
 109 disclose videotaped information that reveals the minor's
 110 identity to a person who is not assisting in the investigation
 111 or prosecution of the alleged offense or to any person other
 112 than the defendant, the defendant's attorney, or a person
 113 specified in an order entered by the court having jurisdiction
 114 of the alleged offense. A person who violates this provision
 115 commits a misdemeanor of the first degree, punishable as
 116 provided in s. 775.082 or s. 775.083.

117 c. This subparagraph is subject to the Open Government
 118 Sunset Review Act in accordance with s. 119.15 and shall stand
 119 repealed on October 2, 2020, unless reviewed and saved from
 120 repeal through reenactment by the Legislature.

121 Section 2. The Legislature finds that it is a public
 122 necessity that criminal intelligence information or criminal
 123 investigative information that may reveal the identity of a
 124 person who is a victim of former s. 827.071, s. 847.003, or s.
 125 847.0137, Florida Statutes, which is a photograph, videotape, or
 126 image of any part of the body of the victim of those provisions
 127 or which is information in a videotaped statement of a minor who
 128 is alleged to be or who is a victim of those provisions, be made
 129 confidential and exempt from s. 119.07(1), Florida Statutes, and
 130 s. 24(a), Article I of the State Constitution. The Legislature

131 finds that such information, photographs, videotapes, or images
 132 often depict the victim in graphic fashion, frequently nude.
 133 Such highly sensitive photographs, videotapes, or images of a
 134 victim of these sexual offenses, if viewed, copied, or
 135 publicized, could result in trauma, sorrow, humiliation, or
 136 emotional injury to the victim and the victim's family.

137 Section 3. For the purpose of incorporating the amendment
 138 made by this act to section 119.071, Florida Statutes, in a
 139 reference thereto, paragraph (a) of subsection (1) of section
 140 92.56, Florida Statutes, is reenacted to read:

141 92.56 Judicial proceedings and court records involving
 142 sexual offenses and human trafficking.—

143 (1)(a) The confidential and exempt status of criminal
 144 intelligence information or criminal investigative information
 145 made confidential and exempt pursuant to s. 119.071(2)(h) must
 146 be maintained in court records pursuant to s. 119.0714(1)(h) and
 147 in court proceedings, including testimony from witnesses.

148 Section 4. For the purpose of incorporating the amendment
 149 made by this act to section 119.071, Florida Statutes, in a
 150 reference thereto, paragraph (h) of subsection (1) of section
 151 119.0714, Florida Statutes, is reenacted to read:

152 119.0714 Court files; court records; official records.—

153 (1) COURT FILES.—Nothing in this chapter shall be
 154 construed to exempt from s. 119.07(1) a public record that was
 155 made a part of a court file and that is not specifically closed
 156 by order of court, except:

157 (h) Criminal intelligence information or criminal
 158 investigative information that is confidential and exempt as
 159 provided in s. 119.071(2)(h).

160 Section 5. For the purpose of incorporating the amendment
 161 made by this act to section 119.071, Florida Statutes, in a
 162 reference thereto, subsection (1) of section 794.024, Florida
 163 Statutes, is reenacted to read:

164 794.024 Unlawful to disclose identifying information.—

165 (1) A public employee or officer who has access to the
 166 photograph, name, or address of a person who is alleged to be
 167 the victim of an offense described in this chapter, chapter 800,
 168 s. 827.03, s. 827.04, or s. 827.071 may not willfully and
 169 knowingly disclose it to a person who is not assisting in the
 170 investigation or prosecution of the alleged offense or to any
 171 person other than the defendant, the defendant's attorney, a
 172 person specified in an order entered by the court having
 173 jurisdiction of the alleged offense, or organizations authorized
 174 to receive such information made exempt by s. 119.071(2)(h), or
 175 to a rape crisis center or sexual assault counselor, as defined
 176 in s. 90.5035(1)(b), who will be offering services to the
 177 victim.

178 Section 6. This act shall take effect on the same date
 179 that HB 7063 or similar legislation takes effect, if such
 180 legislation is adopted in the same legislative session or an
 181 extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7103 PCB CRJS 15-04 Public Records/Juvenile Criminal History Records
SPONSOR(S): Criminal Justice Subcommittee; Pritchett
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1316

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Cox	Cunningham
1) State Affairs Committee	16 Y, 2 N	Williamson	Camechis
2) Judiciary Committee		Cox <i>Mac</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Section 985.04(1), F.S., specifies that all records obtained under ch. 985, F.S., as a result of a juvenile being involved in the juvenile justice system, are confidential. However, s. 985.04(2), F.S., creates exceptions if the juvenile is:

- Taken into custody for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors; or
- Transferred to the adult system.

Section 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.

A recent ruling by Florida's First District Court of Appeal highlighted the inconsistency that exists between s. 985.04(1), F.S., (making most juvenile records confidential) and s. 943.053, F.S. (allowing a juvenile's record to be disseminated in the same manner as that of an adult). The bill addresses these inconsistencies by:

- Making the records of juveniles who have been found to have committed three or more misdemeanors confidential and exempt (currently they are not);
- Ensuring that the list of juvenile records that are not confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed not to be confidential and exempt under s. 943.053, F.S.;
- Requiring the Florida Department of Law Enforcement (FDLE) to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status; and
- Specifying how FDLE must release juvenile criminal history records.

The bill provides that the exemptions repeal on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

FDLE reports that the bill may have a minimal fiscal impact on the department, which can be absorbed. See the fiscal section of this bill analysis.

The bill is effective upon becoming a law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Art. I, s. 24 of the State Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:³

- 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.
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a public records exemption on October 2nd of the 5th year after its creation or substantial amendment, unless reenacted by the Legislature.⁴ The Act also requires specified questions to be considered during the review process.

Confidential Information of Juveniles

Section 985.04(1), F.S., provides that all records obtained under ch. 985, F.S., resulting from a juvenile's involvement in the juvenile justice system, are confidential. However, several exceptions to the confidentiality of these records are provided. For example, s. 985.04(2), F.S., provides in part that the name, photograph, address, and crime or arrest report of certain juveniles is not confidential and exempt from s. 119.07(1), F.S., solely because of the juvenile's age, if the juvenile is:

- Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;
- Transferred to the adult system under ss. 985.557, 985.56, F.S., or 985.556, F.S.;
- Taken into custody by a law enforcement officer for a violation of law subject to s. 985.557(2)(b) or (d), F.S.; or
- Transferred to the adult system but sentenced to the juvenile system under s. 985.565, F.S.

¹ FLA. CONST. art. I, s. 24(c).

² See s. 119.15, F.S.

³ s. 119.15(6)(b), F.S.

⁴ s. 119.15(3), F.S.

Criminal Justice Information Program

Section 943.05, F.S., creates the Criminal Justice Information Program (CJIP) within the Florida Department of Law Enforcement (FDLE) to act as the state's central criminal justice information⁵ repository. Law enforcement agencies, clerks of the court, the Department of Corrections (DOC), and the Department of Juvenile Justice (DJJ) are required to submit specified information on offenders they have had contact with for inclusion in CJIP.⁶ This information can then be transmitted between criminal justice agencies.⁷

Currently, s. 943.051, F.S., requires state, county, municipal, or other law enforcement agencies to capture and electronically submit to FDLE the fingerprints, palm prints, and facial images of:

- Each adult person charged with or convicted of a felony, misdemeanor, or violation of a comparable ordinance;
- A juvenile who is charged with or found to have committed an offense which, if committed by an adult, would be a felony; or
- A minor who is charged with or found to have committed an enumerated offense, unless the minor is issued a civil citation pursuant to s. 985.12, F.S.

Dissemination of Criminal History Information under Chapter 943, F.S.

Criminal history information⁸ compiled by CJIP may be released to criminal justice agencies, noncriminal justice agencies, and the private sector upon request in accordance with s. 943.053, F.S. Criminal justice agencies are provided criminal history information free of charge on a priority basis.⁹ With some exceptions, noncriminal justice agencies and persons in the private sector are charged \$24 per name submitted.¹⁰

Currently, s. 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.¹¹ The statute is silent as to the release of a juvenile's information, which has been made confidential pursuant to s. 985.04, F.S.

G.G. v. FDLE

In *G.G. v. FDLE*,¹² a juvenile with no prior criminal history record was arrested for petit theft – a first degree misdemeanor. Several weeks after the arrest, G.G.'s attorney received G.G.'s criminal history information from FDLE, and discovered that it included information relating to the petit theft arrest.¹³ G.G. filed suit, claiming that the petit theft information should be confidential and exempt pursuant to s. 985.04(1), F.S.¹⁴ The trial court disagreed, holding that s. 943.053(3), F.S., creates an exception to confidentiality established for juvenile criminal history records in s. 985.04(1), F.S.¹⁵

⁵ Section 943.045(12), F.S., provides that the term "criminal justice information" means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. The term does not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term does not include criminal intelligence information or criminal investigative information.

⁶ s. 943.052, F.S.

⁷ s. 985.051, F.S.

⁸ Section 943.045(5), F.S., defines the term "criminal history information" as information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.

⁹ s. 943.053(3)(a), F.S.

¹⁰ s. 943.053(3)(b), F.S. The guardian ad litem program; vendors of the Department of Children and Families, DJJ, and the Department of Elderly Affairs; the Department of Agriculture and Consumer Services; and other qualified entities are charged a lesser amount.

¹¹ s. 943.053(3)(a), F.S.

¹² 97 So. 3d 268 (Fla. 1st DCA 2012).

¹³ *Id.* at 269.

¹⁴ *Id.*

¹⁵ *Id.*

On appeal, the First District Court of Appeal reversed the trial court's decision and held that FDLE's authority to disseminate criminal justice information under s. 943.053(3), F.S., is expressly limited by s. 985.04, F.S., which, with very few exceptions, makes juvenile records confidential.¹⁶

FDLE – Release of Juvenile Information since G.G.

As noted above, s. 985.04(1), F.S., makes the majority of juvenile records confidential. However, s. 985.04(2), F.S., creates exceptions to the confidentiality requirements for records if the juvenile is:

- Taken into custody for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors; or
- Transferred to the adult system.

In an effort to comply with the ruling in *G.G. v. FDLE*, FDLE is ensuring that only the above-described records are released. However, because of programming limitations¹⁷ and incomplete reporting of juvenile disposition information,¹⁸ FDLE reports that they are unable to accurately and fairly assess whether a juvenile has been found by a court to have committed three or more misdemeanors.¹⁹ As such, FDLE currently only releases juvenile records to private entities and non-criminal justice agencies if the juvenile is:

- Taken into custody or charged with a crime that would be a felony if committed by an adult; and
- Treated as adults.²⁰

Effect of the Bill

The ruling in *G.G. v. FDLE* highlighted the inconsistency that exists between s. 985.04(1), F.S., (making the majority of juvenile records confidential) and s. 943.053, F.S. (allowing a juvenile's criminal history information to be disseminated in the same manner as that of an adult). The bill addresses these inconsistencies by:

- Ensuring that the specified juvenile records deemed not to be confidential and exempt under s. 943.053, F.S., are identical to the juvenile records deemed not to be confidential and exempt under s. 985.04, F.S.; and
- Requiring FDLE to release juvenile criminal history records in a manner that takes into account the confidential and exempt status of the record.

Section 985.04, F.S.

The bill amends s. 985.04(1), F.S., clarifying that juvenile records obtained under ch. 985, F.S., are confidential and exempt (rather than just confidential),²¹ and provides that the public record exemption applies retroactively.

¹⁶ *Id.* at 273.

¹⁷ FDLE cites that there would be extensive programming changes required to ensure that the records of juveniles found to have committed three or more misdemeanors were available for dissemination. FDLE Analysis.

¹⁸ Disposition, or charge outcome, reporting for juvenile arrests was not legislatively mandated until July 1, 2008. This has resulted in much lower arrest-disposition reporting rates for juveniles. (The juvenile reporting rate for all arrests is currently 48.5 percent, while the adult rate is 72.2 percent.). FDLE Analysis.

¹⁹ FDLE Analysis.

²⁰ FDLE Analysis, p. 3.

²¹ 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. (August 1, 1985).

The bill also amends s. 985.04(2), F.S., to specify that the following juvenile records are not confidential and exempt:

- Records where a juvenile has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Records where a juvenile has been charged with a violation of law which, if committed by an adult, would be a felony;
- Records where a juvenile has been found to have committed an offense which, if committed by an adult, would be a felony; or
- Records where a juvenile has been transferred to adult court pursuant to part X of ch. 985, F.S.

Notably, the bill removes language specifying that the records of juveniles who have been found to have committed three or more misdemeanor violations are not confidential and exempt. These records will now be confidential and exempt.

Section 943.053, F.S.

The bill amends s. 943.053, F.S., so that the list of juvenile records deemed not to be confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed not to be confidential and exempt under s. 943.053, F.S. Because the language regarding three or more misdemeanors is not included on the list, FDLE will no longer be tasked with determining whether the juvenile had three or more misdemeanors before releasing such records to the private sector and noncriminal justice agencies.

The bill further amends s. 943.053, F.S., to establish a separate process for the dissemination of *juvenile* criminal history information. Under this process, juvenile criminal history information, including the information that is confidential and exempt, is available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S.,²² for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

Juvenile criminal history information that is not confidential and exempt may be released to the private sector and noncriminal justice agencies upon tender of fees and in the same manner that criminal history information relating to adults is released.

The bill provides that juvenile records deemed confidential and exempt under the provisions of s. 943.053, F.S., which are released by the sheriff, DOC, or DJJ to private entities under contract with each entity retain their confidential status upon release to these private entities.

The bill repeals all new public records exemptions provided for in the bill on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.²³

Lastly, the bill makes conforming changes to ss. 496.4101 and 943.056, F.S., to reflect changes made in the act.

²² These sections require persons who are seeking employment with specified agencies (e.g., DCF, Department of Health, DJJ) to acknowledge their criminal history record, even if such record has been sealed or expunged.

²³ FLA. CONST. art. I, s. 24(c).

B. SECTION DIRECTORY:

Section 1. Amends s. 985.04, F.S., relating to oaths; records; confidential information.

Section 2. Amends s. 943.053, F.S., relating to dissemination of criminal justice information; fees.

Section 3. Amends s. 496.4101, F.S., relating to licensure of professional solicitors and certain employees thereof.

Section 4. Amends s. 943.056, F.S., relating to criminal history records; access, review, and challenge.

Section 5. Provides a public necessity statement.

Section 6. Provides an effective date of 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:

FDLE reports that the Computerized Criminal History System requires an update to comply with the ruling or to implement the bill, which will require 891 hours of programming at \$85 dollars per hour for a total of \$75,877.²⁴ Additionally, the bill may require staff training related to the expansion of the public records exemption, which will likely result in an insignificant fiscal impact to FDLE. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.²⁵

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.

²⁴ FDLE Analysis, p. 6.

²⁵ *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:

Vote Requirement

Article I, section 24(c) of the Florida 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 a public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's expanded public records exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill provides that all criminal history information relating to juveniles, must be provided upon tender of fees and in the manner prescribed by rules of the FDLE.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to public records; amending s. 985.04,
 3 F.S.; specifying that certain confidential information
 4 obtained under chapter 985, F.S., relating to juvenile
 5 justice, is exempt from public records requirements;
 6 providing applicability; revising applicability of
 7 public records requirements with respect to the arrest
 8 records of certain juvenile offenders; providing for
 9 future review and repeal of such applicability
 10 provisions; amending s. 943.053, F.S.; providing an
 11 exemption from public records requirements for
 12 juvenile information compiled by the Criminal Justice
 13 Information Program from intrastate sources; providing
 14 exceptions; providing for future review and repeal of
 15 the exemption; providing for release by the Department
 16 of Law Enforcement of the criminal history information
 17 of a juvenile which has been deemed confidential and
 18 exempt under certain circumstances; amending ss.
 19 496.4101 and 943.056, F.S.; conforming provisions to
 20 changes made by the act; providing a statement of
 21 public necessity; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Subsections (1) and (2) of section 985.04,
 26 Florida Statutes, are amended to read:

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27 985.04 Oaths; records; confidential information.—

28 (1) (a) Except as provided in subsections (2), (3), (6),
29 and (7) and s. 943.053, all information obtained under this
30 chapter in the discharge of official duty by any judge, any
31 employee of the court, any authorized agent of the department,
32 the Florida Commission on Offender Review, the Department of
33 Corrections, the juvenile justice circuit boards, any law
34 enforcement agent, or any licensed professional or licensed
35 community agency representative participating in the assessment
36 or treatment of a juvenile is confidential and exempt from s.
37 119.07(1) and s. 24(a), Art. I of the State Constitution. This
38 exemption applies to information obtained before, on, or after
39 the effective date of this exemption.

40 (b) Such confidential and exempt information ~~and~~ may be
41 disclosed only to the authorized personnel of the court, the
42 department and its designees, the Department of Corrections, the
43 Florida Commission on Offender Review, law enforcement agents,
44 school superintendents and their designees, any licensed
45 professional or licensed community agency representative
46 participating in the assessment or treatment of a juvenile, and
47 others entitled under this chapter to receive that information,
48 or upon order of the court.

49 (c) Within each county, the sheriff, the chiefs of police,
50 the district school superintendent, and the department shall
51 enter into an interagency agreement for the purpose of sharing
52 information about juvenile offenders among all parties. The

53 agreement must specify the conditions under which summary
 54 criminal history information is to be made available to
 55 appropriate school personnel, and the conditions under which
 56 school records are to be made available to appropriate
 57 department personnel. Such agreement shall require notification
 58 to any classroom teacher of assignment to the teacher's
 59 classroom of a juvenile who has been placed in a probation or
 60 commitment program for a felony offense. The agencies entering
 61 into such agreement must comply with s. 943.0525, and must
 62 maintain the confidentiality of information that is otherwise
 63 exempt from s. 119.07(1), as provided by law.

64 (2) Notwithstanding any other provisions of this chapter,
 65 the name, photograph, address, and crime or arrest report of a
 66 child:

67 (a) Taken into custody ~~if the child has been taken into~~
 68 ~~custody~~ by a law enforcement officer for a violation of law
 69 which, if committed by an adult, would be a felony;

70 (b) Charged with a violation of law which, if committed by
 71 an adult, would be a felony;

72 (c) Found to have committed an offense which, if committed
 73 by an adult, would be a felony; or

74 (d) Transferred to adult court pursuant to part X,

75 ~~(b) Found by a court to have committed three or more~~
 76 ~~violations of law which, if committed by an adult, would be~~
 77 ~~misdemeanors;~~

78 ~~(c) Transferred to the adult system under s. 985.557,~~

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79 ~~indicted under s. 985.56, or waived under s. 985.556;~~
 80 ~~(d) Taken into custody by a law enforcement officer for a~~
 81 ~~violation of law subject to s. 985.557(2)(b) or (d); or~~
 82 ~~(e) Transferred to the adult system but sentenced to the~~
 83 ~~juvenile system under s. 985.565~~

84
 85 are ~~shall~~ not ~~be~~ considered confidential and exempt from s.
 86 119.07(1) solely because of the child's age.

87 (d) This subsection is subject to the Open Government
 88 Sunset Review Act in accordance with s. 119.15 and shall stand
 89 repealed on October 2, 2020, unless reviewed and saved from
 90 repeal through reenactment by the Legislature.

91 Section 2. Subsections (3), (8), (9), and (10) of section
 92 943.053, Florida Statutes, are amended to read:

93 943.053 Dissemination of criminal justice information;
 94 fees.-

95 (3)(a) Criminal history information, ~~including information~~
 96 relating to an adult ~~minors~~, compiled by the Criminal Justice
 97 Information Program from intrastate sources shall be available
 98 on a priority basis to criminal justice agencies for criminal
 99 justice purposes free of charge. After providing the program
 100 with all known personal identifying information, persons in the
 101 private sector and noncriminal justice agencies may be provided
 102 criminal history information upon tender of fees as established
 103 in this subsection and in the manner prescribed by rule of the
 104 Department of Law Enforcement. ~~Any access to criminal history~~

105 ~~information by the private sector or noncriminal justice~~
 106 ~~agencies as provided in this subsection shall be assessed~~
 107 ~~without regard to the quantity or category of criminal history~~
 108 ~~record information requested.~~

109 (b)1. Criminal history information relating to a juvenile
 110 compiled by the Criminal Justice Information Program from
 111 intrastate sources shall be released as provided in this
 112 section. Such information is confidential and exempt from s.
 113 119.07(1) and s. 24(a), Art. I of the State Constitution, unless
 114 such juvenile has been:

115 a. Taken into custody by a law enforcement officer for a
 116 violation of law which, if committed by an adult, would be a
 117 felony;

118 b. Charged with a violation of law which, if committed by
 119 an adult, would be a felony;

120 c. Found to have committed an offense which, if committed
 121 by an adult, would be a felony; or

122 d. Transferred to adult court pursuant to part X of
 123 chapter 985,

124
 125 and provided the criminal history record has not been expunged
 126 or sealed under any law applicable to such record.

127 2. This paragraph is subject to the Open Government Sunset
 128 Review Act in accordance with s. 119.15 and shall stand repealed
 129 on October 2, 2020, unless reviewed and saved from repeal
 130 through reenactment by the Legislature.

131 (c)1. Criminal history information relating to juveniles,
 132 including criminal history information consisting in whole or in
 133 part of information that is confidential and exempt under
 134 paragraph (b), shall be available to:

135 a. A criminal justice agency for criminal justice purposes
 136 on a priority basis and free of charge;

137 b. The person to whom the record relates, or his or her
 138 attorney;

139 c. The parent, guardian, or legal custodian of the person
 140 to whom the record relates, provided such person has not reached
 141 the age of majority, been emancipated by a court, or been
 142 legally married; or

143 d. An agency or entity specified in s. 943.0585(4) or s.
 144 943.059(4), for the purposes specified therein, and to any
 145 person within such agency or entity who has direct
 146 responsibility for employment, access authorization, or
 147 licensure decisions.

148 2. After providing the program with all known personal
 149 identifying information, the criminal history information
 150 relating to a juvenile which is not confidential and exempt
 151 under this subsection may be released to the private sector and
 152 noncriminal justice agencies not specified in s. 943.0585(4) or
 153 s. 943.059(4) in the same manner as provided in paragraph (a).
 154 Criminal history information relating to a juvenile which is not
 155 confidential and exempt under this subsection is the entire
 156 criminal history information relating to a juvenile who

157 satisfies any of the criteria listed in sub-subparagraphs
 158 (b)1.a. through (b)1.d., except for any portion of such
 159 juvenile's criminal history record which has been expunged or
 160 sealed under any law applicable to such record.

161 3. All criminal history information relating to juveniles,
 162 other than that provided to criminal justice agencies for
 163 criminal justice purposes, shall be provided upon tender of fees
 164 as established in this subsection and in the manner prescribed
 165 by rule of the Department of Law Enforcement.

166 (d) The fee for access to criminal history information by
 167 the private sector or a noncriminal justice agency shall be
 168 assessed without regard to the size or category of criminal
 169 history record information requested.

170 (e) ~~(b)~~ The fee per record for criminal history information
 171 provided pursuant to this subsection and s. 943.0542 is \$24 per
 172 name submitted, except that the fee for the guardian ad litem
 173 program and vendors of the Department of Children and Families,
 174 the Department of Juvenile Justice, and the Department of
 175 Elderly Affairs shall be \$8 for each name submitted; the fee for
 176 a state criminal history provided for application processing as
 177 required by law to be performed by the Department of Agriculture
 178 and Consumer Services shall be \$15 for each name submitted; and
 179 the fee for requests under s. 943.0542, which implements the
 180 National Child Protection Act, shall be \$18 for each volunteer
 181 name submitted. The state offices of the Public Defender shall
 182 not be assessed a fee for Florida criminal history information

183 or wanted person information.

184 (8) Notwithstanding ~~the provisions of~~ s. 943.0525, and any
 185 user agreements adopted pursuant thereto, and notwithstanding
 186 the confidentiality of sealed records as provided for in s.
 187 943.059 and juvenile records as provided for in paragraph
 188 (3)(b), the sheriff of any county that has contracted with a
 189 private entity to operate a county detention facility pursuant
 190 to ~~the provisions of~~ s. 951.062 shall provide that private
 191 entity, in a timely manner, copies of the Florida criminal
 192 history records for its inmates. The sheriff may assess a charge
 193 for the Florida criminal history records pursuant to ~~the~~
 194 ~~provisions of~~ chapter 119. Sealed records and confidential
 195 juvenile records received by the private entity under this
 196 section remain confidential and exempt from ~~the provisions of~~ s.
 197 119.07(1).

198 (9) Notwithstanding ~~the provisions of~~ s. 943.0525, and any
 199 user agreements adopted pursuant thereto, and notwithstanding
 200 the confidentiality of sealed records as provided for in s.
 201 943.059 and juvenile records as provided for in paragraph
 202 (3)(b), the Department of Corrections shall provide, in a timely
 203 manner, copies of the Florida criminal history records for
 204 inmates housed in a private state correctional facility to the
 205 private entity under contract to operate the facility pursuant
 206 to ~~the provisions of~~ s. 944.105. The department may assess a
 207 charge for the Florida criminal history records pursuant to ~~the~~
 208 ~~provisions of~~ chapter 119. Sealed records and confidential

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209 juvenile records received by the private entity under this
 210 section remain confidential and exempt from ~~the provisions of~~ s.
 211 119.07(1).

212 (10) Notwithstanding ~~the provisions of~~ s. 943.0525 and any
 213 user agreements adopted pursuant thereto, and notwithstanding
 214 the confidentiality of sealed records as provided for in s.
 215 943.059 or of juvenile records as provided for in paragraph
 216 (3)(b), the Department of Juvenile Justice or any other state or
 217 local criminal justice agency may provide copies of the Florida
 218 criminal history records for juvenile offenders currently or
 219 formerly detained or housed in a contracted juvenile assessment
 220 center or detention facility or serviced in a contracted
 221 treatment program and for employees or other individuals who
 222 will have access to these facilities, only to the entity under
 223 direct contract with the Department of Juvenile Justice to
 224 operate these facilities or programs pursuant to ~~the provisions~~
 225 ~~of~~ s. 985.688. The criminal justice agency providing such data
 226 may assess a charge for the Florida criminal history records
 227 pursuant to ~~the provisions of~~ chapter 119. Sealed records and
 228 confidential juvenile records received by the private entity
 229 under this section remain confidential and exempt from ~~the~~
 230 ~~provisions of~~ s. 119.07(1). Information provided under this
 231 section shall be used only for the criminal justice purpose for
 232 which it was requested and may not be further disseminated.

233 Section 3. Paragraph (b) of subsection (3) of section
 234 496.4101, Florida Statutes, is amended to read:

235 496.4101 Licensure of professional solicitors and certain
 236 employees thereof.-

237 (3)

238 (b) Fees for state and federal fingerprint processing and
 239 fingerprint retention fees shall be borne by the applicant. The
 240 state cost for fingerprint processing is that authorized in s.
 241 943.053(3)(e) ~~943.053(3)(b)~~ for records provided to persons or
 242 entities other than those specified as exceptions therein.

243 Section 4. Subsection (1) of section 943.056, Florida
 244 Statutes, is amended to read:

245 943.056 Criminal history records; access, review, and
 246 challenge.-

247 (1) For purposes of verification of the accuracy and
 248 completeness of a criminal history record, the Department of Law
 249 Enforcement shall provide, in the manner prescribed by rule,
 250 such record for review upon verification, by fingerprints, of
 251 the identity of the requesting person. If a minor, or the parent
 252 or legal guardian of a minor, requests a copy of the minor's
 253 criminal history record, the Department of Law Enforcement shall
 254 provide such copy, including any portions of the record which
 255 may be confidential under s. 943.053(3)(b), for review upon
 256 verification, by fingerprints, of the identity of the minor. The
 257 providing of such record shall not require the payment of any
 258 fees, except those provided for by federal regulations.

259 Section 5. The Legislature finds that it is a public
 260 necessity that the criminal history information of juveniles,

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261 who have not been adjudicated delinquent of a felony or who have
262 been found only to have committed misdemeanor offenses and
263 certain criminal history information relating to a juvenile
264 compiled by the Criminal Justice Information Program be made
265 confidential and exempt from s. 119.07(1), Florida Statutes, and
266 s. 24(a), Article I of the State Constitution under ss. 985.04
267 and 943.053, Florida Statutes. Many individuals who have either
268 completed their sanctions and received treatment or who were
269 never charged in the juvenile justice system have found it
270 difficult to obtain employment. The presence of an arrest or a
271 misdemeanor record in these individuals' juvenile past and
272 certain criminal history information relating to a juvenile
273 compiled by the Criminal Justice Information Program creates an
274 unnecessary barrier to becoming productive members of society,
275 thus frustrating the rehabilitative purpose of the juvenile
276 system. The Legislature therefore finds that it is in the best
277 interest of the public that individuals with juvenile
278 misdemeanor records are given the opportunity to become
279 contributing members of society. Therefore, prohibiting the
280 unfettered release of juvenile misdemeanor records and certain
281 criminal history information relating to a juvenile compiled by
282 the Criminal Justice Information Program is of greater
283 importance than any public benefit that may be derived from the
284 full disclosure and release of such arrest records and
285 information.


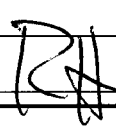
286 Section 6. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7131 PCB CRJS 15-07 Corrections

SPONSOR(S): Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Trujillo; Bracy and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 7020

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Keegan	Cunningham
1) Justice Appropriations Subcommittee	10 Y, 2 N, As CS	McAuliffe	Lloyd
2) Judiciary Committee		Keegan 	Havlicak 

SUMMARY ANALYSIS

The bill makes a number of changes related to the Department of Corrections (Department) that affect data analysis, sentencing requirements, gain-time, and the duties of the Department. Specifically, the bill:

- Requires the Department to administer its institutional operations through five regions;
- Requires the Criminal Justice Estimating Conference (CJEC) to develop projections of prison admissions and populations for elderly felony offenders;
- Allows assessment of victim injury points against specified correctional employees who commit sexual misconduct with an inmate or offender;
- Allows the Department to award educational gain-time to an inmate who earns a GED or vocational certificate;
- Includes "safety" as part of the Department's responsibilities in operating correctional institutions and facilities, and expands the required responsibilities of the Department's security review committee;
- Expands the scope of security audits, and gives priority to institutions with a high level of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse;
- Requires audits to identify a number of specified areas of safety and security concern;
- Expands the required items in the Department's legislative budget request to include a prioritized summary of critical safety and security deficiencies;
- Requires the Department to maintain a *written* Memorandum of Understanding with the Florida Department of Law Enforcement; and
- Requires the Inspector General and the inspectors who conduct sexual abuse investigations in confinement settings to receive specialized training in conducting such investigations.

The bill also provides that, effective for offenses committed on or after July 1, 2015, a court may sentence an offender to a term in the county jail in the county where the offense was committed for no more than 24 months if the offender meets all of the following criteria:

- The sentence score is more than 44 points, but no more than 60 points, as provided in s. 921.0024, F.S.
- The primary offense is not a forcible felony as defined in s. 776.08, F.S., but excluding any third degree felony violation under chapter 810, F.S. (burglary and trespass).
- The primary offense is not punishable by a minimum mandatory sentence in excess of 24 months.

The Criminal Justice Impact Conference (CJIC) met and determined that this bill will have the net impact of decreasing state prison beds over time. The bill may increase Department expenditures because the bill expands the required duties of the security review committee and creates additional training requirements for specified inspectors, which may increase administrative costs. However, the Department states that these costs can be absorbed within current resources.

The House proposed Fiscal Year 2015-16 General Appropriations Act provides the sum of \$5,845,415 for the incarceration of felons sentenced to a county facility pursuant to the provisions of this bill. The bill also limits the award of contracts to the amount appropriated. An appropriation is also provided to staff and operate two additional regions (see Fiscal Impact).

The bill is effective July 1, 2015.

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

STORAGE NAME: h7131b.JDC.DOCX

DATE: 4/10/2015

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

DOC Regional Operations

The organization of the Department of Corrections (Department) is established in accordance with s. 20.315, F.S., which provides that the Department must administer its programs through regions. While the statute does not specify the number of regions, the Department currently administers its programs through three institutional regions.

This bill requires the Department to administer its institutional operations through five regions and authorizes the Secretary to appoint the regional directors. The bill does not affect the administration of the Community Supervision program.

Criminal Justice Estimating Conference

The “consensus estimating conference” was established as a part of the Legislative Branch to provide data, estimates, and other information for the purpose of state budgeting and planning functions.¹ The Criminal Justice Estimating Conference (CJEC) is a subpart of the estimating conference that is primarily responsible for compiling and analyzing data related to the criminal justice system.² Section 216.136(5), F.S., currently requires CJEC to develop official information³ relating to the:

- Criminal justice system, including forecasts of prison admissions and population and of supervised felony offender admissions and population;
- Number of eligible discharges and the projected number of civil commitments for determining space needs pursuant to involuntary civil commitment of sexually violent predators; and
- Number of sexual offenders and sexual predators who are required by law to be placed on community control, probation, or conditional release who are subject to electronic monitoring.⁴

Effect of the Bill

The bill amends s. 216.136(5), F.S., to require CJEC to develop projections of prison admissions and populations for elderly felony offenders.

Victim Injury Sentencing Points

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.⁵ A defendant’s sentence is calculated based on points assigned for a variety of factors (e.g., the offense for which the defendant is being sentenced; victim injury, additional offenses that the defendant committed at the time of the primary offense; the defendant’s prior record, etc.). The points are added in order to determine the “lowest permissible sentence” for the offense.⁶

As noted above additional points may be assessed by the court for “victim injury”⁷ directly caused by any offense that is before a court for sentencing.⁸ If there was “sexual contact,” an additional 40 victim

¹ s. 216.133, F.S.; Office of Economic & Demographic Research, *Consensus Estimating Conferences*, <http://edr.state.fl.us/Content/conferences/index.cfm> (last visited March 19, 2015).

² s. 216.136, F.S.

³ Section 216.133(2), F.S., defines “official information” as the data, forecasts, estimates, analyses, studies, and other information which the principals of a consensus estimating conference unanimously adopt for purposes of the state planning and budgeting system.

⁴ s. 216.136(5), F.S.

⁵ s. 921.0022, F.S.

⁶ s. 921.0024, F.S.

⁷ Section 921.0021(7)(a), F.S., defines “victim injury” as the physical injury or death suffered by a person as a direct result of the primary offense, or any additional offense, for which an offender is convicted and which is pending before the court for sentencing at the time of the primary offense.

⁸ FLA. R. CRIM. P. 702(d)(5) and 703(d)(9).

injury points may be assessed. If there was "sexual penetration," an additional 80 victim injury points may be assessed.⁹

Currently, s. 921.0021(7)(c), F.S., prohibits victim injury points from being assessed for sexual contact or sexual penetration caused by a Department employee or a private correctional facility employee who commits sexual misconduct with an inmate or offender in violation of s. 944.35(3)(b)2., F.S.¹⁰

Effect of the Bill

The bill amends s. 921.0021(7)(c), F.S., so that victim injury points may be assessed for sexual contact or sexual penetration caused by a Department employee or a private correctional facility employee who commits sexual misconduct with an inmate or offender.

Gain-Time

Currently, the Department may grant inmates incentive gain-time for each month in which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities.¹¹ For offenses committed on or after October 1, 1995, the Department is authorized to grant up to 10 days per month of incentive gain-time, but the total amount of incentive gain-time cannot result in release of an inmate before he or she serves a minimum of 85 percent of his or her sentence.¹² Inmates sentenced to life imprisonment or sentenced pursuant to certain statutes¹³ are not entitled to gain-time.¹⁴ When an inmate is found guilty of a violation of the laws of the state or Department rules, gain-time may be forfeited.¹⁵

Section 944.275(4)(d), F.S., specifies that an inmate who earns a GED or vocational certificate may be awarded a one-time grant for 60 days of incentive gain-time (educational gain-time). However, this award may not be granted to inmates who committed their offense on or after October 1, 1995.¹⁶

Effect of the Bill

The bill amends s. 944.275(4)(d), F.S., to allow the Department to award educational gain-time to an inmate who earns a GED or vocational certificate, even if the inmate committed their offense on or after October 1, 1995. Educational gain-time may not be awarded where it would reduce an inmate's tentative release date below the 85 percent minimum service date of the sentence.

The bill prohibits educational gain-time from being awarded if the inmate is or has previously been convicted of specified sexual offenses¹⁷ or a forcible felony offense specified in s. 776.08, F.S., except burglary as specified in s. 810.02(4), F.S.

Safety and Security

Florida law contains a variety of provisions relating to the security of correctional facilities under the Department's control.¹⁸ For example, s. 944.151, F.S., requires the Secretary of the Department (Secretary) to appoint a security review committee, which must:

⁹ s. 921.0024(1)(a), F.S.

¹⁰ Section 944.35(3)(b)2., F.S., prohibits any Department employee or employee of a private correctional facility as defined in s. 944.710, F.S., from engaging in sexual misconduct with an inmate or an offender supervised by the department in the community, without committing the crime of sexual battery.

¹¹ s. 944.275(4)(b), F.S.

¹² s. 944.275(4)(b)3., F.S.

¹³ For example, inmates sentenced to a mandatory minimum term of imprisonment as a dangerous sexual felony offender are not eligible to receive gain-time. s. 794.0115(7), F.S.

¹⁴ s. 944.275(4)(b)3., F.S.

¹⁵ s. 944.275(5), F.S.

¹⁶ s. 944.275(4)(b)3. and (d), F.S.

¹⁷ These offenses include ss. 794.011, 794.05, former 796.03, former 796.035, 800.04, 825.1025, 827.03, 827.071, 847.0133, 847.0135, 847.0137, 847.0138, 847.0145, and 985.701(1), F.S.

¹⁸ The majority of these provisions are contained in ch. 944, F.S.

- Include, at a minimum, the inspector general, the statewide security coordinator, the regional security coordinators, and three wardens and one correctional officer;
- Establish a schedule for physical inspections of the buildings and structures of correctional institutions, giving priority to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a history of escapes or escape attempts;
- Conduct or cause to be conducted announced and unannounced security audits of correctional institutions;
- Adopt and enforce minimum standards and policies;
- Make annual written prioritized budget recommendations to the Secretary that identify critical security deficiencies at major correctional institutions;
- Investigate and evaluate the usefulness and dependability of existing security technology at institutions and the new technology available;
- Contract with security experts the committee deems necessary for security audits and consultation; and
- Establish a periodic schedule to conduct announced and unannounced escape simulation drills.¹⁹

The statute also requires the Secretary to produce quarterly reports of escape statistics and to adopt, enforce, and evaluate emergency response procedures for escapes. The Secretary must include in the annual legislative budget request a prioritized summary of critical security repair and renovation needs.²⁰

Effect of the Bill

The bill amends s. 944.151, F.S., to include “safety” as part of the Department’s responsibilities in operating correctional institutions and facilities, and expands the required responsibilities of the security review committee to include:

- Evaluating new safety and security technology;
- Reviewing and discussing current issues impacting correctional facilities; and
- Reviewing and discussing other issues as requested by management.

The bill expands the types of facilities that should be given priority for physical inspections to include institutions with a high level of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse.

The bill expands the scope of announced and unannounced security audits to include safety concerns, and to give priority to institutions with a high level of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse. Audits must also identify a number of specified areas of safety and security concern (e.g., identification of blind spots or areas where staff or inmates may be isolated).

The bill also expands the required items in the Department’s legislative budget request to include a prioritized summary of critical safety and security deficiencies.

Inspector General

Section 944.31, F.S., requires the Department’s Office of Inspector General to be responsible for prison inspection and investigation, internal affairs investigations, and management reviews.²¹ The Inspector General has specific duties relating to inspections and investigations and must ensure compliance with Department rules and regulations.²² The Inspector General must maintain a Memorandum of Understanding (MOU) with the Florida Department of Law Enforcement (FDLE) for notification and

¹⁹ s. 944.151(1), F.S.

²⁰ s. 944.151(2) - (4), F.S.

²¹ s. 944.31, F.S.

²² *Id.*

investigation of suspicious deaths, organized criminal activity, and any other mutually-agreed upon events.

The Inspector General is authorized to employ inspectors to carry out its inspection and investigation duties, but is not currently required to provide any specific training to the inspectors to prepare them for their duties.²³ The Secretary is also authorized to designate personnel within its office as law enforcement officers who are empowered to conduct criminal investigations and make arrests.²⁴ Unlike inspectors, a person designated as a law enforcement officer must be a certified pursuant to s. 943.1395, F.S., which includes law enforcement officer training, and must have a minimum of three years of experience as a Department inspector.²⁵

Effect of the Bill

The bill amends s. 944.31, F.S., to require the Department to maintain a *written* MOU with FDLE, and provide timely copies of the active MOU to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill also requires the Inspector General and the inspectors who conduct sexual abuse investigations in confinement settings to receive specialized training in conducting such investigations. Such training must be provided by the Department and must include, at a minimum:

- Techniques for interviewing sexual abuse victims;
- Proper use of Miranda and Garrity warnings;
- Sexual abuse evidence collection in confinement settings; and
- The criteria and evidence needed to substantiate a case for administrative action or criminal prosecution.

Felons Sentenced to County Jails

Pursuant to s. 775.08(1), F.S., the term "felony" means any criminal offense that is punishable under the laws of Florida, or that would be punishable if committed in Florida, by death or imprisonment in the state penitentiary. "State penitentiary" includes state correctional facilities. A person must be imprisoned in the state penitentiary for each sentence which exceeds one year. All felonies are punishable by incarceration in state prison. A person who receives a sentence of a year or less for a felony serves that sentence in a county jail.

Effect of the Bill

This bill provides that, effective for offenses committed on or after July 1, 2015, a court may sentence an offender to a term in the county jail in the county where the offense was committed for no more than 24 months if the offender meets all of the following criteria:

- The offender's total sentence points score, as provided in s. 921.0024, F.S., is more than 44 points but no more than 60 points;
- The offender's primary offense is not a forcible felony as defined in s. 776.08, F.S., but excluding any third degree felony violation under chapter 810, F.S. (burglary and trespass); and
- The offender's primary offense is not punishable by a minimum mandatory sentence in excess of 24 months.

The Department must enter into a contract with any chief correctional officer of a county that requests to enter a contract to allow inmates to be sentenced to the county jail as provided in this bill. The contract must specifically establish the maximum number of beds and the validated per diem rate. The contract must provide for per diem reimbursement for occupied inmate days based on the contracting county's most recent annual adult male custody or adult female custody per diem rates not to exceed \$60. All contractual per diem rates must be validated by the Auditor General before payments are made.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

A specific appropriation category ("Inmates Sentenced to County Jail") is created within the House proposed Fiscal Year 2015-16 GAA and appropriated \$5,845,415 to fund the incarceration of offenders sentenced under this bill. In addition to the appropriation, the bill authorizes the department to transfer funds into this specific category in order to fulfill the Department's contractual per diem obligation which may not exceed the Department's average male or female total per diem published for the preceding fiscal year. This allows the Department flexibility in the amount they must transfer into this specific category because the number of counties that will request contracts to have offenders sentenced to their jail is unknown. The \$5,845,415 appropriation will fund the remaining contract amount not to exceed a per diem of \$60. The maximum appropriation allowable would be the appropriated funds plus any funds that are transferred from other Department categories to fulfill the Department's contractual per diem obligation. Any contract executed as provided in this bill is contingent upon a specific appropriation in the General Appropriations Act (GAA). Contracts must be awarded by DOC on a first-come, first-served basis up to the maximum appropriation.

B. SECTION DIRECTORY:

Section 1. Amends s. 20.315, F.S., relating to Department administrative regions.

Section 2. Amends s. 216.136, F.S., relating to consensus estimating conferences; duties and principals.

Section 3. Amends s. 921.0021, F.S., relating to definitions.

Section 4. Amends s. 944.151, F.S., relating to security of correctional institutions and facilities.

Section 5. Amends s. 944.275, F.S., relating to gain-time.

Section 6. Amends s. 944.31, F.S., relating to inspector general; inspectors; power and duties.

Section 7. Provides an appropriation.

Section 8. Amends s. 947.1405, F.S., relating to conditional release.

Section 9. Creates s. 950.021, F.S., relating to sentencing offenders to county jail.

Section 10. Provides an effective date of July 1, 2015.

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:

This bill requires the Department to administer its institutional operations through five regions instead of three. This bill provides an appropriation of \$1,258,256 in recurring general revenue and \$206,388 in nonrecurring general revenue to fund 10 positions and operational expenses for the two new regions.

The Criminal Justice Impact Conference (CJIC) met March 27, 2015, and determined that the portion of the bill permitting assessment of sentencing points for specified criminal acts may have an insignificant prison bed impact on the Department of Corrections (i.e., an increase of 10 or fewer

beds annually. Specifically, the bill permits assessment of victim injury points for acts of sexual penetration or sexual contact in connection with violations of s. 944.35(3)(b)2., F.S. (Sexual Misconduct with an Inmate or Supervised Offender), which may increase the length of affected sentences. By adding these injury points, sexual contact creates a potential sentence range of a non-prison to a five year maximum prison sentence, while sexual penetration would range from 42 months in prison to a maximum sentence of five years. From Fiscal Year 2008-09 through Fiscal Year 2013-14, there were six persons sentenced for this violation, with none receiving a prison sentence.

This bill also amends s. 944.275, F.S., allowing inmates sentenced for an offense committed on or after October 1, 1995, to be eligible for education attainment gain-time in the amount of 60 additional days. An inmate may receive a one-time award of 60 days of gain-time for receiving a General Education Development diploma or for earning a certificate for completion of a vocational program, as long as this does not bring the inmate below 85% of his/her sentence served.

CJIC determined that this portion of the bill may result in prisoners leaving department custody earlier than currently projected (126 in Fiscal Year 2015-16).

The bill may increase Department expenditures because the bill expands the required duties of the security review committee and creates additional training requirements for specified inspectors, which may increase administrative costs. However, the Department states that these costs can be absorbed within current resources.

The bill provides the Department must enter into a contract with any chief correctional officer of a county that requests to enter a contract to allow inmates to be sentenced to the county jail as provided in this bill. The contract must specifically establish the maximum number of beds and the validated per diem rate. The contract must provide for per diem reimbursement for occupied inmate days based on the contracting county's most recent annual adult male custody or adult female custody per diem rates not to exceed \$60. All contractual per diem rates must be validated by the Auditor General before payments are made.

The Department's most recent annual adult male custody per diem rate is \$43.03, and the bill limits the total per diem to \$60. Most County detention facilities per diem rates are above the \$60 rate, therefore the state will be responsible for paying that additional amount of the total per diem up to \$60. For instance, if a county per diem is \$60 and the county chooses to contract with the Department for 100 inmates, the total daily cost would be \$6,000 per day; \$4,303 (\$43.03 per inmate per day) of that would be the cost the Department would have expended if those prisoners were sentenced to state prison. The remaining would be paid from the funds provided in the specific appropriation category "Inmates Sentenced to County Jail."

The House proposed Fiscal Year 2015-16 General Appropriations Act provides the sum of \$5,845,415 for the incarceration of felons sentenced to a county facility pursuant to the provisions of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Counties with excess jail capacity that have a contract with DOC will benefit from the state paying the cost of incarceration.

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 expenditures 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 944.09, F.S., authorizes the Department to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement its statutory authority. 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

On April 7, 2015, the Justice Appropriations Subcommittee adopted three amendments to the bill and one technical amendment to an amendment and reported the bill favorably as a committee substitute. The amendments:

- Require the Department to administer its institutional operations through five regions;
- Provide an appropriation to fund 10 positions and operational expenses for the two new regions;
- Authorize certain felons to be sentenced to county jails.

This analysis is drafted to the bill as passed by the Justice Appropriations Subcommittee

27 the requirements for and receiving a high school
 28 equivalency diploma or vocational certificate if the
 29 inmate was convicted of a specified offense on or
 30 after a specified date; amending s. 944.31, F.S.;
 31 requiring that a copy of a written memorandum of
 32 understanding for notification and investigation of
 33 certain events between the Department of Corrections
 34 and the Department of Law Enforcement be provided to
 35 the Governor, the President of the Senate, and the
 36 Speaker of the House of Representatives; requiring
 37 specialized training for inspectors in certain
 38 circumstances; providing an appropriation; amending s.
 39 947.1405, F.S.; conforming provisions to changes made
 40 by the act; creating s. 950.021, F.S.; authorizing a
 41 court to sentence certain offenders to a county jail
 42 for up to 24 months if the county has a contract with
 43 the Department of Corrections; providing contractual
 44 requirements; requiring and providing for specific
 45 appropriations; requiring validation of per diem
 46 rates; providing an effective date.

47
 48 Be It Enacted by the Legislature of the State of Florida:

49
 50 Section 1. Subsection (4) of section 20.315, Florida
 51 Statutes, is amended to read:

52 20.315 Department of Corrections.—There is created a
 53 Department of Corrections.

54 (4) REGIONS.—The department shall plan and administer its
 55 program of services for community corrections, ~~security, and~~
 56 ~~institutional operations~~ through regions. The department shall
 57 plan and administer its program of services for security and
 58 institutional operations through five geographical regions. The
 59 secretary shall appoint a director for each of the five regions.

60 Section 2. Paragraph (d) is added to subsection (5) of
 61 section 216.136, Florida Statutes, to read:

62 216.136 Consensus estimating conferences; duties and
 63 principals.—

64 (5) CRIMINAL JUSTICE ESTIMATING CONFERENCE.—The Criminal
 65 Justice Estimating Conference shall:

66 (d) Develop projections of prison admissions and
 67 populations for elderly felony offenders.

68 Section 3. Subsection (7) of section 921.0021, Florida
 69 Statutes, is amended to read:

70 921.0021 Definitions.—As used in this chapter, for any
 71 felony offense, except any capital felony, committed on or after
 72 October 1, 1998, the term:

73 (7)(a) "Victim injury" means the physical injury or death
 74 suffered by a person as a direct result of the primary offense,
 75 or any additional offense, for which an offender is convicted
 76 and which is pending before the court for sentencing at the time
 77 of the primary offense.

78 (b) Except as provided in paragraph (c): ~~or paragraph (d),~~

79 1. If the conviction is for an offense involving sexual
 80 contact that includes sexual penetration, the sexual penetration
 81 must be scored in accordance with the sentence points provided
 82 under s. 921.0024 for sexual penetration, regardless of whether
 83 there is evidence of any physical injury.

84 2. If the conviction is for an offense involving sexual
 85 contact that does not include sexual penetration, the sexual
 86 contact must be scored in accordance with the sentence points
 87 provided under s. 921.0024 for sexual contact, regardless of
 88 whether there is evidence of any physical injury.

89
 90 If the victim of an offense involving sexual contact suffers any
 91 physical injury as a direct result of the primary offense or any
 92 additional offense committed by the offender resulting in
 93 conviction, such physical injury must be scored separately and
 94 in addition to the points scored for the sexual contact or the
 95 sexual penetration.

96 ~~(c) The sentence points provided under s. 921.0024 for~~
 97 ~~sexual contact or sexual penetration may not be assessed for a~~
 98 ~~violation of s. 944.35(3)(b)2.~~

99 (c)(d) If the conviction is for the offense described in
 100 s. 872.06, the sentence points provided under s. 921.0024 for
 101 sexual contact or sexual penetration may not be assessed.

102 (d)(e) Notwithstanding paragraph (a), if the conviction is
 103 for an offense described in s. 316.027 and the court finds that

104 the offender caused victim injury, sentence points for victim
 105 injury may be assessed against the offender.

106 Section 4. Section 944.151, Florida Statutes, is amended
 107 to read:

108 944.151 Safety and security of correctional institutions
 109 and facilities.—It is the intent of the Legislature that the
 110 Department of Corrections ~~shall~~ be responsible for the safe
 111 operation and security of the correctional institutions and
 112 facilities. The safe operation and security of the state's
 113 correctional institutions and facilities are ~~is~~ critical to
 114 ensure public safety and the safety of department employees and
 115 offenders and to contain violent and chronic offenders until
 116 offenders are otherwise released from the department's custody
 117 pursuant to law. The Secretary of Corrections shall, at a
 118 minimum:

119 (1) Appoint and designate select staff to the safety and a
 120 security review committee ~~which shall, at a minimum, be composed~~
 121 ~~of: the inspector general, the statewide security coordinator,~~
 122 ~~the regional security coordinators, and three wardens and one~~
 123 ~~correctional officer.~~ The safety and security review committee
 124 shall evaluate new safety and security technology, review and
 125 discuss current issues impacting correctional facilities, and
 126 review and discuss other issues as requested by management.+

127 (2) ~~(a)~~ Ensure that appropriate staff establishes ~~Establish~~
 128 a periodic schedule for the physical inspection of buildings and
 129 structures of each state and private correctional institution

130 and facility to determine safety and security deficiencies. In
 131 scheduling the inspections, priority shall be given to older
 132 institutions, institutions that house a large proportion of
 133 violent offenders, institutions with a high level of
 134 inappropriate incidents of use of force on inmates, assaults on
 135 employees, or inmate sexual abuse, and institutions that have
 136 experienced a significant number of escapes or escape attempts
 137 in the past.

138 (3) ~~(b)~~ Ensure that appropriate staff conducts ~~Conduct~~ or
 139 causes ~~cause~~ to be conducted announced and unannounced
 140 comprehensive safety and security audits of all state and
 141 private correctional institutions. In conducting the safety and
 142 security audits, priority shall be given to older institutions,
 143 institutions that house a large proportion of violent offenders,
 144 institutions with a high level of inappropriate incidents of use
 145 of force on inmates, assaults on employees, or inmate sexual
 146 abuse, and institutions that have experienced a history of
 147 escapes or escape attempts. At a minimum, the audit shall
 148 include an evaluation of the physical plant, which shall include
 149 the identification of blind spots or areas where staff or
 150 inmates may be isolated and the deployment of audio and video
 151 monitoring systems and other monitoring technologies in such
 152 areas; landscaping, fencing, security alarms, and perimeter
 153 lighting; ~~and~~ confinement, arsenal, key and lock, and entrance
 154 and exit ~~inmate classification and staffing~~ policies. Each
 155 correctional institution shall be audited at least annually. ~~The~~

156 ~~secretary shall~~

157 (4) Report the general survey findings annually to the
 158 Governor and the Legislature.

159 (5) Ensure that appropriate staff investigates and
 160 evaluates the usefulness and dependability of existing safety
 161 and security technology at the institutions and new technology
 162 and video monitoring systems available and makes periodic
 163 written recommendations to the secretary on the discontinuation
 164 or purchase of various safety and security devices.

165 (6) Contract, if deemed necessary, with security
 166 personnel, consulting engineers, architects, or other safety and
 167 security experts that the department deems necessary for safety
 168 and security consultant services.

169 (7) Ensure that appropriate staff, in conjunction with the
 170 regional offices, establishes a periodic schedule for conducting
 171 announced and unannounced escape simulation drills.

172 (8) Adopt, enforce, and annually cause the evaluation of
 173 emergency escape response procedures, which shall, at a minimum,
 174 include the immediate notification and inclusion of local and
 175 state law enforcement through mutual aid agreements.

176 (9) Ensure that appropriate staff reviews staffing
 177 policies, classification, and practices as needed.

178 (10)(e) Adopt and enforce minimum safety and security
 179 standards and policies that include, but are not limited to:

180 (a)1. Random monitoring of outgoing telephone calls by
 181 inmates.

182 (b)2. Maintenance of current photographs of all inmates.

183 (c)3. Daily inmate counts at varied intervals.

184 (d)4. Use of canine units, where appropriate.

185 (e)5. Use of escape alarms and perimeter lighting.

186 (f)6. Florida Crime Information Center/National Crime
187 Information Center capabilities.

188 (g)7. Employment background investigations.

189 ~~(d) Annually make written prioritized budget~~
190 ~~recommendations to the secretary that identify critical security~~
191 ~~deficiencies at major correctional institutions.~~

192 ~~(e) Investigate and evaluate the usefulness and~~
193 ~~dependability of existing security technology at the~~
194 ~~institutions and new technology available and make periodic~~
195 ~~written recommendations to the secretary on the discontinuation~~
196 ~~or purchase of various security devices.~~

197 ~~(f) Contract, if deemed necessary, with security~~
198 ~~personnel, consulting engineers, architects, or other security~~
199 ~~experts the committee deems necessary for security audits and~~
200 ~~security consultant services.~~

201 ~~(g) Establish a periodic schedule for conducting announced~~
202 ~~and unannounced escape simulation drills.~~

203 (11)(2) Direct staff to maintain and produce quarterly
204 reports with accurate escape statistics. For the purposes of
205 these reports, "escape" includes all possible types of escape,
206 regardless of prosecution by the state attorney, and includes
207 ~~including~~ offenders who walk away from nonsecure community

208 facilities.

209 ~~(3) Adopt, enforce, and annually evaluate the emergency~~
 210 ~~escape response procedures, which shall at a minimum include the~~
 211 ~~immediate notification and inclusion of local and state law~~
 212 ~~enforcement through a mutual aid agreement.~~

213 (12)(4) Direct staff to submit in the annual legislative
 214 budget request a prioritized summary of critical safety and
 215 security deficiencies and repair and renovation ~~security~~ needs.

216 Section 5. Paragraphs (d) and (e) of subsection (4) of
 217 section 944.275, Florida Statutes, are amended to read:

218 944.275 Gain-time.-

219 (4)

220 (d) Notwithstanding paragraph (b) subparagraphs (b)1. and
 221 ~~2.~~, the education program manager shall recommend, and the
 222 Department of Corrections may grant, a one-time award of 60
 223 additional days of incentive gain-time to an inmate who is
 224 otherwise eligible and who successfully completes requirements
 225 for and is awarded a high school equivalency diploma or
 226 vocational certificate. This incentive gain-time award may be
 227 granted to reduce any sentence for an offense committed on or
 228 after October 1, 1995. However, this gain-time may not be
 229 granted to reduce any sentence for an offense committed on or
 230 after October 1, 1995, if the inmate is, or has previously been,
 231 convicted of a violation of s. 794.011, s. 794.05, former s.
 232 796.03, former s. 796.035, s. 800.04, s. 825.1025, s. 827.03, s.
 233 827.071, s. 847.0133, s. 847.0135, s. 847.0137, s. 847.0138, s.

234 847.0145, or s. 985.701(1), or a forcible felony offense that is
 235 specified in s. 776.08, except burglary as specified in s.
 236 810.02(4). An inmate subject to the 85-percent minimum service
 237 requirement pursuant to subparagraph (b)3. may not accumulate
 238 gain-time awards at any point when the tentative release date is
 239 the same as the 85-percent minimum service date of the sentence
 240 imposed. Under no circumstances may an inmate receive more than
 241 60 days for educational attainment pursuant to this section.

242 (e) Notwithstanding subparagraph (b)3. and paragraph (d),
 243 for sentences imposed for offenses committed on or after October
 244 1, 2014, the department may not grant incentive gain-time if the
 245 offense is a violation of s. 782.04(1)(a)2.c.; s. 787.01(3)(a)2.
 246 or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s.
 247 794.011(10); s. 800.04; s. 825.1025; or s. 847.0135(5).

248 Section 6. Section 944.31, Florida Statutes, is amended to
 249 read:

250 944.31 Inspector general; inspectors; power and duties.—

251 (1) The inspector general shall be responsible for prison
 252 inspection and investigation, internal affairs investigations,
 253 and management reviews. The office of the inspector general
 254 shall be charged with the duty of inspecting the penal and
 255 correctional systems of the state. The office of the inspector
 256 general shall inspect each correctional institution or any place
 257 in which state prisoners are housed, worked, or kept within the
 258 state, with reference to its physical conditions, cleanliness,
 259 sanitation, safety, and comfort; the quality and supply of all

260 bedding; the quality, quantity, and diversity of food served and
 261 the manner in which it is served; the number and condition of
 262 the prisoners confined therein; and the general conditions of
 263 each institution. The office of inspector general shall see that
 264 all the rules and regulations issued by the department are
 265 strictly observed and followed by all persons connected with the
 266 correctional systems of the state. The office of the inspector
 267 general shall coordinate and supervise the work of inspectors
 268 throughout the state. The inspector general and inspectors may
 269 enter any place where prisoners in this state are kept and shall
 270 be immediately admitted to such place as they desire and may
 271 consult and confer with any prisoner privately and without
 272 molestation. The inspector general and inspectors shall be
 273 responsible for criminal and administrative investigation of
 274 matters relating to the Department of Corrections. The secretary
 275 may designate persons within the office of the inspector general
 276 as law enforcement officers to conduct any criminal
 277 investigation that occurs on property owned or leased by the
 278 department or involves matters over which the department has
 279 jurisdiction. A person designated as a law enforcement officer
 280 must be certified pursuant to s. 943.1395 and must have a
 281 minimum of 3 years' experience as an inspector in the inspector
 282 general's office or as a law enforcement officer.

283 (2) The department shall maintain a written memorandum of
 284 understanding with the Department of Law Enforcement for the
 285 notification and investigation of mutually agreed-upon predicate

286 events that shall include, but are not limited to, suspicious
 287 deaths and organized criminal activity. A copy of an active
 288 memorandum of understanding shall be provided in a timely manner
 289 to the Governor, the President of the Senate, and the Speaker of
 290 the House of Representatives.

291 (3) During investigations, the inspector general and
 292 inspectors may consult and confer with any prisoner or staff
 293 member privately and without molestation and persons designated
 294 as law enforcement officers under this section shall have the
 295 authority to arrest, with or without a warrant, any prisoner of
 296 or visitor to a state correctional institution for a violation
 297 of the criminal laws of the state involving an offense
 298 classified as a felony that occurs on property owned or leased
 299 by the department and may arrest offenders who have escaped or
 300 absconded from custody. Persons designated as law enforcement
 301 officers have the authority to arrest with or without a warrant
 302 a staff member of the department, including any contract
 303 employee, for a violation of the criminal laws of the state
 304 involving an offense classified as a felony under this chapter
 305 or chapter 893 on property owned or leased by the department. A
 306 person designated as a law enforcement officer under this
 307 section may make arrests of persons against whom arrest warrants
 308 have been issued, including arrests of offenders who have
 309 escaped or absconded from custody. The arrested person shall be
 310 surrendered without delay to the sheriff of the county in which
 311 the arrest is made, with a formal complaint subsequently made

312 against her or him in accordance with law.

313 (4) The inspector general, and inspectors who conduct
 314 sexual abuse investigations in confinement settings, shall
 315 receive specialized training in conducting such investigations.
 316 The department is responsible for providing the specialized
 317 training. Specialized training shall include, but need not be
 318 limited to, techniques for interviewing sexual abuse victims,
 319 proper use of Miranda and Garrity warnings, sexual abuse
 320 evidence collection in confinement settings, and the criteria
 321 and evidence required to substantiate a case for administrative
 322 action or prosecution.

323 Section 7. For the 2015-2016 fiscal year, the sums of
 324 \$1,258,256 in recurring funds and \$206,388 in nonrecurring funds
 325 are appropriated from the General Revenue Fund to the Department
 326 of Corrections, and ten full-time equivalent positions with
 327 717,800 in salary rate are authorized, for staffing and all
 328 operating expenses associated with establishing the additional
 329 regional headquarters required by this act. The Department of
 330 Corrections may submit budget amendments pursuant to chapter
 331 216, Florida Statutes, to reallocate existing resources to
 332 support the additional regional headquarters.

333 Section 8. Paragraph (a) of subsection (2) of section
 334 947.1405, Florida Statutes, is amended to read:

335 947.1405 Conditional release program.-

336 (2) Any inmate who:

337 (a) Is convicted of a crime committed on or after October

338 1, 1988, and before January 1, 1994, and any inmate who is
 339 convicted of a crime committed on or after January 1, 1994,
 340 which crime is or was contained in category 1, category 2,
 341 category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida
 342 Rules of Criminal Procedure (1993), and who has served at least
 343 one prior felony commitment at a state or federal correctional
 344 institution or a sentence of more than 364 days in county jail;
 345
 346 shall, upon reaching the tentative release date or provisional
 347 release date, whichever is earlier, as established by the
 348 Department of Corrections, be released under supervision subject
 349 to specified terms and conditions, including payment of the cost
 350 of supervision pursuant to s. 948.09. Such supervision shall be
 351 applicable to all sentences within the overall term of sentences
 352 if an inmate's overall term of sentences includes one or more
 353 sentences that are eligible for conditional release supervision
 354 as provided herein. Effective July 1, 1994, and applicable for
 355 offenses committed on or after that date, the commission may
 356 require, as a condition of conditional release, that the
 357 releasee make payment of the debt due and owing to a county or
 358 municipal detention facility under s. 951.032 for medical care,
 359 treatment, hospitalization, or transportation received by the
 360 releasee while in that detention facility. The commission, in
 361 determining whether to order such repayment and the amount of
 362 such repayment, shall consider the amount of the debt, whether
 363 there was any fault of the institution for the medical expenses

364 incurred, the financial resources of the releasee, the present
 365 and potential future financial needs and earning ability of the
 366 releasee, and dependents, and other appropriate factors. If any
 367 inmate placed on conditional release supervision is also subject
 368 to probation or community control, resulting from a probationary
 369 or community control split sentence within the overall term of
 370 sentences, the Department of Corrections shall supervise such
 371 person according to the conditions imposed by the court and the
 372 commission shall defer to such supervision. If the court revokes
 373 probation or community control and resentsences the offender to a
 374 term of incarceration, such revocation also constitutes a
 375 sufficient basis for the revocation of the conditional release
 376 supervision on any nonprobationary or noncommunity control
 377 sentence without further hearing by the commission. If any such
 378 supervision on any nonprobationary or noncommunity control
 379 sentence is revoked, such revocation may result in a forfeiture
 380 of all gain-time, and the commission may revoke the resulting
 381 deferred conditional release supervision or take other action it
 382 considers appropriate. If the term of conditional release
 383 supervision exceeds that of the probation or community control,
 384 then, upon expiration of the probation or community control,
 385 authority for the supervision shall revert to the commission and
 386 the supervision shall be subject to the conditions imposed by
 387 the commission. A panel of no fewer than two commissioners shall
 388 establish the terms and conditions of any such release. If the
 389 offense was a controlled substance violation, the conditions

390 shall include a requirement that the offender submit to random
 391 substance abuse testing intermittently throughout the term of
 392 conditional release supervision, upon the direction of the
 393 correctional probation officer as defined in s. 943.10(3). The
 394 commission shall also determine whether the terms and conditions
 395 of such release have been violated and whether such violation
 396 warrants revocation of the conditional release.

397 Section 9. Section 950.021, Florida Statutes, is created
 398 to read:

399 950.021 Sentencing of offenders to county jail.-

400 (1) Notwithstanding s. 921.0024 or any other provision of
 401 law, and effective for offenses committed on or after July 1,
 402 2015, a court may sentence an offender to a term in the county
 403 jail under the custody of the chief correctional officer in the
 404 county where the offense was committed for up to 24 months if
 405 the offender meets all of the following criteria:

406 (a) The offender's total sentence points score, as
 407 provided in s. 921.0024, is more than 44 points but no more than
 408 60 points.

409 (b) The offender's primary offense is not a forcible
 410 felony as defined in s. 776.08; however, an offender whose
 411 primary offense is a third degree felony under chapter 810 is
 412 not ineligible to be sentenced to a county jail under this
 413 paragraph.

414 (c) The offender's primary offense is not punishable by a
 415 minimum mandatory sentence of more than 24 months.

416 (d) Offenders sentenced under this section must serve a
 417 minimum of 85 percent of their sentences.

418 (2) (a) The court may only sentence an offender to a county
 419 jail pursuant to this section if there is a contractual
 420 agreement between the chief correctional officer of that county
 421 and the Department of Corrections.

422 (b) If the chief correctional officer of a county requests
 423 the Department of Corrections to enter into a contract that
 424 allows offenders to be sentenced to the county jail pursuant to
 425 subsection (1), subject to the restrictions of this paragraph
 426 and subsections (3) and (6), the Department of Corrections must
 427 enter into such a contract. The contract shall specifically
 428 establish the maximum number of beds and the validated per diem
 429 rate. The contract shall provide for per diem reimbursement for
 430 occupied inmate days based on the contracting county's most
 431 recent annual adult male custody or adult female custody per
 432 diem rates, not to exceed \$60 per inmate.

433 (3) A contract under this section is contingent upon a
 434 specific appropriation in the General Appropriations Act.
 435 Contracts shall be awarded by the Department of Corrections on a
 436 first-come, first-served basis up to the maximum appropriation
 437 allowable in the General Appropriations Act for this purpose.
 438 The maximum appropriation allowable consists of funds
 439 appropriated in or transferred to the specific appropriation in
 440 the Inmates Sentenced to County Jail appropriation category.
 441 Before any transferred appropriation under this section, the

442 Inmates Sentenced to County Jail appropriation category provides
 443 for estimated incremental appropriation for county jail beds
 444 contracted under this section in excess of the Department of
 445 Corrections' per diem for adult male and female inmates.

446 (4) The Department of Corrections shall transfer funds
 447 pursuant to s. 216.177 from other appropriation categories
 448 within the Adult Male Custody Operations or Adult and Youthful
 449 Offender Female Custody Operations budget entities to the
 450 Inmates Sentenced to County Jail appropriation category in an
 451 amount necessary to satisfy the requirements of each executed
 452 contract but not to exceed the Department of Corrections'
 453 average total per diem published for the preceding fiscal year
 454 for adult male custody or adult and youthful offender female
 455 custody inmates for each county jail bed contracted.

456 (5) The Department of Corrections shall assume maximum
 457 annual value of each contract when determining the full use of
 458 funds appropriated and to ensure that the maximum appropriation
 459 allowable is not exceeded.

460 (6) All contractual per diem rates under this section as
 461 well as the per diem rates used by the Department of Corrections
 462 must be validated by the Auditor General before payments are
 463 made.

464 Section 10. This act shall take effect July 1, 2015.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 54-59 and insert:

(4) REGIONS.—

(a) The department shall plan and administer its program of services for community corrections, security, and institutional operations through regions.

(b) The department shall plan and administer its program of services for security and institutional operations through five geographical regions. The secretary shall appoint a director for each of the five regions. A person may serve as the director for a specific region for up to four consecutive years. The directors must:

1. Ensure the policies of the department, particularly those policies associated with inmate grievances, the care of



Amendment No. 1

18 inmates, and contact with inmates, are appropriately implemented
19 and enforced at each correctional facility within the director's
20 assigned region;

21 2. Review, recommend, and hold subordinate chain-of-command
22 staff responsible for appropriate and measured disciplinary
23 decisions;

24 3. Ensure each correctional facility in the director's
25 assigned region maintains a retaliation free work environment;

26 4. Ensure each correctional facility in the director's
27 assigned region maintains a retaliation free custody environment
28 for all inmates;

29 5. Make at least two unannounced visits to each
30 correctional facility within the director's assigned region on a
31 quarterly basis; and

32 6. Meet quarterly to review statistics and trends related
33 to uses of force, inmate grievances, employee discipline
34 reports, and calls received from the Office of Citizen Services
35 involving inmate abuse.

36

37

38

39

40

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

41

Remove line 7 and insert:

42

director for each region; requiring the directors to perform

43

specified functions; amending s. 216.136, F.S.;



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

5 Between lines 322 and 323, insert:

6 Section 7. Paragraph (a) of subsection (1) and subsection
 7 (2) of section 944.35, Florida Statutes, is amended to read, and
 8 subsection (5) is added to that section to read:

9 944.35 Authorized use of force; malicious battery and
 10 sexual misconduct prohibited; reporting required; penalties.-

11 (1)(a) An employee of the department is authorized to
 12 apply physical force upon an inmate only when and to the extent
 13 that it reasonably appears necessary:

14 1. To defend himself or herself or another against such
 15 other imminent use of unlawful force;

16 2. To prevent a person from escaping from a state
 17 correctional institution when the officer reasonably believes



Amendment No. 2

18 that person is lawfully detained in such institution;

19 3. To prevent damage to property;

20 4. To quell a disturbance;

21 5. To overcome physical resistance to a lawful command; or

22 6. To administer medical treatment only by or under the
23 supervision of a physician or his or her designee and only:

24 a. When treatment is necessary to protect the health of
25 other persons, as in the case of contagious or venereal
26 diseases; or

27 b. When treatment is offered in satisfaction of a duty to
28 protect the inmate against self-inflicted injury or death.

29
30 As part of the correctional officer training program, the
31 Criminal Justice Standards and Training Commission shall develop
32 a course specifically designed to explain the parameters of this
33 subsection and to teach the proper methods and techniques in
34 applying authorized physical force upon an inmate. Effective
35 October 1, 2015, this course shall include specialized training
36 for effectively managing in nonforceful ways mentally ill
37 inmates who may exhibit erratic behavior.

38 (2) Each employee of the department who either applies
39 physical force or was responsible for making the decision to
40 apply physical force upon an inmate or an offender supervised by
41 the department in the community pursuant to this subsection
42 shall prepare, date, and sign under oath an independent report
43 within 1 working day of the incident. The report shall be



Amendment No. 2

44 delivered to the warden or the circuit administrator, who shall
45 forward the report with all appropriate documentation to the
46 office of the inspector general. The inspector general shall
47 conduct a review and make recommendations regarding the
48 appropriateness or inappropriateness of the use of force. If the
49 inspector general finds that the use of force was appropriate,
50 the employee's report, together with the inspector general's
51 written determination of the appropriateness of the force used
52 and the reasons therefor, shall be forwarded to the circuit
53 administrator or warden upon completion of the review. If the
54 inspector general finds that the use of force was inappropriate,
55 the inspector general shall conduct a complete investigation
56 into the incident and forward the findings of fact to the
57 appropriate regional director for further action. Copies of the
58 employee's report and the inspector general's review shall be
59 kept in the files of the inmate or the offender supervised by
60 the department in the community. A notation of each incident
61 involving use of force and the outcome based on the inspector
62 general's evaluation shall be kept in the employee's file.

63 (5) The department shall establish a usage and inventory
64 policy to track, by institution, the use of chemical agents and
65 the disposal of expired, used, or damaged canisters of chemical
66 agents. The policy shall include, but not be limited to, a
67 requirement that a numbered seal be affixed to each chemical
68 agent canister in such a manner that the canister cannot be
69 removed from the carrier without breaking the seal. All

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Amendment No. 2

70 canisters in the carriers will be checked out at the beginning
71 of each shift and checked back in at the end of the shift. The
72 shift supervisor should be charged with verifying the condition
73 of the numbered seals and periodically weighing random canisters
74 to insure that they have not been used without the required
75 documentation. All nonreactionary use of force incidents using
76 chemical agents shall be videotaped.

77

78

79

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

80

Remove line 38 and insert:

81

circumstances; amending s. 944.35, F.S.; requiring the Criminal
82 Justice Standards and Training Commission to include specialized
83 training for effectively managing in nonforceful ways mentally
84 ill inmates who may exhibit erratic behavior as part of the
85 correctional officer training program; requiring that reports of
86 physical force be signed under oath; requiring the department to
87 establish policies relating to the use of chemical agents;
88 requiring all nonreactionary use of force incidents using
89 chemical agents be videotaped; providing an appropriation;
90 amending s.



Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 59 and 60, insert:

Section 2. Paragraph (m) of subsection (2) of section 110.205, Florida Statutes, is amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(m) All assistant division director, deputy division director, and bureau chief positions in any department, and those positions determined by the department to have managerial responsibilities comparable to such positions, which include, but are not limited to:

1. Positions in the Department of Health and the Department of Children and Families which are assigned primary



Amendment No. 3

18 duties of serving as the superintendent or assistant
19 superintendent of an institution.

20 2. Positions in the Department of Corrections which are
21 assigned primary duties of serving as the warden, assistant
22 warden, colonel, or major of an institution or that are assigned
23 primary duties of serving as the circuit administrator or deputy
24 circuit administrator, and all positions assigned to the
25 Inspector General's office.

26 3. Positions in the Department of Transportation which are
27 assigned primary duties of serving as regional toll managers and
28 managers of offices, as specified in s. 20.23(3)(b) and (4)(c).

29 4. Positions in the Department of Environmental Protection
30 which are assigned the duty of an Environmental Administrator or
31 program administrator.

32 5. Positions in the Department of Health which are
33 assigned the duties of Environmental Administrator, Assistant
34 County Health Department Director, and County Health Department
35 Financial Administrator.

36 6. Positions in the Department of Highway Safety and Motor
37 Vehicles which are assigned primary duties of serving as
38 captains in the Florida Highway Patrol.

39
40 Unless otherwise fixed by law, the department shall set the
41 salary and benefits of the positions listed in this paragraph in
42 accordance with the rules established for the Selected Exempt
43 Service.



Amendment No. 3

44 Section 3. For the 2015-2016 fiscal year, the sum of
45 \$180,000 in recurring funds is appropriated from the General
46 Revenue Fund to the Department of Corrections to exempt
47 positions assigned to the Inspector General's office from the
48 Career Service System as required by this act.

49

50

51

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

52

Remove line 7 and insert:

53

director for each region; amending s. 110.205, F.S.; exempting
54 all positions assigned to the department's Inspector General's
55 office from the Career Service System; providing an
56 appropriation; amending s. 216.136, F.S.;