



Judiciary Committee

Thursday, April 02, 2015
8:00 AM - 10:30 AM
Sumner Hall (404 HOB)

MEETING PACKET

Steve Crisafulli
Speaker

Charles McBurney
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Thursday, April 02, 2015 08:00 am
End Date and Time: Thursday, April 02, 2015 10:30 am
Location: Sumner Hall (404 HOB)
Duration: 2.50 hrs

Consideration of the following bill(s):

CS/HB 19 School Safety by Appropriations Committee, Steube
HB 117 False Personation by Watson, B.
CS/HB 197 Tracking Devices or Tracking Applications by Criminal Justice Subcommittee, Metz
CS/HB 201 Diabetes Awareness Training for Law Enforcement Officers by Criminal Justice Subcommittee, Narain
CS/HB 235 Restitution for Juvenile Offenses by Health & Human Services Committee, Eagle
CS/CS/HB 649 Surveillance by a Drone by Civil Justice Subcommittee, Criminal Justice Subcommittee, Metz
HB 667 Service of Process by Cruz
HB 755 Convenience Business Security by Stone
CS/HB 897 Controlled Substances by Criminal Justice Subcommittee, Ingram
CS/HB 1069 Defendants in Specialized Courts by Criminal Justice Subcommittee, Perry
CS/CS/HB 1211 Community Associations by Business & Professions Subcommittee, Civil Justice Subcommittee, Fitzenhagen
HB 4005 Licenses to Carry Concealed Weapons or Firearms by Steube
HB 7111 Conscience Protection for Private Child-Placing Agencies by Health & Human Services Committee, Brodeur

Consideration of the following proposed committee substitute(s):

PCS for CS/HB 943 -- Family Law

NOTICE FINALIZED on 03/31/2015 16:15 by Ingram.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 19 School Safety
SPONSOR(S): Appropriations Committee; Steube and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 180

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	10 Y, 1 N	Brink	Fudge
2) Appropriations Committee	19 Y, 9 N, As CS	Heflin	Leznoff
3) Judiciary Committee		Patton BP	Havlicak RN

SUMMARY ANALYSIS

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

The bill establishes criteria and training requirements which school safety designees must meet. The bill also requires a level 2 background screening for school safety designees who have not already had a level 2 background screening by the school board and authorizes each school superintendent to require additional background screenings and mental health screenings for all school safety designees.

The bill requires district school board policies and procedures for emergencies and emergency drills to include active shooters and hostage situations. Active-shooter situation procedures for each school must be developed in consultation with a local law enforcement agency.

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

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

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

The bill specifies that the required training will be created and defined by the Criminal Justice Standards and Training Commission which is administered by the Florida Department of Law Enforcement (FDLE). According to FDLE, the cost to develop and implement the training required by this bill would be \$157,927. This bill provides an appropriation of \$157,927 nonrecurring general revenue funds for the 2015-2016 fiscal year.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Gun Free School Zones

Federal Law

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

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

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

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

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

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

² 18 U.S.C. s. 922(q)(2)(B).

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

⁴ 18 U.S.C. s. 922(q)(3)(B).

⁵ 18 U.S.C. s. 927.

Florida Law

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

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

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

⁶ s. 790.115(2)(a), F.S.

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

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

⁹ s. 790.115(1), F.S.

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

¹¹ s. 790.115(1), F.S.

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

¹³ s. 790.115(2)(a), F.S.

¹⁴ s. 790.115(2)(c)1, F.S. 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.

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

¹⁶ A second degree felony is punishable by a term of imprisonment not exceeding 15 years and a fine not exceeding \$10,000. ss. 775.082 and 775.083, F.S.

¹⁷ s. 790.115(2)(d), F.S.

¹⁸ ss. 790.115(2)(e) and 790.06(12)(a) and (d), F.S. A second degree misdemeanor is punishable by up to 60 days in county jail and a fine not exceeding \$500. ss. 775.082 and 775.083.

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

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

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

Concealed Weapons Permits

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

School Safety

Emergency Policies

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

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

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

Each district school superintendent must make recommendations to the school board for improving emergency response policies based upon the self-assessment results. The self-assessment results and superintendent’s recommendations must be addressed in a publicly noticed school board meeting. The results of the self-assessment and any school board action on the superintendent’s

¹⁹ s. 790.115(2)(a)3., F.S.

²⁰ *Id.*; see, e.g., Policies 1217, 3217, 4217, 5772, and 7217, Leon County School Board, <http://www.neola.com/leon-fl/> (last visited Mar. 9, 2015).

²¹ s. 790.06(12)(a), F.S.

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

²³ s. 1006.07(6), F.S.; Florida Department of Education, *District Safety and Security Best Practices*, <http://www.fldoe.org/EM/security-practices.asp> (last visited March 9, 2015). The self-assessment is developed by the Office of Program Policy Analysis and Government Accountability. *Id.*

recommendations must be reported to the Commissioner of Education within 30 days after the school board meeting.²⁴

School Safety Officers

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

Background Screening

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

Available Firearms and Security Training

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

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

²⁴ s. 1006.07(6), F.S.

²⁵ s. 1006.12(2)(a) and (c), F.S.

²⁶ s. 1006.12(2)(b) and (d), F.S.

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

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

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

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

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

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

³³ s. 493.6303(4)(a), F.S.

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

³⁵ s. 493.6113(b), F.S.

³⁶ *Security Officer Training*, *supra* note 34.

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

Effect of Proposed Changes

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

The bill requires that a school safety designee be a school district employee or volunteer, licensed to carry a concealed firearm as provided by law and:

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

The bill requires designated personnel to submit to the authorizing school superintendent proof of completion of a school safety program. The bill specifies that the required training is created and defined by the Criminal Justice Standards and Training Commission and that the training programs are administered by criminal justice training centers operated by the State.³⁸ The bill is silent regarding whether the designee or school district is to pay the cost of training, if any. Accordingly, each district can decide how expenses for designee training are to be borne.

The bill requires each school safety designee, if not previously screened by the school board, to undergo a level 2 background screening and provides superintendents the authority to require additional screening for all designees. The bill specifies that the state and national fingerprint processing and retention fees will be borne by the school safety designee or the school. The bill also requires the school to notify the Department of Law Enforcement regarding any person whose fingerprints have been retained but who are no longer a school safety designee.

³⁷ s. 493.6113(3)(b), F.S.

³⁸ The Commission is comprised of 19 members including various law enforcement and correctional personnel, the attorney general or a proxy, and a Florida resident who is not a law enforcement or correctional personnel. The Commission establishes various training standards and training programs and requirements and performs other duties. Florida Department of Law Enforcement, *Criminal Justice Standards & Training Commission*, <http://www.fdle.state.fl.us/content/getdoc/91a75023-5a74-40ef-814d-8e7e5b622d4d/cjstc-home-page.aspx> (last visited Mar. 9, 2015). The Criminal Justice Professionalism Division of the Florida Department of Law Enforcement provides staff support to the Commission. Florida Department of Law Enforcement, *Criminal Justice Professionalism Division*, <https://www.fdle.state.fl.us/Content/getdoc/05c013ca-a32e-48a1-aca8-df7f06854d49/CJP-Home-Page.aspx> (last visited Mar. 9, 2015). A list of State of Florida Criminal Justice Training Centers can be found at <https://www.fdle.state.fl.us/Content/getdoc/f1431117-7788-4e70-bb0a-86d4f7717558/Training-Centers.aspx> (last visited Mar. 9, 2015).

The bill authorizes signage at school property where a school safety designee serves in his or her capacity. If the signage is posted, it must state "Authorized Armed Defense Present and Permitted."

The bill exempts school safety designees from criminal penalties for possessing a firearm on school property and discharging a weapon or firearm on school property. However, the bill makes it a second degree misdemeanor to store or leave a weapon or firearm within reach of a minor who obtains the firearm.³⁹

The bill requires district school board policies and procedures for emergencies and emergency drills to include active shooters and hostage situations. The bill requires each district school board to address active-shooter situations in the board's model emergency management and emergency preparedness procedures. The procedure for each school must be conducted in consultation with a local law enforcement agency.

The bill requires each district school superintendent to provide recommendations to improve school safety and security to the local law enforcement agencies that are first responders to the district's school campuses. Currently, these recommendations are only provided to the district school board.⁴⁰

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

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

B. SECTION DIRECTORY:

Section 1. Provides a statement of legislative intent.

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

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

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

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

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

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

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

Section 9. Provides an appropriation.

Section 10. Provides an effective date of July 1, 2015.

³⁹ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

⁴⁰ s. 1006.07(6), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill specifies that the required training will be created and defined by the Criminal Justice Standards and Training Commission which is administered by the Florida Department of Law Enforcement (FDLE). According to FDLE, School Safety Officer, Firearms Proficiency, and Active Shooter training would be required for school safety designees as provided in this bill. The Firearms Proficiency Course and Active Shooter Course can be developed using existing materials. The School Safety Officer Course for Civilians, however, is unique and must take into consideration all Florida statutes governing the school safety officer's authority to act. Also, the safety of the school safety officer must be addressed in the training as well as limited first responder activity, officer survival, tactical operations, and environmental considerations.

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

This bill provides a nonrecurring appropriation of \$157,927 in general revenue funds for the 2015-2016 fiscal year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2015, the Appropriations Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added the authority for school districts to require a school safety designee to undergo mental health screening.

The bill analysis is drafted to the committee substitute.

27 790.251, 921.0022, and 1012.315, F.S.; conforming
 28 cross-references; providing an appropriation;
 29 providing an effective date.

30
 31 Be It Enacted by the Legislature of the State of Florida:

32
 33 Section 1. It is the intent of the Legislature to prevent
 34 violent crimes from occurring on school grounds. The Legislature
 35 acknowledges that the safekeeping of our students, teachers, and
 36 campuses is imperative. In addition, the Legislature's intent is
 37 not to mandate that a school have one or more school safety
 38 designees as described in the amendments made by this act to s.
 39 790.115, Florida Statutes; rather, the intent of the amendments
 40 is to allow a district school board to develop policies
 41 consistent with chapter 790, Florida Statutes.

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

44 790.115 Possessing or discharging weapons or firearms at a
 45 school-sponsored event or on school property prohibited;
 46 penalties; exceptions.-

47 (1) As used in this section, the term "school" means a
 48 preschool, elementary school, middle school, junior high school,
 49 secondary school, adult education facility, career center, or
 50 postsecondary school, whether public or nonpublic, or a facility
 51 that combines any of these facilities.

52 (2)~~(1)~~ A person who exhibits any sword, sword cane,

53 | firearm, electric weapon or device, destructive device, or other
 54 | weapon as defined in s. 790.001(13), including a razor blade,
 55 | box cutter, or common pocketknife, except as authorized in
 56 | support of school-sanctioned activities, in the presence of one
 57 | or more persons in a rude, careless, angry, or threatening
 58 | manner and not in lawful self-defense, at a school-sponsored
 59 | event or on the grounds or facilities of any school, school bus,
 60 | or school bus stop, or within 1,000 feet of the real property
 61 | that comprises a public or private elementary school, middle
 62 | school, or secondary school, during school hours or during the
 63 | time of a sanctioned school activity, commits a felony of the
 64 | third degree, punishable as provided in s. 775.082, s. 775.083,
 65 | or s. 775.084. This subsection does not apply to the exhibition
 66 | of a firearm or weapon on private real property within 1,000
 67 | feet of a school by the owner of such property or by a person
 68 | whose presence on such property has been authorized, licensed,
 69 | or invited by the owner.

70 | (3) (a) A school superintendent, with approval of the
 71 | school board, may authorize a school safety designee to carry a
 72 | concealed weapon or firearm on school property. For purposes of
 73 | this subsection, a school safety designee is an individual who
 74 | is a school district employee or volunteer who is licensed to
 75 | carry a concealed weapon or firearm pursuant to s. 790.06 and
 76 | who is:

77 | 1. A military veteran who was honorably discharged and who
 78 | has not been found to have committed a firearms-related

79 disciplinary infraction during his or her service;

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

84 3. An active law enforcement officer in good standing or a
 85 law enforcement officer who retired or terminated employment in
 86 good standing and did not retire or terminate employment during
 87 the course of an internal affairs investigation.

88 (b) A school safety designee authorized to carry a
 89 concealed weapon or firearm on school property under this
 90 subsection may only carry such weapon or firearm in a concealed
 91 manner. The weapon or firearm must be carried on the school
 92 safety designee's person at all times while the school safety
 93 designee is performing his or her official school duties or, if
 94 the school safety designee is a volunteer, while performing his
 95 or her official school duties under this program.

96 (c) A school board that approves the use of a school
 97 safety designee shall develop policies consistent with this
 98 section to incorporate in its overall school safety plan. A
 99 school principal may recommend school safety designees to the
 100 school superintendent under this subsection. The school
 101 superintendent may designate individuals to serve as school
 102 safety designees who agree to accept the designation. If a
 103 superintendent designates one or more individuals pursuant to
 104 this section, the school district shall coordinate with each

105 local law enforcement agency that may potentially respond to an
 106 emergency at a school in which a school safety designee is
 107 employed or volunteers to develop best practices and to allow
 108 the responding law enforcement agency to easily identify a
 109 school safety designee in a case of emergency. In the case of an
 110 emergency, a school safety designee shall be under the direction
 111 of the assigned school resource officer, if any. Upon the
 112 arrival of the local responding law enforcement agency, the
 113 school safety designee shall be under the direction of the
 114 responding law enforcement agency.

115 (d) Each school safety designee must submit to the school
 116 superintendent proof of completion of a school safety program.
 117 The school safety program shall be created and defined by the
 118 Criminal Justice Standards and Training Commission and may
 119 include, but is not limited to, active shooter training, firearm
 120 proficiency, school resource officer training, crisis
 121 intervention training, weapons retention training, and
 122 continuing education and training. The school safety program
 123 shall be developed and created by January 1, 2016. The school
 124 safety program shall be administered by criminal justice
 125 training centers operated by the State of Florida. Each state-
 126 operated criminal justice training center that administers the
 127 school safety program must certify and provide proof of
 128 completion of the program in a manner prescribed by the Criminal
 129 Justice Standards and Training Commission.

130 (e) School property at which a school safety designee may

131 carry a concealed weapon or firearm under this subsection may be
 132 indicated with signage that reads: "Authorized Armed Defense
 133 Present and Permitted."

134 (f) Subsection (4) does not apply to school safety
 135 designees who are working or volunteering at the school to which
 136 they are assigned as school safety designees. A school safety
 137 designee who stores or leaves a weapon or firearm within the
 138 reach or easy access of a minor who obtains the firearm commits
 139 a misdemeanor of the second degree, punishable as provided in s.
 140 775.082 or s. 775.083.

141 (g)1. If the school safety designee has not previously
 142 undergone level 2 background screening pursuant to s. 435.04 by
 143 the school board, the school superintendent must require the
 144 school safety designee to undergo the level 2 background
 145 screening pursuant to s. 435.04 at least once every 5 years. The
 146 school superintendent may require additional screenings at any
 147 time, including, but not limited to, mental health screenings.

148 2. If the school safety designee is screened pursuant to
 149 subparagraph 1., the school safety designee's fingerprints must
 150 be submitted by the school or an entity or vendor as authorized
 151 by s. 943.053(13). The fingerprints shall be forwarded to the
 152 Department of Law Enforcement for state processing, and the
 153 Department of Law Enforcement shall forward the fingerprints to
 154 the Federal Bureau of Investigation for national processing.

155 3. All fingerprints submitted to the Department of Law
 156 Enforcement as required under this subsection shall be retained

157 by the Department of Law Enforcement as provided under s.
 158 943.05(2)(g) and (h) and enrolled in the Federal Bureau of
 159 Investigation's national retained print arrest notification
 160 program. Fingerprints shall be enrolled in the national retained
 161 print arrest notification program when the Department of Law
 162 Enforcement begins participation with the Federal Bureau of
 163 Investigation. Arrest fingerprints shall be searched against the
 164 retained prints by the Department of Law Enforcement and the
 165 Federal Bureau of Investigation, and any arrest record that is
 166 identified shall be reported to the school by the Department of
 167 Law Enforcement.

168 4. The fees for state and national fingerprint processing,
 169 along with the fingerprint retention fees, shall be borne by the
 170 school safety designee or school. The state shall pay the cost
 171 for fingerprint processing as authorized in s. 943.053(3)(b) for
 172 records provided to persons or entities other than those
 173 specified as exceptions therein.

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

177 (4)(2)(a) A person shall not possess any firearm, electric
 178 weapon or device, destructive device, or other weapon as defined
 179 in s. 790.001(13), including a razor blade or box cutter, except
 180 as authorized in support of school-sanctioned activities, at a
 181 school-sponsored event or on the property of any school, school
 182 bus, or school bus stop; however, a person may carry a firearm:

183 1. In a case to a firearms program, class or function
 184 which has been approved in advance by the principal or chief
 185 administrative officer of the school as a program or class to
 186 which firearms could be carried;

187 2. In a case to a career center having a firearms training
 188 range; or

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

193
 194 For the purposes of this section, "school" means any preschool,
 195 elementary school, middle school, junior high school, secondary
 196 school, career center, or postsecondary school, whether public
 197 or nonpublic.

198 (b) A person who willfully and knowingly possesses any
 199 electric weapon or device, destructive device, or other weapon
 200 as defined in s. 790.001(13), including a razor blade or box
 201 cutter, except as authorized in support of school-sanctioned
 202 activities, in violation of this subsection commits a felony of
 203 the third degree, punishable as provided in s. 775.082, s.
 204 775.083, or s. 775.084.

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

209 2. A person who stores or leaves a loaded firearm within
 210 the reach or easy access of a minor who obtains the firearm and
 211 commits a violation of subparagraph 1. commits a misdemeanor of
 212 the second degree, punishable as provided in s. 775.082 or s.
 213 775.083; except that this does not apply if the firearm was
 214 stored or left in a securely locked box or container or in a
 215 location which a reasonable person would have believed to be
 216 secure, or was securely locked with a firearm-mounted push-
 217 button combination lock or a trigger lock; if the minor obtains
 218 the firearm as a result of an unlawful entry by any person; or
 219 to members of the Armed Forces, National Guard, or State
 220 Militia, or to police or other law enforcement officers, with
 221 respect to firearm possession by a minor which occurs during or
 222 incidental to the performance of their official duties.

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

228 (e) The penalties of this subsection shall not apply to
 229 persons licensed under s. 790.06. Persons licensed under s.
 230 790.06 shall be punished as provided in s. 790.06(12), except
 231 that a licenseholder who unlawfully discharges a weapon or
 232 firearm on school property as prohibited by this subsection
 233 commits a felony of the second degree, punishable as provided in
 234 s. 775.082, s. 775.083, or s. 775.084.

235 (5)~~(3)~~ This section does not apply to any law enforcement
 236 officer as defined in s. 943.10(1), (2), (3), (4), (6), (7),
 237 (8), (9), or (14).

238 (6)~~(4)~~ Notwithstanding s. 985.24, s. 985.245, or s.
 239 985.25(1), any minor under 18 years of age who is charged under
 240 this section with possessing or discharging a firearm on school
 241 property shall be detained in secure detention, unless the state
 242 attorney authorizes the release of the minor, and shall be given
 243 a probable cause hearing within 24 hours after being taken into
 244 custody. At the hearing, the court may order that the minor
 245 continue to be held in secure detention for a period of 21 days,
 246 during which time the minor shall receive medical, psychiatric,
 247 psychological, or substance abuse examinations pursuant to s.
 248 985.18, and a written report shall be completed.

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

252 1006.07 District school board duties relating to student
 253 discipline and school safety.—The district school board shall
 254 provide for the proper accounting for all students, for the
 255 attendance and control of students at school, and for proper
 256 attention to health, safety, and other matters relating to the
 257 welfare of students, including:

258 (4) EMERGENCY DRILLS; EMERGENCY PROCEDURES.—

259 (a) Formulate and prescribe policies and procedures for
 260 emergency drills and for actual emergencies, including, but not

261 | limited to, fires, natural disasters, active shooters, hostage
 262 | situations, and bomb threats, for all the public schools of the
 263 | district which comprise grades K-12. District school board
 264 | policies shall include commonly used alarm system responses for
 265 | specific types of emergencies and verification by each school
 266 | that drills have been provided as required by law and fire
 267 | protection codes. The emergency response agency that is
 268 | responsible for notifying the school district for each type of
 269 | emergency must be listed in the district's emergency response
 270 | policy.

271 | (b) Establish model emergency management and emergency
 272 | preparedness procedures, including emergency notification
 273 | procedures pursuant to paragraph (a), for the following life-
 274 | threatening emergencies:

275 | 1. Weapon-use, ~~and~~ hostage, and active-shooter situations.
 276 | The active-shooter situation procedures for each school shall be
 277 | developed in consultation with a local law enforcement agency.

278 | 2. Hazardous materials or toxic chemical spills.

279 | 3. Weather emergencies, including hurricanes, tornadoes,
 280 | and severe storms.

281 | 4. Exposure as a result of a manmade emergency.

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

287 school superintendent shall provide recommendations to the
 288 district school board and local law enforcement agencies that
 289 are first responders to the district campuses which identify
 290 strategies and activities that the district school board should
 291 implement in order to improve school safety and security.
 292 Annually each district school board must receive the self-
 293 assessment results at a publicly noticed district school board
 294 meeting to provide the public an opportunity to hear the
 295 district school board members discuss and take action on the
 296 report findings. Each district school superintendent shall
 297 report the self-assessment results and school board action to
 298 the commissioner within 30 days after the district school board
 299 meeting.

300 (7) SAFETY IN CONSTRUCTION AND PLANNING.—A district school
 301 board or private school principal or governing board must allow
 302 local law enforcement agencies that are first responders to the
 303 schools to tour the school campuses at least once every 3 years.
 304 Any changes related to school safety and emergency issues
 305 recommended by a law enforcement agency based on a campus tour
 306 must be documented by the district school board or the private
 307 school principal or governing board.

308 Section 4. Paragraph (b) of subsection (2) of section
 309 1006.12, Florida Statutes, is amended to read:

310 1006.12 School resource officers and school safety
 311 officers.—

312 (2)

313 (b) A district school board may commission one or more
 314 school safety officers for the protection and safety of school
 315 personnel, property, and students on each school campus within
 316 the school district. The district school superintendent may
 317 recommend and the district school board may appoint the ~~one or~~
 318 ~~more~~ school safety officers.

319 Section 5. Paragraphs (q) and (r) of subsection (2) of
 320 section 435.04, Florida Statutes, are amended to read:

321 435.04 Level 2 screening standards.—

322 (2) The security background investigations under this
 323 section must ensure that no persons subject to the provisions of
 324 this section have been arrested for and are awaiting final
 325 disposition of, have been found guilty of, regardless of
 326 adjudication, or entered a plea of nolo contendere or guilty to,
 327 or have been adjudicated delinquent and the record has not been
 328 sealed or expunged for, any offense prohibited under any of the
 329 following provisions of state law or similar law of another
 330 jurisdiction:

331 (q) Section 790.115(2) ~~790.115(1)~~, relating to exhibiting
 332 firearms or weapons within 1,000 feet of a school.

333 (r) Section 790.115(4)(b) ~~790.115(2)(b)~~, relating to
 334 possessing an electric weapon or device, destructive device, or
 335 other weapon on school property.

336 Section 6. Paragraph (a) of subsection (7) of section
 337 790.251, Florida Statutes, is amended to read:

338 790.251 Protection of the right to keep and bear arms in

339 motor vehicles for self-defense and other lawful purposes;
 340 prohibited acts; duty of public and private employers; immunity
 341 from liability; enforcement.—

342 (7) EXCEPTIONS.—The prohibitions in subsection (4) do not
 343 apply to:

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

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

348 921.0022 Criminal Punishment Code; offense severity
 349 ranking chart.—

350 (3) OFFENSE SEVERITY RANKING CHART

351 (d) LEVEL 4

352

Florida Statute	Felony Degree	Description
316.1935(3) (a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.

353

354

355	499.0051(2)	3rd	Failure to authenticate pedigree papers.
356	499.0051(6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
357	517.07(1)	3rd	Failure to register securities.
358	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
359	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
360	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
361	784.075	3rd	Battery on detention or commitment facility staff.
362	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.

363	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
364	784.081(3)	3rd	Battery on specified official or employee.
365	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
366	784.083(3)	3rd	Battery on code inspector.
367	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
368	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
369	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
370			

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371	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
372	787.07	3rd	Human smuggling.
373	<u>790.115(2)</u> 790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
374	<u>790.115(4)(b)</u> 790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
375	<u>790.115(4)(c)</u> 790.115(2)(c)	3rd	Possessing firearm on school property.
376	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.

377

810.02(4)(b) 3rd Burglary, or attempted
burglary, of an unoccupied
conveyance; unarmed; no assault
or battery.

378

810.06 3rd Burglary; possession of tools.

379

810.08(2)(c) 3rd Trespass on property, armed
with firearm or dangerous
weapon.

380

812.014(2)(c)3. 3rd Grand theft, 3rd degree \$10,000
or more but less than \$20,000.

381

812.014 3rd Grand theft, 3rd degree, a
(2)(c)4.-10. will, firearm, motor vehicle,
livestock, etc.

382

812.0195(2) 3rd Dealing in stolen property by
use of the Internet; property
stolen \$300 or more.

383

817.563(1) 3rd Sell or deliver substance other
than controlled substance
agreed upon, excluding s.

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			893.03(5) drugs.
384	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
385	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
386	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
387	837.02(1)	3rd	Perjury in official proceedings.
388	837.021(1)	3rd	Make contradictory statements in official proceedings.
389	838.022	3rd	Official misconduct.
390	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
391	839.13(2)(c)	3rd	Falsifying records of the

			Department of Children and Families.
392	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
393	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
394	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
395	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
396	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
397	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d),

(2) (a), (2) (b), or (2) (c) 4.
drugs).

398

914.14 (2) 3rd Witnesses accepting bribes.

399

914.22 (1) 3rd Force, threaten, etc., witness,
victim, or informant.

400

914.23 (2) 3rd Retaliation against a witness,
victim, or informant, no bodily
injury.

401

918.12 3rd Tampering with jurors.

402

934.215 3rd Use of two-way communications
device to facilitate commission
of a crime.

403

404 (f) LEVEL 6

405

Florida	Felony	
Statute	Degree	Description

406

316.027 (2) (b)	2nd	Leaving the scene of a crash involving serious bodily injury.
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407	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
408	499.0051(3)	2nd	Knowing forgery of pedigree papers.
409	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
410	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
411	775.0875(1)	3rd	Taking firearm from law enforcement officer.
412	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
413	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
414	784.041	3rd	Felony battery; domestic battery by strangulation.

415

784.048(3) 3rd Aggravated stalking; credible threat.

416

784.048(5) 3rd Aggravated stalking of person under 16.

417

784.07(2)(c) 2nd Aggravated assault on law enforcement officer.

418

784.074(1)(b) 2nd Aggravated assault on sexually violent predators facility staff.

419

784.08(2)(b) 2nd Aggravated assault on a person 65 years of age or older.

420

784.081(2) 2nd Aggravated assault on specified official or employee.

421

784.082(2) 2nd Aggravated assault by detained person on visitor or other detainee.

422

784.083(2) 2nd Aggravated assault on code inspector.

423

787.02(2) 3rd False imprisonment; restraining
with purpose other than those
in s. 787.01.

424

790.115(4)(d) 2nd Discharging firearm or weapon
~~790.115(2)(d)~~ on school property.

425

790.161(2) 2nd Make, possess, or throw
destructive device with intent
to do bodily harm or damage
property.

426

790.164(1) 2nd False report of deadly
explosive, weapon of mass
destruction, or act of arson or
violence to state property.

427

790.19 2nd Shooting or throwing deadly
missiles into dwellings,
vessels, or vehicles.

428

794.011(8)(a) 3rd Solicitation of minor to
participate in sexual activity
by custodial adult.

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430	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
431	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.
432	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
433	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
434	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
435	810.145 (8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.

436

812.014(6) 2nd Theft; property stolen \$3,000
or more; coordination of
others.

437

812.015(9)(a) 2nd Retail theft; property stolen
\$300 or more; second or
subsequent conviction.

438

812.015(9)(b) 2nd Retail theft; property stolen
\$3,000 or more; coordination of
others.

439

812.13(2)(c) 2nd Robbery, no firearm or other
weapon (strong-arm robbery).

440

817.4821(5) 2nd Possess cloning paraphernalia
with intent to create cloned
cellular telephones.

441

825.102(1) 3rd Abuse of an elderly person or
disabled adult.

442

825.102(3)(c) 3rd Neglect of an elderly person or
disabled adult.

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444	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
445	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
446	827.03(2)(c)	3rd	Abuse of a child.
447	827.03(2)(d)	3rd	Neglect of a child.
448	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
449	836.05	2nd	Threats; extortion.
450	836.10	2nd	Written threats to kill or do bodily injury.
451	843.12	3rd	Aids or assists person to escape.
	847.011	3rd	Distributing, offering to distribute, or possessing with

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			intent to distribute obscene materials depicting minors.
452	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
453	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
454	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
455	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
456	944.40	2nd	Escapes.
457	944.46	3rd	Harboring, concealing, aiding escaped prisoners.

478 | possessing an electric weapon or device, destructive device, or
 479 | other weapon at a school-sponsored event or on school property.

480 | Section 9. For the 2015-2016 fiscal year, the sum of
 481 | \$157,927 in nonrecurring funds is appropriated from the General
 482 | Revenue Fund to the Department of Law Enforcement for the
 483 | Criminal Justice Standards and Training Commission to develop
 484 | the training curriculum as required by this act.

485 | 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 Steube offered the following:

Amendment (with title amendment)

Between lines 32 and 33, insert:

Section 1. Sections 2 through 7 of this bill may be cited as "Gabby's Law for School Bus Stop Safety."

Section 2. Subsection (1) of section 316.172, Florida Statutes, is amended to read:

316.172 Traffic to stop for school bus.—

(1) (a) A ~~Any~~ person using, operating, or driving a vehicle on or over the roads or highways of this state shall, upon approaching a ~~any~~ school bus that ~~which~~ displays a stop signal, bring such vehicle to a full stop while the bus is stopped, and the vehicle may ~~shall~~ not pass the school bus until the signal has been withdrawn. Except as provided in paragraph (b), a person who violates this subsection ~~section~~ commits a moving



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18 violation, punishable as provided in chapter 318.

19 (b) A ~~Any~~ person using, operating, or driving a vehicle
20 that passes a school bus on the side that children enter and
21 exit when the school bus displays a stop signal commits reckless
22 driving a moving violation, punishable as provided in s. 316.192
23 ~~chapter 318, and is subject to a mandatory hearing under the~~
24 ~~provisions of s. 318.19.~~

25 Section 3. Section 316.192, Florida Statutes, is amended
26 to read:

27 316.192 Reckless driving.-

28 (1)(a) A ~~Any~~ person who drives a ~~any~~ vehicle in willful or
29 wanton disregard for the safety of persons or property commits
30 ~~is guilty of~~ reckless driving.

31 (b) Fleeing a law enforcement officer in a motor vehicle
32 is reckless driving per se.

33 (2) Except as provided in subsection (3), a ~~any~~ person
34 convicted of reckless driving shall be punished:

35 (a) Upon a first conviction, by imprisonment for ~~a period~~
36 ~~of~~ not more than 90 days or by a fine of not less than \$25 nor
37 more than \$500, or by both such fine and imprisonment.

38 (b) On a second or subsequent conviction, by imprisonment
39 for not more than 6 months or by a fine of not less than \$50 nor
40 more than \$1,000, or by both such fine and imprisonment.

41 (3) A ~~Any~~ person:

42 (a) Who is in violation of subsection (1);

43 (b) Who operates a vehicle; and



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44 (c) Who, by reason of such operation, causes:

45 1. Damage to the property or person of another commits a
46 misdemeanor of the first degree, punishable as provided in s.
47 775.082 or s. 775.083.

48 2. Serious bodily injury to another commits a felony of
49 the third degree, punishable as provided in s. 775.082, s.
50 775.083, or s. 775.084. The term "serious bodily injury" means
51 an injury to another person, which consists of a physical
52 condition that creates a substantial risk of death, serious
53 personal disfigurement, or protracted loss or impairment of the
54 function of any bodily member or organ.

55 (4) Notwithstanding any other provision of this section,
56 \$5 shall be added to a fine imposed pursuant to this section.
57 The clerk shall remit the \$5 to the Department of Revenue for
58 deposit in the Emergency Medical Services Trust Fund.

59 (5) In addition to any other penalty provided under this
60 section, if the court has reasonable cause to believe that the
61 use of alcohol, chemical substances set forth in s. 877.111, or
62 substances controlled under chapter 893 contributed to a
63 violation of this section, the court shall direct the person so
64 convicted to complete a DUI program substance abuse education
65 course and evaluation as provided in s. 316.193(5) within a
66 reasonable period of time specified by the court. If the DUI
67 program conducting such course and evaluation refers the person
68 to an authorized substance abuse treatment provider for
69 substance abuse evaluation and treatment, the directive of the



Amendment No. 1

70 court requiring completion of such course, evaluation, and
71 treatment shall be enforced as provided in s. 322.245. The
72 referral to treatment resulting from the DUI program evaluation
73 may not be waived without a supporting independent psychosocial
74 evaluation conducted by an authorized substance abuse treatment
75 provider, appointed by the court, which shall have access to the
76 DUI program psychosocial evaluation before the independent
77 psychosocial evaluation is conducted. The court shall review the
78 results and recommendations of both evaluations before
79 determining the request for waiver. The offender shall bear the
80 full cost of this procedure. If a person directed to a DUI
81 program substance abuse education course and evaluation or
82 referred to treatment under this subsection fails to report for
83 or complete such course, evaluation, or treatment, the DUI
84 program shall notify the court and the department of the
85 failure. Upon receipt of such notice, the department shall
86 cancel the person's driving privilege, notwithstanding the terms
87 of the court order or any suspension or revocation of the
88 driving privilege. The department may reinstate the driving
89 privilege upon verification from the DUI program that the
90 education, evaluation, and treatment are completed. The
91 department may temporarily reinstate the driving privilege on a
92 restricted basis upon verification that the offender is
93 currently participating in treatment and has completed the DUI
94 education course and evaluation requirement. If the DUI program
95 notifies the department of the second failure to complete

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96 treatment, the department shall reinstate the driving privilege
97 only after notice of successful completion of treatment from the
98 DUI program.

99 (6) In addition, \$65 shall be added to a fine imposed
100 pursuant to this section for a violation under s. 316.172(1)(b).
101 The additional \$65 collected under this subsection shall be
102 remitted to the Department of Revenue for deposit into the
103 Emergency Medical Services Trust Fund of the Department of
104 Health to be used as provided in s. 395.4036.

105 Section 4. Section 318.17, Florida Statutes, is amended to
106 read:

107 318.17 Offenses excepted.—No provision of this chapter is
108 available to a person who is charged with any of the following
109 offenses:

110 (1) Fleeing or attempting to elude a police officer, in
111 violation of s. 316.1935.~~†~~

112 (2) Leaving the scene of a crash, in violation of ss.
113 316.027 and 316.061.~~†~~

114 (3) Driving, or being in actual physical control of, any
115 vehicle while under the influence of alcoholic beverages, any
116 chemical substance set forth in s. 877.111, or any substance
117 controlled under chapter 893, in violation of s. 316.193, or
118 driving with an unlawful blood-alcohol level.~~†~~

119 (4) Reckless driving under s. 316.172(1)(b) or, ~~in~~
120 ~~violation of~~ s. 316.192.~~†~~

121 (5) Making false crash reports, in violation of s.



Amendment No. 1

122 316.067.~~+~~

123 (6) Willfully failing or refusing to comply with any
124 lawful order or direction of any police officer or member of the
125 fire department, in violation of s. 316.072(3).~~+~~

126 (7) Obstructing an officer, in violation of s.
127 316.545(1).~~+~~ ~~or~~

128 (8) Any other offense in chapter 316 which is classified
129 as a criminal violation.

130 Section 5. Subsection (5) of section 318.18, Florida
131 Statutes, is amended to read:

132 318.18 Amount of penalties.—The penalties required for a
133 noncriminal disposition pursuant to s. 318.14 or a criminal
134 offense listed in s. 318.17 are as follows:

135 (5)(a) Two hundred fifty ~~One hundred~~ dollars for a
136 violation of s. 316.172(1)(a), failure to stop for a school bus.
137 If, at a hearing, the alleged offender is found to have
138 committed this offense, the court shall impose a minimum civil
139 penalty of \$250 ~~\$100~~. In addition to this penalty, for a second
140 or subsequent offense within ~~a period of~~ 5 years, the department
141 shall suspend the driver license of the person for not less than
142 6 months ~~90 days~~ and not more than 1 year ~~6 months~~.

143 ~~(b) Two hundred dollars for a violation of s.~~
144 ~~316.172(1)(b), passing a school bus on the side that children~~
145 ~~enter and exit when the school bus displays a stop signal. If,~~
146 ~~at a hearing, the alleged offender is found to have committed~~
147 ~~this offense, the court shall impose a minimum civil penalty of~~



Amendment No. 1

148 ~~\$200. In addition to this penalty, for a second or subsequent~~
149 ~~offense within a period of 5 years, the department shall suspend~~
150 ~~the driver license of the person for not less than 180 days and~~
151 ~~not more than 1 year.~~

152 ~~(b)(e)~~ In addition to the penalty under paragraph (a) ~~or~~
153 ~~paragraph (b)~~, \$65 for a violation of s. 316.172(1)(a) ~~or (b)~~.
154 If the alleged offender is found to have committed the offense,
155 the court shall impose the civil penalty under paragraph (a) ~~or~~
156 ~~paragraph (b)~~ plus an additional \$65. The additional \$65
157 collected under this paragraph shall be remitted to the
158 Department of Revenue for deposit into the Emergency Medical
159 Services Trust Fund of the Department of Health to be used as
160 provided in s. 395.4036.

161 Section 6. Subsection (21) of section 318.21, Florida
162 Statutes, is amended to read:

163 318.21 Disposition of civil penalties by county courts.-
164 All civil penalties received by a county court pursuant to the
165 provisions of this chapter shall be distributed and paid monthly
166 as follows:

167 (21) Notwithstanding subsections (1) and (2), the proceeds
168 from the additional penalties imposed pursuant to s.
169 318.18(5)(b) ~~s. 318.18(5)(e)~~ and (20) shall be distributed as
170 provided in that section.

171 Section 7. Paragraph (b) of subsection (1) of section
172 395.4036, Florida Statutes, is amended to read:

173 395.4036 Trauma payments.-



Amendment No. 1

174 (1) Recognizing the Legislature's stated intent to provide
175 financial support to the current verified trauma centers and to
176 provide incentives for the establishment of additional trauma
177 centers as part of a system of state-sponsored trauma centers,
178 the department shall utilize funds collected under s. 318.18 and
179 deposited into the Emergency Medical Services Trust Fund of the
180 department to ensure the availability and accessibility of
181 trauma services throughout the state as provided in this
182 subsection.

183 (b) Funds collected under ss. 316.192(6) and 318.18(5)(b)
184 ~~s. 318.18(5)(c)~~ and (20) shall be distributed as follows:

185 1. Thirty percent of the total funds collected shall be
186 distributed to Level II trauma centers operated by a public
187 hospital governed by an elected board of directors as of
188 December 31, 2008.

189 2. Thirty-five percent of the total funds collected shall
190 be distributed to verified trauma centers based on trauma
191 caseload volume for the most recent calendar year available. The
192 determination of caseload volume for distribution of funds under
193 this subparagraph shall be based on the department's Trauma
194 Registry data.

195 3. Thirty-five percent of the total funds collected shall
196 be distributed to verified trauma centers based on severity of
197 trauma patients for the most recent calendar year available. The
198 determination of severity for distribution of funds under this
199 subparagraph shall be based on the department's International



Amendment No. 1

200 Classification Injury Severity Scores or another statistically
201 valid and scientifically accepted method of stratifying a trauma
202 patient's severity of injury, risk of mortality, and resource
203 consumption as adopted by the department by rule, weighted based
204 on the costs associated with and incurred by the trauma center
205 in treating trauma patients. The weighting of scores shall be
206 established by the department by rule.

207

208

209

210

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

211

Remove line 2 and insert:

212

An act relating to school safety; amending ss. 316.172, 316.192,

213

and 318.18, F.S.; revising penalties for failure to stop a

214

vehicle upon approaching a school bus that displays a stop

215

signal; providing for criminal penalties under certain

216

circumstances; amending ss. 318.17, 318.21, and 395.4036, F.S.,

217

relating to application of specified provisions, disposition of

218

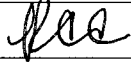

penalty amounts received, and trauma payments; conforming

219

provisions to changes made by the act; providing

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 117 False Personation
SPONSOR(S): Watson, B.
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1010

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Cox	Cunningham
2) Justice Appropriations Subcommittee	11 Y, 0 N	Schrader	Lloyd
3) Judiciary Committee		Cox 	Havlicak 

SUMMARY ANALYSIS

Section 843.08, F.S., makes it a third degree felony for a person to falsely assume or pretend to be a specified officer and take it upon himself or herself to act as such officer, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such an officer. The offense is reclassified to a second degree felony or a first degree felony in specified instances.

Section 843.085, F.S., makes it a first degree misdemeanor for a person to own or operate a motor vehicle marked or identified in any manner by words or insignia that could deceive a reasonable person into believing the vehicle is authorized by a law enforcement agency for use by the person operating the vehicle. The prohibited words and insignia include words such as "police," "patrolman," "sheriff," and "deputy."

The bill amends s. 843.08, F.S., to add "firefighter" and a "fire or arson investigator of the Department of Financial Services" to the list of officers that may not be falsely personated. The bill expands the application of s. 843.085, F.S., to prohibit a person from:

- Wearing or displaying the word "fire department" on any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof;
- Marking or identifying a vehicle by the word "fire department," or any lettering, marking, insignia, or colorable imitation thereof; and
- Selling, transferring, or giving away the authorized badge, or colorable imitation thereof, including miniatures which bear the word "fire department."

The bill addresses a 2005 Florida Supreme Court decision by requiring proof that the offender had the intent to mislead or cause another person to believe (rather than requiring proof that a reasonable person could be deceived) that the:

- Person is a member of that agency or is authorized to wear or display such item; or
- Vehicle is an official vehicle of that agency and is authorized to be used by that agency.

The Criminal Justice Impact Conference (CJIC) met February 27, 2015, and determined this bill will have a positive insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the department's prison bed population by less than 10 inmates annually. The bill may also have a negative jail bed impact on local governments because it expands the application of a misdemeanor offense.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

False Personation of an Officer or Others

Section 843.08, F.S., makes it a third degree felony¹ for a person to falsely assume or pretend to be a specified officer and take it upon himself or herself to act as such officer, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such an officer.² This section applies to the false personation of the following:

- A sheriff or deputy sheriff;
- Officers of the Florida Highway Patrol;
- Officers of the Fish and Wildlife Conservation Commission;
- Officers of the Department of Transportation;
- Officers of the Department of Financial Services;
- Officers of the Department of Corrections;
- Correctional probation officers;
- State Attorneys, assistant state attorneys, and state attorney investigators;
- The Statewide Prosecutor and assistant statewide prosecutors;
- Coroners;
- Police officers;
- Lottery special agents and lottery investigators;
- Beverage enforcement agents;
- Watchman;
- Members of the Parole Commission and any administrative aid or supervisor employed by the Parole Commission;
- Any personnel or representative of the Florida Department of Law Enforcement (FDLE); and
- Federal law enforcement officers as defined in s. 901.1505, F.S.

If a person falsely personates any of the above listed officers during the commission of a felony, the offense is reclassified to a second degree felony.³ If the commission of a felony results in the death or injury of another person, the offense is reclassified to a first degree felony.⁴

Currently, the term "watchman" is not defined.

Effect of the Bill

The bill amends s. 843.08, F.S., to add "firefighter" and a "fire or arson investigator of the Department of Financial Services" to the list of officers described above, and defines the term "watchman" as a security officer licensed under ch. 493, F.S.⁵ The bill also removes the reference to "officer of the Department of Transportation" since these officers were consolidated with the Florida Highway Patrol.

The bill amends the title of this offense to "false personation" and makes conforming changes in s. 921.0022, F.S., to reflect this title change.

¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

² s. 843.08, F.S.

³ A second felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

⁴ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

⁵ Section 493.6101(19), F.S., defines a "security officer" as any individual who, for consideration:

- Advertises as providing or performs bodyguard services or otherwise guards persons or property;
- Attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or
- Attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof.

Unlawful Use of Police Badges or Other Indicia of Authority

Unlawful use of Police Badges

Section 843.085(1), F.S., makes it a first degree misdemeanor,⁶ for a person, unless authorized by the appropriate agency, to wear or display any authorized indicia of authority including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof of a law enforcement agency which could deceive a reasonable person into believing that such item is authorized by the agency for use by the person displaying or wearing it.

The subsection also prohibits a person from wearing or displaying any item which displays the word "police," "patrolman," "agent," "sheriff," "deputy," "trooper," "highway patrol," "Wildlife Officer," "Marine Patrol Officer," "state attorney," "public defender," "marshal," "constable," or "bailiff" and which could deceive a reasonable person into believing that such item is authorized by the law enforcement agency for use by the person displaying or wearing it.

Operating a Vehicle Marked as a Law Enforcement Vehicle

Section 843.085(2), F.S., makes it a first degree misdemeanor for a person to own or operate a motor vehicle marked or identified in any manner or combination (marked vehicle) by words or insignia which could deceive a reasonable person into believing that the vehicle is authorized by a law enforcement agency for use by the person operating the vehicle.⁷ The prohibited words and insignia include:

- The word or words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff," or
- Any lettering, marking, or insignia or colorable imitation thereof, including, but not limited to, stars, badges, or shields, officially used to identify the marked vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency.⁸

Section 843.085(2), F.S., does not apply if:

- The marked vehicle is owned or operated by the appropriate agency and its use is authorized by such agency;
- The local law enforcement agency authorizes the use of the marked vehicle; or
- The person is appointed by the Governor pursuant to ch. 354, F.S.⁹

An exception is also provided to allow fraternal, benevolent, or labor organizations or associations (fraternal association), to use any of the following words in the official name of the organization or association:

- "Police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff."¹⁰

Selling Badges

Currently, s. 843.085(3), F.S., makes it a first degree misdemeanor to sell, transfer, or give away the authorized badge, or colorable imitation thereof of any criminal justice agency or bearing words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "Wildlife Officer," "Marine Patrol

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

⁷ s. 843.085(2), F.S.

⁸ Section 943.045, F.S., defines the term "criminal justice agency" as a court, FDLE, the Department of Juvenile Justice, the protective investigations component of the Department of Children and Family Services, which investigates the crimes of abuse and neglect, and any other governmental agency or subunit thereof which performs the administration of criminal justice pursuant to a statute or rule of court and which allocates a substantial part of its annual budget to the administration of criminal justice.

⁹ Chapter 354, F.S., requires the Governor to appoint one or more persons who have met specified law enforcement qualifications and training requirements as special officers for the protection and safety of railroads and common carriers; their passengers and employees; and the property of such carriers, passengers, and employees.

¹⁰ s. 843.085(4), F.S.

Officer," "marshal," "constable," "agent," "state attorney," "public defender," or "bailiff," which could deceive a reasonable person into believing that such item is authorized by the agency.¹¹

Sult v. State

In *Sult v. State*,¹² the Florida Supreme Court held that s. 843.085, F.S., was unconstitutionally overbroad and vague. The court found the statute unconstitutional because it did not require that the offender had a specific intent to deceive and it made no distinction between innocent wearing of law enforcement items and wearing of these items in order to deceive the public into believing the wearer was a member of the law enforcement agency. The court found:

With no specific intent-to-deceive element, the section extends its prohibitions to innocent wearing and displaying of specified words. The reach of the statute is not tailored toward the legitimate public purpose of prohibiting conduct intended to deceive the public into believing law enforcement impersonators. The could deceive a reasonable person element of section 843.085(1), in conjunction with the prohibition of a display in any manner or combination of words listed in the statute, results in a virtually boundless and uncertain restriction on expression. Thus...[the section] is overbroad because it reaches a substantial amount of constitutionally protected conduct.¹³

Effect of the Bill

The bill expands the application of s. 843.085, F.S., to prohibit a person from:

- Wearing or displaying the word "fire department" on any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof;
- Marking or identifying a vehicle by the word "fire department," or any lettering, marking, insignia, or colorable imitation thereof; and
- Selling, transferring, or giving away the authorized badge, or colorable imitation thereof, including miniatures which bear the word "fire department."

The bill addresses the *Sult v. State* decision by requiring proof that the offender had the intent to mislead or cause another person to believe (rather than requiring proof that a reasonable person could be deceived) that the:

- Person is a member of that agency or is authorized to wear or display such item; or
- Vehicle is an official vehicle of that agency and is authorized to be used by that agency.

B. SECTION DIRECTORY:

Section 1. Amends s. 843.08, F.S., relating to falsely personating officer, etc.

Section 2. Amends s. 843.085, F.S., relating to unlawful use of police badges or other indicia of authority.

Section 3. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

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

¹¹ Section 843.085(3), F.S., provides an exception for "agency purchases or upon the presentation and recordation of both a driver's license and other identification showing any transferee to actually be a member of such criminal justice agency or unless the person is appointed by the Governor pursuant to chapter 354." A transferor of an item covered by this subsection is required to maintain for 2 years a written record of the transaction, including records showing compliance with this subsection, and if such transferor is a business, it must make such records available during normal business hours for inspection by any law enforcement agency having jurisdiction in the area where the business is located. Violation of this provision is a first degree misdemeanor. The bill does not change this provision.

¹² 906 So. 2d 1013 (Fla. 2005).

¹³ *Id.* at 1021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met February 27, 2015, and determined this bill will have a positive insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the department's prison bed population by less than 10 inmates annually. False personation under s. 843.08 F.S., is a third degree felony ranked in level two of the Criminal Punishment Code ranking chart. In Fiscal Year 2013-14, 29 offenders were sentenced for this offense with three receiving a prison sentence. The average prison sentence for this offense is 24 months with an incarceration rate of 10 percent per offenders sentenced.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill may also have a negative jail bed impact on local governments because it expands the application of s. 843.085, F.S., a first degree misdemeanor, to include vehicles marked or identified by the word "fire department," or any lettering, marking, insignia, or colorable imitation thereof.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to false personation; amending s.
 3 843.08, F.S.; revising the list of officials who are
 4 prohibited from being falsely personated; revising
 5 terminology; amending s. 843.085, F.S.; prohibiting
 6 the sale or transfer of specified badges bearing in
 7 any manner or combination the words "fire department"
 8 and the ownership or operation of vehicles marked or
 9 identified by the words "fire department"; requiring
 10 specified intent for certain offenses; providing an
 11 exception; amending s. 921.0022, F.S.; conforming
 12 provisions to changes made by the act; providing an
 13 effective date.

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

16
 17 Section 1. Section 843.08, Florida Statutes, is amended to
 18 read:

19 843.08 False personation ~~Falsely personating officer,~~
 20 ~~etc.~~-A person who falsely assumes or pretends to be a
 21 firefighter, sheriff, officer of the Florida Highway Patrol,
 22 officer of the Fish and Wildlife Conservation Commission, a fire
 23 or arson investigator of the Department of Financial Services,
 24 ~~officer of the Department of Transportation,~~ officer of the
 25 Department of Financial Services, officer of the Department of
 26 Corrections, correctional probation officer, deputy sheriff,

27 state attorney or assistant state attorney, statewide prosecutor
 28 or assistant statewide prosecutor, state attorney investigator,
 29 coroner, police officer, lottery special agent or lottery
 30 investigator, beverage enforcement agent, or watchman, or any
 31 member of the Florida Commission on Offender Review and any
 32 administrative aide or supervisor employed by the commission, or
 33 any personnel or representative of the Department of Law
 34 Enforcement, or a federal law enforcement officer as defined in
 35 s. 901.1505, and takes upon himself or herself to act as such,
 36 or to require any other person to aid or assist him or her in a
 37 matter pertaining to the duty of any such officer, commits a
 38 felony of the third degree, punishable as provided in s.
 39 775.082, s. 775.083, or s. 775.084. However, a person who
 40 falsely personates any such officer during the course of the
 41 commission of a felony commits a felony of the second degree,
 42 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 43 If the commission of the felony results in the death or personal
 44 injury of another human being, the person commits a felony of
 45 the first degree, punishable as provided in s. 775.082, s.
 46 775.083, or s. 775.084. The term "watchman" means a security
 47 officer licensed under chapter 493.

48 Section 2. Section 843.085, Florida Statutes, is amended
 49 to read:

50 843.085 Unlawful use of ~~police~~ badges or other indicia of
 51 authority. ~~It is unlawful for any person:~~

52 (1) It is unlawful for any person, unless appointed by the

53 Governor pursuant to chapter 354, authorized by the appropriate
 54 agency, or displayed in a closed or mounted case as a collection
 55 or exhibit, to wear or display any authorized indicia of
 56 authority, including any badge, insignia, emblem, identification
 57 card, or uniform, or any colorable imitation thereof, of any
 58 federal, state, county, or municipal law enforcement agency, or
 59 other criminal justice agency as now or hereafter defined in s.
 60 943.045, with the intent to mislead or cause another person to
 61 believe that he or she is a member of that agency or is
 62 authorized to display or wear such item, or to wear or display
 63 any item that ~~which could deceive a reasonable person into~~
 64 ~~believing that such item is authorized by any of the agencies~~
 65 ~~described above for use by the person displaying or wearing it,~~
 66 ~~or which~~ displays in any manner or combination the word or words
 67 "police," "patrolman," "agent," "sheriff," "deputy," "trooper,"
 68 "highway patrol," "commission officer," "Wildlife Officer,"
 69 "Marine Patrol Officer," "state attorney," "public defender,"
 70 "marshal," "constable," ~~or~~ "bailiff," or "fire department," with
 71 the intent to mislead or cause another person to believe that he
 72 or she is a member of that agency or is authorized to wear or
 73 display such item ~~which could deceive a reasonable person into~~
 74 ~~believing that such item is authorized by any of the agencies~~
 75 ~~described above for use by the person displaying or wearing it.~~
 76 (2) It is unlawful for a person to own or operate a motor
 77 vehicle marked or identified in any manner or combination by the
 78 word or words "police," "patrolman," "sheriff," "deputy,"

79 "trooper," "highway patrol," "commission officer," "Wildlife
 80 Officer," "Marine Patrol Officer," "marshal," "constable," ~~or~~
 81 "bailiff," or "fire department," or by any lettering, marking,
 82 or insignia, or colorable imitation thereof, including, but not
 83 limited to, stars, badges, or shields, officially used to
 84 identify the vehicle as a federal, state, county, or municipal
 85 law enforcement vehicle or a vehicle used by a criminal justice
 86 agency as ~~now or hereafter~~ defined in s. 943.045, or a vehicle
 87 used by a fire department with the intent to mislead or cause
 88 another person to believe that such vehicle is an official
 89 vehicle of that agency and is authorized to be used by that
 90 agency ~~which could deceive a reasonable person into believing~~
 91 ~~that such vehicle is authorized by any of the agencies described~~
 92 ~~above for use by the person operating the motor vehicle,~~ unless
 93 such vehicle is owned or operated by the appropriate agency and
 94 its use is authorized by such agency, or the local law
 95 enforcement agency or fire department authorizes the use of such
 96 vehicle, ~~unless~~ the person is appointed by the Governor
 97 pursuant to chapter 354.

98 (3) It is unlawful for a person to sell, transfer, or give
 99 away the authorized badge, or colorable imitation thereof,
 100 including miniatures, of any criminal justice agency as ~~now or~~
 101 ~~hereafter~~ defined in s. 943.045, or bearing in any manner or
 102 combination the word or words "police," "patrolman," "sheriff,"
 103 "deputy," "trooper," "highway patrol," "commission officer,"
 104 "Wildlife Officer," "Marine Patrol Officer," "marshal,"

105 "constable," "agent," "state attorney," "public defender," ~~or~~
 106 "bailiff," or "fire department," with the intent to mislead or
 107 cause another person to believe that he or she is a member of
 108 that agency or is authorized to wear or display such item ~~which~~
 109 ~~could deceive a reasonable person into believing that such item~~
 110 ~~is authorized by any of the agencies described above,~~ except for
 111 agency purchases or upon the presentation and recordation of
 112 both a driver license and other identification showing any
 113 transferee to actually be a member of such criminal justice
 114 agency or unless the person is appointed by the Governor
 115 pursuant to chapter 354. A transferor of an item covered by this
 116 subsection is required to maintain for 2 years a written record
 117 of such transaction, including records showing compliance with
 118 this subsection, and if such transferor is a business, it shall
 119 make such records available during normal business hours for
 120 inspection by any law enforcement agency having jurisdiction in
 121 the area where the business is located.

122 (4) ~~Nothing in~~ This section does not ~~shall~~ prohibit a
 123 fraternal, benevolent, or labor organization or association, or
 124 their chapters or subsidiaries, from using the following words,
 125 in any manner or in any combination, if those words appear in
 126 the official name of the organization or association: "police,"
 127 "patrolman," "sheriff," "deputy," "trooper," "highway patrol,"
 128 "commission officer," "Wildlife Officer," "Marine Patrol
 129 Officer," "marshal," "constable," ~~or~~ "bailiff," or "fire
 130 department."

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131 (5) Violation of any provision of this section is a
 132 misdemeanor of the first degree, punishable as provided in s.
 133 775.082 or s. 775.083. This section is cumulative to any law now
 134 in force in the state.

135 Section 3. Paragraph (b) of subsection (3) of section
 136 921.0022, Florida Statutes, is amended to read:

137 921.0022 Criminal Punishment Code; offense severity
 138 ranking chart.-

139 (3) OFFENSE SEVERITY RANKING CHART

140 (b) LEVEL 2

141

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding

142

143

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			500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
145	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
146	590.28(1)	3rd	Intentional burning of lands.
147	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
148	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
149	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
150	810.061(2)	3rd	Impairing or impeding telephone

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			or power to a dwelling; facilitating or furthering burglary.
151	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
152	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
153	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
154	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
155	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
156	817.481(3)(a)	3rd	Obtain credit or purchase with

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			false, expired, counterfeit, etc., credit card, value over \$300.
157	817.52 (3)	3rd	Failure to redeliver hired vehicle.
158	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
159	817.60 (5)	3rd	Dealing in credit cards of another.
160	817.60 (6) (a)	3rd	Forgery; purchase goods, services with false card.
161	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
162	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
163			

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164	831.01	3rd	Forgery.
165	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
166	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
167	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
168	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
169	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
170	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
	843.08	3rd	<u>False personation</u> Falsely

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~~impersonating an officer.~~

171

893.13(2)(a)2. 3rd Purchase of any s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4) drugs
other than cannabis.

172

893.147(2) 3rd Manufacture or delivery of drug
paraphernalia.

173

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 197 Tracking Devices or Applications
SPONSOR(S): Criminal Justice Subcommittee; Metz and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 282

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Keegan	Cunningham
2) Economic Development & Tourism Subcommittee	11 Y, 0 N	Lukis	Duncan
3) Judiciary Committee		Keegan <i>OK</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Chapter 934, F.S., governs the security of electronic and telephonic communications and the procedural requirements for searching and monitoring such communications. Florida law does not currently prohibit a person from installing a tracking device or tracking application on another person's property without the other person's consent.

The bill creates a new section of statute making it a second degree misdemeanor for a person to install a tracking device or tracking application on another person's property without the other person's consent. This prohibition does not apply to:

- a law enforcement officer or law enforcement agency that lawfully installs a tracking device or tracking application on another person's property as part of a criminal investigation;
- a parent or legal guardian of a minor child that installs a tracking device or tracking application on the minor child's property if:
 - the parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either parent or legal guardian consents to the installation of the tracking device or tracking application;
 - the parent or legal guardian is the sole surviving parent or legal guardian of the minor child;
 - the parent or legal guardian has sole custody of the minor child; or
 - the parents or legal guardians are divorced, separated, or otherwise living apart and both consent to the installation of the tracking device or tracking application;
- a caregiver of an elderly person or disabled adult, if the elderly person or disabled adult's treating physician certifies that such installation is necessary to ensure the safety of the elderly person or disabled adult; or
- a person acting in good faith on behalf of a business entity for a legitimate business purpose.

The bill creates a new second degree misdemeanor, which is punishable by up to 60 days in county jail and a \$500 fine. This may have a negative jail bed impact.

The bill is effective on October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Cellular Phone Tracking

Any time a cellular phone is on, it will periodically send a signal to the local “base station”¹ to verify the strength of the phone’s connection to the provider network.² Cellular phones also communicate back and forth with base stations during phone calls.³ Providers divide their service area up among base stations in the area, and the cellular phone communicates with different nearby base stations as the user moves around the service area.⁴ Providers keep close track of which base stations a phone communicates with so the provider knows which base stations to send phone calls to.⁵ The electronic record created by a cellular phone communicating with a base station is often referred to as “cell site location information” (hereinafter “CSLI”).⁶

CSLI is also used by cellular providers to transmit location data for cellular phones that dial 911.⁷ The Federal Communications Commission (hereinafter “FCC”) developed the Enhanced 911 program (hereinafter “E911”) to ensure that wireless carriers provide location information to 911 dispatchers when a 911 call is placed from a cellular phone.⁸ Over time the FCC has created more stringent requirements for cellular providers that currently require specific location data such as latitude and longitude of the 911 caller.⁹ In similar form to the FCC requirements, Florida law requires the establishment of a statewide E911 program requiring providers to route 911 calls to the correct public safety answering points.¹⁰ This is accomplished by “selective routing based on the geographical location from which the call originated,” and requiring providers to create automatic number identification and automatic location-identification features.¹¹

GPS Tracking

The Global Positioning System (hereinafter “GPS”) is a system of twenty-four operating satellites that orbit the earth and transmit radio signals.¹² The GPS system is operated by the United States Air Force,¹³ and is used for civilian applications as well as national security and military operations.¹⁴ GPS can be used for tracking and locating cellular phones that are equipped with hardware that can receive

¹ The “base station” is the device or communications tower that transmits cellular radio signals so a telephone call can be made wirelessly. These towers are also referred to as “cellular towers.” See IEEE Global History Network, *Base Stations*, http://www.ieeeahn.org/wiki/index.php/Cellular_Base_Stations (last visited Jan. 22, 2015).

² *ECPA Reform and the Revolution in Location Based Techs. & Servs. before the Subcomm. on the Constitution, Civil Rights & Civil Liberties*, 111th Cong. 13-14 (testimony of Matt Blaze, Assoc. Prof., Univ. Pa.).

³ *Id.* at 13.

⁴ *Id.* at 13.

⁵ *Id.* at 14.

⁶ *In re Application of U.S. for an Order Directing a Provider of Elec. Comm’n Serv. to Disclose Records to the Gov’t*, 620 F.3d 304 (3d Cir. 2010).

⁷ Federal Commc’ns Comm’n, *Enhanced 9-1-1 Wireless Services*, <http://www.fcc.gov/encyclopedia/enhanced-9-1-1-wireless-services> (last visited Jan. 23, 2015).

⁸ Federal Commc’ns Comm’n, *Guide: 911 Wireless Services*, <http://www.fcc.gov/guides/wireless-911-services> (last visited Jan. 23, 2015).

⁹ Federal Commc’ns Comm’n, *Enhanced 9-1-1 Wireless Services*, <http://www.fcc.gov/encyclopedia/enhanced-9-1-1-wireless-services> (last visited Jan. 23, 2015).

¹⁰ s. 365.172(3)(h), F.S.

¹¹ *Id.*

¹² GPS.Gov, *Space Segment*, <http://www.gps.gov/systems/gps/space/> (last visited Jan. 23, 2015).

¹³ Schriever Air Force Base, *GPS*, <http://www.schriever.af.mil/GPS/> (last visited Jan. 23, 2015).

¹⁴ GPS.Gov, *GPS Applications*, <http://www.gps.gov/applications/> (last visited Jan. 23, 2015).

radio signals from GPS satellites.¹⁵ GPS technology can usually identify the location of a cellular phone within a distance of ten meters;¹⁶ however, more recent cellular phone models are the only models equipped with the proper hardware to utilize this technology.¹⁷

Tracking Software

Tracking software can be downloaded onto phones and other electronic devices and used to track the location of the device for mapping applications or other purposes.¹⁸ Some types of tracking software can monitor messages, emails, websites that are visited, and contacts that are saved, in addition to tracking a device's location.¹⁹

Florida Law

Chapter 934, F.S., governs the security of electronic and telephonic communications and the procedural requirements for searching and monitoring such communications. The law covers a number of different investigative and monitoring procedures, including wiretapping, obtaining service provider records, and mobile tracking devices. However, many of the chapter's provisions only apply to law enforcement entities (e.g., s. 934.42, F.S., authorizes a law enforcement officer to apply to a judge of competent jurisdiction for an order authorizing or approving the installation and use of a mobile tracking device²⁰).

Section 934.03, F.S., which applies to all persons, makes it a third degree felony²¹ for a person to intentionally use the contents of an electronic communication, knowing or having reason to know that the information was obtained through the unlawful interception of the electronic communication (i.e., without the consent of both parties). The term "electronic communication" is defined as "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce."²² However, the definition specifically excludes "any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object."²³

Florida law does not currently prohibit a private individual from installing a tracking device or tracking application on another person's property without the other person's consent.

Effect of the Bill

The bill creates a new section of statute making it a second degree misdemeanor²⁴ for a person to install a tracking device or tracking application on another person's property without the other person's consent. This prohibition does not apply to:

¹⁵ *ECPA Reform and the Revolution in Location Based Techs. & Servs. before the Subcomm. on the Constitution, Civil Rights & Civil Liberties*, 111th Cong. 13-14 (statement of Matt Blaze, Assoc. Prof., Univ. Pa.).

¹⁶ *Id.*

¹⁷ *Id.* at 22.

¹⁸ *ECPA Reform and the Revolution in Location Based Techs. & Servs. before the Subcomm. on the Constitution, Civil Rights & Civil Liberties*, 111th Cong. 13-14 (statement of Matt Blaze, Assoc. Prof., Univ. Pa.).

¹⁹ CBS DFW, *Stalkers Using Cell Phones to Track Victims*, <http://dfw.cbslocal.com/2015/01/14/stalkers-using-cell-phones-to-track-victims/> (last visited Jan. 26, 2015); Christine Pitawanich, *Virtually Invisible Cell Phone Apps Used to Track and Spy on Victims*, NBC News, Nov. 25, 2014, <http://kobi5.com/news/item/virtually-invisible-cell-phone-apps-used-to-track-and-spy-on-victims.html#.VMvymKNOncs> (last visited Jan. 26, 2015).

²⁰ Section 934.42, F.S., defines "tracking device" as an electronic or mechanical device which permits the tracking of the movement of a person or object.

²¹ 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.

²² s. 934.02(12), F.S.

²³ *Id.*

²⁴ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

- a law enforcement officer as defined in s. 943.10, F.S., or any local, state, federal, or military law enforcement agency, that lawfully installs a tracking device or tracking application on another person's property as part of a criminal investigation;
- a parent or legal guardian of a minor child that installs a tracking device or tracking application on the minor child's property if:
 - the parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either parent or legal guardian consents to the installation of the tracking device or tracking application;
 - the parent or legal guardian is the sole surviving parent or legal guardian of the minor child;
 - the parent or legal guardian has sole custody of the minor child; or
 - the parents or legal guardians are divorced, separated, or otherwise living apart and both consent to the installation of the tracking device or tracking application;
- a caregiver of an elderly person or disabled adult, as those terms are defined in s. 825.101, F.S., if the elderly person or disabled adult's treating physician certifies that the installation of a tracking device or tracking application onto the elderly person or disabled adult's property is necessary to ensure the safety of the elderly person or disabled adult; or
- a person acting in good faith on behalf of a business entity for a legitimate business purpose.

The bill specifies that a person's consent to be tracked is presumed to be revoked in the following circumstances:

- the consenting person and the person to whom consent was given are lawfully married and one person files a petition for dissolution of marriage from the other; or
- the consenting person or the person to whom consent was given files an injunction for protection against the other person pursuant to ss. 741.30, 741.315, 784.046, or 784.0485, F.S.

The bill creates the following definitions:

- "Business entity" means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state.
- "Tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual.
- "Tracking device" means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals.
- "Person" means an individual and does not include a business entity.

B. SECTION DIRECTORY:

Section 1: Creates s. 934.425, F.S., relating to installation of tracking devices or tracking applications; exceptions; penalties.

Section 2: Provides an effective date of October 1, 2015.

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.

2. Expenditures:

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

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 creates a new second degree misdemeanor, which is punishable by up to 60 days in county jail and a \$500 fine. This may have a negative jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

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 3, 2015, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill as favorable as a committee substitute. The amendment:

- corrected terminology;
- narrowed the definition of "tracking application" and "tracking device" to encompass applications and devices whose *primary* purpose was to track or identify its location;
- added the definitions of "person" and "business entity;"
- narrowed the prohibition against tracking a person's location to only encompass the act of *installing* a tracking device or tracking application;
- removed the requirement for law enforcement officers to create a contemporaneous record of the use of the tracking device or application;
- modified the exception for law enforcement use to apply when a tracking device or tracking application is *lawfully* installed;
- added a new exception for installing a tracking device or application by a caregiver of an elderly person or disabled adult; and

- added a new exception for a person acting in good faith on behalf of a business entity.

This bill 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 tracking devices or tracking
 3 applications; creating s. 934.425, F.S.; providing
 4 definitions; prohibiting the installation of a
 5 tracking device or tracking application without the
 6 person's consent; creating a presumption that consent
 7 is revoked upon initiation of specified proceedings;
 8 providing exceptions; providing criminal penalties;
 9 providing an effective date.

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

12
 13 Section 1. Section 934.425, Florida Statutes, is created
 14 to read:

15 934.425 Installation of tracking devices or tracking
 16 applications; exceptions; penalties.-

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

18 (a) "Business entity" means any form of corporation,
 19 partnership, association, cooperative, joint venture, business
 20 trust, or sole proprietorship that conducts business in this
 21 state.

22 (b) "Tracking application" means any software program
 23 whose primary purpose is to track or identify the location or
 24 movement of an individual.

25 (c) "Tracking device" means any device whose primary
 26 purpose is to reveal its location or movement by the

27 transmission of electronic signals.

28 (d) "Person" means an individual but does not include a
 29 business entity.

30 (2) Except as provided in subsection (4), a person may not
 31 knowingly install a tracking device or tracking application on
 32 another person's property without the other person's consent.

33 (3) For purposes of this section, a person's consent is
 34 presumed to be revoked if:

35 (a) The consenting person and the person to whom consent
 36 was given are lawfully married and one person files a petition
 37 for dissolution of marriage from the other; or

38 (b) The consenting person or the person to whom consent
 39 was given files an injunction for protection against the other
 40 person pursuant to s. 741.30, s. 741.315, s. 784.046, or s.
 41 784.0485.

42 (4) This section does not apply to:

43 (a) A law enforcement officer as defined in s. 943.10, or
 44 any local, state, federal, or military law enforcement agency,
 45 that lawfully installs a tracking device or tracking application
 46 on another person's property as part of a criminal
 47 investigation.

48 (b) A parent or legal guardian of a minor child who
 49 installs a tracking device or tracking application on the minor
 50 child's property if:

51 1. The parents or legal guardians are lawfully married to
 52 each other and are not separated or otherwise living apart, and

53 either parent or legal guardian consents to the installation of
 54 the tracking device or tracking application;

55 2. The parent or legal guardian is the sole surviving
 56 parent or legal guardian of the minor child;

57 3. The parent or legal guardian has sole custody of the
 58 minor child; or

59 4. The parents or legal guardians are divorced, separated,
 60 or otherwise living apart and both consent to the installation
 61 of the tracking device or tracking application.

62 (c) A caregiver of an elderly person or disabled adult, as
 63 those terms are defined in s. 825.101, if the elderly person's
 64 or disabled adult's treating physician certifies that the
 65 installation of a tracking device or tracking application onto
 66 the elderly person's or disabled adult's property is necessary
 67 to ensure the safety of the elderly person or disabled adult.

68 (d) A person acting in good faith on behalf of a business
 69 entity for a legitimate business purpose.

70 (5) A person who violates this section commits a
 71 misdemeanor of the second degree, punishable as provided in s.
 72 775.082 or s. 775.083.

73 Section 2. 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 Metz offered the following:

Amendment (with title amendment)

Remove lines 68-72 and insert:

6 (d) A person acting in good faith on behalf of a business
7 entity for a legitimate business purpose. This paragraph does
8 not apply to a person engaged in private investigation, as
9 defined in s. 493.6101, on behalf of another person unless such
10 activities would otherwise be exempt under this subsection if
11 performed by the person engaging the private investigator.

12 (e) An owner or lessee of a motor vehicle that installs,
13 or directs the installation of, a tracking device or tracking
14 application on such vehicle during the period of ownership or
15 lease, provided that:



Amendment No. 1

16 1. The tracking device or tracking application is removed
17 before the vehicle's title is transferred or the vehicle's lease
18 expires;

19 2. The new owner of the vehicle, in the case of a sale, or
20 the lessor of the vehicle, in the case of an expired lease,
21 consents in writing to the nonremoval of the tracking device or
22 tracking application; or

23 3. The owner of the vehicle at the time of the
24 installation of the tracking device or tracking application was
25 the original manufacturer of the vehicle.

26 (5) A person who violates this section commits a
27 misdemeanor of the second degree, punishable as provided in s.
28 775.082 or s. 775.083.

29 Section 2. Paragraph (y) is added to subsection (1) of
30 section 493.6118, Florida Statutes, to read:

31 493.6118 Grounds for disciplinary action.—

32 (1) The following constitute grounds for which
33 disciplinary action specified in subsection (2) may be taken by
34 the department against any licensee, agency, or applicant
35 regulated by this chapter, or any unlicensed person engaged in
36 activities regulated under this chapter.

37 (y) Installation of a tracking device or tracking
38 application in violation of s. 934.425.

39
40 -----

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



Amendment No. 1

42 | Between lines 8 and 9, insert:
43 | amending s. 493.6118, F.S.; providing that violations
44 | of the prohibition on installation of tracking devices
45 | and tracking applications by private investigative,
46 | private security, and repossession services are
47 | grounds for disciplinary action, to which penalties
48 | apply;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 201 Diabetes Awareness Training for Law Enforcement Officers
SPONSOR(S): Criminal Justice Subcommittee; Narain and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 746

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

SUMMARY ANALYSIS

The Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement (FDLE), establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement officers (LEOs). Currently, every prospective LEO must meet the minimum qualifications outlined in s. 943.13, F.S., successfully complete a CJSTC-developed Basic Recruit Training Program, and pass a statewide certification examination in order to receive their certification.

In order to maintain their certification, LEOs must satisfy the continuing training and education requirements of s. 943.135, F.S. This statute requires LEOs, as a condition of continued employment, to receive periodic CJSTC-approved training or education at the rate of 40 hours every 4 years.

Florida law currently requires CJSTC to establish continued employment training related to specified topics (e.g., topics related to community policing, interpersonal skills relating to diverse populations, and juvenile sexual offender investigations). This training counts toward the 40 hours of required instruction for continued employment.

Florida law does not currently require CJSTC to establish continued employment training related to diabetic emergencies.

The bill creates s. 943.1726, F.S., which requires FDLE to establish an on-line continued employment training component relating to diabetic emergencies. Instruction must include, but is not limited to, recognition of symptoms of such an emergency, distinguishing such an emergency from alcohol intoxication or drug overdose, and appropriate first aid for such an emergency. The bill specifies that completion of the training component may count toward the 40 hours of required instruction for continued employment or appointment as a LEO.

FDLE reports that the bill will not have a fiscal impact on the Department.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Law Enforcement Officer - Basic Recruit Training Program

The Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement (FDLE), establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement officers (LEOs). Currently, every prospective LEO must meet the minimum qualifications outlined in s. 943.13, F.S., successfully complete a CJSTC-developed Basic Recruit Training Program, and pass a statewide certification examination in order to receive their certification.¹

Sections 943.171 through 943.17296, F.S., require CJSTC to include instruction on a number of specific topics into a LEO Basic Recruit Training Program curriculum (e.g., topics related to victim assistance, juvenile sexual offender investigations, elder abuse and neglect, etc.). Although instruction on diabetic emergencies is not currently required by statute, FDLE states that this training is currently being provided.²

Law Enforcement Officer - Continuing Training & Education

In order to maintain their certification, LEOs must also satisfy the continuing training and education requirements of s. 943.135, F.S. This statute requires LEOs, as a condition of continued employment or appointment, to receive periodic CJSTC-approved continuing training or education at the rate of 40 hours every 4 years.³ The employing agency must document that the continuing training or education is job-related and consistent with the needs of the employing agency, and must maintain and submit the documentation to CJSTC.⁴

Similar to the Basic Recruit Training Program, Florida law requires CJSTC to establish continued employment training related to specified topics (e.g., topics related to community policing, interpersonal skills relating to diverse populations, and juvenile sexual offender investigations).⁵ This training counts toward the 40 hours of required instruction for continued employment.⁶

Currently, Florida law does not require CJSTC to establish continued employment training related to diabetic emergencies.

Effect of the Bill

The bill creates s. 943.1726, F.S., which requires FDLE to establish an on-line continued employment training component relating to diabetic emergencies. Instruction must include, but is not limited to, recognition of symptoms of such an emergency, distinguishing such an emergency from alcohol intoxication or drug overdose, and appropriate first aid for such an emergency. The bill specifies that completion of the training component may count toward the 40 hours of required instruction for continued employment or appointment as a LEO.

B. SECTION DIRECTORY:

Section 1. Cites the act as the "Arthur Green, Jr., Act."

¹ s. 943.13, F.S.

² FDLE Analysis of HB 201, January 16, 2015 (on file with the Criminal Justice Subcommittee).

³ s. 943.135(1), F.S.

⁴ *Id.*

⁵ ss. 943.1729, 943.1716, and 943.17295, F.S.

⁶ *Id.*

Section 2. Creates s. 943.1726, F.S., relating to continued employment training relating to diabetic emergencies.

Section 3. 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:

FDLE reports that the bill will not have a fiscal impact on the Department.⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill 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:

Section 943.03, F.S., requires FDLE to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of law conferring powers or duties upon it. The bill does not appear to create a need for additional rulemaking or rulemaking authority.

⁷ E-mail from Ron Draa, FDLE's Legislative Affairs Director, March 5, 2015 (on file with the Criminal Justice Subcommittee).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2015, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorable as a committee substitute. The committee substitute requires *FDLE* to establish an on-line *continued employment* training component relating to diabetic emergencies (the bill as filed required CJSTC to establish such training for LEOs as part of their basic skills training).

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 diabetes awareness training for law
 3 enforcement officers; providing a short title;
 4 creating s. 943.1726, F.S.; requiring the Department
 5 of Law Enforcement to establish an online continued
 6 employment training component relating to diabetic
 7 emergencies; specifying instruction to be included in
 8 the training component; providing that completion of
 9 the training may count toward continued employment
 10 instruction requirements; providing an effective date.

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

13
 14 Section 1. This act may be cited as the "Arthur Green,
 15 Jr., Act."

16 Section 2. Section 943.1726, Florida Statutes, is created
 17 to read:

18 943.1726 Continued employment training relating to
 19 diabetic emergencies.--The department shall establish an online
 20 continued employment training component relating to diabetic
 21 emergencies. The training component shall include, but need not
 22 be limited to, instruction on the recognition of symptoms of
 23 such an emergency, distinguishing such an emergency from alcohol
 24 intoxication or drug overdose, and appropriate first aid for
 25 such an emergency. Completion of the training component may
 26 count toward the 40 hours of instruction for continued

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2015

27 employment or appointment as a law enforcement officer required
28 under s. 943.135.

29 Section 3. This act shall take effect October 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 235 Restitution
SPONSOR(S): Health & Human Services Committee; Eagle and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Cox	Cunningham
2) Health & Human Services Committee	15 Y, 2 N, As CS	Guzzo	Calamas
3) Justice Appropriations Subcommittee	12 Y, 0 N	Schrader	Lloyd
4) Judiciary Committee		Cox <i>lee</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

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

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

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

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

The bill would not necessarily increase the number of cases where restitution is ordered, but would likely increase the amounts recovered for victims where restitution was ordered. It cannot be determined how judicial workload will be impacted. Restitution cannot be ordered without a restitution hearing that determines the amount of restitution owed and the ability to pay. Restitution issues can be heard as part of the disposition hearing if the parties are noticed. However, the decision whether or not to impose restitution remains discretionary with the court.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Restitution in Juvenile Criminal Cases

Currently, s. 985.437, F.S., authorizes, but does not require, a court with jurisdiction over a child that has been adjudicated delinquent to order the child to pay restitution to the victim for *any* damage¹ or loss caused by the child's offense² in a reasonable amount or manner.³ Similarly, s. 985.35, F.S., authorizes the court to place a child found to have committed a violation of law in a probation program.⁴ The probation program may include restitution in money or in kind.⁵ The court determines the amount or manner of restitution that is reasonable.⁶

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

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

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

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

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

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

⁴ s. 985.35(4) and (5), F.S.

⁵ s. 985.35(4)(a), F.S.

⁶ s. 985.437(2), F.S.

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

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

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

¹⁰ s. 985.437(2), F.S.

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

¹² s. 985.437(4), F.S.

¹³ s. 985.437(5), F.S.

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

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

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

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

Failing to Pay Restitution Order

Section 985.0301(5)(d), F.S., states that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089, F.S. Section 775.089(5), F.S., provides that a restitution order may be enforced in the same manner as a judgment in a civil lien. Thus, if a child or parent fails to pay court-ordered restitution, a civil lien may be placed upon the parent or child's real property.¹⁵ The court may transfer a restitution order to a collection court or a private collection agency to collect unpaid restitution.¹⁶

Effect of Proposed Changes

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

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

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

The bill authorizes the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility.

The bill specifies certain individuals, agencies, and facilities that are not considered guardians responsible for restitution for the delinquent acts of a child who is found to be dependent, including:

- DCF;
- A foster parent;
- A community-based care lead agency supervising the placement of the child pursuant to a contract with DCF;
- A residential child-caring agency; and

¹⁴ s. 985.513(1)(b), F.S.

¹⁵ s. 775.089(5), F.S.

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

- A family foster home.

As a result, a victim may incur the costs associated with a delinquent act committed by a child under the care of any of the non-responsible parties provided above.

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

B. SECTION DIRECTORY:

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

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

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

Section 4. Provides an effective date of July 1, 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 amends s. 985.437, F.S., to require, rather than authorize, the court to order a child and the child's parent or legal guardian to pay restitution in cases where court has determined that restitution is appropriate. The bill would not necessarily increase the number of cases where restitution is ordered, but would likely increase the amounts recovered for victims where restitution was ordered. It cannot be determined how judicial workload will be impacted. Restitution cannot be ordered without a restitution hearing that determines the amount of restitution owed and the ability to pay. Restitution issues can be heard as part of the disposition hearing if the parties are noticed. However, the decision whether or not to impose restitution remains discretionary with the court.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

A victim may incur the costs associated with a delinquent act committed by a child under the care of any of the non-responsible parties provided in the bill.

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 19, 2015, the Health and Human Services Committee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Authorized the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility.
- Provided that residential child-caring agencies and family foster homes are not considered guardians responsible for restitution for the delinquent acts of dependent children.

The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.

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

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

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

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

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

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

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

51 985.437 Restitution.-

52 (1) Regardless of whether adjudication is imposed or

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

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

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

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

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

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

86 (5) The court may only order restitution to be paid by the
 87 parents or guardians who have current custody of and parental
 88 responsibility for the child.

89 (6) For purposes of this section, the Department of
 90 Children and Families, a foster parent with whom the child is
 91 placed, the community-based care lead agency supervising the
 92 placement of the child pursuant to a contract with the
 93 Department of Children and Families, or a facility registered
 94 under s. 409.176 is not considered a guardian responsible for
 95 restitution for the delinquent acts of a child who is found to
 96 be dependent as defined in s. 39.01(15).

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

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

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

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

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

125 Section 4. This act shall take effect July 1, 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 Eagle offered the following:

Amendment

Remove lines 93-94 and insert:

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 4
 5
 6 Department of Children and Families, or a facility licensed or
 7 registered under ss. 409.175 or 409.176 is not considered a
 8 guardian responsible for

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 649 Surveillance by a Drone

SPONSOR(S): Civil Justice Subcommittee; Criminal Justice Subcommittee; Metz and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 766

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Weber	Cunningham
2) Civil Justice Subcommittee	11 Y, 1 N, As CS	Weber	Bond
3) Judiciary Committee		Weber	Havlicak <i>RH</i>

SUMMARY ANALYSIS

In 2013, the Legislature enacted the Freedom from Unwarranted Surveillance Act (Act). The Act regulates the use of drones by law enforcement agencies, provides a civil remedy for an aggrieved party to obtain relief in the event the Act is violated, and prohibits the use of evidence in court if it was obtained or collected in violation of the Act.

The bill amends the Freedom from Unwarranted Surveillance Act to prohibit a person, state agency, or political subdivision from using a drone equipped with an imaging device to:

- Record an image of privately owned or occupied real property or the owner, tenant, occupant, invitee, or licensee of such property;
- With the intent to conduct surveillance on the individual or property in violation of such person's reasonable expectation of privacy; and
- Without that individual's written consent.

The bill creates a presumption that a person has a reasonable expectation of privacy on his or her privately owned or occupied real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.

The bill creates a limited exception to the above-described prohibition for a person or entity engaged in a business or profession licensed by the state, or by an agent, employee, or contractor of the state only if the drone is used to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license.

The bill creates a civil remedy authorizing an aggrieved party to seek compensatory damages and injunctive relief against a person, state agency, or political subdivision that violates the above described prohibition. The prevailing party in such civil actions is entitled to recover reasonable attorney fees from the nonprevailing party and may recover punitive damages against a person (not a state agency or political subdivision) who violates the above-described prohibition.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Drones

A drone is an unmanned aircraft that can be flown by remote control or on a predetermined flight path.¹ The size of a drone varies—it can be as small as an insect or as large as a commercial airliner.² Drones can be equipped with various devices such as infrared cameras,³ devices used to intercept electronic transmissions,⁴ and devices that can intercept cellular phone message and crack Wi-Fi passwords.⁵ It has been reported that the U.S. Army contracted with two corporations in 2011 to develop facial recognition and behavior recognition technologies for drone use.⁶

There are three major markets for drones: military, civil government, and commercial.⁷ The majority of drones are operated by the military and have an insignificant impact on U.S. airspace.⁸ However, drone use in this country is increasing because of technological advances. In 2011, the Federal Aviation Administration (FAA) estimated that there will be 30,000 drones in U.S. airspace by 2030.⁹

Non-Military Drone Use

The FAA, which first allowed drones in U.S. airspace in 1990, is in charge of overseeing the integration of drones into U.S. airspace.¹⁰ In doing so, it must balance the integration of drones with the safety of the nation's airspace.¹¹ Since 1990, the FAA has allowed limited use of drones for important public missions such as firefighting, disaster relief, search and rescue, law enforcement, border patrol, scientific research, and testing and evaluation.¹² Recently, the FAA limited the type of airspace where drones may operate. For example, the FAA prohibits drone operations over major urban areas.¹³

¹ Richard M. Thompson II, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, Congressional Research Service, April 3, 2013, www.fas.org/sqp/crs/natsec/R42701.pdf (last visited Mar. 12, 2015).

² Jeremiah Gertler, *U.S. Unmanned Aerial Systems*, Congressional Research Service, January 3, 2012, www.fas.org/sqp/crs/natsec/R42136.pdf (last visited Mar. 12, 2015).

³ See, DSLRPros, *Nighthawk Thermal P2 Aerial Kit*, <http://www.dslrpros.com/dslrpros-products/thermal-aerial-drone-kit.html> (last visited Mar. 12, 2015).

⁴ Greg Miller, *CIA flew stealth drones into Pakistan to monitor bin Laden house*, THE WASHINGTON POST (May 17, 2011), http://www.washingtonpost.com/world/national-security/cia-flew-stealth-drones-into-pakistan-to-monitor-bin-laden-house/2011/05/13/AF5dW55G_story.html (last visited Mar. 31, 2015).

⁵ Any Greenberg, *Flying Drone Can Crack Wi-Fi Networks, Snoop on Cell Phones*, FORBES (July 28, 2011), <http://www.forbes.com/sites/andygreenberg/2011/07/28/flying-drone-can-crack-wifi-networks-snoop-on-cell-phones/> (last visited Mar. 31, 2015).

⁶ Clay Dillow, *Army Developing Drones that can Recognize Your Face from a Distance and Even Recognize Your Intentions*, POPULAR SCIENCE (Sept. 28, 2011), <http://www.popsci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind> (last visited Mar. 31, 2015).

⁷ *FAA Aerospace Forecast: Fiscal Years 2011-2031*, FEDERAL AVIATION ADMINISTRATION 49 (2011).

⁸ *Id.*

⁹ *Id.*

¹⁰ FAA Modernization and Reform Act of 2002, Public Law No. 112-95, 126 Stat. 11 (2012).

¹¹ Fact Sheet—Unmanned Aircraft Systems (UAS), FEDERAL AVIATION ADMINISTRATION (Feb. 15, 2015), http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297 (last visited Mar. 12, 2015).

¹² *Id.*

¹³ Fact Sheet—Unmanned Aircraft Systems (UAS), FEDERAL AVIATION ADMINISTRATION (Jan. 6, 2014), http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153 (last visited Mar. 12, 2015).

Flying model aircraft/drones as a hobby or for recreational purpose does not require FAA approval.¹⁴ The FAA authorizes non-recreational drone operations on a case-by-case basis, and there are several ways to gain FAA approval.

Currently, private sector manufacturers and technology developers can obtain a Special Airworthiness Certificate in the experimental category to conduct research and development. Commercial firms that fly drones may also do so under a FAA Restricted Category Type Certificate, which allows limited operations such as wildlife conservation flights, aerial surveying, and oil/gas pipeline patrols.¹⁵ Additionally, commercial entities are able to petition the FAA for exemptions under Section 333 of Public Law 112-95 to permit non-recreational drone operations.¹⁶

The FAA also may issue a Certificate of Waiver of Authorization (COA), which allows public entities, including governmental agencies, to fly drones in civil airspace.¹⁷ An agency seeking a COA must apply online and detail the proposed operation for the drone.¹⁸ If the FAA issues a COA, it contains a stated time period (usually two years), a certain block of airspace for the drone, and other special provisions unique to the specific operation.¹⁹ In 2013, the FAA issued 423 COAs.²⁰

Drone Use in Florida

According to the FAA's Freedom of Information Act responses, the Miami-Dade Police Department, the Orange County Sheriff's Office, the Polk County Sheriff's Office, and the University of Florida each held a COA to operate an unmanned aircraft system between November 2006 and June 30, 2011.²¹ Additionally, it has been reported that the Daytona Beach Police Department was issued a COA.²²

- The Miami-Dade Police Department released a COA issued to the department that was effective from July 1, 2011, to June 30, 2012.²³ However, as recently at 2013, the department was using drones in training drills.²⁴
- The Orange County Sheriff's Office COA that was released to the public was effective from January 28, 2011, to January 27, 2012.²⁵ The Sheriff's Office purchased two drones.²⁶
- The Polk County Sheriff's Office purchased a quadcopter in 2010, and as of October 2014, reported using it eight times in SWAT situations.²⁷

¹⁴ All model aircraft/drone operators must fly in accordance with the law. Fact Sheet—Unmanned Aircraft Systems (UAS), FEDERAL AVIATION ADMINISTRATION (Feb. 15, 2015), http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297 (last visited Mar. 12, 2015).

¹⁵ *Id.* As of October 2014, the FAA has only approved operations using two certificated drones.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ FEDERAL AVIATION ADMINISTRATION, *Freedom of Information Act Responses*,

https://www.faa.gov/uas/public_operations/foia_responses/ (last visited Mar. 12, 2015). Whether these entities have renewed their COAs or whether other Florida state or local agencies have obtained COAs is unknown at this time.

²² Shawn Musgrave, *Finally, Here's Every Organization Allowed to Fly Drones in the US*, MOTHERBOARD (Oct. 6, 2014), <http://motherboard.vice.com/read/every-organization-flying-drones-in-the-us> (last visited Mar. 12, 2015). In a public records request, the FAA released COA requests submitted between November 2012, and June 2014. *Id.* According to the information released, the Daytona Beach Police Department obtained two COA waivers. *Id.*

²³ ELECTRONIC FRONTIER FOUNDATION, *Miami-Dade PD Drone Certificate of Authorization*, <https://www.eff.org/document/miami-dade-pd-drone-certificate-authorization> (last visited Mar. 12, 2015).

²⁴ David Sutta, *Unmanned Drones Now Patrolling South Florida Skies*, CBS MIAMI (May 9, 2013), <http://miami.cbslocal.com/2013/05/09/unmanned-drones-now-patrolling-south-florida-skies/> (last visited Mar. 31, 2015).

²⁵ ELECTRONIC FRONTIER FOUNDATION, *Orange County Sheriff Drone Records*, <https://www.eff.org/document/orange-county-sheriff-drone-records> (last visited Mar. 12, 2015).

²⁶ *Drone Spotted at Orange County Standoff Scene Raises Questions*, NEWS 96.5.COM (July 24, 2014), <http://www.news965.com/news/news/local/drone-spotted-orange-county-standoff-scene-raises-/ngmj/> (last visited Mar. 31, 2015).

Florida Law

In 2013, the Legislature passed the Freedom from Unwarranted Surveillance Act (Act). The Act created section 934.50, F.S., which limits the use of drones by law enforcement agencies. The Act defines a drone as a powered, aerial vehicle that does not carry a human operator, uses aerodynamic forces to provide vehicle lift, can fly autonomously or be piloted remotely, can be expendable or recoverable, and can carry a lethal or nonlethal payload.²⁸

Current law prohibits a law enforcement agency from using a drone to gather evidence or other information. However, the act does not prohibit the use of a drone:

- To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk;
- If the law enforcement agency first obtains a search warrant signed by a judge authorizing the use of a drone; or
- If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.²⁹

Effect of the Bill

The bill amends s. 934.50, F.S., to prohibit a person, state agency,³⁰ or political subdivision³¹ from using a drone equipped with an imaging device³² to:

- Record an image³³ of privately owned or occupied real property or the owner, tenant, occupant, invitee, or licensee of such property;
- With the intent to conduct surveillance on the individual or property in violation of such person's reasonable expectation of privacy; and
- Without that individual's written consent.

The bill creates a presumption that a person has a reasonable expectation of privacy on his or her privately owned or occupied real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.

²⁷ Howard Altman, *Socom, Polk County Sheriff's Office Among Those with Drone Permits*, THE TAMPA TRIBUNE (Oct. 7, 2014), <http://tbo.com/list/military-news/socom-polk-county-sheriffs-office-among-those-with-drone-permits-20141007/> (last visited Mar. 31, 2015).

²⁸ s. 934.50(2)(a), F.S.

²⁹ s. 934.50(3) & (4), F.S.

³⁰ Section 11.45(1)(j), F.S., defines "state agency" as a separate agency or unit of state government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, commission, department, division, institution, office, officer, or public corporation, as the case may be, except any such agency or unit within the legislative branch of state government other than the Florida Public Service Commission.

³¹ Section 11.45(1)(i), F.S., defines "political subdivision" as separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

³² The bill defines the term "imaging device" as a mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting an image.

³³ The bill defines the term "image" as a record of thermal, infrared, ultraviolet, visible light, or other electromagnetic waves; sound waves; odors; or other physical phenomena which captures conditions existing on or about real property or an individual located on that property.

The bill creates an exception to the above-described prohibition for a person or entity engaged in a business or profession licensed by the state, or by an agent, employee, or contractor of the state only if the drone is used to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license. However, this exception does not apply to a profession in which the licensee's authorized scope of practice includes obtaining information about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.

The bill creates a civil remedy authorizing an aggrieved party to seek compensatory damages and injunctive relief against a person, state agency, or political subdivision that violates the above-described prohibition. The prevailing party in such civil actions is entitled to recover reasonable attorney fees from the nonprevailing party.³⁴

Additionally, the bill gives an aggrieved party the ability to seek punitive damages against a person (not a state agency or political subdivision) who violates the above-described prohibition.

B. SECTION DIRECTORY:

Section 1. Amends s. 934.50, F.S., relating to searches and seizure using a drone.

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.

2. Expenditures:

The bill authorizes an aggrieved party to initiate a civil action and to obtain compensatory damages or injunctive relief against a state agency or political subdivision that violates the bill's newly-created prohibitions on using drones. This remedy could result in monetary damages, which would have a negative fiscal impact on state government.

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 authorizes an aggrieved party to initiate a civil action and to obtain compensatory damages or injunctive relief against a political subdivision that violates the bill's newly-created prohibitions on using drones. This remedy could result in monetary damages, which would have a negative fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes an aggrieved party to initiate a civil action and to obtain compensatory damages or injunctive relief against a person who violates the bill's newly-created prohibitions on using drones.

³⁴ The bill specifies that reasonable attorney fees are based on the actual and reasonable time expended by a plaintiff's attorney billed at an appropriate hourly rate and, in cases in which the payment of such a fee is contingent on the outcome, without a multiplier, unless the action is tried to verdict, in which case a multiplier of up to twice the actual value of the time expended may be awarded in the discretion of the trial court.

Additionally, the bill authorizes an aggrieved party to seek punitive damages against a person who commits such violation. The remedies could result in monetary damages, which would have a negative fiscal impact on the private sector.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates a presumption of a reasonable expectation of privacy. According to the bill, a person is presumed to have a reasonable expectation of privacy on his or her privately owned or occupied real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.

Despite this presumption, and depending on the facts of individual cases, the U.S. Supreme Court's³⁵ and Florida courts³⁶ extensive case law regarding an individual's reasonable expectation of privacy would likely be applied in the event the use of a drone is challenged using the civil remedy created by this bill.

In *Katz v. U.S.*, Justice Harlan laid out in his concurring opinion a test to determine whether an individual had a reasonable expectation of privacy. First, the person needs to exhibit an actual (subjective) expectation of privacy, and second, the expectation needs to be one that society is

³⁵ See, e.g., *Katz v. U.S.*, 389 U.S. 347 (1967) and *Kyllo v. United States*, 533 U.S. 27 (2001) (holding that a thermal imaging device aimed at a private home from a public street in order to detect relative amounts of heat inside the home was an invasion of a reasonable expectation of privacy and constituted a search within the meaning of the Fourth Amendment). In *Kyllo*, the Court reasoned that "obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical 'intrusion into a constitutionally protected area' constitutes a search . . ." *Kyllo v. United States*, 533 U.S. 27, 34-35 (2001) (quoting *Silverman v. United States*, 365 U.S. 505, 512 (1961)). Most recently, in *United States v. Jones*, 132 S.Ct. 945 (2012), the Court suggested that "[i]t may be that achieving the same result through electronic means, without an accompanying trespass is an unconstitutional invasion of privacy." *Jones*, 132 S.Ct. at 954.

³⁶ For example, under Florida case law, it is clear that a person does not harbor an expectation of privacy on a front porch where visitors may appear at any time. See *State v. Detlefson*, 335 So.2d 371 (Fla. 1st DCA 1976) and *State v. Belcher*, 317 So.2d 842 (Fla. 2d DCA 1975). An individual's privacy expectation in the backyard, when objects placed there are not visible from outside, is valid. *State v. Morsman*, 394 So.2d 408 (Fla. 1981). An unobstructed view from an individual's neighbor's yard into his or her yard evidences no expectation of privacy from that point. *Lightfoot v. State*, 356 So.2d 331 (Fla. 4th DCA 1978).

prepared to recognize as 'reasonable.'³⁷ The U.S. Supreme Court later adopted this test in *Smith v. Maryland*.³⁸ The Florida Supreme Court has a long history of applying this test to determine whether an individual had a reasonable expectation of privacy in various settings.³⁹ It is likely that such an analysis would be applied in the event the issue of whether an aggrieved party actually had a reasonable expectation of privacy sufficient to support a civil suit against a person, state agency, or political subdivision arose.

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 restructured the bill's civil remedy provisions so that they only applied to the newly-created prohibitions on using drones (not the existing prohibitions relating to law enforcement use).

On March 24, 2015, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Created an exception for use of a drone by a licensed person acting in the scope of his or her licensed field (unless that field is the practice of surveillance);
- Created an exception for use of a drone by a property appraiser;
- Expanded the list of property owners protected to include invitees or licensees; and
- Specified that the exceptions in the bill do not authorize a lawful drone user to violate federal law.

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

³⁷ *Katz*, 389 U.S. at 361.

³⁸ *Smith v. Maryland*, 442 U.S. 735 (1979).

³⁹ See, e.g., *Tracey v. State*, 152 So.3d 504 (Fla. 2014), *State v. Titus*, 707 So.2d 706 (Fla. 1998), *State v. Morsman*, 394 So.2d 408 (Fla. 1981).

1 A bill to be entitled

2 An act relating to surveillance by a drone; amending
3 s. 934.50, F.S.; defining terms; prohibiting a person,
4 state agency, or political subdivision from using a
5 drone to capture an image of privately owned or
6 occupied real property or of the owner, tenant,
7 occupant, invitee, or licensee of such property with
8 the intent to conduct surveillance without his or her
9 written consent if a reasonable expectation of privacy
10 exists; specifying when a reasonable expectation of
11 privacy may be presumed; authorizing the use of a
12 drone by a person or an entity engaged in a business
13 or profession licensed by the state in certain
14 circumstances; providing an exception; authorizing the
15 use of a drone by an employee or a contractor of a
16 property appraiser for the purpose of assessing
17 property for ad valorem taxation; providing that the
18 owner, tenant, occupant, invitee, or licensee may
19 initiate a civil action for compensatory damages and
20 may seek injunctive relief against a person, state
21 agency, or political subdivision for violations;
22 providing for the recovery of attorney fees and
23 punitive damages; specifying that remedies provided
24 are cumulative to other existing remedies; providing
25 an effective date.

26

Page 1 of 5

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

hb0649-02-c2

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

28

29 Section 1. Section 934.50, Florida Statutes, is amended to
30 read:

31 934.50 Searches and seizure using a drone.—

32 (1) SHORT TITLE.—This section ~~act~~ may be cited as the
33 "Freedom from Unwarranted Surveillance Act."

34 (2) DEFINITIONS.—As used in this section ~~act~~, the term:

35 (a) "Drone" means a powered, aerial vehicle that:

- 36 1. Does not carry a human operator;
- 37 2. Uses aerodynamic forces to provide vehicle lift;
- 38 3. Can fly autonomously or be piloted remotely;
- 39 4. Can be expendable or recoverable; and
- 40 5. Can carry a lethal or nonlethal payload.

41 (b) "Image" means a record of thermal, infrared,
42 ultraviolet, visible light, or other electromagnetic waves;
43 sound waves; odors; or other physical phenomena which captures
44 conditions existing on or about real property or an individual
45 located on that property.

46 (c) "Imaging device" means a mechanical, digital, or
47 electronic viewing device; still camera; camcorder; motion
48 picture camera; or any other instrument, equipment, or format
49 capable of recording, storing, or transmitting an image.

50 (d) ~~(b)~~ "Law enforcement agency" means a lawfully
51 established state or local public agency that is responsible for
52 the prevention and detection of crime, local government code

53 enforcement, and the enforcement of penal, traffic, regulatory,
 54 game, or controlled substance laws.

55 (3) PROHIBITED USE OF DRONES.—

56 (a) A law enforcement agency may not use a drone to gather
 57 evidence or other information.

58 (b) A person, a state agency, or a political subdivision
 59 as defined in s. 11.45 may not use a drone equipped with an
 60 imaging device to record an image of privately owned or occupied
 61 real property or of the owner, tenant, occupant, invitee, or
 62 licensee of such property with the intent to conduct
 63 surveillance on the individual or property captured in the image
 64 in violation of such person's reasonable expectation of privacy
 65 without his or her written consent. For purposes of this
 66 section, a person is presumed to have a reasonable expectation
 67 of privacy on his or her privately owned or occupied real
 68 property if he or she is not observable by persons located at
 69 ground level in a place where they have a legal right to be,
 70 regardless of whether he or she is observable from the air with
 71 the use of a drone. This paragraph is not intended to limit or
 72 restrict the application of federal law to the use of drones for
 73 surveillance purposes.

74 (4) EXCEPTIONS.—This ~~section~~ act does not prohibit the use
 75 of a drone:

76 (a) To counter a high risk of a terrorist attack by a
 77 specific individual or organization if the United States
 78 Secretary of Homeland Security determines that credible

79 intelligence indicates that there is such a risk.

80 (b) If the law enforcement agency first obtains a search
81 warrant signed by a judge authorizing the use of a drone.

82 (c) If the law enforcement agency possesses reasonable
83 suspicion that, under particular circumstances, swift action is
84 needed to prevent imminent danger to life or serious damage to
85 property, to forestall the imminent escape of a suspect or the
86 destruction of evidence, or to achieve purposes including, but
87 not limited to, facilitating the search for a missing person.

88 (d) By a person or an entity engaged in a business or
89 profession licensed by the state, or by an agent, employee, or
90 contractor thereof, if the drone is used only to perform
91 reasonable tasks within the scope of practice or activities
92 permitted under such person's or entity's license. However, this
93 exception does not apply to a profession in which the licensee's
94 authorized scope of practice includes obtaining information
95 about the identity, habits, conduct, movements, whereabouts,
96 affiliations, associations, transactions, reputation, or
97 character of any society, person, or group of persons.

98 (e) By an employee or a contractor of a property appraiser
99 who uses a drone solely for the purpose of assessing property
100 for ad valorem taxation.

101 (5) REMEDIES FOR VIOLATION.—

102 (a) An aggrieved party may initiate a civil action against
103 a law enforcement agency to obtain all appropriate relief in
104 order to prevent or remedy a violation of this section ~~act~~.

105 (b) The owner, tenant, occupant, invitee, or licensee of
 106 privately owned or occupied real property may initiate a civil
 107 action for compensatory damages for violations of this section
 108 and may seek injunctive relief against a person, state agency,
 109 or political subdivision that violates paragraph (3)(b) to
 110 prevent future such violations. In such action, the prevailing
 111 party is entitled to recover reasonable attorney fees from the
 112 nonprevailing party based on the actual and reasonable time
 113 expended by his or her attorney billed at an appropriate hourly
 114 rate and, in cases in which the payment of such a fee is
 115 contingent on the outcome, without a multiplier, unless the
 116 action is tried to verdict, in which case a multiplier of up to
 117 twice the actual value of the time expended may be awarded in
 118 the discretion of the trial court.

119 (c) Punitive damages for a violation of paragraph (3)(b)
 120 may be sought against a person subject to other requirements and
 121 limitations of law, including, but not limited to, part II of
 122 chapter 768 and case law.

123 (d) The remedies provided for a violation of paragraph
 124 (3)(b) are cumulative to other existing remedies.

125 (6) PROHIBITION ON USE OF EVIDENCE.—Evidence obtained or
 126 collected in violation of this section ~~act~~ is not admissible as
 127 evidence in a criminal prosecution in any court of law in this
 128 state.

129 Section 2. 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 Metz offered the following:

Amendment (with title amendment)

Remove lines 54-106 and insert:

game, or controlled substance laws.

(e) "Surveillance" means:

8 1. With respect to an owner, tenant, occupant, invitee, or
 9 licensee of privately owned real property, to observe, with
 10 visual clarity that is sufficient to be able to obtain
 11 information about, the identity, habits, conduct, movements, or
 12 whereabouts of such person or persons; or

13 2. With respect to privately owned real property, to
 14 observe, with visual clarity that is sufficient to be able to
 15 obtain information about, the property's physical improvements,
 16 unique identifying features, or occupancy by one or more
 17 persons.



Amendment No. 1

18 (3) PROHIBITED USE OF DRONES.—

19 (a) A law enforcement agency may not use a drone to gather
20 evidence or other information.

21 (b) A person, a state agency, or a political subdivision
22 as defined in s. 11.45 may not use a drone equipped with an
23 imaging device to record an image of privately owned real
24 property or of the owner, tenant, occupant, invitee, or licensee
25 of such property with the intent to conduct surveillance on the
26 individual or property captured in the image in violation of
27 such person's reasonable expectation of privacy without his or
28 her written consent. For purposes of this section, a person is
29 presumed to have a reasonable expectation of privacy on his or
30 her privately owned real property if he or she is not observable
31 by persons located at ground level in a place where they have a
32 legal right to be, regardless of whether he or she is observable
33 from the air with the use of a drone. This paragraph is not
34 intended to limit or restrict the application of federal law to
35 the use of drones.

36 (4) EXCEPTIONS.—This section ~~act~~ does not prohibit the use
37 of a drone:

38 (a) To counter a high risk of a terrorist attack by a
39 specific individual or organization if the United States
40 Secretary of Homeland Security determines that credible
41 intelligence indicates that there is such a risk.

42 (b) If the law enforcement agency first obtains a search
43 warrant signed by a judge authorizing the use of a drone.



Amendment No. 1

44 (c) If the law enforcement agency possesses reasonable
45 suspicion that, under particular circumstances, swift action is
46 needed to prevent imminent danger to life or serious damage to
47 property, to forestall the imminent escape of a suspect or the
48 destruction of evidence, or to achieve purposes including, but
49 not limited to, facilitating the search for a missing person.

50 (d) By a person or an entity engaged in a business or
51 profession licensed by the state, or by an agent, employee, or
52 contractor thereof, if the drone is used only to perform
53 reasonable tasks within the scope of practice or activities
54 permitted under such person's or entity's license. However, this
55 exception does not apply to a profession in which the licensee's
56 authorized scope of practice includes obtaining information
57 about the identity, habits, conduct, movements, whereabouts,
58 affiliations, associations, transactions, reputation, or
59 character of any society, person, or group of persons.

60 (e) By an employee or a contractor of a property appraiser
61 who uses a drone solely for the purpose of assessing property
62 for ad valorem taxation.

63 (f) To capture images by or for an electric, water, or
64 natural gas utility:

65 1. For operations and maintenance of utility facilities,
66 including facilities used in the generation, transmission, or
67 distribution of electricity, gas, or water, for the purpose of
68 maintaining utility system reliability and integrity;



Amendment No. 1

69 2. For inspecting utility facilities, including pipelines,
70 to determine construction, repair, maintenance, or replacement
71 needs before, during, and after construction of such facilities;

72 3. For assessing vegetation growth for the purpose of
73 maintaining clearances on utility rights-of-way;

74 4. For utility routing, siting, and permitting for the
75 purpose of constructing utility facilities or providing utility
76 service; or

77 5. For conducting environmental monitoring, as provided by
78 federal, state, or local law, rule, or permit.

79 (5) REMEDIES FOR VIOLATION.—

80 (a) An aggrieved party may initiate a civil action against
81 a law enforcement agency to obtain all appropriate relief in
82 order to prevent or remedy a violation of this section ~~aet.~~

83 (b) The owner, tenant, occupant, invitee, or licensee of
84 privately owned real property may initiate a civil

85

86

87

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

88

Remove lines 5-17 and insert:

89

drone to capture an image of privately owned real property or of
90 the owner, tenant, occupant, invitee, or licensee of such
91 property with the intent to conduct surveillance without his or
92 her written consent if a reasonable expectation of privacy
93 exists; specifying when a reasonable expectation of privacy may
94 be presumed; authorizing the use of a drone by a person or an





Amendment No. 1

95 entity engaged in a business or profession licensed by the state
96 in certain circumstances; providing an exception; authorizing
97 the use of a drone by an employee or a contractor of a property
98 appraiser for the purpose of assessing property for ad valorem
99 taxation; authorizing the use of a drone by certain utilities
100 for specified purposes; providing that the
101

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 667 Service of Process
SPONSOR(S): Cruz
TIED BILLS: None **IDEN./SIM. BILLS:** SB 672

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Keegan	Cunningham
2) Judiciary Committee		Keegan 	Havlicak 

SUMMARY ANALYSIS

Witness subpoenas for criminal cases in Florida may be served by the sheriff of the county where the witness is found, by special process servers appointed by the sheriff, or by certified process servers. Process servers may charge reasonable fees, including fees for each attempted service. Sheriffs may charge a statutory fee for each criminal witness to be served, but they may not charge additional fees for multiple attempts to serve a witness, and may not charge anything at all in criminal cases with an insolvent defendant.

Failing to obey a subpoena can be considered contempt of court when the witness does not have a sufficient excuse for the failure. Criminal contempt of court may be punished by up to one year in jail and a \$500.00 fine.

Currently, Florida law permits a copy of a witness subpoena in a criminal case to be served on the witness by a sheriff or process server in the following ways:

- Hand delivery to the witness, or hand delivery to a qualifying person at the witness's usual place of abode;
- Mailing the subpoena to the witness via the United States Postal Service (USPS) at the witness's last known address, in specified criminal cases;
- Hand delivery to a designated supervisor or administrative employee at the witness's place of employment, for specified witnesses; and
- Posting the subpoena at the witness's residence after 3 attempts on different days and at different times have failed.

The bill amends s. 48.031(3)(b), F.S., to permit a criminal witness subpoena for a *deposition* to be served by posting it to the witness's residence after one attempt to serve the subpoena by another method has failed.

The bill may reduce state and local government expenditures because agencies and sheriffs attempting to serve process will be spared the expense of repeat service. However, the change to service of process made by the bill may increase the number of hearings to show cause, thereby increasing related expenses to circuit and county courts.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Service of Process

Witness subpoenas for criminal cases may be served by the sheriff of the county where the witness is found, by a special process server appointed by the sheriff, or by a certified process server.¹ Special and certified process servers are permitted to charge a reasonable fee for serving subpoenas,² but there is no statutory limit on the amount of the fee. They may also charge for each attempt to serve a subpoena. Florida sheriffs are permitted to charge a fee of \$40.00 for service of subpoenas; however, they cannot charge any fee in connection with insolvent criminal defendants, and they may not charge any additional fees for attempting to serve a witness multiple times.³

Failure to Appear

A witness who fails to obey a valid subpoena can be held in contempt of court when the witness does not have a sufficient excuse for the failure.⁴ If a witness disobeys a subpoena, a judge may issue an order to show cause, requiring the witness to appear before the judge to answer to the charge.⁵ Criminal contempt of court can be punished by up to one year in jail and a \$500.00 fine.⁶

If a witness claims that the service of the subpoena was not valid, the party seeking to invoke the court's jurisdiction over the witness (i.e., the party that subpoenaed the witness to appear) is responsible for proving the validity of the service of process.⁷ If the service of the subpoena is found to be invalid, the court cannot exercise personal jurisdiction over the witness.⁸

Serving Witness Subpoenas

Florida law currently provides multiple options for serving a witness subpoena in a criminal case. For example, a copy of the witness subpoena may be hand delivered to the witness, or it may be hand delivered to a qualifying person⁹ at the witness's usual place of abode.¹⁰

A witness subpoena in a criminal case may be also be served upon the witness by mailing the subpoena to the witness via the United States Postal Service (USPS) to the witness's last known address in the following types of cases:

- A criminal traffic case;
- A misdemeanor case; or
- A second or third degree felony case.¹¹

¹ ss. 48.021(1) and 48.29, F.S.

² ss. 48.021(3) and 48.29(8), F.S.

³ s. 30.231(1)(c), F.S.; 63-101 Fla. Op. Att'y Gen. 2 (1963).

⁴ FLA. R. CRIM. P. 3.220(h); *See Ex parte Crews*, 173 So. 275, 278 (Fla. 1937).

⁵ FLA. R. CRIM. P. 3.840(a).

⁶ *Schaab v. Florida*, 33 So. 3d 763, 765 (Fla. 4th DCA 2010) (citing to s. 775.02, F.S., *Moorman v. Bentley*, 490 So. 2d 186, 187 (Fla. 2d DCA 1986).); *see also Giordano v. Florida*, 32 So. 3d 96, 98 (Fla. 2d DCA 2009); *Johnson v. Florida*, 584 So. 2d 95, 98 n.3 (Fla. 1st DCA 1991).

⁷ *Thompson v. Fla., Dep't of Revenue*, 867 So. 2d 603, 605 (Fla. 1st DCA 2004); *Torres v. Arnco Constr., Inc.*, 867 So. 2d 583 (Fla. 5th DCA 2004).

⁸ *Thompson v. Fla., Dep't of Revenue*, 867 So. 2d 603 (Fla. 1st DCA 2004).

⁹ A qualifying person is any person who is at the witness's usual place of abode at the time of service, is 15 years of age or older, and resides at that location. s. 48.031(1)(a), F.S.

¹⁰ The "usual place of abode" is the place where the witness is actually living at the time of service. *Stettner v. Richardson*, 143 So. 2d 987, 990 (Fla. 3d DCA 2014); *Johnson v. Hudlett*, 32 So. 3d 700, 704-05 (Fla. 4th DCA 2010); *Heck v. Bank Liberty*, 86 So. 3d 1281, 1283 (Fla. 1st DCA 2012).

¹¹ s. 48.031(3)(a), F.S.

When serving a witness by USPS, the serving party must use certified mail in order for a court to hold the witness in contempt for failure to appear.¹² Additionally, subpoenas served by USPS must be mailed at least seven days prior to the date when appearance is required.¹³

Additional options are provided for serving criminal witness subpoenas on law enforcement officers, or federal, state or municipal employees who are called to testify in an official capacity. While a witness subpoena for these witnesses may be served by the methods explained above, it may also be hand delivered to a designated supervisor or administrative employee at the witness's place of employment.¹⁴

Florida law currently allows a criminal witness subpoena to be served by posting it at the witness's residence,¹⁵ but only after the sheriff or process server makes three separate attempts on different dates and at different times to serve the subpoena.¹⁶ The subpoena must be posted to the residence at least five days in advance of the witness's required appearance.¹⁷ These requirements apply to witness subpoenas for both depositions and court appearances in criminal cases.¹⁸

Effect of the Bill

The bill amends s. 48.031(3)(b), F.S., to permit a criminal witness subpoena *for a deposition* to be served by posting it to the witness's residence after one attempt to serve the subpoena by another method has failed.¹⁹

The bill reenacts s. 48.196(2), F.S., and 409.257(5), F.S., to incorporate the changes made to service of process requirements in s. 48.031, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 48.031, F.S., relating to service of process generally; service of witness subpoenas.

Section 2. Reenacts s. 48.196, F.S., relating to service of process in connection with actions under the Florida International Commercial Arbitration Act.

Section 3. Reenacts s. 409.257, F.S., relating to service of process.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹² s. 48.031(3)(a), F.S.

¹³ *Id.*

¹⁴ s. 48.031(4)(a), F.S. The subpoena may only be delivered to a supervisor or administrative employee who has been designated to accept service for the witness by the agency head or the highest ranking official at the witness's place of employment.

¹⁵ If a witness has more than one residence, the witness must be served at the residence in which he or she is actually living at the time the subpoena is served. *Heck v. Bank Liberty*, 86 So. 3d 1281, 1283 (Fla. 1st DCA 2012).

¹⁶ s. 48.031(3)(b), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ The bill does not change the process for serving any other type of criminal witness subpoena.

2. Expenditures:

The bill may reduce state government expenditures because state entities attempting to serve process will be spared the expense of repeat service. However, the change to service of process made by the bill may increase the number of hearings to show cause, thereby increasing related expenses to circuit courts.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may reduce local government expenditures because local government entities attempting to serve process will be spared the expense of repeat service.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce litigation expenses for private individuals in criminal cases because it spares such parties the expense of repeat service.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create 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 service of process; amending s.
 3 48.031, F.S.; authorizing a criminal witness subpoena
 4 commanding a witness to appear for a deposition to be
 5 posted at the witness's residence by an authorized
 6 person if one attempt to serve the subpoena has
 7 failed; reenacting ss. 48.196(2) and 409.257(5), F.S.,
 8 relating to service of process in actions under the
 9 Florida International Commercial Arbitration Act and
 10 of witness subpoenas served by the Department of
 11 Children and Families in paternity or child support
 12 proceedings, respectively, to incorporate the
 13 amendment made to s. 48.031, F.S., in references
 14 thereto; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Paragraph (b) of subsection (3) of section
 19 48.031, Florida Statutes, is amended to read:

20 48.031 Service of process generally; service of witness
 21 subpoenas.—

22 (3)

23 (b) A criminal witness subpoena commanding the witness to
 24 appear for a court appearance may be posted by a person
 25 authorized to serve process at the witness's residence if three
 26 attempts to serve the subpoena, made at different times of the

27 | day or night on different dates, have failed. A criminal witness
 28 | subpoena commanding the witness to appear for a deposition may
 29 | be posted by a person authorized to serve process at the
 30 | witness's residence if one attempt to serve the subpoena has
 31 | failed. The subpoena must be posted at least 5 days before ~~prior~~
 32 | ~~to~~ the date of the witness's required appearance.

33 | Section 2. For the purpose of incorporating the amendment
 34 | made by this act to section 48.031, Florida Statutes, in a
 35 | reference thereto, subsection (2) of section 48.196, Florida
 36 | Statutes, is reenacted to read:

37 | 48.196 Service of process in connection with actions under
 38 | the Florida International Commercial Arbitration Act.—

39 | (2) The process served under subsection (1) shall include
 40 | a copy of the application to the court together with all
 41 | attachments thereto and shall be served in the following manner:

42 | (a) In any manner agreed upon, whether service occurs
 43 | within or without this state;

44 | (b) If service is within this state:

45 | 1. In the manner provided in ss. 48.021 and 48.031, or

46 | 2. If applicable under their terms, in the manner provided
 47 | in ss. 48.161, 48.183, 48.23, or chapter 49; or

48 | (c) If service is outside this state:

49 | 1. By personal service by any person authorized to serve
 50 | process in the jurisdiction where service is being made or by
 51 | any person appointed to do so by any competent court in that
 52 | jurisdiction;

53 2. In any other manner prescribed by the laws of the
 54 jurisdiction where service is being made for service in an
 55 action before a local court of competent jurisdiction;
 56 3. In the manner provided in any applicable treaty to
 57 which the United States is a party;
 58 4. In the manner prescribed by order of the court;
 59 5. By any form of mail requiring a signed receipt, to be
 60 addressed and dispatched by the clerk of the court to the person
 61 being served; or
 62 6. If applicable, in the manner provided in chapter 49.
 63 Section 3. For the purpose of incorporating the amendment
 64 made by this act to section 48.031, Florida Statutes, in a
 65 reference thereto, subsection (5) of section 409.257, Florida
 66 Statutes, is reenacted to read:
 67 409.257 Service of process.—
 68 (5) Witness subpoenas shall be served by the department by
 69 United States mail as provided for in s. 48.031(3).
 70 Section 4. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 755 Convenience Business Security

SPONSOR(S): Stone

TIED BILLS: None **IDEN./SIM. BILLS:** SB 684

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

SUMMARY ANALYSIS

The Convenience Business Security Act (Act) requires a convenience business to be equipped with a variety of security devices and standards (e.g., a security camera system, a drop safe for restricted access to cash receipts, a notice at the entrance stating that the cash register contains \$50 or less, height markers at the entrance; a cash management policy that limits cash on hand after 11 p.m., a silent alarm, etc.).

The Act also requires any convenience business at which a specified crime has occurred, to implement enhanced security measures. These measures must be in place between 11 p.m. and 5 a.m., and include:

- Providing at least two employees on the premises, installing a transparent secured safety enclosure for use by the employees; providing a security guard on the premises; locking the premises and transacting business through an indirect pass-through window; or closing the business.

The Act also requires all employees to receive robbery deterrence and safety training within 60 days of employment. Convenience businesses must submit a proposed training curriculum to the Department of Legal Affairs (Department), along with an administrative fee not to exceed \$100, for review and approval. The training curriculum must be submitted to the Department biennially, along with the appropriate administrative fee, for reapproval.

Currently, the term "convenience business" is defined to exclude *any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.*

The bill amends the definition of "convenience business" so that it does not exclude businesses in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m. As a result, all of the above-described security and training requirements (except the ones noted below) will apply to convenience businesses in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.

The bill continues to exempt convenience businesses in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m. from the enhanced security standards required after a crime has occurred on the property (described above).

The bill removes the requirement that convenience businesses must submit a safety training curriculum and associated administrative fee to the Department. The Department reports that they are not currently collecting the fee. The bill does not appear to have a fiscal impact on state or local government.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Convenience Business Security Act

In 1990, the Legislature passed the Convenience Business Security Act (Act)¹ to prevent violent crime and provide uniform statewide security standards for late night convenience businesses.² The provisions of the Act are enforced by the Department of Legal Affairs (Department).³

Minimum Security Standards

The Act requires convenience businesses to have the following security devices and standards:

- A security camera system that is capable of recording and retrieving an image to assist in offender identification and apprehension;
- A drop safe or cash management device for restricted access to cash receipts;
- A lighted parking lot illuminated at a specified intensity;
- A conspicuous notice at the entrance stating that the cash register contains \$50 or less;
- Window signage that allows a clear and unobstructed view from outside the building and in a normal line of sight of the cash register and sales transaction area;
- Height markers at the entrance of the convenience business that display height measures;
- A cash management policy that limits cash on hand after 11 p.m.;
- Windows that are not tinted in a way that reduces exterior or interior view; and
- A silent alarm to law enforcement or a private security agency.⁴

Enhanced Security Standards

The Act requires any convenience business at which a murder, robbery, sexual battery, aggravated assault, aggravated battery, kidnapping, or false imprisonment has occurred, to implement additional security measures. These additional security measures must be in place at all times between 11 p.m. and 5 a.m., and include:

- Providing at least two employees on the premises;
- Installing a transparent secured safety enclosure for use by the employees;
- Providing a security guard on the premises;
- Locking the premises and transacting business through an indirect pass-through window; or
- Closing the business.⁵

After complying with these provisions for 24 months with no additional occurrences of the above-described crimes, a convenience business may file a notice of exemption from the enhanced security measures with the Department.⁶

Training Requirements

The Act requires all employees to receive robbery deterrence and safety training within 60 days of employment.⁷ Convenience businesses must submit a proposed training curriculum to the Department, along with an administrative fee not to exceed \$100, for review and approval.⁸ The training curriculum must be submitted to the Department biennially, along with the appropriate administrative fee, for reapproval.⁹

¹ Ch. 90-346, Laws of Fla.

² s. 812.172, F.S.

³ s. 812.175, F.S. The Department may also enter into agreements with local governments to assist in enforcement. s. 812.175(4), F.S.

⁴ s. 812.173(1), (2), and (3), F.S.

⁵ s. 812.173(4), F.S.

⁶ s. 812.173(5), F.S.

⁷ s. 812.174, F.S.

⁸ *Id.*

⁹ *Id.*

Enforcement

The Department enforces the provisions of the Act. Upon learning of a violation, the Department must provide the convenience business a notice of violation which the business has 30 days to correct.¹⁰ If the convenience business fails to correct the violation within 30 days, the Department may impose a civil fine of up to \$5,000.¹¹ If the violation is determined to be a threat to health, safety, and public welfare, the Department is authorized to pursue an injunction against the convenience business.¹²

Currently, the term "convenience business" is defined as any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, and that is open for business at any time between the hours of 11 p.m. and 5 a.m.¹³ The term does not include:

- A business that is solely or primarily a restaurant;
- A business that always has at least five employees on the premises after 11 p.m. and before 5 a.m.; or
- A business that has at least 10,000 square feet of retail floor space.¹⁴

The term also does not include any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.¹⁵

Effect of the Bill

The bill amends the definition of "convenience business" so that it does not exclude any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m. As a result, all of the above-described security and training requirements (except the ones noted below) will apply to convenience businesses in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.

The bill continues to exempt convenience businesses in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m. from the enhanced security standards required after a crime has occurred on the property (described above).

The bill also removes the requirement that convenience businesses submit a safety training curriculum to the Department.

B. SECTION DIRECTORY:

Section 1. Amends s. 812.171, F.S., relating to definition.

Section 2. Amends s. 812.173, F.S., relating to convenience business security.

Section 3. Amends s. 812.174, F.S., relating to training of employees.

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

¹⁰ s. 812.175(1), F.S.

¹¹ *Id.*

¹² s. 812.175(3), F.S.

¹³ s. 812.171, F.S.

¹⁴ *Id.*

¹⁵ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill removes the requirement that convenience businesses must submit a safety training curriculum and associated administrative fee to the Department. The Department reports that they are not currently collecting the fee, and that the bill will not have a fiscal impact.¹⁶

2. Expenditures:

The bill does not appear to have an impact on state government 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:

The bill may have a positive fiscal impact on convenience businesses, as they will no longer be required to submit a safety training curriculum and associated fee to the Department.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹⁶ E-mail from Andrew Fay, Florida Department of Legal Affairs, March 11, 2015 (on file with the Criminal Justice Subcommittee).
STORAGE NAME: h0755d.JDC.DOCX
DATE: 3/31/2015

1 A bill to be entitled

2 An act relating to convenience business security;
 3 amending s. 812.171, F.S.; revising the definition of
 4 the term "convenience business" to delete an exception
 5 for certain businesses in which the owner or family
 6 members work between specified hours; amending s.
 7 812.173, F.S.; exempting certain businesses in which
 8 the owner or family members work between specified
 9 hours from specified requirements; amending s.
 10 812.174, F.S.; deleting obsolete provisions; deleting
 11 administrative fees required to be submitted to the
 12 Attorney General with proposed and biennial robbery
 13 deterrence and safety training curriculum for
 14 convenience store employees; deleting a requirement
 15 for the Attorney General to biennially reapprove such
 16 curriculum; providing an effective date.

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

19
 20 Section 1. Section 812.171, Florida Statutes, is amended
 21 to read:

22 812.171 Definition.—As used in ss. 812.1701-812.175 ~~this~~
 23 ~~act~~, the term "convenience business" means any place of business
 24 that is primarily engaged in the retail sale of groceries, or
 25 both groceries and gasoline, and that is open for business at
 26 any time between the hours of 11 p.m. and 5 a.m. The term

27 "convenience business" does not include:

28 (1) A business that is solely or primarily a restaurant.

29 (2) A business that always has at least five employees on
30 the premises after 11 p.m. and before 5 a.m.

31 (3) A business that has at least 10,000 square feet of
32 retail floor space.

33

34 ~~The term "convenience business" does not include any business in~~
35 ~~which the owner or members of his or her family work between the~~
36 ~~hours of 11 p.m. and 5 a.m.~~

37 Section 2. Subsection (4) of section 812.173, Florida
38 Statutes, is amended to read:

39 812.173 Convenience business security.—

40 (4) If a murder, robbery, sexual battery, aggravated
41 assault, aggravated battery, or kidnapping or false
42 imprisonment, as those crimes are identified and defined by
43 Florida Statutes, occurs or has occurred at a convenience
44 business since July 1, 1989, and arises out of the operation of
45 the convenience business, that convenience business, unless it
46 is a convenience business in which the owner or members of his
47 or her family work between the hours of 11 p.m. and 5 a.m.,
48 shall implement at least one of the following security measures:

49 (a) Provide at least two employees on the premises at all
50 times after 11 p.m. and before 5 a.m.;

51 (b) Install for use by employees at all times after 11
52 p.m. and before 5 a.m. a secured safety enclosure of transparent

53 polycarbonate or other material that meets at least one of the
 54 following minimum standards:

55 1. American Society for Testing and Materials Standard
 56 D3935 (classification PC110 B 3 0800700) and that has a
 57 thickness of at least 0.375 inches and has an impact strength of
 58 at least 200 foot pounds; or

59 2. Underwriters Laboratory Standard UL 752 for medium
 60 power small arms (level one), Bullet Resisting Equipment;

61 (c) Provide a security guard on the premises at all times
 62 after 11 p.m. and before 5 a.m.;

63 (d) Lock the business premises throughout the hours of 11
 64 p.m. to 5 a.m., and only transact business through an indirect
 65 pass-through trough, trapdoor, or window; or

66 (e) Close the business at all times after 11 p.m. and
 67 before 5 a.m.

68 Section 3. Section 812.174, Florida Statutes, is amended
 69 to read:

70 812.174 Training of employees.-

71 (1) The owner or principal operator of a convenience
 72 business or convenience businesses shall provide proper robbery
 73 deterrence and safety training by an approved curriculum to its
 74 retail employees within 60 days after ~~of~~ employment. ~~Existing~~
 75 ~~retail employees shall receive training within 6 months of April~~
 76 ~~8, 1992.~~

77 (2) A proposed curriculum shall be submitted in writing to
 78 the Attorney General ~~with an administrative fee not to exceed~~

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79 | ~~§100.~~ The Attorney General shall review and approve or
 80 | disapprove the curriculum in writing within 60 days after
 81 | receipt. The state shall have no liability for approving or
 82 | disapproving a training curriculum under this section. Approval
 83 | shall be given to a curriculum that ~~which~~ trains and
 84 | familiarizes retail employees with the security principles,
 85 | devices, and measures required by s. 812.173. Disapproval of a
 86 | curriculum shall be subject to ~~the provisions of~~ chapter 120.

87 | (3) ~~A~~ No person shall not be liable for ordinary
 88 | negligence due to implementing an approved curriculum if the
 89 | training was actually provided. ~~A curriculum shall be submitted~~
 90 | ~~for reapproval biennially with an administrative fee not to~~
 91 | ~~exceed \$100. Any curriculum approved by the Attorney General~~
 92 | ~~since September 1990 shall be subject to reapproval 2 years from~~
 93 | ~~the anniversary of initial approval and biennially thereafter.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 897 Controlled Substances
SPONSOR(S): Criminal Justice Subcommittee; Ingram
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1098

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

SUMMARY ANALYSIS

In recent years, synthetic drugs have become a problem in Florida. Synthetic drugs, such as cannabinoids and cathinones, are industrial grade chemicals mixed to produce a "high" similar to what would be experienced when using illegal drugs such as marijuana or methamphetamine.

Each year since 2011, the Florida Legislature has added numerous synthetic cannabinoids, cathinones, and phenethylamines to Schedule I of Florida's controlled substances schedules. Since the 2014 Legislative Session, new formulas of synthetic cannabinoids have been developed that are made up of chemicals not covered by current law.

The bill adds five new synthetic cannabinoids to Schedule I of Florida's controlled substance schedules. As a result, the criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances will apply to these synthetic substances.

The Criminal Justice Impact Conference (CJIC) met March 11, 2015, and determined this bill will have an insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the department's prison bed population by less than 10 inmates annually. This bill may increase the number of offenders sentenced to local jail beds because the bill provides possession of three grams or less of the new Schedule I substances is a first degree misdemeanor.

While this bill may also impact the Florida Department of Law Enforcement Crime Laboratory workload because the lab may see a rise in evidence submissions associated with the newly added substances, the department states the workload can be absorbed within existing resources.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Scheduling Synthetic Drugs

Background

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the “potential for abuse”¹ of the substances listed therein and whether there is a currently accepted medical use for the substance.² Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.³ Cannabis and heroin are examples of Schedule I substances.⁴

Chapter 893, F.S., contains a variety of provisions criminalizing behavior related to controlled substances. Most of these provisions are found in s. 893.13, F.S., which criminalizes the possession, sale, purchase, manufacture, and delivery of controlled substances. The penalty for violating these provisions depends largely on the schedule in which the substance is listed.⁵ Other factors, such as the quantity of controlled substances involved in a crime, can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

In recent years, synthetic drugs have emerged in Florida. Synthetic drugs, such as cannabinoids and cathinones, are industrial grade chemicals mixed to produce a “high” similar to what would be experienced when using illegal drugs such as marijuana or methamphetamine.⁶ According to the United States Drug Enforcement Administration (DEA), these substances have not been approved for human consumption by the United States Food and Drug Administration (FDA).⁷

Synthetic Cannabinoids

Synthetic cannabinoids (also known as “K2” or “Spice”) are chemically engineered substances that have a similar structure to tetrahydrocannabinol (THC) and produce a high similar to marijuana when ingested.⁸ The chemicals are often applied to a plant material to mimic marijuana.⁹ Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system.¹⁰ No legitimate non-research uses have been identified for synthetic cannabinoids and they have not been approved by the FDA for human consumption.¹¹

¹ Section 893.035(3)(a), F.S., defines “potential for abuse” to mean that a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: 1) used in amounts that create a hazard to the user's health or the safety of the community; 2) diverted from legal channels and distributed through illegal channels; or 3) taken on the user's own initiative rather than on the basis of professional medical advice.

² See s. 893.03, F.S.

³ *Id.*

⁴ *Id.*

⁵ See, e.g., s. 893.13(1)(a) and (c), F.S.

⁶ OFFICE OF NATIONAL DRUG CONTROL POLICY, *Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)*, <http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts> (last visited March 7, 2015).

⁷ UNITED STATES DRUG ENFORCEMENT ADMINISTRATION, *Chemicals Used in “Spice” and K2” Type Products Now under Federal Control and Regulation*, <http://www.dea.gov/pubs/pressrel/pr030111.html> (last visited March 7, 2015).

⁸ OFFICE OF NATIONAL DRUG CONTROL POLICY, *Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)*, <http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts> (last visited March 7, 2015).

⁹ *Id.*

¹⁰ Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I, 75 Fed. Reg. 71,635-38 (Nov. 24, 2010) (supplementary information), also available at <https://www.federalregister.gov/articles/2010/11/24/2010-29600/schedules-of-controlled-substances-temporary-placement-of-five-synthetic-cannabinoids-into-schedule#h-6>.

¹¹ *Id.*

Despite being labeled “not for human consumption,” synthetic cannabinoids are used as recreational drugs and have been marketed as a legal alternative to illegal methods of getting “high.”¹² They can be purchased on the Internet, in smoke shops, and convenience stores.¹³ The effects of ingesting synthetic cannabinoids can be very serious, and may include seizures, hallucinations, paranoia, anxiety, and tachycardia (racing heartbeat), among others.¹⁴

Synthetic Drugs Legislation

Each year since 2011, the Florida Legislature has added numerous synthetic cannabinoids, cathinones, and phenethylamines to Schedule I of Florida’s controlled substances schedules.¹⁵ As a result, the criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances now apply to these synthetic substances. For example:

- It is a first degree misdemeanor¹⁶ to possess three grams or less of listed synthetic cannabinoids;¹⁷ and
- It is a third degree felony¹⁸ to knowingly sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, listed synthetic cannabinoids.¹⁹

Since the 2014 Legislative Session, new formulas of synthetic cannabinoids have been developed that are made of chemicals not covered by current law. In December, 2014, the DEA federally scheduled two new synthetic cannabinoids that are not scheduled as controlled substances in Florida.²⁰

Effect of the Bill

The bill amends s. 893.03(1)(c), F.S., to add five synthetic cannabinoids to Schedule I of Florida’s controlled substances schedules:

- AB-CHMINACA: N-[1-(aminocarbonyl)-2-methylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide;
- FUB-PB-22: Quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-3-carboxylate;
- Fluoro-NNEI: 1-(Fluoropentyl)-N-(naphthalen-1-yl)-1H-indole-3-carboxamide;
- Fluoro-AMB: Methyl 2-(1-(fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate; and
- THJ-2201: [1-(5-Fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone.

As a result, the criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances will apply to these synthetic substances.

The bill reenacts ss. 39.01(30)(a) and (g); 316.193(5); 322.2616(2)(c); 327.35(5); 440.102(11)(b); 458.3265(1)(e); 459.0137(1)(e); 782.04(1)(a) and (4); 893.0356(2)(a) and (5); 893.05(1); 893.12(2)(b)-(d); 893.13(1)(a), (c), (d)-(f), (h), (2)(a), (4)(b), (5)(b), and (7)(a); 893.135(1)(k) and (l); 921.0022(3)(b), (c), (e), F.S.; to incorporate the changes to s. 893.03, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 893.03, F.S., relating to standards and schedules.

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

¹² United States Drug Enforcement Administration, *Chemicals Used in “Spice” and K2” Type Products Now under Federal Control and Regulation*, <http://www.dea.gov/pubs/pressrel/pr030111.html> (last visited March 7, 2015).

¹³ Synthetic Substances Ban, Brief # 12-150, Florida Fusion Center (March 23, 2012) available at www.tspd.us/Substances_Ban.pdf

¹⁴ Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I, 76 Fed. Reg. 11,075-78 (March 1, 2011) (supplementary information) also available at http://www.deadiversion.usdoj.gov/fed_regs/rules/2011/fr0301.htm.

¹⁵ Chs. 14-159, 13-29, 12-23, 11-73, 11-90, Laws of Fla.

¹⁶ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

¹⁷ s. 893.13(6)(b), F.S.

¹⁸ 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.

¹⁹ s. 893.13(1)(a), F.S.

²⁰ Schedules of Controlled Substances: Temporary Placement of Three Synthetic Cannabinoids Into Schedule I, 79 Fed. Reg. 75,767-771 (Dec. 2014) also available at http://www.deadiversion.usdoj.gov/fed_regs/rules/2014/fr1219.htm.

Section 3. Reenacts s. 316.193, F.S., relating to driving under the influence; penalties.

Section 4. Reenacts s. 322.2616, F.S., relating to suspension of license; persons under 21 years of age; right to review.

Section 5. Reenacts s. 327.35, F.S., relating to boating under the influence; penalties; "designated drivers."

Section 6. Reenacts s. 440.102, F.S., relating to drug-free workplace program requirements.

Section 7. Reenacts s. 458.3265, F.S., relating to pain-management clinics.

Section 8. Reenacts s. 459.0137, F.S., relating to pain-management clinics.

Section 9. Reenacts s. 782.04, F.S., relating to murder.

Section 10. Reenacts s. 893.0356, F.S., relating to control of new substances; findings of fact; "controlled substance analog" defined.

Section 11. Reenacts s. 893.05, F.S., relating to practitioners and persons administering controlled substances in their absence.

Section 12. Reenacts s. 893.12, F.S., relating to contraband; seizure, forfeiture, sale.

Section 13. Reenacts s. 893.13, F.S., relating to prohibited acts; penalties.

Section 14. Reenacts s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 15. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 16. Provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met March 11, 2015, and determined this bill will have an insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the department's prison bed population by less than 10 inmates annually.

While this bill may also impact the Florida Department of Law Enforcement Crime Laboratory workload because the lab may see a rise in evidence submissions associated with the newly added substances, the department states the workload can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

This bill may increase the number of offenders sentenced to local jail beds because the bill provides possession of three grams or less of the new Schedule I substances is a first degree misdemeanor.

The bill may also impact local agencies that fund or maintain their own crime lab because these labs may see a rise in evidence submissions associated with the newly added substances.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because 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 12, 2015, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorable as a committee substitute. Amendment 1 made technical corrections to the names of two chemical substances included in the bill, and Amendment 2 changed the effective date to be effective upon becoming a law.

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

53 preparation that contains any quantity of the following
 54 hallucinogenic substances or that contains any of their salts,
 55 isomers, including optical, positional, or geometric isomers,
 56 and salts of isomers, if the existence of such salts, isomers,
 57 and salts of isomers is possible within the specific chemical
 58 designation:

- 59 1. Alpha-ethyltryptamine.
- 60 2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-
 61 methylaminorex).
- 62 3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
- 63 4. 4-Bromo-2,5-dimethoxyamphetamine.
- 64 5. 4-Bromo-2,5-dimethoxyphenethylamine.
- 65 6. Bufotenine.
- 66 7. Cannabis.
- 67 8. Cathinone.
- 68 9. Diethyltryptamine.
- 69 10. 2,5-Dimethoxyamphetamine.
- 70 11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
- 71 12. Dimethyltryptamine.
- 72 13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine
 73 analog of phencyclidine).
- 74 14. N-Ethyl-3-piperidyl benzilate.
- 75 15. N-ethylamphetamine.
- 76 16. Fenethylamine.
- 77 17. N-Hydroxy-3,4-methylenedioxyamphetamine.
- 78 18. Ibogaine.

105 isomers, esters, and ethers, if the existence of such isomers,
 106 esters, ethers, and salts is possible within the specific
 107 chemical designation.

108 37. Tetrahydrocannabinols.

109 38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)
 110 (Thiophene analog of phencyclidine).

111 39. 3,4,5-Trimethoxyamphetamine.

112 40. 3,4-Methylenedioxymethcathinone.

113 41. 3,4-Methylenedioxypyrovalerone (MDPV).

114 42. Methylenedioxymethcathinone.

115 43. Methoxymethcathinone.

116 44. Fluoromethcathinone.

117 45. Methylethcathinone.

118 46. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-
 119 yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8)
 120 homologue.

121 47. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
 122 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol,
 123 also known as HU-210.

124 48. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.

125 49. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.

126 50. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole,
 127 also known as JWH-200.

128 51. BZP (Benzylpiperazine).

129 52. Fluorophenylpiperazine.

130 53. Methylphenylpiperazine.

- 157 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
- 158 81. Butylone (beta-keto-N-methylbenzodioxolylpropylamine).
- 159 82. Ethcathinone.
- 160 83. Ethylone (3,4-methylenedioxy-N-ethylcathinone).
- 161 84. Naphyrone (naphthylpyrovalerone).
- 162 85. N-N-Dimethyl-3,4-methylenedioxycathinone.
- 163 86. N-N-Diethyl-3,4-methylenedioxycathinone.
- 164 87. 3,4-methylenedioxy-propiofenone.
- 165 88. 2-Bromo-3,4-Methylenedioxypropiofenone.
- 166 89. 3,4-methylenedioxy-propiofenone-2-oxime.
- 167 90. N-Acetyl-3,4-methylenedioxycathinone.
- 168 91. N-Acetyl-N-Methyl-3,4-Methylenedioxycathinone.
- 169 92. N-Acetyl-N-Ethyl-3,4-Methylenedioxycathinone.
- 170 93. Bromomethcathinone.
- 171 94. Buphedrone (alpha-methylamino-butyrophenone).
- 172 95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).
- 173 96. Dimethylcathinone.
- 174 97. Dimethylmethcathinone.
- 175 98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
- 176 99. (MDPPP) 3,4-Methylenedioxy-alpha-
- 177 pyrrolidinopropiofenone.
- 178 100. (MDPBP) 3,4-Methylenedioxy-alpha-
- 179 pyrrolidinobutiophenone.
- 180 101. Methoxy-alpha-pyrrolidinopropiofenone (MOPPP).
- 181 102. Methyl-alpha-pyrrolidinohexiofenone (MPHP).
- 182 103. Benocyclidine (BCP) or

- 209 123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).
 210 124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-
 211 yl)ethanone).
 212 125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-
 213 yl)methanone).
 214 126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-
 215 yl)ethanone).
 216 127. JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-
 217 yl)ethanone).
 218 128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).
 219 129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).
 220 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
 221 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
 222 ol).
 223 131. HU-308 ([(1R,2R,5R)-2-[2,6-dimethoxy-4-(2-
 224 methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-
 225 enyl] methanol).
 226 132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-
 227 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-
 228 1,4-dione).
 229 133. CB-13 (Naphthalen-1-yl-(4-pentyloxynaphthalen-1-
 230 yl)methanone).
 231 134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
 232 undecanamide).
 233 135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
 234 undecanamide).

- 261 tetramethylcyclopropyl)methanone).
- 262 152. XLR11 ((1-(5-fluoropentyl)-1H-indol-3-yl) (2,2,3,3-
- 263 tetramethylcyclopropyl)methanone).
- 264 153. (1-(5-chloropentyl)-1H-indol-3-yl) (2,2,3,3-
- 265 tetramethylcyclopropyl)methanone.
- 266 154. AKB48 (1-pentyl-N-tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-
- 267 indazole-3-carboxamide).
- 268 155. AM-2233((2-iodophenyl) [1-[(1-methyl-2-
- 269 piperidinyl)methyl]-1H-indol-3-yl]-methanone).
- 270 156. STS-135 (1-(5-fluoropentyl)-N-
- 271 tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-indole-3-carboxamide).
- 272 157. URB-597 ((3'-(aminocarbonyl) [1,1'-biphenyl]-3-yl)-
- 273 cyclohexylcarbamate).
- 274 158. URB-602 ([1,1'-biphenyl]-3-yl-carbamic acid,
- 275 cyclohexyl ester).
- 276 159. URB-754 (6-methyl-2-[(4-methylphenyl)amino]-1-
- 277 benzoxazin-4-one).
- 278 160. 2C-D (2-(2,5-Dimethoxy-4-methylphenyl)ethanamine).
- 279 161. 2C-H (2-(2,5-Dimethoxyphenyl)ethanamine).
- 280 162. 2C-N (2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine).
- 281 163. 2C-P (2-(2,5-Dimethoxy-4-(n)-
- 282 propylphenyl)ethanamine).
- 283 164. 25I-NBOMe (4-iodo-2,5-dimethoxy-N-[(2-
- 284 methoxyphenyl)methyl]-benzeneethanamine).
- 285 165. 3,4-Methylenedioxymethamphetamine (MDMA).
- 286 166. PB-22 (1-pentyl-8-quinolinyl ester-1H-indole-3-

313 carboxamido)-3-methylbutanoate.

314 180. THJ-2201: [1-(5-Fluoropentyl)-1H-indazol-3-
 315 yl](naphthalen-1-yl)methanone.

316 Section 2. For the purpose of incorporating the amendment
 317 made by this act to section 893.03, Florida Statutes, in
 318 references thereto, paragraphs (a) and (g) of subsection (30) of
 319 section 39.01, Florida Statutes, are reenacted to read:

320 39.01 Definitions.—When used in this chapter, unless the
 321 context otherwise requires:

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

324 (a) Inflicts or allows to be inflicted upon the child
 325 physical, mental, or emotional injury. In determining whether
 326 harm has occurred, the following factors must be considered in
 327 evaluating any physical, mental, or emotional injury to a child:
 328 the age of the child; any prior history of injuries to the
 329 child; the location of the injury on the body of the child; the
 330 multiplicity of the injury; and the type of trauma inflicted.
 331 Such injury includes, but is not limited to:

332 1. Willful acts that produce the following specific
 333 injuries:

- 334 a. Sprains, dislocations, or cartilage damage.
- 335 b. Bone or skull fractures.
- 336 c. Brain or spinal cord damage.
- 337 d. Intracranial hemorrhage or injury to other internal
 338 organs.

365 defined in this section, or emotional injury. The significance
 366 of any injury must be evaluated in light of the following
 367 factors: the age of the child; any prior history of injuries to
 368 the child; the location of the injury on the body of the child;
 369 the multiplicity of the injury; and the type of trauma
 370 inflicted. Corporal discipline may be considered excessive or
 371 abusive when it results in any of the following or other similar
 372 injuries:

- 373 a. Sprains, dislocations, or cartilage damage.
- 374 b. Bone or skull fractures.
- 375 c. Brain or spinal cord damage.
- 376 d. Intracranial hemorrhage or injury to other internal
 377 organs.
- 378 e. Asphyxiation, suffocation, or drowning.
- 379 f. Injury resulting from the use of a deadly weapon.
- 380 g. Burns or scalding.
- 381 h. Cuts, lacerations, punctures, or bites.
- 382 i. Permanent or temporary disfigurement.
- 383 j. Permanent or temporary loss or impairment of a body
 384 part or function.
- 385 k. Significant bruises or welts.

386 (g) Exposes a child to a controlled substance or alcohol.
 387 Exposure to a controlled substance or alcohol is established by:

- 388 1. A test, administered at birth, which indicated that the
 389 child's blood, urine, or meconium contained any amount of
 390 alcohol or a controlled substance or metabolites of such

417 treatment resulting from a psychosocial evaluation shall not be
418 waived without a supporting independent psychosocial evaluation
419 conducted by an authorized substance abuse treatment provider
420 appointed by the court, which shall have access to the DUI
421 program's psychosocial evaluation before the independent
422 psychosocial evaluation is conducted. The court shall review the
423 results and recommendations of both evaluations before
424 determining the request for waiver. The offender shall bear the
425 full cost of this procedure. The term "substance abuse" means
426 the abuse of alcohol or any substance named or described in
427 Schedules I through V of s. 893.03. If an offender referred to
428 treatment under this subsection fails to report for or complete
429 such treatment or fails to complete the DUI program substance
430 abuse education course and evaluation, the DUI program shall
431 notify the court and the department of the failure. Upon receipt
432 of the notice, the department shall cancel the offender's
433 driving privilege, notwithstanding the terms of the court order
434 or any suspension or revocation of the driving privilege. The
435 department may temporarily reinstate the driving privilege on a
436 restricted basis upon verification from the DUI program that the
437 offender is currently participating in treatment and the DUI
438 education course and evaluation requirement has been completed.
439 If the DUI program notifies the department of the second failure
440 to complete treatment, the department shall reinstate the
441 driving privilege only after notice of completion of treatment
442 from the DUI program. The organization that conducts the

469 the evaluation. The term "substance abuse" means the abuse of
 470 alcohol or any substance named or described in Schedules I
 471 through V of s. 893.03. If a driver fails to complete the
 472 substance abuse education course and evaluation, the driver
 473 license shall not be reinstated by the department.

474 Section 5. For the purpose of incorporating the amendment
 475 made by this act to section 893.03, Florida Statutes, in a
 476 reference thereto, subsection (5) of section 327.35, Florida
 477 Statutes, is reenacted to read:

478 327.35 Boating under the influence; penalties; "designated
 479 drivers."-

480 (5) In addition to any sentence or fine, the court shall
 481 place any offender convicted of violating this section on
 482 monthly reporting probation and shall require attendance at a
 483 substance abuse course specified by the court; and the agency
 484 conducting the course may refer the offender to an authorized
 485 service provider for substance abuse evaluation and treatment,
 486 in addition to any sentence or fine imposed under this section.
 487 The offender shall assume reasonable costs for such education,
 488 evaluation, and treatment, with completion of all such
 489 education, evaluation, and treatment being a condition of
 490 reporting probation. Treatment resulting from a psychosocial
 491 evaluation may not be waived without a supporting psychosocial
 492 evaluation conducted by an agency appointed by the court and
 493 with access to the original evaluation. The offender shall bear
 494 the cost of this procedure. The term "substance abuse" means the

521 reference thereto, paragraph (e) of subsection (1) of section
 522 458.3265, Florida Statutes, is reenacted to read:

523 458.3265 Pain-management clinics.—

524 (1) REGISTRATION.—

525 (e) The department shall deny registration to any pain-
 526 management clinic owned by or with any contractual or employment
 527 relationship with a physician:

528 1. Whose Drug Enforcement Administration number has ever
 529 been revoked.

530 2. Whose application for a license to prescribe, dispense,
 531 or administer a controlled substance has been denied by any
 532 jurisdiction.

533 3. Who has been convicted of or pleaded guilty or nolo
 534 contendere to, regardless of adjudication, an offense that
 535 constitutes a felony for receipt of illicit and diverted drugs,
 536 including a controlled substance listed in Schedule I, Schedule
 537 II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in
 538 this state, any other state, or the United States.

539 Section 8. For the purpose of incorporating the amendment
 540 made by this act to section 893.03, Florida Statutes, in a
 541 reference thereto, paragraph (e) of subsection (1) of section
 542 459.0137, Florida Statutes, is reenacted to read:

543 459.0137 Pain-management clinics.—

544 (1) REGISTRATION.—

545 (e) The department shall deny registration to any pain-
 546 management clinic owned by or with any contractual or employment

- 573 d. Robbery,
- 574 e. Burglary,
- 575 f. Kidnapping,
- 576 g. Escape,
- 577 h. Aggravated child abuse,
- 578 i. Aggravated abuse of an elderly person or disabled
- 579 adult,
- 580 j. Aircraft piracy,
- 581 k. Unlawful throwing, placing, or discharging of a
- 582 destructive device or bomb,
- 583 l. Carjacking,
- 584 m. Home-invasion robbery,
- 585 n. Aggravated stalking,
- 586 o. Murder of another human being,
- 587 p. Resisting an officer with violence to his or her
- 588 person,
- 589 q. Aggravated fleeing or eluding with serious bodily
- 590 injury or death,
- 591 r. Felony that is an act of terrorism or is in furtherance
- 592 of an act of terrorism; or
- 593 3. Which resulted from the unlawful distribution of any
- 594 substance controlled under s. 893.03(1), cocaine as described in
- 595 s. 893.03(2)(a)4., opium or any synthetic or natural salt,
- 596 compound, derivative, or preparation of opium, or methadone by a
- 597 person 18 years of age or older, when such drug is proven to be
- 598 the proximate cause of the death of the user,

625 (m) Carjacking,
 626 (n) Home-invasion robbery,
 627 (o) Aggravated stalking,
 628 (p) Murder of another human being,
 629 (q) Aggravated fleeing or eluding with serious bodily
 630 injury or death,
 631 (r) Resisting an officer with violence to his or her
 632 person, or
 633 (s) Felony that is an act of terrorism or is in
 634 furtherance of an act of terrorism,
 635
 636 is murder in the third degree and constitutes a felony of the
 637 second degree, punishable as provided in s. 775.082, s. 775.083,
 638 or s. 775.084.

639 Section 10. For the purpose of incorporating the amendment
 640 made by this act to section 893.03, Florida Statutes, in
 641 references thereto, paragraph (a) of subsection (2) and
 642 subsection (5) of section 893.0356, Florida Statutes, are
 643 reenacted to read:

644 893.0356 Control of new substances; findings of fact;
 645 "controlled substance analog" defined.—

646 (2)(a) As used in this section, "controlled substance
 647 analog" means a substance which, due to its chemical structure
 648 and potential for abuse, meets the following criteria:

649 1. Is substantially similar to that of a controlled
 650 substance listed in Schedule I or Schedule II of s. 893.03; and

677 listed in Schedule I or Schedule II of s. 893.03.

678 Section 12. For the purpose of incorporating the amendment
 679 made by this act to section 893.03, Florida Statutes, in
 680 references thereto, paragraphs (b), (c), and (d) of subsection
 681 (2) of section 893.12, Florida Statutes, are reenacted to read:

682 893.12 Contraband; seizure, forfeiture, sale.—

683 (2)

684 (b) All real property, including any right, title,
 685 leasehold interest, and other interest in the whole of any lot
 686 or tract of land and any appurtenances or improvements, which
 687 real property is used, or intended to be used, in any manner or
 688 part, to commit or to facilitate the commission of, or which
 689 real property is acquired with proceeds obtained as a result of,
 690 a violation of any provision of this chapter related to a
 691 controlled substance described in s. 893.03(1) or (2) may be
 692 seized and forfeited as provided by the Florida Contraband
 693 Forfeiture Act except that no property shall be forfeited under
 694 this paragraph to the extent of an interest of an owner or
 695 lienholder by reason of any act or omission established by that
 696 owner or lienholder to have been committed or omitted without
 697 the knowledge or consent of that owner or lienholder.

698 (c) All moneys, negotiable instruments, securities, and
 699 other things of value furnished or intended to be furnished by
 700 any person in exchange for a controlled substance described in
 701 s. 893.03(1) or (2) or a listed chemical in violation of any
 702 provision of this chapter, all proceeds traceable to such an

729 499, a person may not sell, manufacture, or deliver, or possess
 730 with intent to sell, manufacture, or deliver, a controlled
 731 substance. A person who violates this provision with respect to:

732 1. A controlled substance named or described in s.
 733 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 734 commits a felony of the second degree, punishable as provided in
 735 s. 775.082, s. 775.083, or s. 775.084.

736 2. A controlled substance named or described in s.
 737 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 738 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 739 the third degree, punishable as provided in s. 775.082, s.
 740 775.083, or s. 775.084.

741 3. A controlled substance named or described in s.
 742 893.03(5) commits a misdemeanor of the first degree, punishable
 743 as provided in s. 775.082 or s. 775.083.

744 (c) Except as authorized by this chapter, a person may not
 745 sell, manufacture, or deliver, or possess with intent to sell,
 746 manufacture, or deliver, a controlled substance in, on, or
 747 within 1,000 feet of the real property comprising a child care
 748 facility as defined in s. 402.302 or a public or private
 749 elementary, middle, or secondary school between the hours of 6
 750 a.m. and 12 midnight, or at any time in, on, or within 1,000
 751 feet of real property comprising a state, county, or municipal
 752 park, a community center, or a publicly owned recreational
 753 facility. As used in this paragraph, the term "community center"
 754 means a facility operated by a nonprofit community-based

781 conspicuous place where the sign is reasonably visible to the
782 public.

783 (d) Except as authorized by this chapter, a person may not
784 sell, manufacture, or deliver, or possess with intent to sell,
785 manufacture, or deliver, a controlled substance in, on, or
786 within 1,000 feet of the real property comprising a public or
787 private college, university, or other postsecondary educational
788 institution. A person who violates this paragraph with respect
789 to:

790 1. A controlled substance named or described in s.
791 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
792 commits a felony of the first degree, punishable as provided in
793 s. 775.082, s. 775.083, or s. 775.084.

794 2. A controlled substance named or described in s.
795 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
796 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
797 the second degree, punishable as provided in s. 775.082, s.
798 775.083, or s. 775.084.

799 3. Any other controlled substance, except as lawfully
800 sold, manufactured, or delivered, must be sentenced to pay a
801 \$500 fine and to serve 100 hours of public service in addition
802 to any other penalty prescribed by law.

803 (e) Except as authorized by this chapter, a person may not
804 sell, manufacture, or deliver, or possess with intent to sell,
805 manufacture, or deliver, a controlled substance not authorized
806 by law in, on, or within 1,000 feet of a physical place for

833 1. A controlled substance named or described in s.
 834 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 835 commits a felony of the first degree, punishable as provided in
 836 s. 775.082, s. 775.083, or s. 775.084.

837 2. A controlled substance named or described in s.
 838 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 839 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 840 the second degree, punishable as provided in s. 775.082, s.
 841 775.083, or s. 775.084.

842 3. Any other controlled substance, except as lawfully
 843 sold, manufactured, or delivered, must be sentenced to pay a
 844 \$500 fine and to serve 100 hours of public service in addition
 845 to any other penalty prescribed by law.

846 (h) Except as authorized by this chapter, a person may not
 847 sell, manufacture, or deliver, or possess with intent to sell,
 848 manufacture, or deliver, a controlled substance in, on, or
 849 within 1,000 feet of the real property comprising an assisted
 850 living facility, as that term is used in chapter 429. A person
 851 who violates this paragraph with respect to:

852 1. A controlled substance named or described in s.
 853 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 854 commits a felony of the first degree, punishable as provided in
 855 s. 775.082, s. 775.083, or s. 775.084.

856 2. A controlled substance named or described in s.
 857 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 858 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of

885 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 886 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 887 the second degree, punishable as provided in s. 775.082, s.
 888 775.083, or s. 775.084.

889
 890 Imposition of sentence may not be suspended or deferred, and the
 891 person so convicted may not be placed on probation.

892 (5) A person may not bring into this state any controlled
 893 substance unless the possession of such controlled substance is
 894 authorized by this chapter or unless such person is licensed to
 895 do so by the appropriate federal agency. A person who violates
 896 this provision with respect to:

897 (b) A controlled substance named or described in s.
 898 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 899 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 900 the third degree, punishable as provided in s. 775.082, s.
 901 775.083, or s. 775.084.

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

903 1. Distribute or dispense a controlled substance in
 904 violation of this chapter.

905 2. Refuse or fail to make, keep, or furnish any record,
 906 notification, order form, statement, invoice, or information
 907 required under this chapter.

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

910 4. Distribute a controlled substance named or described in

937 possession of a controlled substance by misrepresentation,
 938 fraud, forgery, deception, or subterfuge.

939 10. Affix any false or forged label to a package or
 940 receptacle containing a controlled substance.

941 11. Furnish false or fraudulent material information in,
 942 or omit any material information from, any report or other
 943 document required to be kept or filed under this chapter or any
 944 record required to be kept by this chapter.

945 12. Store anhydrous ammonia in a container that is not
 946 approved by the United States Department of Transportation to
 947 hold anhydrous ammonia or is not constructed in accordance with
 948 sound engineering, agricultural, or commercial practices.

949 13. With the intent to obtain a controlled substance or
 950 combination of controlled substances that are not medically
 951 necessary for the person or an amount of a controlled substance
 952 or substances that is not medically necessary for the person,
 953 obtain or attempt to obtain from a practitioner a controlled
 954 substance or a prescription for a controlled substance by
 955 misrepresentation, fraud, forgery, deception, subterfuge, or
 956 concealment of a material fact. For purposes of this
 957 subparagraph, a material fact includes whether the person has an
 958 existing prescription for a controlled substance issued for the
 959 same period of time by another practitioner or as described in
 960 subparagraph 8.

961 Section 14. For the purpose of incorporating the amendment
 962 made by this act to section 893.03, Florida Statutes, in

989 p. 3,4-Methylenedioxy methcathinone;
 990 q. 3,4-Methylenedioxy pyrovalerone (MDPV); or
 991 r. Methylmethcathinone,
 992
 993 individually or analogs thereto or isomers thereto or in any
 994 combination of or any mixture containing any substance listed in
 995 sub-subparagraphs a.-r., commits a felony of the first degree,
 996 which felony shall be known as "trafficking in Phenethylamines,"
 997 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 998 2. If the quantity involved:
 999 a. Is 10 grams or more, but less than 200 grams, such
 1000 person shall be sentenced to a mandatory minimum term of
 1001 imprisonment of 3 years and shall be ordered to pay a fine of
 1002 \$50,000.
 1003 b. Is 200 grams or more, but less than 400 grams, such
 1004 person shall be sentenced to a mandatory minimum term of
 1005 imprisonment of 7 years and shall be ordered to pay a fine of
 1006 \$100,000.
 1007 c. Is 400 grams or more, such person shall be sentenced to
 1008 a mandatory minimum term of imprisonment of 15 years and shall
 1009 be ordered to pay a fine of \$250,000.
 1010 3. A person who knowingly manufactures or brings into this
 1011 state 30 kilograms or more of any of the following substances
 1012 described in s. 893.03(1)(c):
 1013 a. 3,4-Methylenedioxy methamphetamine (MDMA);
 1014 b. 4-Bromo-2,5-dimethoxyamphetamine;

1041 (1)1. Any person who knowingly sells, purchases,
 1042 manufactures, delivers, or brings into this state, or who is
 1043 knowingly in actual or constructive possession of, 1 gram or
 1044 more of lysergic acid diethylamide (LSD) as described in s.
 1045 893.03(1)(c), or of any mixture containing lysergic acid
 1046 diethylamide (LSD), commits a felony of the first degree, which
 1047 felony shall be known as "trafficking in lysergic acid
 1048 diethylamide (LSD)," punishable as provided in s. 775.082, s.
 1049 775.083, or s. 775.084. If the quantity involved:

1050 a. Is 1 gram or more, but less than 5 grams, such person
 1051 shall be sentenced to a mandatory minimum term of imprisonment
 1052 of 3 years, and the defendant shall be ordered to pay a fine of
 1053 \$50,000.

1054 b. Is 5 grams or more, but less than 7 grams, such person
 1055 shall be sentenced to a mandatory minimum term of imprisonment
 1056 of 7 years, and the defendant shall be ordered to pay a fine of
 1057 \$100,000.

1058 c. Is 7 grams or more, such person shall be sentenced to a
 1059 mandatory minimum term of imprisonment of 15 calendar years and
 1060 pay a fine of \$500,000.

1061 2. Any person who knowingly manufactures or brings into
 1062 this state 7 grams or more of lysergic acid diethylamide (LSD)
 1063 as described in s. 893.03(1)(c), or any mixture containing
 1064 lysergic acid diethylamide (LSD), and who knows that the
 1065 probable result of such manufacture or importation would be the
 1066 death of any person commits capital manufacture or importation

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1083

403.413(6)(c)

3rd

Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.

1084

517.07(2)

3rd

Failure to furnish a prospectus meeting requirements.

1085

590.28(1)

3rd

Intentional burning of lands.

1086

784.05(3)

3rd

Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.

1087

787.04(1)

3rd

In violation of court order, take, entice, etc., minor beyond state limits.

1088

use of an antishoplifting or
inventory control device
countermeasure.

1094

817.234(1)(a)2.

3rd False statement in
support of insurance
claim.

1095

817.481(3)(a)

3rd Obtain credit or purchase
with false, expired,
counterfeit, etc., credit
card, value over \$300.

1096

817.52(3)

3rd Failure to redeliver
hired vehicle.

1097

817.54

3rd With intent to defraud, obtain
mortgage note, etc., by false
representation.

1098

817.60(5)

3rd Dealing in credit cards
of another.

1099

817.60(6)(a)

3rd Forgery; purchase
goods, services with
false card.

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1108	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
1109	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
1110	843.08	3rd	Falsely impersonating an officer.
1111	893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
1112	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
1113	(c) LEVEL 3		
1114	Florida	Felony	
1115	Statute	Degree	Description

1122			on stolen vehicle.
1122	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
1123	327.35(2)(b)	3rd	Felony BUI.
1124	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
1125	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
1126	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
1127	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring,

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1132	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
1133	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
1134	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
1135	697.08	3rd	Equity skimming.
1136	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
1137	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
1138	806.10(2)	3rd	Interferes with or assaults firefighter in performance

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than \$20,000.

1144

817.233

3rd

Burning to defraud
insurer.

1145

817.234

3rd

(8) (b) & (c)

Unlawful solicitation of persons
involved in motor vehicle
accidents.

1146

817.234(11) (a)

3rd

Insurance fraud;
property value less
than \$20,000.

1147

817.236

3rd

Filing a false motor vehicle
insurance application.

1148

817.2361

3rd

Creating, marketing, or
presenting a false or
fraudulent motor vehicle
insurance card.

1149

817.413(2)

3rd

Sale of used
goods as new.

1150

817.505(4)

3rd

Patient brokering.

1151

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1158	870.01(2)	3rd	Riot; inciting or encouraging.
1159	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).
1160	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.
1160	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.,

1166	893.13(8)(a)1.	3rd	<p>fraudulent material information on any document or record required by chapter 893.</p> <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>
1167	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>
1168	893.13(8)(a)3.	3rd	<p>Knowingly write a prescription for a controlled substance for a fictitious person.</p>

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

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1176	Florida Statute	Felony Degree	Description
1177	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
1178	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
1179	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
1180	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
1181	379.367(4)	3rd	Willful molestation of a commercial harvester's

workers' compensation
premiums.

1187

624.401(4)(b)2.

2nd Transacting insurance
without a certificate
or authority; premium
collected \$20,000 or
more but less than
\$100,000.

1188

626.902(1)(c)

2nd Representing an
unauthorized insurer;
repeat offender.

1189

790.01(2)

3rd Carrying a concealed
firearm.

1190

790.162

2nd Threat to throw or discharge
destructive device.

1191

790.163(1)

2nd False report of deadly
explosive or weapon of mass
destruction.

1192

790.221(1)

2nd Possession of short-
barreled shotgun or

\$50,000.

1199

812.015(8) 3rd Retail theft; property stolen is valued at \$300 or more and one or more specified acts.

1200

812.019(1) 2nd Stolen property; dealing in or trafficking in.

1201

812.131(2)(b) 3rd Robbery by sudden snatching.

1202

812.16(2) 3rd Owning, operating, or conducting a chop shop.

1203

817.034(4)(a)2. 2nd Communications fraud, value \$20,000 to \$50,000.

1204

817.234(11)(b) 2nd Insurance fraud; property value \$20,000 or more but less than \$100,000.

1205

817.2341(1), 3rd Filing false financial
(2)(a) & (3)(a) statements, making false

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1210	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
1211	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
1212	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.
1213	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
1213	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.

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.

1220

893.13(1)(d)1.

1st

Sell, manufacture, or
 deliver cocaine (or other
 s. 893.03(1)(a), (1)(b),
 (1)(d), (2)(a), (2)(b), or
 (2)(c)4. drugs) within
 1,000 feet of university.

1221

893.13(1)(e)2.

2nd

Sell, manufacture, or
 deliver cannabis or other
 drug prohibited under s.
 893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3.,
 (2)(c)5., (2)(c)6.,

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substance.

1225



1226

1227

Section 16. This act shall take effect upon becoming a
law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 943 Family Law
SPONSOR(S): Judiciary Committee
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1248

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Robinson 	Havlicak 

SUMMARY ANALYSIS

Alimony provides financial support to a financially dependent former spouse. The primary elements to determine entitlement to alimony are need and the ability to pay, but statutes and case law impose many more criteria. There are currently five different types of alimony: temporary alimony, bridge-the-gap alimony, rehabilitative alimony, durational alimony, and permanent alimony. An award of alimony may be modified or terminated early in certain circumstances.

The bill makes a number of substantial changes to current law on alimony. The bill:

- Eliminates the categorization of alimony as bridge-the-gap, rehabilitative, durational or permanent.
- Eliminates the categorization of marriages as short, moderate, or long term based on their length.
- Provides guidelines to determine an award of temporary alimony.
- Provides a formula and presumptive guidelines to determine an award of full alimony, one effect of which is to eliminate future awards of permanent alimony.
- Redefines the term "income" for purposes of calculating alimony.
- Limits combined awards of alimony and child support to 55 percent of the payor's net income.
- Revises procedures to initiate participation in the alimony depository.
- Repeals cohabitation requirement for a finding of a supportive relationship in a modification action.
- Specifies when evidence of the financial resources of a successor spouse is admissible in a modification action.
- Requires written findings justifying the factors used to determine an alimony award or modification.
- Creates a presumption that the parties may have a lower standard of living after divorce.
- Provides that the amount of alimony may be modified or terminated upon certain changes in actual income or the obligee reaching retirement age.
- Requires courts to advance certain domestic relations actions on the court calendar upon party motion.

This bill does not appear to have a fiscal impact on local governments, but may have an indeterminate fiscal impact on state government.

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

CS/HB 943, as filed, was referred to the Civil Justice Subcommittee and the Judiciary Committee.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

ALIMONY

In general, alimony provides support to a financially dependent former spouse.¹ Alimony may be awarded to either party in a dissolution of marriage case,² and may be awarded in certain other cases. The judgment awarding alimony may be based upon the court's findings of fact, or by an underlying agreement of the parties that is approved by the court.³ Alimony is determined by considering both the need of the recipient and the ability to pay of the other party.⁴ Alimony is not appropriate when the requesting spouse has no need for support or when the other spouse does not have the ability to pay.⁵

While there is some statutory guidance regarding alimony, much of the law on alimony is common law (that is, established through case precedent). The leading case on alimony is *Canakaris v. Canakaris*,⁶ a 1980 case that set forth many general concepts of alimony but also confirmed that ultimately the setting of alimony is a matter within the broad discretion of a trial court. Writing in favor of broad discretion, the Supreme Court said:

Dissolution proceedings present a trial judge with the difficult problem of apportioning assets acquired by the parties and providing necessary support. The judge possesses broad discretionary authority to do equity between the parties and has available various remedies to accomplish this purpose, including lump sum alimony, permanent periodic alimony, rehabilitative alimony, child support, a vested special equity in property, and an award of exclusive possession of property. As considered by the trial court, these remedies are interrelated; to the extent of their eventual use, the remedies are part of one overall scheme.⁷

However, the court noted the problem with such broad discretion:

The discretionary power that is exercised by a trial judge is not, however, without limitation, and both appellate and trial judges should recognize the concern which arises from substantial disparities in domestic judgments resulting from basically similar factual circumstances. The appellate courts have not been helpful in this regard. Our decisions and those of the district courts are difficult, if not impossible, to reconcile. The trial court's discretionary power is subject only to the test of reasonableness, but that test requires a determination of whether there is logic and justification for the result. The trial courts' discretionary power was never intended to be exercised in accordance with whim or caprice of the judge nor in an inconsistent manner. Judges dealing with cases essentially alike should reach the same result. Different results reached from substantially the same facts comport with neither logic nor reasonableness.⁸

In the 35 years since *Canakaris*, little has changed in alimony law. While some statutory guidance has been added and case law has somewhat narrowed judicial discretion, a trial court

¹ Victoria Ho & Jennifer Johnson, *Overview of Florida Alimony Law*, 78 Fla.B.J. 71, 71 (Oct. 2004).

² s. 61.08(2), F.S.

³ s. 61.14(1)(a), F.S.

⁴ See s. 61.08(2), F.S.; *Payne v. Payne*, 88 So.3d 1016 (Fla. 2d DCA 2012).

⁵ s. 61.08(2), F.S.

⁶ *Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980).

⁷ *Id.* at 1202.

⁸ *Id.* at 1203.

still has broad discretion in setting the amount and term of alimony. Expressing his frustration with the concept of broad discretion, one appellate judge wrote in 2002:

I write, however, to express my view that broad discretion in the award of alimony is no longer justifiable and should be discarded in favor of guidelines, if not an outright rule.⁹

TYPES OF ALIMONY

Florida law recognizes five forms of alimony: temporary, bridge-the-gap, rehabilitative, durational, and permanent periodic alimony.

Temporary Alimony

Alimony pendente lite is temporary alimony awarded after a marital party files for dissolution of marriage. The right to temporary alimony ends when the divorce becomes final, which is after the appeal process has run.¹⁰ Florida law provides that a party may request alimony pendente lite through petition or motion, and if well-founded, the court must order a reasonable amount.¹¹

Bridge-the-Gap Alimony

Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap alimony is not modifiable in amount or duration.¹²

Rehabilitative Alimony

Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through the redevelopment of previous skills or credentials; or the acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.¹³ In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan which must be included as a part of any order awarding rehabilitative alimony.¹⁴ An award of rehabilitative alimony may be modified or terminated in accordance with s. 61.14, F.S., based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.¹⁵

Durational Alimony

Durational alimony may be awarded when permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration. An award of durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. The amount of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances in accordance with s. 61.14, F.S. However, the length of an award of durational alimony may not be modified except under exceptional circumstances and may not exceed the length of the marriage.¹⁶

⁹ *Bacon v. Bacon*, 819 So. 2d 950, 954 (Fla. 4th DCA 2002)(Farmer, J., concurring).

¹⁰ 24A AM. JR. 2D *Divorce and Separation* §615.

¹¹ s. 61.071, F.S.

¹² s. 61.08(5), F.S.

¹³ s. 61.08(6)(a), F.S.

¹⁴ s. 61.08(6)(b), F.S.

¹⁵ s. 61.08(6)(c), F.S.

¹⁶ s. 61.08(7), F.S.

Permanent Alimony

Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration, following a marriage of moderate duration if such an award is appropriate upon consideration of certain enumerated factors, or following a marriage of short duration if there are exceptional circumstances. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14, F.S.¹⁷

For purposes of determining the appropriateness of a particular award of alimony, there is a rebuttable presumption that:

- A short-term marriage is a marriage having a duration of less than seven years;
- A moderate-term marriage is a marriage having a duration of greater than seven years but less than seventeen years; and
- A long-term marriage is a marriage having a duration of seventeen years or greater.¹⁸

Effect of the Bill - Types of Alimony

The bill eliminates:

- Permanent alimony.
- The categorization of alimony as bridge-the-gap, rehabilitative, durational, or permanent in form.
- The categorization of marriage as short-term, moderate-term, or long-term based on the length of the marriage.

The bill creates one category of alimony, similar to what is currently called "durational alimony", that may be awarded in amount and duration based on presumptive guidelines as more fully explained in the "Determination of Alimony Award" section of this analysis. The concept of using such alimony for bridging the gap or rehabilitative purposes is retained in the presumptive guidelines that judges may use to determine the award.

The bill does not change the categorization or form of temporary alimony.

DETERMINATION OF ALIMONY AWARD

Current Guidelines

Unlike child support obligations which are established by a fairly strict formula based on income, the type, amount and duration of alimony awards are largely within the discretion of the court. If alimony is to be judicially determined in "just proportions where appropriate," then this judicial discretion can understandably lead to widely disparate results.¹⁹

Currently, before a court can make an award of alimony, equitable distribution of the former spouse's assets must occur.²⁰ Thereafter, the court must make a specific factual determination regarding whether there remains a need for and ability to pay alimony. Alimony is not appropriate when the requesting spouse has no need for support or when the other spouse does not have the ability to pay. If

¹⁷ s. 61.08(8), F.S.

¹⁸ s. 61.08(4), F.S.

¹⁹ Victoria M. Ho and Jennifer J. Cohen, *An update on Florida Alimony Case Law: Are Alimony Guidelines a Part of Our Future? Part I*, The Florida Bar Journal, (October 2003).

²⁰ *Canakaris v. Canakaris*, 382 So. 2d 1197, 1202 (Fla. 1980)

the court finds that a party has a need for alimony or maintenance and that the other party has the ability to pay alimony or maintenance, then in determining the proper type and amount of alimony or maintenance the court must consider all relevant factors, including.²¹

- The standard of living established during the marriage.
- The duration of the marriage.
- The age and the physical and emotional condition of each party.
- The financial resources of each party, including the non-marital and the marital assets and liabilities distributed to each.
- The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
- The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.
- The responsibilities each party will have with regard to any minor children they have in common.
- The tax treatment and consequences of any alimony award, including the designation of alimony as nontaxable and nondeductible.
- All sources of income available to either party, including income available through investments.
- Any other factor necessary to do equity and justice between the parties.

The court may also consider the adultery of either spouse and the circumstances surrounding that adultery in determining an award of alimony.²² However, adultery is not a bar to entitlement to alimony²³ and marital misconduct may not be used as a basis for alimony unless the misconduct causes a depletion of marital assets.²⁴

Among the factors enumerated in current law, the income of the parties is one of the most important to courts in establishing the need of one party and the ability of the other to pay, but is perhaps the most difficult to accurately measure. Unlike the definition of income for purposes of the child support guidelines, income as applicable to alimony actions is defined very broadly as "any form of payment to an individual, regardless of source, including, but not limited to: wages, salary, commissions and bonuses, compensation as an independent contractor, worker's compensation, disability benefits, annuity and retirement benefits, pensions, dividends, interest, royalties, trusts, and any other payments, made by any person, private entity, federal or state government, or any unit of local government."²⁵ Case law has expanded the definition of income to include in-kind payments²⁶ and regular gifts.²⁷ In general, a source of income must be "available" in order to be considered in an alimony claim.²⁸ A spouse cannot voluntarily make the income unavailable in order to reduce his or her annual income.²⁹ Income may also be imputed to a voluntarily unemployed or underemployed spouse, whether the spouse is the payor or payee.³⁰ In either case, evidence about specific job opportunities must be presented.³¹

²¹ s. 61.08(2), F.S.

²² s. 61.08(1), F.S.

²³ See *Coltea v. Coltea*, 856 So. 2d 1047 (Fla. 4th DCA 2003).

²⁴ See *Noah v. Noah*, 491 So. 2d 1124 (Fla. 1986)(holding that the trial court erred in distributing virtually all assets to the wife on the basis of her husband's adultery where there was no evidence that the adultery depleted the family resources or that the emotional devastation visited on the wife translated into her having a greater financial need).

²⁵ s. 61.046(7), F.S.

²⁶ *Fitzgerald v. Fitzgerald*, 912 So. 2d 363 (Fla. 2d DCA 2005).

²⁷ *Weiser v. Weiser*, 782 So. 2d 986 (Fla. 4th DCA 2000).

²⁸ *Zold v. Zold*, 880 So. 2d 779 (Fla. 5th DCA 2004).

²⁹ *Geoghegan v. Geoghegan*, 969 So. 2d 482 (Fla. 5th DCA 2007)(court should have considered including income earned by husband that was annually contributed by him to his 401K plan where contributions were voluntary).

³⁰ *Kovar v. Kovar*, 648 So. 2d 177 (Fla. 4th DCA 1994); *Rojas v. Rojas*, 656 So. 2d 563 (Fla. 3d DCA 1995).

³¹ *Brooks v. Brooks*, 602 So. 2d 630 (Fla. 2d DCA 1992).

The court must include findings of fact relative to the factors enumerated supporting an award or denial of alimony.³² It is reversible error if a judgment fails to include findings as to all enumerated factors.³³ After determining the amount of alimony, the court may order periodic payments, payments in lump sum, or a combination of the two. Periodic payment of alimony means a payment of a certain amount of alimony at regular intervals (for example payment of the alimony on a monthly, semi-monthly, bi-weekly, or weekly basis). For lump sum alimony to be awarded, there must be a showing of need and ability to pay as well as unusual circumstances which require non-modifiable support and justification that does not substantially endanger the payor's economic status.³⁴

An alimony award may be protected by the court by requiring the payor to purchase life insurance or post a bond, or to otherwise secure the alimony award with other assets that may be suitable for that purpose.³⁵

Effect of the Bill - Presumptive Guidelines

The bill creates one category of alimony, similar to what is currently called "durational alimony," that may be awarded in amount and duration based on presumptive guidelines. The guidelines may not be used to calculate temporary alimony.

Initial Determination of Presumptive Alimony Range

The court must make initial written findings regarding the amount of each party's monthly gross income, which includes actual or potential income and such income from nonmarital or marital property distributed to each party, as well as the years of marriage as determined from the date of marriage through the date of the filing of the action for dissolution of marriage.

Gross income is defined virtually identical to gross income for purposes of determining child support under s. 61.30(2)(a), F.S., with the inclusion of several additional sources of income currently recognized in case law, such as continuing monetary gifts³⁶ and severance pay.³⁷ "Gross income" does not include child support, public assistance benefits, certain social security benefits, or earnings or gains on retirement accounts if unable to take a distribution from such account.

If a party is voluntarily unemployed or underemployed, alimony is calculated based upon that party's potential income unless the court makes specific written findings regarding circumstances that make it inequitable to impute income. Potential income means income which could be earned by a party using his or her best efforts from:

- Employment - The income a party could reasonable expect to earn by working at a locally available full-time job commensurate with education, training, and experience; or
- Investments of assets or use of property - The income a party could reasonably expect to earn from the investment of his or her assets or the use of his or her property in a financially prudent manner.

A party is underemployed if he or she is not working full-time in a position which is appropriate, based upon his or her education and experience, and available in the geographical area of his or her residence. A party will not be considered underemployed if he or she is enrolled in an educational program that can be reasonably expected to result in a degree or certification if it will lead to higher income and is a good faith educational choice.

³² s. 61.08, F.S.

³³ *Pavese v. Pavese*, 932 So. 2d 1269 (Fla 2d DCA 2006); *Baig v. Baig*, 917 So. 2d 379 (Fla. 2d DCA 2005).

³⁴ *Rosario v. Rosario*, 945 So. 2d 629, 632 (Fla. 4th DCA 2006).

³⁵ s. 61.08(3), F.S.

³⁶ *Ordini v. Ordini*, 701 So. 2d 663 (Fla. 4th DCA 1997) and *Cooper v. Kahn*, 696 So. 2d 1186 (Fla. 3d DCA 1997).

³⁷ *Stebbins v. Stebbins*, 754 So. 2d 903 (Fla. 1st DCA 2000).

After making such initial findings, the court must calculate and make written findings regarding the presumptive alimony amount and duration range pursuant to the following formula:

Presumptive Alimony Formula		
	Low End	High End
Amount	(0.015 x YOMA) x GI If a negative number results, the presumptive amount is \$0.	(0.020 x YOMA) x GI If a negative number results, the presumptive amount is \$0.
Duration	0.25 x YOMD	0.75 x YOMD
<ul style="list-style-type: none"> • YOMA = Years of marriage (measured from date of marriage through the date of filing the action for dissolution) for purposes of determining the presumptive amount of alimony. For marriages of 20 years or more, 20 years is used in calculating the low end and high end. If the court establishes the duration of the alimony at 50% percent or less than the actual years of marriage, then the court must use the actual years of marriage, up to a maximum of 25 years, to calculate the high end. • YOMD = Years of marriage (measured from date of marriage through the date of filing the action for dissolution) for purposes of determining the presumptive duration of alimony. • GI = Monthly gross income of the potential payor minus the monthly gross income of the party seeking alimony. If a party is voluntarily unemployed or underemployed, GI is calculated using the party's potential income. 		

Example Presumptive Alimony Awards Pursuant to Formula (subject to deviation by the court):

- Spouse 1 and Spouse 2 divorce after 16 years of marriage. Spouse 1 has a monthly gross income of \$5,000. Spouse 2 has a monthly gross income of \$3,200. Spouse 2 seeks an award of alimony. Under the presumptive guidelines, Spouse 2 may be awarded \$432 - \$576 per month in alimony for 4 - 12 years.
- Spouse 1 and Spouse 2 divorce after 40 years of marriage. Spouse 1 has a monthly gross income of \$3,000. Spouse 2 has a monthly gross income of \$ 12,000. Spouse 1 seeks an award of alimony. Under the presumptive guidelines, Spouse 1 may be awarded \$2,700 - \$3,600 per month in alimony for 10-30 years. If the court awards alimony for 20 years or less, Spouse 1 may receive up to \$4,500 per month in alimony.
- Spouse 1 and Spouse 2 divorce after 2 years of marriage. Spouse 1 has a monthly gross income of \$10,000. Spouse 2 has a monthly gross income of \$60,000. Spouse 1 seeks an award of alimony. Under the presumptive guidelines, Spouse 1 may be awarded \$1,500-\$2,000 per month in alimony for 6 months - 18 months.
- Spouse 1 and Spouse 2 divorce after 10 years of marriage. Spouse 1 has a monthly gross income of \$5,000. Spouse 2 has a monthly gross income of \$7,000. Spouse 2 seeks an award of alimony. Under the presumptive guidelines, Spouse 2 may be awarded \$0 in alimony.

Determining Alimony Award Within Presumptive Range

A court must award alimony within the presumptive range based on the length of the marriage and a list of enumerated factors.

There is a rebuttable presumption for marriages 2 years or less that no alimony may be awarded regardless of the range determined pursuant to the presumptive guidelines. The court may award alimony for such marriages in accordance with the standards for awarding alimony for marriages in excess of 2 years if the court makes written findings that:

- There is clear and convincing need for alimony;
- There is ability to pay alimony; and
- The failure to award alimony would be inequitable.

For all other marriages, and a marriage of 2 years or less meeting the above criteria, if there is no agreement between the parties, alimony is presumptively awarded within the calculated presumptive range. In determining the amount and duration of the alimony award within the range, the court retains broad discretion, but must consider all of the following factors:

- The financial resources (including actual and potential income) and ability of each spouse to meet his or her reasonable needs independently;
- The standard of living of the parties during the marriage with consideration that neither party may be able to maintain that standard of living as there will be two households after the divorce;
- Whether there was an equitable distribution of marital property;
- Both parties' income, employment, and employability, obtainable through reasonable diligence and additional training or education, and the details of such additional training or education plans;
- Reduction in employment due to the needs of an unemancipated child of the marriage or the circumstances of the parties;
- Whether either party has foregone or postponed economic, educational, or employment opportunities during the course of the marriage;
- Whether either party has caused the unreasonable depletion or dissipation of marital assets;
- The amount of temporary alimony and the amount of time it was paid to the recipient spouse;
- The age, health, and physical and mental condition of the parties, including health care needs and unreimbursed health care expenses;
- Significant economic or noneconomic contributions to the marriage or to the economic, educational, or occupational advancement of a party;
- The tax consequence of the alimony award; and
- Any other factor necessary to do equity and justice between the parties.

After consideration of the presumptive alimony amount and duration range and the listed factors, the court may establish an alimony award. The order establishing the award must clearly set forth both the amount and duration of the award. The court must also make a written finding that the payor has the financial ability to pay the award.

A court may still order a payor to secure the award of alimony, but only upon a showing of special circumstances. The court must make specific evidentiary findings regarding the availability, cost, and financial impact on the obligated party for the security. The permissible methods of security include the purchase or maintenance of a decreasing term life insurance policy or a bond, or any other assets that may be suitable. The obligation of a payor to secure the award of alimony may be modified if the underlying alimony award is modified and must be reduced in an amount commensurate with any reduction in the alimony award.

Deviations from the Presumptive Alimony Range

The court may establish an award of alimony that is outside either or both of the presumptive alimony amount and alimony duration ranges only if the court has considered all of the enumerated factors and makes specific written findings concerning the factors that justify the finding that the application of the presumptive alimony amount and alimony duration ranges is inappropriate or inequitable.

Determining Award of Temporary Alimony

Current law does not specify guidelines for the court to consider in awarding temporary alimony. This bill requires the court to first determine whether there is a need for temporary alimony and the ability to pay alimony, which restates and codifies the current standard for determining awards of other types of alimony. If both conditions are met, the court must consider the factors used to determine an award of alimony within the presumptive alimony guidelines and make specific written findings of fact regarding the factors that justify an award of temporary alimony. However, a court may not use the presumptive alimony formula created in the bill to calculate temporary alimony.

MODIFICATION AND TERMINATION OF ALIMONY

Section 61.14, F.S. provides that either party may request modification of an award of alimony, whether such award was agreed to by the parties in a marital settlement agreement³⁸ or ordered by the court, if the circumstances or the financial ability of either party changes. The change in circumstances must be alleged to have occurred subsequent to last judgment or order awarding alimony.³⁹ The court has jurisdiction to modify an award of alimony as equity requires.⁴⁰ A modification order may be retroactive to the date of the filing of the action, or the filing of the petition for modification.⁴¹ Though s. 61.14, F.S., provides for a modification of alimony upon a change in circumstances, whether the award can be modified and on what basis depends on the type and the purpose of the alimony award.

Basis for Modification or Termination of Alimony		
Type of Alimony	Basis for Modification or Termination	Automatic Termination
Temporary	Upon good cause shown	Entry of final judgment of dissolution of marriage.
Bridge-the-gap	Not modifiable in amount or duration	After 2 Years Remarriage of Recipient Death of Payor or Recipient
Rehabilitative	Substantial change in circumstances Non-compliance with the rehabilitative plan Completion of the rehabilitative plan	Death of Payor or Recipient
Durational	Substantial change in circumstances (Amount) Exceptional Circumstances (Length)	Remarriage of Recipient Death of Payor or Recipient
Permanent	Substantial change in circumstances	Remarriage of Recipient Death of Payor or Recipient

The bill provides that the amount of an award of alimony under the presumptive guidelines may be modified or terminated consistent with current law. However, a court may not decrease or increase the duration of an award of alimony provided for by agreement of the parties or by court order.

Substantial Change in Circumstances

Where a substantial change in circumstances forms the basis to modify an award of alimony, the moving party must show a substantial change in circumstances, that the change was not contemplated

³⁸Despite such statutory authorization, a marital settlement agreement becomes a contractual duty which, when endorsed by court order, may not be set aside or revisited, according to principles of collateral estoppel and res judicata. Florida courts do not take lightly agreements made by husband and wife concerning spousal support. A marital settlement agreement as to alimony or property rights which is entered before the dissolution of marriage is binding upon the parties. See, e.g., *Perry v. Perry*, 976 So. 2d 1151 (Fla. 4th DCA 2008) and *Griffith v. Griffith*, 860 So. 2d 1069, 1073 (Fla. 1st DCA 2003).

³⁹*Johnson v. Johnson*, 537 So. 2d 637 (Fla. 2d DCA 1998).

⁴⁰s. 61.14(1)(a), F.S.

⁴¹*Id.*

at the time of the final judgment of dissolution, and that the change is sufficient, material, involuntary and permanent in nature."⁴²

Supportive Relationship

One form of change of circumstances warranting modification of an alimony award is the existence of a supportive relationship. A court may reduce or terminate an award of alimony based on its specific written findings that, since the granting of a divorce and the award of alimony, the spouse receiving alimony, or the obligee, has entered into a supportive relationship with a person with whom he or she resides. Section 61.14(1), F.S., enumerates factors a court must consider when determining whether a supportive relationship exists between the obligee and the individual with whom such former spouse resides (i.e. the extent to which the obligee and the person hold themselves out as a married couple). The spouse paying spousal support, or the obligor, has the burden to prove that a supportive relationship exists.

The bill authorizes a court to terminate or modify an award of alimony based upon a supportive relationship that currently exists or has existed within the year before the filing of the petition for modification, thereby allowing a court to reduce an award of alimony if the petitioner can prove that the obligee received support in the recent past although a current supportive relationship may not exist. However, the court may consider whether the obligor's failure to comply with court ordered financial obligations to the obligee was a significant factor in the establishment of the relationship.

The bill also eliminates the requirement that the obligee cohabitate with the person with whom they are in a supportive relationship, although cohabitation is a factor the court may still consider. The obligor does not have to prove cohabitation. If a reduction or termination of alimony is granted based on a supportive relationship, the reduction or termination is retroactive to the date of filing of the petition for reduction or termination.

Retirement of the Obligor

Current law provides that retirement of the obligor can be considered as part of the total circumstances in order to determine if a sufficient change in circumstances exists to warrant a modification of alimony.⁴³ In *Pimm v. Pimm*,⁴⁴ the Florida Supreme Court set out the following criteria for modification in cases of retirement and voluntary retirement before age 65 (the full retirement age for social security benefits at the time):

- Consideration of payor's age, health, and motivation for retirement as well as the type of work the payor performs and the age at which others engage in that line of work normally retire.
- Whether the retirement placed the receiving spouse in peril of poverty.
- The assets of the parties.

There are no statutory standards relating to modification or termination of alimony based on retirement, and it is strictly up to the trial court's discretion within the guidance provided by the Supreme Court.

⁴² *Townsend v. Townsend*, 585 So. 2d 468 (Fla. 2d DCA 1991); Courts have found a substantial change in circumstance where: an obligor's health deteriorated due to two heart attacks, he was unable to continue gainful employment, and received social security disability income as his full income (*Scott v. Scott*, 109 So. 3d 804 (Fla. 5th DCA 2012)). An obligor demonstrated a showing of a substantial change in circumstance through a detrimental impact on his business in manufacturing cathode ray television tubes due to advancing technology that made his product obsolete. The court also noted that the obligor was forced to remove money from family trust accounts to meet his alimony obligation. (*Shawfrank v. Shawfrank*, 97 So. 3d 934, 937 (Fla. 1st DCA 2012)). The court found a substantial change in circumstance where financial affidavits showed that obligee's income jumped from \$1,710 to \$4,867 a month, making her income higher than the obligor's income of \$3,418 a month. (*Koski v. Koski*, 98 So. 3d 93, 94 (Fla. 4th DCA 2012)).

⁴³ *Pimm v. Pimm*, 601 So. 2d 534 (Fla. 1992).

⁴⁴ *Id.*

The bill codifies the *Pimm case* and provides for modification or termination of an alimony award based on actual retirement. A substantial change in circumstances is deemed to exist if the obligor has reached the full retirement age for social security benefits and has retired or the obligor has reached the customary retirement age for his or her occupation and retired. The obligor may file an action within 1 year of his or her anticipated retirement and the court must determine the customary retirement date for the obligor's profession. However, such determination is not adjudicative of the petition for modification.

If an obligor voluntarily retires before meeting either condition, the court must determine if the retirement is reasonable based on the factors set out in *Pimm*. If the voluntary retirement is reasonable it constitutes a substantial change in circumstances. There is a rebuttal presumption that an obligor's existing alimony obligation shall be modified or terminated upon a finding of substantial change in circumstances. The bill provides factors that may overcome the presumption when applied to the current circumstances of the obligor and obligee, including:

- Age, health, assets and liabilities, earned and imputed income, and ability to maintain full- or part-time employment.
- Any other factor deemed relevant by the court.

The court may temporarily reduce or suspend the obligor's payment of alimony while a petition for modification based on retirement is pending.

Remarriage of the Obligor

The financial status of a successor spouse is ordinarily irrelevant in a modification proceeding, as it is improper for a court to consider the income of the obligor's current spouse in an action to modify the obligor's alimony obligation. An exception exists if it is determined that the obligor has deliberately limited his or her income for the purpose of reducing the alimony obligation and is living off the income of a successor spouse.⁴⁵

The bill provides that the remarriage of an alimony obligor does not constitute a substantial change in circumstance or a basis for modification of alimony. Financial information of a successor spouse of the party paying or receiving alimony is inadmissible in a modification action unless a party claims his or her income has decreased since the marriage. The bill specifies the extent to which the information is discoverable and admissible in such actions.

Imputed Income

The bill provides that a party is entitled to pursue an immediate modification of alimony under the following circumstances, which shall constitute a substantial change in circumstances:

- If the actual income earned by a party exceeds, by at least 10 percent, the amount imputed to that party at the time an alimony award was determined. The increase in an obligor's income alone does not constitute a basis for modification unless at the time the award was established the obligor was considered unemployed or underemployed and the court did not impute income to that party at his or her maximum potential income.
- If the obligor becomes involuntarily underemployed or unemployed for a period of 6 months following the entry of the last order of alimony.

Attorney Fees and Costs

Attorney's fees are available in proceedings to modify an award of alimony. Section 61.16(1), F.S., provides in relevant part: "The court may from time to time, *after considering the financial resources of both parties*, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter, including enforcement

⁴⁵ *Harmon v. Harmon* 523 So. 2d 187 (Fla. 2d DCA 1988), *Hayden v. Hayden*, 662 So. 2d 714 (Fla. 4th DCA 1995).

and modification proceedings and appeals.” The purpose of s. 61.16, F.S., is to make certain that both parties will have similar ability to secure competent legal counsel. “It is not necessary that one spouse be completely unable to pay attorney’s fees in order for the trial court to require the other spouse to pay these fees.”⁴⁶ The court views the relative disparity of financial circumstances between the spouses when awarding fees. Accordingly, a party may prevail in a modification action but, if in possession of greater financial resources relative to his or her spouse, still be required to pay the fees of his or her spouse based upon public policy considerations that each party have similar ability to secure competent legal counsel.

The bill provides an exception to the consideration of the financial resources of the both parties when awarding attorney fees and costs in a modification action. A party who unreasonably pursues or defends an action for modification of alimony will be required to pay the reasonable attorney fees and costs of the prevailing party and is disqualified from payment of his or her own fees or costs under s. 61.16, F.S.

INCOME TAX TREATMENT OF ALIMONY PAYMENTS

Gross income for federal income tax purposes includes amounts received as alimony or separate maintenance payments.⁴⁷ The payment to or for the benefit of a spouse or former spouse under a divorce or separation instrument⁴⁸ will qualify and be deemed and treated by the Internal Revenue Service (IRS) as "alimony" for income tax purposes, and thus will be tax deductible from the payor's gross income and taxable income to the payee, if:⁴⁹

- The payment is made in cash;
- The divorce or separation instrument does not designate the payment as a payment that is not includable in gross income under the Internal Revenue Code and not allowable as a deduction under the Internal Revenue Code;
- The spouses are not members of the same household at the time the payment is made; and
- There is no requirement to make any payment (in cash or property) after the death of the payee.

Florida courts may override the default IRS rule by providing in the judgment of dissolution or support that alimony payments are excluded from the gross income of the payee and not deductible by the payor.⁵⁰ However, the usual treatment of alimony has been to make the alimony taxable to the recipient and deductible by the payor.⁵¹ The spouses may also validly override the default taxability rules of the IRS by designating that payments otherwise qualifying as alimony or separate maintenance payments under the Internal Revenue Code be nondeductible by the payor and excludable from gross income by the payee in a marital settlement agreement or related agreement.⁵²

Effect of the Bill

The bill codifies and restates current law.

⁴⁶ *Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980).

⁴⁷ 26 U.S.C. § 71(a).

⁴⁸ A divorce or separation instrument means a decree of divorce or separate maintenance or a written instrument incident to such a decree, or a written separation agreement, or a decree requiring a spouse to make payments for the support or maintenance of the other spouse. 26 U.S.C. § 71(b)(2).

⁴⁹ 26 U.S.C. § 71(b)(1).

⁵⁰ *Rykiel v. Rykiel*, 838 So. 2d 508, 511-12 (Fla. 2003)

⁵¹ See generally *Garcia v. Garcia*, 696 So. 2d 1279 (Fla. 2d DCA 1997); *Rihl v. Rihl*, 727 So. 2d 272 (Fla. 3d DCA 1999).

⁵² 26 CFR. § 1.71-1T, Q8 & A8.

OTHER EFFECTS OF THE BILL

Nominal Alimony

Under current law, nominal alimony may be awarded when the court finds the requisite entitlement to alimony, but due to insufficient resources available at the time of the final hearing, the court cannot award sufficient alimony to meet the needs of the payee. Nominal alimony is not a form of alimony, but rather is an award of a de minimis amount to serve as a "placeholder" for one of the five types of alimony currently recognized by the state. The award of nominal alimony reserves jurisdiction for the court to later modify the amount of alimony upon petition of the payee, should the financial conditions of the payor spouse improve.⁵³

The bill reserves the right of a court to award nominal alimony in the amount of \$1 per year if:

- At the time of trial, a party who traditionally provided the primary source of financial support to the family temporarily lacked the ability to pay support but was reasonably anticipated to have the ability to pay support in the future; or
- An alimony recipient is presently able to work but has a medical condition that with a reasonable degree of certainty may inhibit or prevent his or her ability to work during the duration of the alimony period.

The duration of the nominal alimony must be established in accordance with the presumptive guidelines. Before the expiration of the durational period, nominal alimony may be modified to a full alimony award using the presumptive alimony guidelines.

Advancing Trial

Judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so.⁵⁴ The Florida Rules of Judicial Administration provide that the presumptively reasonable time period for the completion of domestic relation cases in the trial and appellate courts of this state is 90 days (from filing to disposition) for uncontested actions and 180 days (from filing to disposition) for contested actions.⁵⁵ Nevertheless, the length of a dissolution and support action depends on the circumstances of a particular situation, and may exceed these time periods in some cases. Judges have the duty to identify priority cases as assigned by statute, rule of procedure, case law, or otherwise and implementing such docket control policies as may be necessary.⁵⁶ In all civil cases assigned a priority status, any party may file a notice of priority status explaining the nature of the case, the source of the priority status, any deadlines imposed by law on any aspect of the case, and any unusual factors that may bear on meeting the imposed deadlines.⁵⁷

Section 61.192, F.S. is created by the bill to authorize either party in an action brought pursuant to ch. 61, F.S., to move the court to advance the trial of the action on the docket if more than 2 years have passed since the initial petition was served. The statute directs that the court is thereafter required to give the case priority on the court's calendar.

Payment of Alimony Awards

Section 61.08(10), F.S. requires that any order entered after January 1, 1985, that awards alimony, must direct the payment of alimony be made through a depository operated by the clerk of court unless

⁵³ *Ellis v. Ellis*, 699 So. 2d 280 (Fla. 5th DCA 1997)(award of \$1.00 in permanent alimony to wife to leave open the possibility of increasing the alimony should the value of the husband's pension increase, since husband could then pay increased alimony from his social security disability income currently being used for his own support).

⁵⁴ Florida Rule of Judicial Administration 2.085.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

the parties have no minor child or the parties request that the court not direct payment through the depository. If the parties request that the court not enter an order directing payment through the depository, the order of support must provide, or will be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository.⁵⁸ Either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program.⁵⁹ The party must provide copies of the affidavit to the court and the other party or parties.⁶⁰ Fifteen days after receipt of the affidavit, the depository must notify all parties that future payments must be directed to the depository.⁶¹ The depository collects a fee equal to 4 percent of the alimony payment, except that no fee may exceed \$5.25.⁶²

The bill revises the procedures parties must use to initiate subsequent participation in the depository program. Instead of filing an affidavit with the depository alleging a default or arrearage, a party must file a verified motion with the court. The moving party must provide the non-moving party with a copy of the motion. A court is required to conduct an evidentiary hearing within 15 days after the filing of the motion to establish the default and arrearages, if any. The court must issue an order directing the clerk of the circuit court to establish or amend a Family Law Case History account, and direct that future payments be processed by the depository.

Child Support

The bill provides that in no event may a combined award of alimony and child support constitute more than 55 percent of the payor's net income, calculated without any consideration of alimony or child support obligations. The bill amends s. 61.30, F.S., the child support guidelines to require a court to adjust the award of child support to ensure that the 55 percent cap is not exceeded.

The cap appears to reflect the current cap on deductions of income pursuant to an income deduction order to meet alimony and child support obligations. Income deduction is a process by which an employed obligor has child support or alimony payments withheld directly from his or her salary. Section 61.1301 requires courts, upon the entry of an order establishing, enforcing, or modifying an obligation for child support, alimony, or a combination of both, to enter an order for income deduction. Payors receiving an income deduction order are required to deduct support payments from the obligor's income, but may not deduct in excess of the amounts allowed under the federal Consumer Credit Protection Act (CCPA).⁶³ The CCPA provides the maximum disposable earnings⁶⁴ of an individual for a work week that may be deducted pursuant to an order of support.⁶⁵

- 50% if the obligor is supporting a spouse or dependent child (other than a spouse or child that is the subject of the support order);
- 55% if the obligor is supporting a spouse or dependent child (other than a spouse or child that is the subject of the support order) and is more than 12 weeks delinquent in the payment of support.
- 60% if the obligor is not supporting a spouse or dependent child.
- 65% if the obligor is not supporting a spouse or dependent child and is more than 12 weeks delinquent in the payment of support.

The cap also appears consistent with case law as appellate courts have reversed awards of trial courts where the percent of income awarded as support is considered unreasonable. The Fourth District Court

⁵⁸ s. 61.08(10)(d), F.S.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² s. 61.181(2)(b), F.S.

⁶³ s. 61.1301, F.S.; The Consumer Credit Protection Act is codified at 15 U.S.C. § 1671, et. seq.

⁶⁴ "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld. 15 U.S.C. § 1672(b).

⁶⁵ 15 U.S.C. § 1673(b).

of Appeal found that a trial court committed an abuse of discretion in awarding combined alimony and child support totaling 58 percent of the obligor's net income.⁶⁶ The Fourth District Court of Appeal also ruled clearly excessive an award of combined alimony and child support that approached 70 percent of an obligor's net income.⁶⁷

APPLICABILITY TO PENDING OR FUTURE PETITIONS FOR MODIFICATION OF ALIMONY

The revisions made by the bill apply to all initial determinations of alimony and all alimony modification actions pending or brought on or after October 1, 2015. The changes in current law do not constitute a substantial change in circumstances for purposes of modifying an alimony award and may not serve as the sole basis to seek modification of an alimony award made before October 1, 2015.

B. SECTION DIRECTORY:

Section 1 amends s. 61.071, F.S., relating to alimony pendent lite; suit money.

Section 2 amends s. 61.08, F.S., relating to alimony.

Section 3 amends s. 61.14, F.S., relating to enforcement and modification of support, maintenance, or alimony agreements or orders.

Section 4 amends s. 61.30, F.S., relating to child support guidelines; retroactive child support.

Section 5 creates s. 61.192, F.S., relating to advancing trial.

Section 6 provides for applicability and construction of the effect of the bill.

Section 7 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 bill appears to have an impact on the State Courts System which is indeterminate at this time.

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.

⁶⁶ *Thomas v. Thomas*, 418 So. 2d 316, (Fla. 4th DCA 1982).

⁶⁷ *Casella v. Casella*, 569 So. 2d 848, 849 (Fla. 4th DCA 1990). The court stopped short of ruling that a particular percentage constitutes a bright-line rule, and instead, ruled that each case must be determined individually.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is likely to impact future alimony awards.

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:

Provisions of the bill requiring the court to advance actions under ch. 61, F.S. on the calendar and to hear a motion regarding payment of alimony through the clerk depository within a specified period may violate the court's exclusive rule-making authority. The Florida Supreme Court is responsible for adopting rules of practice and procedure in all state courts. The Legislature cannot modify or rewrite court-formulated rules of practice and procedure.⁶⁸ The court has invalidated statutes that the court claims violate its exclusive rulemaking authority.⁶⁹

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Current law provides for an award of alimony unconnected with an action for dissolution. The court has the ability in these actions to enter an alimony award "as it deems just and proper."⁷⁰ As the bill repeals the discretionary guidelines given to judges to determine an award of alimony and replaces it with presumptive guidelines based on income and the years of marriage, which is calculated depending upon the date of the filing of the action of dissolution, it is unclear whether alimony awards unconnected with dissolution are also subject to the presumptive guidelines or if judges retain full discretion to determine the award.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

⁶⁸ Art. V, Sec. 2(a), Fla. Const.

⁶⁹ See *Allen v. Butterworth*, 756 So. 2d 52 (Fla. 2000) (holding that time limits for the writ of habeas corpus is a matter of practice and procedure, thereby invalidating part of the Death Penalty Reform Act); see also *Haven Fed. Sav. & Loan Ass'n v. Kirian*, 579 So. 2d 730 (Fla. 1991) (striking law regarding counterclaims in foreclosure proceedings).

⁷⁰ s. 61.09 F.S.

1 A bill to be entitled
 2 An act relating to family law; amending s. 61.071,
 3 F.S.; requiring the use of specified factors in
 4 calculating alimony pendente lite; requiring findings
 5 by the court regarding such alimony; specifying that a
 6 court may not use certain presumptive alimony
 7 guidelines in calculating such alimony; amending s.
 8 61.08, F.S.; providing definitions; requiring a court
 9 to make specified findings before ruling on a request
 10 for alimony; providing for determination of
 11 presumptive alimony range and duration range;
 12 providing presumptions concerning alimony awards
 13 depending on the duration of marriages; providing for
 14 imputation of income in certain circumstances;
 15 providing for awards of nominal alimony in certain
 16 circumstances; providing for taxability and
 17 deductibility of alimony awards; specifying that a
 18 combined award of alimony and child support may not
 19 constitute more than a specified percentage of a
 20 payor's net income; providing for security of awards
 21 through specified means; providing for modification,
 22 termination, and payment of awards; revising procedure
 23 for participation in alimony depository; amending s.
 24 61.14, F.S.; prohibiting a court from decreasing or
 25 increasing the duration of an alimony award; providing
 26 that a party may pursue an immediate modification of

27 | alimony in certain circumstances; revising factors to
 28 | be considered in determining whether an existing award
 29 | of alimony should be reduced or terminated because of
 30 | an alleged supportive relationship; providing for the
 31 | effective date of a reduction or termination of an
 32 | alimony award based on the existence of a supportive
 33 | relationship; providing that the remarriage of an
 34 | alimony obligor is not a substantial change in
 35 | circumstance; providing that the financial information
 36 | of a subsequent spouse of a party paying or receiving
 37 | alimony is inadmissible and undiscoverable; providing
 38 | an exception; providing for modification or
 39 | termination of an award based on a party's retirement;
 40 | providing for a temporary reduction or suspension of
 41 | an obligor's payment of alimony while his or her
 42 | petition for modification or termination based on
 43 | retirement is pending; providing for an award of
 44 | attorney fees and costs for unreasonably pursuing or
 45 | defending a modification of an award; establishing a
 46 | rebuttal presumption that the modification of an
 47 | alimony award is retroactive; amending s. 61.30, F.S.;
 48 | providing that whenever a combined alimony and child
 49 | support award constitutes more than a specified
 50 | percentage of a payor's net income, the child support
 51 | award be adjusted to reduce the combined total;
 52 | creating s. 61.192, F.S.; providing for motions to

53 advance the trial of certain actions if a specified
 54 period has passed since the initial service on the
 55 respondent; providing applicability; providing an
 56 effective date.

57
 58 Be It Enacted by the Legislature of the State of Florida:

59
 60 Section 1. Section 61.071, Florida Statutes, is amended to
 61 read:

62 61.071 Alimony pendente lite; suit money.—In every
 63 proceeding for dissolution of the marriage, a party may claim
 64 alimony and suit money in the petition or by motion, and if the
 65 petition is well founded, the court shall allow a reasonable sum
 66 therefor. If a party in any proceeding for dissolution of
 67 marriage claims alimony or suit money in his or her answer or by
 68 motion, and the answer or motion is well founded, the court
 69 shall allow a reasonable sum therefor. After determining that
 70 there is a need for alimony and that there is an ability to pay
 71 alimony, the court shall consider the alimony factors in s.
 72 61.08(4)(b)1.-14. and make specific written findings of fact
 73 regarding the relevant factors that justify an award of alimony
 74 under this section. The court may not use the presumptive
 75 alimony guidelines in s. 61.08 to calculate alimony under this
 76 section.

77 Section 2. Section 61.08, Florida Statutes, is amended to
 78 read:

79 61.08 Alimony.—
 80 (Substantial rewording of section. See
 81 s. 61.08, F.S., for present text.)
 82 (1) DEFINITIONS.—As used in this section, unless the
 83 context otherwise requires, the term:
 84 (a)1. "Gross income" means recurring income from any
 85 source and includes, but is not limited to:
 86 a. Income from salaries.
 87 b. Wages, including tips declared by the individual for
 88 purposes of reporting to the Internal Revenue Service or tips
 89 imputed to bring the employee's gross earnings to the minimum
 90 wage for the number of hours worked, whichever is greater.
 91 c. Commissions.
 92 d. Payments received as an independent contractor for
 93 labor or services, which payments must be considered income from
 94 self-employment.
 95 e. Bonuses.
 96 f. Dividends.
 97 g. Severance pay.
 98 h. Pension payments and retirement benefits actually
 99 received.
 100 i. Royalties.
 101 j. Rental income, which is gross receipts minus ordinary
 102 and necessary expenses required to produce the income.
 103 k. Interest.
 104 l. Trust income and distributions which are regularly

105 received, relied upon, or readily available to the beneficiary.

106 m. Annuity payments.

107 n. Capital gains.

108 o. Any money drawn by a self-employed individual for
 109 personal use that is deducted as a business expense, which
 110 moneys must be considered income from self-employment.

111 p. Social security benefits, including social security
 112 benefits actually received by a party as a result of the
 113 disability of that party.

114 q. Workers' compensation benefits.

115 r. Unemployment insurance benefits.

116 s. Disability insurance benefits.

117 t. Funds payable from any health, accident, disability, or
 118 casualty insurance to the extent that such insurance replaces
 119 wages or provides income in lieu of wages.

120 u. Continuing monetary gifts.

121 v. Income from general partnerships, limited partnerships,
 122 closely held corporations, or limited liability companies;
 123 except that if a party is a passive investor, has a minority
 124 interest in the company, and does not have any managerial duties
 125 or input, the income to be recognized may be limited to actual
 126 cash distributions received.

127 w. Expense reimbursements or in-kind payments or benefits
 128 received by a party in the course of employment, self-
 129 employment, or operation of a business which reduces personal
 130 living expenses.

- 131 x. Overtime pay.
- 132 y. Income from royalties, trusts, or estates.
- 133 z. Spousal support received from a previous marriage.
- 134 aa. Gains derived from dealings in property, unless the
- 135 gain is nonrecurring.
- 136 2. "Gross income" does not include:
- 137 a. Child support payments received.
- 138 b. Benefits received from public assistance programs.
- 139 c. Social security benefits received by a parent on behalf
- 140 of a minor child as a result of the death or disability of a
- 141 parent or stepparent.
- 142 d. Earnings or gains on retirement accounts, including
- 143 individual retirement accounts; except that such earnings or
- 144 gains shall be included as income if a party takes a
- 145 distribution from the account. If a party is able to take a
- 146 distribution from the account without being subject to a federal
- 147 tax penalty for early distribution and the party chooses not to
- 148 take such a distribution, the court may consider the
- 149 distribution that could have been taken in determining the
- 150 party's gross income.
- 151 3.a. For income from self-employment, rent, royalties,
- 152 proprietorship of a business, or joint ownership of a
- 153 partnership or closely held corporation, the term "gross income"
- 154 equals gross receipts minus ordinary and necessary expenses, as
- 155 defined in sub-subparagraph b., which are required to produce
- 156 such income.

157 b. "Ordinary and necessary expenses," as used in sub-
 158 subparagraph a., does not include amounts allowable by the
 159 Internal Revenue Service for the accelerated component of
 160 depreciation expenses or investment tax credits or any other
 161 business expenses determined by the court to be inappropriate
 162 for determining gross income for purposes of calculating
 163 alimony.

164 (b) "Potential income" means income which could be earned
 165 by a party using his or her best efforts and includes potential
 166 income from employment and potential income from the investment
 167 of assets or use of property. Potential income from employment
 168 is the income which a party could reasonably expect to earn by
 169 working at a locally available, full-time job commensurate with
 170 his or her education, training, and experience. Potential income
 171 from the investment of assets or use of property is the income
 172 which a party could reasonably expect to earn from the
 173 investment of his or her assets or the use of his or her
 174 property in a financially prudent manner.

175 (c)1. "Underemployed" means a party is not working full-
 176 time in a position which is appropriate, based upon his or her
 177 educational training and experience, and available in the
 178 geographical area of his or her residence.

179 2. A party is not considered "underemployed" if he or she
 180 is enrolled in an educational program that can be reasonably
 181 expected to result in a degree or certification within a
 182 reasonable period, so long as the educational program is:

183 a. Expected to result in higher income within the
 184 foreseeable future.

185 b. A good faith educational choice based upon the previous
 186 education, training, skills, and experience of the party and the
 187 availability of immediate employment based upon the educational
 188 program being pursued.

189 (d) "Years of marriage" means the number of whole years,
 190 beginning from the date of the parties' marriage until the date
 191 of the filing of the action for dissolution of marriage.

192 (2) INITIAL FINDINGS.—When a party has requested alimony
 193 in a dissolution of marriage proceeding, before granting or
 194 denying an award of alimony, the court shall make initial
 195 written findings as to:

196 (a) The amount of each party's monthly gross income,
 197 including, but not limited to, the actual or potential income,
 198 and also including actual or potential income from nonmarital or
 199 marital property distributed to each party.

200 (b) The years of marriage as determined from the date of
 201 marriage through the date of the filing of the action for
 202 dissolution of marriage.

203 (3) ALIMONY GUIDELINES.—After making the initial findings
 204 described in subsection (2), the court shall calculate the
 205 presumptive alimony amount range and the presumptive alimony
 206 duration range. The court shall make written findings as to the
 207 presumptive alimony amount range and presumptive alimony
 208 duration range.

209 (a) Presumptive alimony amount range.—The low end of the
 210 presumptive alimony amount range shall be calculated by using
 211 the following formula:

212
 213 (0.015 x the years of marriage) x the difference between
 214 the monthly gross incomes of the parties

215
 216 The high end of the presumptive alimony amount range shall be
 217 calculated by using the following formula:

218
 219 (0.020 x the years of marriage) x the difference between
 220 the monthly gross incomes of the parties

221
 222 For purposes of calculating the presumptive alimony amount
 223 range, 20 years of marriage shall be used in calculating the low
 224 end and high end for marriages of 20 years or more. In
 225 calculating the difference between the parties' monthly gross
 226 income, the income of the party seeking alimony shall be
 227 subtracted from the income of the other party. If the
 228 application of the formulas to establish a guideline range
 229 results in a negative number, the presumptive alimony amount
 230 shall be \$0. If a court establishes the duration of the alimony
 231 award at 50 percent or less of the length of the marriage, the
 232 court shall use the actual years of the marriage, up to a
 233 maximum of 25 years, to calculate the high end of the
 234 presumptive alimony amount range.

235 (b) Presumptive alimony duration range.—The low end of the
 236 presumptive alimony duration range shall be calculated by using
 237 the following formula:

238
 239 0.25 x the years of marriage

240
 241 The high end of the presumptive alimony duration range shall be
 242 calculated by using the following formula:

243
 244 0.75 x the years of marriage

245
 246 (4) ALIMONY AWARD.—

247 (a) Marriages of 2 years or less.—For marriages of 2 years
 248 or less, there is a rebuttable presumption that no alimony shall
 249 be awarded. The court may award alimony for a marriage with a
 250 duration of 2 years or less only if the court makes written
 251 findings that there is clear and convincing need for alimony,
 252 there is an ability to pay alimony, and that the failure to
 253 award alimony would be inequitable. The court shall then
 254 establish the alimony award in accordance with paragraph (b).

255 (b) Marriages of more than 2 years.—Absent an agreement of
 256 the parties, alimony shall presumptively be awarded in an amount
 257 within the alimony amount range calculated in paragraph (3)(a).
 258 Absent an agreement of the parties, alimony shall presumptively
 259 be awarded for a duration within the alimony duration range
 260 calculated in paragraph (3)(b). In determining the amount and

261 duration of the alimony award, the court shall consider all of
 262 the following factors upon which evidence was presented:

263 1. The financial resources of the recipient spouse,
 264 including the actual or potential income from nonmarital or
 265 marital property or any other source and the ability of the
 266 recipient spouse to meet his or her reasonable needs
 267 independently.

268 2. The financial resources of the payor spouse, including
 269 the actual or potential income from nonmarital or marital
 270 property or any other source and the ability of the payor spouse
 271 to meet his or her reasonable needs while paying alimony.

272 3. The standard of living of the parties during the
 273 marriage with consideration that there will be two households to
 274 maintain after the dissolution of the marriage and that neither
 275 party may be able to maintain the same standard of living after
 276 the dissolution of the marriage.

277 4. The equitable distribution of marital property,
 278 including whether an unequal distribution of marital property
 279 was made to reduce or alleviate the need for alimony.

280 5. Both parties' income, employment, and employability,
 281 obtainable through reasonable diligence and additional training
 282 or education, if necessary, and any necessary reduction in
 283 employment due to the needs of an unemancipated child of the
 284 marriage or the circumstances of the parties.

285 6. Whether a party could become better able to support
 286 himself or herself and reduce the need for ongoing alimony by

287 pursuing additional educational or vocational training along
 288 with all of the details of such educational or vocational plan,
 289 including, but not limited to, the length of time required and
 290 the anticipated costs of such educational or vocational plan.

291 7. Whether one party has historically earned higher or
 292 lower income than the income reflected at the time of trial and
 293 the duration and consistency of income from overtime or
 294 secondary employment.

295 8. Whether either party has foregone or postponed
 296 economic, educational, or employment opportunities during the
 297 course of the marriage.

298 9. Whether either party has caused the unreasonable
 299 depletion or dissipation of marital assets.

300 10. The amount of temporary alimony and the number of
 301 months that temporary alimony was paid to the recipient spouse.

302 11. The age, health, and physical and mental condition of
 303 the parties, including consideration of significant health care
 304 needs or uninsured or unreimbursed health care expenses.

305 12. Significant economic or noneconomic contributions to
 306 the marriage or to the economic, educational, or occupational
 307 advancement of a party, including, but not limited to, services
 308 rendered in homemaking, child care, education, and career
 309 building of the other party, payment by one spouse of the other
 310 spouse's separate debts, or enhancement of the other spouse's
 311 personal or real property.

312 13. The tax consequence of the alimony award.

313 14. Any other factor necessary to do equity and justice
 314 between the parties.

315 (c) Deviation from guidelines.—The court may establish an
 316 award of alimony that is outside the presumptive alimony amount
 317 or alimony duration ranges only if the court considers all of
 318 the factors in paragraph (b) and makes specific written findings
 319 concerning the relevant factors that justify that the
 320 application of the presumptive alimony amount or alimony
 321 duration ranges, as applicable, is inappropriate or inequitable.

322 (d) Order establishing alimony award.—After consideration
 323 of the presumptive alimony amount and duration ranges in
 324 accordance with paragraphs (3)(a) and (b), and the factors upon
 325 which evidence was presented in accordance with paragraph (b),
 326 the court may establish an alimony award. An order establishing
 327 an alimony award must clearly set forth both the amount and the
 328 duration of the award. The court shall also make a written
 329 finding that the payor has the financial ability to pay the
 330 award.

331 (5) IMPUTATION OF INCOME.—If a party is voluntarily
 332 unemployed or underemployed, alimony shall be calculated based
 333 on a determination of potential income unless the court makes
 334 specific written findings regarding the circumstances that make
 335 it inequitable to impute income.

336 (6) NOMINAL ALIMONY.—Notwithstanding subsections (1), (3),
 337 and (4), the court may make an award of nominal alimony in the
 338 amount of \$1 per year if, at the time of trial, a party who has

339 traditionally provided the primary source of financial support
 340 to the family temporarily lacks the ability to pay support but
 341 is reasonably anticipated to have the ability to pay support in
 342 the future. The court may also award nominal alimony for an
 343 alimony recipient that is presently able to work but for whom a
 344 medical condition with a reasonable degree of medical certainty
 345 may inhibit or prevent his or her ability to work during the
 346 duration of the alimony period. The duration of the nominal
 347 alimony shall be established within the presumptive durational
 348 range based upon the length of the marriage subject to the
 349 alimony factors in paragraph (4) (b). Before the expiration of
 350 the durational period, nominal alimony may be modified in
 351 accordance with s. 61.14 as to amount to a full alimony award
 352 using the alimony guidelines and factors in this section.

353 (7) TAXABILITY AND DEDUCTIBILITY OF ALIMONY.—

354 (a) Unless otherwise stated in the judgment or order for
 355 alimony or in an agreement incorporated thereby, alimony shall
 356 be deductible from income by the payor under s. 215 of the
 357 Internal Revenue Code and includable in the income of the payee
 358 under s. 71 of the Internal Revenue Code.

359 (b) When making a judgment or order for alimony, the court
 360 may, in its discretion after weighing the equities and tax
 361 efficiencies, order alimony be nondeductible from income by the
 362 payor and nonincludable in the income of the payee.

363 (c) The parties may, in a marital settlement agreement,
 364 separation agreement, or related agreement, specifically agree

365 in writing that alimony be nondeductible from income by the
 366 payor and nonincludable in the income of the payee.

367 (8) MAXIMUM COMBINED AWARD.—In no event shall a combined
 368 award of alimony and child support constitute more than 55
 369 percent of the payor's net income, calculated without any
 370 consideration of alimony or child support obligations.

371 (9) SECURITY OF AWARD.—To the extent necessary to protect
 372 an award of alimony, the court may order any party who is
 373 ordered to pay alimony to purchase or maintain a decreasing term
 374 life insurance policy or a bond, or to otherwise secure such
 375 alimony award with any other assets that may be suitable for
 376 that purpose, in an amount adequate to secure the alimony award.
 377 Any such security may be awarded only upon a showing of special
 378 circumstances. If the court finds special circumstances and
 379 awards such security, the court must make specific evidentiary
 380 findings regarding the availability, cost, and financial impact
 381 on the obligated party. Any security may be modifiable in the
 382 event that the underlying alimony award is modified and shall be
 383 reduced in an amount commensurate with any reduction in the
 384 alimony award.

385 (10) MODIFICATION OF AWARD.—A court may subsequently
 386 modify or terminate the amount of an award of alimony initially
 387 established under this section in accordance with s. 61.14.
 388 However, a court may not modify the duration of an award of
 389 alimony initially established under this section.

390 (11) TERMINATION OF AWARD.—An alimony award shall

391 terminate upon the death of either party or the remarriage of
 392 the obligee.

393 (12) (a) PAYMENT OF AWARD.—With respect to an order
 394 requiring the payment of alimony entered on or after January 1,
 395 1985, unless paragraph (c) or paragraph (d) applies, the court
 396 shall direct in the order that the payments of alimony be made
 397 through the appropriate depository as provided in s. 61.181.

398 (b) With respect to an order requiring the payment of
 399 alimony entered before January 1, 1985, upon the subsequent
 400 appearance, on or after that date, of one or both parties before
 401 the court having jurisdiction for the purpose of modifying or
 402 enforcing the order or in any other proceeding related to the
 403 order, or upon the application of either party, unless paragraph
 404 (c) or paragraph (d) applies, the court shall modify the terms
 405 of the order as necessary to direct that payments of alimony be
 406 made through the appropriate depository as provided in s.
 407 61.181.

408 (c) If there is no minor child, alimony payments need not
 409 be directed through the depository.

410 (d)1. If there is a minor child of the parties and both
 411 parties so request, the court may order that alimony payments
 412 need not be directed through the depository. In this case, the
 413 order of support shall provide, or be deemed to provide, that
 414 either party may subsequently apply to the depository to require
 415 that payments be made through the depository. The court shall
 416 provide a copy of the order to the depository.

417 2. If subparagraph 1. applies, either party may
 418 subsequently file with the clerk of the court a verified motion
 419 alleging a default or arrearages in payment stating that the
 420 party wishes to initiate participation in the depository
 421 program. The moving party shall provide a copy of the motion to
 422 the other party. No later than 15 days after filing the motion,
 423 the court shall conduct an evidentiary hearing establishing the
 424 default and arrearages, if any, and issue an order directing the
 425 clerk of the circuit court to establish, or amend an existing,
 426 family law case history account, and further advising the
 427 parties that future payments shall thereafter be directed
 428 through the depository.

429 3. In IV-D cases, the Title IV-D agency shall have the
 430 same rights as the obligee in requesting that payments be made
 431 through the depository.

432 Section 3. Subsection (1) of section 61.14, Florida
 433 Statutes, is amended to read:

434 61.14 Enforcement and modification of support,
 435 maintenance, or alimony agreements or orders.-

436 (1) (a) When the parties enter into an agreement for
 437 payments for, or instead of, support, maintenance, or alimony,
 438 whether in connection with a proceeding for dissolution or
 439 separate maintenance or with any voluntary property settlement,
 440 or when a party is required by court order to make any payments,
 441 and the circumstances or the financial ability of either party
 442 changes or the child who is a beneficiary of an agreement or

443 court order as described herein reaches majority after the
 444 execution of the agreement or the rendition of the order, either
 445 party may apply to the circuit court of the circuit in which the
 446 parties, or either of them, resided at the date of the execution
 447 of the agreement or reside at the date of the application, or in
 448 which the agreement was executed or in which the order was
 449 rendered, for an order decreasing or increasing the amount of
 450 support, maintenance, or alimony, and the court has jurisdiction
 451 to make orders as equity requires, with due regard to the
 452 changed circumstances or the financial ability of the parties or
 453 the child, decreasing, increasing, or confirming the amount of
 454 separate support, maintenance, or alimony provided for in the
 455 agreement or order. However, a court may not decrease or
 456 increase the duration of alimony provided for in the agreement
 457 or order. A party is entitled to pursue an immediate
 458 modification of alimony if the actual income earned by the other
 459 party exceeds, by at least 10 percent, the amount imputed to
 460 that party at the time the existing alimony award was determined
 461 and such circumstance shall constitute a substantial change in
 462 circumstances sufficient to support a modification of alimony.
 463 However, an increase in an alimony obligor's income alone does
 464 not constitute a basis for a modification to increase alimony
 465 unless at the time the alimony award was established it was
 466 determined that the obligor was underemployed or unemployed and
 467 the court did not impute income to that party at his or her
 468 maximum potential income. If an alimony obligor becomes

469 involuntarily underemployed or unemployed for a period of 6
 470 months following the entry of the last order requiring the
 471 payment of alimony, the obligor is entitled to pursue an
 472 immediate modification of his or her existing alimony
 473 obligations and such circumstance shall constitute a substantial
 474 change in circumstance sufficient to support a modification of
 475 alimony. A finding that medical insurance is reasonably
 476 available or the child support guidelines schedule in s. 61.30
 477 may constitute changed circumstances. Except as otherwise
 478 provided in s. 61.30(11)(c), the court may modify an order of
 479 support, maintenance, or alimony by increasing or decreasing the
 480 support, maintenance, or alimony retroactively to the date of
 481 the filing of the action or supplemental action for modification
 482 as equity requires, giving due regard to the changed
 483 circumstances or the financial ability of the parties or the
 484 child.

485 (b)1. The court may reduce or terminate an award of
 486 alimony upon specific written findings by the court that since
 487 the granting of a divorce and the award of alimony a supportive
 488 relationship exists or has existed within the previous year
 489 before the date of the filing of the petition for modification
 490 or termination between the obligee and another a person with
 491 ~~whom the obligee resides. On the issue of whether alimony should~~
 492 ~~be reduced or terminated under this paragraph, the burden is on~~
 493 ~~the obligor to prove by a preponderance of the evidence that a~~
 494 ~~supportive relationship exists.~~

495 2. In determining whether an existing award of alimony
 496 should be reduced or terminated because of an alleged supportive
 497 relationship between an obligee and a person who is not related
 498 by consanguinity or affinity ~~and with whom the obligee resides,~~
 499 the court shall elicit the nature and extent of the relationship
 500 in question. The court shall give consideration, without
 501 limitation, to circumstances, including, but not limited to, the
 502 following, in determining the relationship of an obligee to
 503 another person:

504 a. The extent to which the obligee and the other person
 505 have held themselves out as a married couple by engaging in
 506 conduct such as using the same last name, using a common mailing
 507 address, referring to each other in terms such as "my spouse"
 508 ~~"my husband" or "my wife,"~~ or otherwise conducting themselves in
 509 a manner that evidences a permanent supportive relationship.

510 b. The period of time that the obligee has resided with
 511 the other person in a permanent place of abode.

512 c. The extent to which the obligee and the other person
 513 have pooled their assets or income or otherwise exhibited
 514 financial interdependence.

515 d. The extent to which the obligee or the other person has
 516 supported the other, in whole or in part.

517 e. The extent to which the obligee or the other person has
 518 performed valuable services for the other.

519 f. The extent to which the obligee or the other person has
 520 performed valuable services for the other's company or employer.

521 g. Whether the obligee and the other person have worked
522 together to create or enhance anything of value.

523 h. Whether the obligee and the other person have jointly
524 contributed to the purchase of any real or personal property.

525 i. Evidence in support of a claim that the obligee and the
526 other person have an express agreement regarding property
527 sharing or support.

528 j. Evidence in support of a claim that the obligee and the
529 other person have an implied agreement regarding property
530 sharing or support.

531 k. Whether the obligee and the other person have provided
532 support to the children of one another, regardless of any legal
533 duty to do so.

534 1. Whether the obligor's failure, in whole or in part, to
535 comply with all court-ordered financial obligations to the
536 obligee constituted a significant factor in the establishment of
537 the supportive relationship.

538 3. In any proceeding to modify an alimony award based upon
539 a supportive relationship, the obligor has the burden of proof
540 to establish, by a preponderance of the evidence, that a
541 supportive relationship exists or has existed within the
542 previous year before the date of the filing of the petition for
543 modification or termination. The obligor is not required to
544 prove cohabitation of the obligee and the third party.

545 4. Notwithstanding paragraph (f), if a reduction or
546 termination is granted under this paragraph, the reduction or

547 termination is retroactive to the date of filing of the petition
 548 for reduction or termination.

549 ~~5.3.~~ This paragraph does not abrogate the requirement that
 550 every marriage in this state be solemnized under a license, does
 551 not recognize a common law marriage as valid, and does not
 552 recognize a de facto marriage. This paragraph recognizes only
 553 that relationships do exist that provide economic support
 554 equivalent to a marriage and that alimony terminable on
 555 remarriage may be reduced or terminated upon the establishment
 556 of equivalent equitable circumstances as described in this
 557 paragraph. The existence of a conjugal relationship, though it
 558 may be relevant to the nature and extent of the relationship, is
 559 not necessary for the application of the provisions of this
 560 paragraph.

561 (c)1. For purposes of this section, the remarriage of an
 562 alimony obligor does not constitute a substantial change in
 563 circumstance or a basis for a modification of alimony.

564 2. The financial information, including, but not limited
 565 to, information related to assets and income, of a subsequent
 566 spouse of a party paying or receiving alimony is inadmissible
 567 and may not be considered as a part of any modification action
 568 unless a party is claiming that his or her income has decreased
 569 since the marriage. If a party makes such a claim, the financial
 570 information of the subsequent spouse is discoverable and
 571 admissible only to the extent necessary to establish whether the
 572 party claiming that his or her income has decreased is diverting

573 income or assets to the subsequent spouse that might otherwise
 574 be available for the payment of alimony. However, this
 575 subparagraph may not be used to prevent the discovery of or
 576 admissibility in evidence of the income or assets of a party
 577 when those assets are held jointly with a subsequent spouse.
 578 This subparagraph is not intended to prohibit the discovery or
 579 admissibility of a joint tax return filed by a party and his or
 580 her subsequent spouse in connection with a modification of
 581 alimony.

582 (d)1. An obligor may file a petition for modification or
 583 termination of an alimony award based upon his or her actual
 584 retirement.

585 a. A substantial change in circumstance is deemed to exist
 586 if:

587 (I) The obligor has reached the age for eligibility to
 588 receive full retirement benefits under s. 216 of the Social
 589 Security Act, 42 U.S.C. s. 416 and has retired; or

590 (II) The obligor has reached the customary retirement age
 591 for his or her occupation and has retired from that occupation.
 592 An obligor may file an action within 1 year of his or her
 593 anticipated retirement date and the court shall determine the
 594 customary retirement date for the obligor's profession. However,
 595 a determination of the customary retirement age is not an
 596 adjudication of a petition for a modification of an alimony
 597 award.

598 b. If an obligor voluntarily retires before reaching any

599 of the ages described in sub-subparagraph a., the court shall
 600 determine whether the obligor's retirement is reasonable upon
 601 consideration of the obligor's age, health, and motivation for
 602 retirement and the financial impact on the obligee. A finding of
 603 reasonableness by the court shall constitute a substantial
 604 change in circumstance.

605 2. Upon a finding of a substantial change in circumstance,
 606 there is a rebuttable presumption that an obligor's existing
 607 alimony obligation shall be modified or terminated. The court
 608 shall modify or terminate the alimony obligation, or make a
 609 determination regarding whether the rebuttable presumption has
 610 been overcome, based upon the following factors applied to the
 611 current circumstances of the obligor and obligee:

- 612 a. The age of the parties.
- 613 b. The health of the parties.
- 614 c. The assets and liabilities of the parties.
- 615 d. The earned or imputed income of the parties as provided
 616 in s. 61.08(1)(a) and (5).
- 617 e. The ability of the parties to maintain part-time or
 618 full-time employment.
- 619 f. Any other factor deemed relevant by the court.

620 3. The court may temporarily reduce or suspend the
 621 obligor's payment of alimony while his or her petition for
 622 modification or termination under this paragraph is pending.

623 (e) A party who unreasonably pursues or defends an action
 624 for modification of alimony shall be required to pay the

625 reasonable attorney fees and costs of the prevailing party.
 626 Further, a party obligated to pay prevailing party attorney fees
 627 and costs in connection with unreasonably pursuing or defending
 628 an action for modification is not entitled to an award of
 629 attorney fees and cost in accordance with s. 61.16.

630 (f) There is a rebuttable presumption that a modification
 631 or termination of an alimony award is retroactive to the date of
 632 the filing of the petition, unless the obligee demonstrates that
 633 the result is inequitable.

634 (g)~~(e)~~ For each support order reviewed by the department
 635 as required by s. 409.2564(11), if the amount of the child
 636 support award under the order differs by at least 10 percent but
 637 not less than \$25 from the amount that would be awarded under s.
 638 61.30, the department shall seek to have the order modified and
 639 any modification shall be made without a requirement for proof
 640 or showing of a change in circumstances.

641 (h)~~(d)~~ The department may ~~shall have authority to~~ adopt
 642 rules to implement this section.

643 Section 4. Paragraph (d) is added to subsection (11) of
 644 section 61.30, Florida Statutes, to read:

645 61.30 Child support guidelines; retroactive child
 646 support.—

647 (11)

648 (d) Whenever a combined alimony and child support award
 649 constitutes more than 55 percent of the payor's net income,
 650 calculated without any consideration of alimony or child support

651 obligations, the court shall adjust the award of child support
 652 to ensure that the 55 percent cap is not exceeded.

653 Section 5. Section 61.192, Florida Statutes, is created to
 654 read:

655 61.192 Advancing trial.—In an action brought pursuant to
 656 this chapter, if more than 2 years have passed since the initial
 657 petition was served on the respondent, either party may move the
 658 court to advance the trial of their action on the docket. This
 659 motion may be made at any time after 2 years have passed since
 660 the petition was served, and once made the court must give the
 661 case priority on the court's calendar.

662 Section 6. The amendments made by this act to chapter 61,
 663 Florida Statutes, apply to all initial determinations of alimony
 664 and all alimony modification actions that are pending on October
 665 1, 2015 or that are brought on or after October 1, 2015. The
 666 changes to the law made by this act do not constitute a
 667 substantial change in circumstances and may not serve as the
 668 sole basis to seek a modification of an alimony award made
 669 before the effective date of this act.

670 Section 7. This act shall take effect October 1, 2015.

Alimony Duration Formula

Years of Marriage	Low Year Range	High Year Range
1	---	---
2	---	---
3	0.75	2.25
4	1	3
5	1.25	3.75
6	1.5	4.5
7	1.75	5.25
8	2	6
9	2.25	6.75
10	2.5	7.5
11	2.75	8.25
12	3	9
13	3.25	9.75
14	3.5	10.5
15	3.75	11.25

Years of Marriage	Low Year Range	High Year Range
16	4	12
17	4.25	12.75
18	4.5	13.5
19	4.75	14.25
20	5	15
21	5.25	15.75
22	5.5	16.5
23	5.75	17.25
24	6	18
25	6.25	18.75
26	6.5	19.5
27	6.75	20.25
28	7	21
29	7.25	21.75
30	7.5	22.5


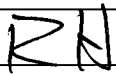
Alimony Amount Formula

Years of Marriage	Low % Range	High % Range
1	---	---
2	---	---
3	4.5%	6%
4	6%	8%
5	7.5%	10%
6	9%	12%
7	10.5%	14%
8	12%	16%
9	13.5%	18%
10	15%	20%
11	16.5%	22%
12	18%	24%
13	19.5%	26%
14	21%	28%
15	22.5%	30%

Years of Marriage	Low % Range	High % Range	<i>Expanded High % (if judge sets alimony duration ≤ 50% of length of marriage)</i>
16	24%	32%	
17	25.5%	34%	
18	27%	36%	
19	28.5%	38%	
20	30%	40%	
21	30%	40%	42%
22	30%	40%	44%
23	30%	40%	46%
24	30%	40%	48%
25	30%	40%	50%
26	30%	40%	50%
27	30%	40%	50%
28	30%	40%	50%
29	30%	40%	50%
30	30%	40%	50%

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1069 Defendants in Specialized Courts
SPONSOR(S): Criminal Justice Subcommittee; Perry and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1170

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Keegan	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N	Schrader	Lloyd
3) Judiciary Committee		Keegan 	Havlicak 

SUMMARY ANALYSIS

Currently, s. 910.035(5), F.S., allows any person who is eligible for participation in a preadjudicatory drug court program to have the case transferred to a county other than that in which the charge arose if:

- The representative of the drug court program of the county requesting to transfer the case consults with the representative of the drug court program in the county to which transfer is desired; and all parties approve the transfer.

If the above requirements are met, the trial court must accept a plea of nolo contendere and enter a transfer order directing the clerk to transfer the case to the county which has accepted the defendant into its drug court. Upon successful completion of the drug court program, the jurisdiction to which the case has been transferred must dispose of the case.

The bill expands s. 910.035(5), F.S., so that a person eligible to participate in *any type of* problem solving courts PSC (not just a preadjudicatory drug court) may have their case transferred to another county if:

- The defendant agrees to the transfer;
- The authorized representative of the trial court consults with the authorized representative of the PSC in the county to which transfer is requested; and
- Both authorized representatives agree to the transfer.

The bill defines "problem-solving court" to include preadjudicatory and postadjudicatory drug courts pursuant to s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s. 948.20; preadjudicatory and postadjudicatory veterans' courts pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; and mental health courts.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Preadjudicatory Diversion Programs

A variety of programs currently exist that offer criminal defendants an alternative to prosecution by diverting their cases into pretrial diversion programs. For example, Pretrial Intervention (PTI) programs allow defendants with pending felony or misdemeanor charges the opportunity to have their charges dismissed if they successfully complete PTI program requirements.¹ The purpose of these programs is to provide defendants with services such as counseling, education programs, and psychological treatment.² Generally, PTI programs accept defendants charged with a misdemeanor or third degree felony so long as the defendant, PTI program administrator, victim, prosecutor, and presiding judge agree.³

Postadjudicatory Diversion Programs

Florida law also establishes postadjudicatory programs designed to provide supervised community treatment services in lieu of incarceration for criminal defendants who have entered a guilty or nolo contendere plea to a crime.⁴ For example, postadjudicatory drug court programs serve non-violent, drug addicted offenders who typically have prior convictions. Upon successful completion of the program, these offenders may have their adjudication withheld, probation reduced or terminated, or other sanctions reduced.⁵

Problem-Solving Courts

Florida law authorizes specialty preadjudicatory and postadjudicatory programs for military service members and veterans (veterans' courts),⁶ as well as for defendants with a high risk of substance abuse (drug courts).⁷ These specialty programs, often referred to as problem-solving courts (PSCs) focus on sobriety, counseling, and the unique needs of the specialty groups served by the program.⁸ In addition, while not codified in statute, many judicial circuits have created what are often referred to as mental health courts. Mental health courts are diversionary programs for persons diagnosed with a severe mental illness or developmental disability.

Transferring Criminal Cases to Other Counties

Florida law currently authorizes criminal cases to be transferred between counties in limited circumstances. For example:

¹ See, e.g., ss. 948.08, 948.16, and 985.345, F.S.

² George E. Tragos & Peter A. Sartes, *Diversion Programs: PTI...Dismissal...Problem Solved...or Is It?*, 82 THE FLA. BAR J. 73 (Oct. 2008).

³ See, e.g., ss. 948.08, 948.16, and 985.345, F.S.

⁴ See, e.g., ss. 394.47891, 948.01, 948.06, 948.20, and 948.21, F.S. See also, Office of Program Policy Analysis & Gov't Accountability, *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, OPPAGA Report # 09-13 (March 2009) <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0913rpt.pdf> (last visited March 13, 2015).

⁵ Office of Program Policy Analysis & Gov't Accountability, *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, OPPAGA Report # 09-13 (March 2009) <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0913rpt.pdf> (last visited March 13, 2015).

⁶ ss. 948.08(7) and 948.16(2) and (3), F.S.

⁷ ss. 948.16(1)(a) and 985.345, F.S.

⁸ See, e.g., EIGHTEENTH JUDICIAL CIRCUIT COURTS, *Court Programs – Seminole Drug Court*, <http://www.flcourts18.org/page.php?109> (last visited March 13, 2015); Office of Program Policy Analysis & Gov't Accountability, *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, OPPAGA Report # 09-13 (March 2009) <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0913rpt.pdf> (last visited March 13, 2015).

- When a defendant is arrested or held in a county other than the county where the defendant's criminal charges are pending, the criminal case may be transferred to the county where the defendant is being held.⁹
- When a defendant does not have criminal charges pending, but is arrested on a warrant issued in a county other than the county where the defendant was arrested, the criminal case may be transferred to the county where the defendant was arrested.¹⁰

In addition, s. 910.035(5), F.S., allows the transfer of a criminal case involving a PSC. This statute allows any person who is eligible for participation in a preadjudicatory drug court program¹¹ to have the case transferred to a county other than that in which the charge arose if:

- The authorized representative of the drug court program of the county requesting to transfer the case consults with the authorized representative of the drug court program in the county to which transfer is desired; and
- All parties approve the transfer.

If the above requirements are met, the trial court must accept a plea of nolo contendere and enter a transfer order¹² directing the clerk to transfer the case to the county which has accepted the defendant into its drug court.¹³ After the transfer takes place, the clerk must set the matter for a hearing before the drug court judge and the court must ensure the defendant's entry into the drug court.¹⁴

Upon successful completion of the drug court program, the jurisdiction to which the case has been transferred must dispose of the case pursuant to s. 948.08(6), F.S. If the defendant does not complete the drug court program successfully, the jurisdiction to which the case has been transferred must dispose of the case within the guidelines of the Criminal Punishment Code.¹⁵

Effect of the Bill

The bill expands s. 910.035(5), F.S., to allow a person eligible to participate in a preadjudicatory or postadjudicatory PSC to have their case transferred to another county. Specifically, the bill requires a person who is eligible to participate in a PSC to have his or her case transferred to another county upon request by the person or the court, if:

- The person agrees to the transfer;
- The authorized representative of the trial court consults with the authorized representative of the PSC in the county to which transfer is requested; and
- Both authorized representatives agree to the transfer.

If the above requirements are met, the trial court must enter a transfer order directing the clerk to transfer the case. Any transfer order must include specified documents depending on whether the case

⁹ Section 910.035(1), F.S., permits the criminal case to be transferred if the defendant states in writing that he or she 1) wishes to plead guilty or nolo contendere, 2) to waive trial in the county in which the indictment or information is pending, and 3) to consent to disposition of the case in the county in which the defendant was arrested or is held, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending.

¹⁰ Section 910.035(2), F.S., permits the criminal case to be transferred if the defendant states in writing that he or she 1) wishes to plead guilty or nolo contendere, 2) to waive trial in the county in which the warrant was issued, and 3) to consent to disposition of the case in the county in which the defendant was arrested, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending.

¹¹ Section 948.08(6), F.S., sets forth the eligibility criteria for participation in such programs.

¹² The transfer order must include a copy of the probable cause affidavit; any charging documents in the case; all reports, witness statements, test results, evidence lists, and other documents in the case; the defendant's mailing address and phone number; and the defendant's written consent to abide by the rules and procedures of the receiving county's drug court program. s. 910.035(5)(c), F.S.

¹³ s. 910.035(5)(b), F.S.

¹⁴ s. 910.035(5)(d), F.S.

¹⁵ s. 910.035(5)(e), F.S.

is postadjudicatory or preadjudicatory.¹⁶ After the transfer takes place, the clerk must set the matter for a hearing before the PSC judge to ensure the defendant's entry into the PSC.

Upon successful completion of the PSC, the jurisdiction to which the case has been transferred must dispose of the case. If the defendant does not complete the PSC successfully, the jurisdiction to which the case has been transferred must dispose of the case within the guidelines of the Criminal Punishment Code.¹⁷

The bill defines "problem-solving court" to mean a preadjudicatory or postadjudicatory drug court pursuant to s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s. 948.20; a preadjudicatory or postadjudicatory veterans' court pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; or a mental health court.

B. SECTION DIRECTORY:

Section 1. Amends s. 910.035, F.S., relating to transfer from county for plea and sentence.

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.

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 may have a minimal fiscal impact on local government expenditures because counties will be required to take administrative and procedural steps to transfer criminal cases between counties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹⁶ A transfer order for a pretrial case must include: a copy of the probable cause affidavit; any case charging documents; all case reports, witness statements, test results, evidence lists, and other documents; the defendant's mailing address and telephone number; and the defendant's written consent to abide by the rules and procedures of the receiving county's problem-solving court. A transfer order for a postadjudication case must include: the case charging documents; the final disposition; all case reports, test results, and other documents; the defendant's mailing address and telephone number; and the defendant's written consent to abide by the rules and procedures of the receiving county's problem-solving court.

¹⁷ s. 910.035(5)(e), F.S.

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:

- Expands the transfer process to allow a person eligible to participate in a preadjudicatory or postadjudicatory PSC to have their case transferred to another county;
- Adds a requirement that the defendant must consent to any transfer; and
- Provides separate requirements for the transfer orders for preadjudicatory and postadjudicatory cases.

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

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A bill to be entitled
An act relating to defendants in specialized courts;
amending s. 910.035, F.S.; providing a definition;
requiring a trial court to transfer certain criminal
cases involving participants in specified programs to
another jurisdiction having such a program under
certain conditions; providing an effective date.

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

Section 1. Subsection (5) of section 910.035, Florida
Statutes, is amended to read:

910.035 Transfer from county for plea, and sentence, or
participation in a problem-solving court.-

(5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING
COURT.-

(a) For purposes of this subsection, the term "problem-
solving court" means a drug court pursuant to s. 948.01, s.
948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans' court
pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; or
a mental health court.

(b) Any person eligible for participation in a problem-
solving drug court shall, upon request by the person or a court,
~~treatment program pursuant to s. 948.08(6) may be eligible to~~
have the case transferred to a county other than that in which
the charge arose if the person agrees to the transfer, ~~the drug~~

27 ~~court program agrees and if the following conditions are met:~~

28 ~~(a) the authorized representative of the trial drug court~~
 29 ~~consults program of the county requesting to transfer the case~~
 30 ~~shall consult~~ with the authorized representative of the problem-
 31 solving drug court program in the county to which transfer is
 32 desired, and both representatives agree to the transfer.

33 ~~(c)(b)~~ If all parties agree to the transfer as required by
 34 paragraph (b), approval for transfer is received from all
 35 parties, the trial court shall accept a plea of nolo contendere
 36 ~~and~~ enter a transfer order directing the clerk to transfer the
 37 case to the county which has accepted the defendant into its
 38 problem-solving drug court program.

39 ~~(d)1.(e)~~ When transferring a pretrial problem-solving
 40 court case, the transfer order shall include a copy of the
 41 probable cause affidavit; any charging documents in the case;
 42 all reports, witness statements, test results, evidence lists,
 43 and other documents in the case; the defendant's mailing address
 44 and telephone ~~phone~~ number; and the defendant's written consent
 45 to abide by the rules and procedures of the receiving county's
 46 problem-solving drug court program.

47 2. When transferring a postadjudicatory problem-solving
 48 court case, the transfer order shall include a copy of the
 49 charging documents in the case; the final disposition; all
 50 reports, test results, and other documents in the case; the
 51 defendant's mailing address and telephone number; and the
 52 defendant's written consent to abide by the rules and procedures

53 of the receiving county's problem-solving court.

54 ~~(e)(d)~~ After the transfer takes place, the clerk shall set
 55 the matter for a hearing before the problem-solving ~~drug~~ court
 56 ~~to program judge and the court shall~~ ensure the defendant's
 57 entry into the problem-solving ~~drug~~ court ~~program~~.

58 ~~(f)(e)~~ Upon successful completion of the problem-solving
 59 ~~drug~~ court program, the jurisdiction to which the case has been
 60 transferred shall dispose of the case ~~pursuant to s. 948.08(6)~~.
 61 If the defendant does not complete the problem-solving ~~drug~~
 62 court program successfully, the jurisdiction to which the case
 63 has been transferred shall dispose of the case within the
 64 guidelines of the Criminal Punishment Code.

65 Section 2. 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 Perry offered the following:

3
4

Amendment

5
6
7
8

Remove lines 54-55 and insert:

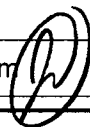
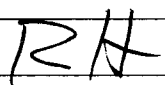
(e) ~~(d)~~ After the transfer takes place, the receiving clerk
 shall set the matter for a hearing before the problem-solving
~~drug~~ court in the receiving jurisdiction

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1211 Community Associations

SPONSOR(S): Business & Professions Subcommittee; Civil Justice Subcommittee; Fitzenhagen

TIED BILLS: None **IDEN./SIM. BILLS:** SB 870

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 0 N, As CS	Bond	Bond
2) Business & Professions Subcommittee	12 Y, 0 N, As CS	Anstead	Luczynski
3) Judiciary Committee		Malcolm 	Havlicak 

SUMMARY ANALYSIS

Condominium, cooperative, and homeowners' associations all hold various types of membership meetings throughout the year as determined by the Board of Directors, where votes of the membership may be required. In addition to general membership meetings, the laws governing condominium, cooperative, and homeowners' associations all require an annual meeting of the members at which some or all of the directors of the association may be elected. Current law does not recognize electronic voting.

The bill creates a mechanism for electronic voting of the membership for condominium, cooperative, and homeowners' association, provided that the bylaws of an association allow for electronic voting.

The bill does not appear to have a fiscal impact on 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

Condominium, cooperative, and homeowners' associations all hold various types of membership meetings throughout the year as determined by the Board of Directors, where votes of the membership may be required. In addition to general membership meetings, the laws governing condominium, cooperative, and homeowners' associations all require an annual meeting of the members at which some or all of the directors of the association may be elected.

A condominium association is required to have an annual meeting at which directors are elected.¹ Votes must be cast by "written ballot or voting machine."² Proxies may not be used in the election.³ Florida Administrative Code governing condominium associations also provides detailed regulations for voting and election procedures, such as requiring that paper ballots be mailed in double envelopes.⁴ Similar statutory and administrative requirements apply to cooperative associations.⁵

A homeowners' association is likewise required to hold board of director elections at its annual meeting or as provided in its governing documents.⁶ Elections are conducted in accordance with the procedures set forth in the governing documents of the association.⁷ Additionally, proxies may be used in the election unless otherwise provided in the governing documents.⁸

Effect of Proposed Change

This bill provides that an association may elect to conduct votes of the membership by electronic voting according to the following terms:

Each member voting electronically must consent, in writing, to electronic voting.

The association must provide each member with a method to:

- Authenticate the member's identity to the electronic voting system.
- Secure the member's vote from, among other things, malicious software and the ability of others to remotely monitor or control the electronic voting platform.
- Communicate with the electronic voting system.
- Review an electronic ballot before its transmission to the electronic voting system.
- Transmit an electronic ballot to the electronic voting system that ensures the secrecy and integrity of each ballot.
- Verify the authenticity of receipts sent from the electronic voting system.
- Confirm, at least 14 days before the voting deadline, that the member's electronic voting platform can successfully communicate with the electronic voting system.
- Vote by mail or to deliver a ballot in person in the event of a disruption of the electronic voting system.

¹ s. 718.112(2)(d)1., F.S.; see generally Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, p. 40-57 (14th. ed. 2014-2015).

² s. 718.112(2)(d)4., F.S.

³ *Id.*

⁴ Rule 61B-23.0021, F.A.C.

⁵ s. 719.106(1)(d), F.S.; Rule 61B-75.005, F.A.C.

⁶ s. 720.306(2), F.S.

⁷ s. 720.306(9)(a), F.S.

⁸ s. 720.306(8), F.S.

In addition, an electronic voting system must be:

- Accessible to members with disabilities.
- Secure from, among other things, malicious software and the ability of others to remotely monitor or control the system.
- Able to authenticate the member's identity.
- Able to communicate with each member's electronic voting platform.
- Able to authenticate the validity of each electronic ballot to ensure that the ballot is not altered in transit.
- Able to transmit a receipt from the electronic voting system to each member who casts an electronic ballot.
- Able to permanently separate any authentication or identifying information from the electronic ballot, rendering it impossible to tie a ballot to a specific member.
- Able to allow the member to confirm that his or her ballot has been received and counted.
- Able to store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.

The bill also provides that an association member voting electronically is counted as being in attendance at the meeting for purposes of determining a quorum.

The bylaws of an association must provide for electronic voting in order for this bill to apply. The bylaws may provide for electronic voting of some or all votes of the membership.

B. SECTION DIRECTORY:

Section 1 creates s. 718.128, F.S., regarding electronic voting for condominium associations.

Section 2 creates s. 719.129, F.S., regarding electronic voting for cooperative associations.

Section 3 creates s. 720.317, F.S., regarding electronic voting for homeowners' associations.

Section 4 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 appears to require rulemaking by the Department of Business and Professional Regulation, which may require a minimal nonrecurring expenditure in FY 2015-16 payable from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill appears to create a need for rulemaking by the Department of Business and Professional Regulation to modify election rules for condominiums and cooperatives. The department appears to have adequate rulemaking authority at ss. 718.501(1)(f) and 719.501(1)(f), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2015, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the definition of "electronic transmission," provides that a member voting electronically counts towards a meeting quorum, and provided that it applies to any vote of the membership where allowed by the bylaws of the association.

On March 24, 2015, the Business & Professions Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the word "election" and replaced it with "votes of the membership" throughout the bill.

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

1 A bill to be entitled

2 An act relating to community associations; creating
 3 ss. 718.128, 719.129, and 720.317, F.S.; authorizing
 4 condominium, cooperative, and homeowners' associations
 5 to conduct votes of the membership by electronic
 6 voting under certain conditions; providing that a
 7 member voting electronically is counted toward the
 8 determination of a quorum; providing applicability;
 9 providing an effective date.

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

12
 13 Section 1. Section 718.128, Florida Statutes, is created
 14 to read:

15 718.128 Electronic voting.—The association may conduct
 16 votes of the membership by electronic voting if a member
 17 consents, in writing, to voting electronically and the following
 18 requirements are met:

19 (1) The association provides each member with:

20 (a) A method to authenticate the member's identity to the
 21 electronic voting system.

22 (b) A method to secure the member's vote from, among other
 23 things, malicious software and the ability of others to remotely
 24 monitor or control the electronic voting platform.

25 (c) A method to communicate with the electronic voting
 26 system.

27 (d) A method to review an electronic ballot before its
 28 transmission to the electronic voting system.

29 (e) A method to transmit an electronic ballot to the
 30 electronic voting system that ensures the secrecy and integrity
 31 of each ballot.

32 (f) A method to allow members to verify the authenticity
 33 of receipts sent from the electronic voting system.

34 (g) A method to confirm, at least 14 days before the
 35 voting deadline, that the member's electronic voting platform
 36 can successfully communicate with the electronic voting system.

37 (h) In the event of a disruption of the electronic voting
 38 system, the ability to vote by mail or to deliver a ballot in
 39 person.

40 (2) The association uses an electronic voting system that
 41 is:

42 (a) Accessible to members with disabilities.

43 (b) Secure from, among other things, malicious software
 44 and the ability of others to remotely monitor or control the
 45 system.

46 (c) Able to authenticate the member's identity.

47 (d) Able to communicate with each member's electronic
 48 voting platform.

49 (e) Able to authenticate the validity of each electronic
 50 ballot to ensure that the ballot is not altered in transit.

51 (f) Able to transmit a receipt from the electronic voting
 52 system to each member who casts an electronic ballot.

53 (g) Able to permanently separate any authentication or
 54 identifying information from the electronic ballot, rendering it
 55 impossible to tie a ballot to a specific member.

56 (h) Able to allow the member to confirm that his or her
 57 ballot has been received and counted.

58 (i) Able to store and keep electronic ballots accessible
 59 to election officials for recount, inspection, and review
 60 purposes.

61 (3) A member voting electronically pursuant to this
 62 section shall be counted as being in attendance at the meeting
 63 for purposes of determining a quorum.

64 (4) This section applies to an association that provides
 65 for and authorizes electronic voting pursuant to this section in
 66 the association's bylaws and may apply to any matter that
 67 requires a vote of the membership.

68 Section 2. Section 719.129, Florida Statutes, is created
 69 to read:

70 719.129 Electronic voting.—The association may conduct
 71 votes of the membership by electronic voting if a member
 72 consents, in writing, to voting electronically and the following
 73 requirements are met:

74 (1) The association provides each member with:

75 (a) A method to authenticate the member's identity to the
 76 electronic voting system.

77 (b) A method to secure the member's vote from, among other
 78 things, malicious software and the ability of others to remotely

79 monitor or control the electronic voting platform.

80 (c) A method to communicate with the electronic voting
 81 system.

82 (d) A method to review an electronic ballot before its
 83 transmission to the electronic voting system.

84 (e) A method to transmit an electronic ballot to the
 85 electronic voting system that ensures the secrecy and integrity
 86 of each ballot.

87 (f) A method to allow members to verify the authenticity
 88 of receipts sent from the electronic voting system.

89 (g) A method to confirm, at least 14 days before the
 90 voting deadline, that the member's electronic voting platform
 91 can successfully communicate with the electronic voting system.

92 (h) In the event of a disruption of the electronic voting
 93 system, the ability to vote by mail or to deliver a ballot in
 94 person.

95 (2) The association uses an electronic voting system that
 96 is:

97 (a) Accessible to members with disabilities.

98 (b) Secure from, among other things, malicious software
 99 and the ability of others to remotely monitor or control the
 100 system.

101 (c) Able to authenticate the member's identity.

102 (d) Able to communicate with each member's electronic
 103 voting platform.

104 (e) Able to authenticate the validity of each electronic

105 ballot to ensure that the ballot is not altered in transit.

106 (f) Able to transmit a receipt from the electronic voting
 107 system to each member who casts an electronic ballot.

108 (g) Able to permanently separate any authentication or
 109 identifying information from the electronic ballot, rendering it
 110 impossible to tie a ballot to a specific member.

111 (h) Able to allow the member to confirm that his or her
 112 ballot has been received and counted.

113 (i) Able to store and keep electronic ballots accessible
 114 to election officials for recount, inspection, and review
 115 purposes.

116 (3) A member voting electronically pursuant to this
 117 section shall be counted as being in attendance at the meeting
 118 for purposes of determining a quorum.

119 (4) This section applies to an association that provides
 120 for and authorizes electronic voting pursuant to this section in
 121 the association's bylaws and may apply to any matter that
 122 requires a vote of the membership.

123 Section 3. Section 720.317, Florida Statutes, is created
 124 to read:

125 720.317 Electronic voting.—The association may conduct
 126 votes of the membership by electronic voting if a member
 127 consents, in writing, to voting electronically and the following
 128 requirements are met:

129 (1) The association provides each member with:

130 (a) A method to authenticate the member's identity to the

131 electronic voting system.

132 (b) A method to secure the member's vote from, among other
 133 things, malicious software and the ability of others to remotely
 134 monitor or control the electronic voting platform.

135 (c) A method to communicate with the electronic voting
 136 system.

137 (d) A method to review an electronic ballot before its
 138 transmission to the electronic voting system.

139 (e) A method to transmit an electronic ballot to the
 140 electronic voting system that ensures the secrecy and integrity
 141 of each ballot.

142 (f) A method to allow members to verify the authenticity
 143 of receipts sent from the electronic voting system.

144 (g) A method to confirm, at least 14 days before the
 145 voting deadline, that the member's electronic voting platform
 146 can successfully communicate with the electronic voting system.

147 (h) In the event of a disruption of the electronic voting
 148 system, the ability to vote by mail or to deliver a ballot in
 149 person.

150 (2) The association uses an electronic voting system that
 151 is:

152 (a) Accessible to members with disabilities.

153 (b) Secure from, among other things, malicious software
 154 and the ability of others to remotely monitor or control the
 155 system.

156 (c) Able to authenticate the member's identity.

157 (d) Able to communicate with each member's electronic
 158 voting platform.

159 (e) Able to authenticate the validity of each electronic
 160 ballot to ensure that the ballot is not altered in transit.

161 (f) Able to transmit a receipt from the electronic voting
 162 system to each member who casts an electronic ballot.

163 (g) Able to permanently separate any authentication or
 164 identifying information from the electronic ballot, rendering it
 165 impossible to tie a ballot to a specific member.

166 (h) Able to allow the member to confirm that his or her
 167 ballot has been received and counted.

168 (i) Able to store and keep electronic ballots accessible
 169 to election officials for recount, inspection, and review
 170 purposes.

171 (3) A member voting electronically pursuant to this
 172 section shall be counted as being in attendance at the meeting
 173 for purposes of determining a quorum.

174 (4) This section applies to an association that provides
 175 for and authorizes electronic voting pursuant to this section in
 176 the association's bylaws and may apply to any matter that
 177 requires a vote of the membership.

178 Section 4. 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 Fitzenhagen offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:
6 Section 1. Paragraph (d) of subsection (2) of section

7 718.112, Florida Statutes, is amended to read:

8 718.112 Bylaws.-

9 (2) REQUIRED PROVISIONS.-The bylaws shall provide for the
10 following and, if they do not do so, shall be deemed to include
11 the following:

12 (d) Unit owner meetings.-

13 1. An annual meeting of the unit owners shall be held at
14 the location provided in the association bylaws and, if the
15 bylaws are silent as to the location, the meeting shall be held
16 within 45 miles of the condominium property. However, such



Amendment No. 1

17 distance requirement does not apply to an association governing
18 a timeshare condominium.

19 2. Unless the bylaws provide otherwise, a vacancy on the
20 board caused by the expiration of a director's term shall be
21 filled by electing a new board member, and the election must be
22 by secret ballot. An election is not required if the number of
23 vacancies equals or exceeds the number of candidates. For
24 purposes of this paragraph, the term "candidate" means an
25 eligible person who has timely submitted the written notice, as
26 described in sub-subparagraph 4.a., of his or her intention to
27 become a candidate. Except in a timeshare or nonresidential
28 condominium, or if the staggered term of a board member does not
29 expire until a later annual meeting, or if all members' terms
30 would otherwise expire but there are no candidates, the terms of
31 all board members expire at the annual meeting, and such members
32 may stand for reelection unless prohibited by the bylaws. If the
33 bylaws or articles of incorporation permit terms of no more than
34 2 years, the association board members may serve 2-year terms.
35 If the number of board members whose terms expire at the annual
36 meeting equals or exceeds the number of candidates, the
37 candidates become members of the board effective upon the
38 adjournment of the annual meeting. Unless the bylaws provide
39 otherwise, any remaining vacancies shall be filled by the
40 affirmative vote of the majority of the directors making up the
41 newly constituted board even if the directors constitute less
42 than a quorum or there is only one director. In a residential

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43 condominium association of more than 10 units or in a
44 residential condominium association that does not include
45 timeshare units or timeshare interests, coowners of a unit may
46 not serve as members of the board of directors at the same time
47 unless they own more than one unit or unless there are not
48 enough eligible candidates to fill the vacancies on the board at
49 the time of the vacancy. A unit owner in a residential
50 condominium desiring to be a candidate for board membership must
51 comply with sub-subparagraph 4.a. and must be eligible to be a
52 candidate to serve on the board of directors at the time of the
53 deadline for submitting a notice of intent to run in order to
54 have his or her name listed as a proper candidate on the ballot
55 or to serve on the board. A person who has been suspended or
56 removed by the division under this chapter, or who is delinquent
57 in the payment of any monetary obligation due to the
58 association, is not eligible to be a candidate for board
59 membership and may not be listed on the ballot. A person who has
60 been convicted of any felony in this state or in a United States
61 District or Territorial Court, or who has been convicted of any
62 offense in another jurisdiction which would be considered a
63 felony if committed in this state, is not eligible for board
64 membership unless such felon's civil rights have been restored
65 for at least 5 years as of the date such person seeks election
66 to the board. The validity of an action by the board is not
67 affected if it is later determined that a board member is
68 ineligible for board membership due to having been convicted of

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69 a felony. This subparagraph does not limit the term of a member
70 of the board of a nonresidential condominium.

71 3. The bylaws must provide the method of calling meetings
72 of unit owners, including annual meetings. Written notice must
73 include an agenda, must be mailed, hand delivered, or
74 electronically transmitted to each unit owner at least 14 days
75 before the annual meeting, and must be posted in a conspicuous
76 place on the condominium property at least 14 continuous days
77 before the annual meeting. Upon notice to the unit owners, the
78 board shall, by duly adopted rule, designate a specific location
79 on the condominium property or association property where all
80 notices of unit owner meetings shall be posted. This requirement
81 does not apply if there is no condominium property or
82 association property for posting notices. In lieu of, or in
83 addition to, the physical posting of meeting notices, the
84 association may, by reasonable rule, adopt a procedure for
85 conspicuously posting and repeatedly broadcasting the notice and
86 the agenda on a closed-circuit cable television system serving
87 the condominium association. However, if broadcast notice is
88 used in lieu of a notice posted physically on the condominium
89 property, the notice and agenda must be broadcast at least four
90 times every broadcast hour of each day that a posted notice is
91 otherwise required under this section. If broadcast notice is
92 provided, the notice and agenda must be broadcast in a manner
93 and for a sufficient continuous length of time so as to allow an
94 average reader to observe the notice and read and comprehend the

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95 entire content of the notice and the agenda. Unless a unit owner
96 waives in writing the right to receive notice of the annual
97 meeting, such notice must be hand delivered, mailed, or
98 electronically transmitted to each unit owner. Notice for
99 meetings and notice for all other purposes must be mailed to
100 each unit owner at the address last furnished to the association
101 by the unit owner, or hand delivered to each unit owner.
102 However, if a unit is owned by more than one person, the
103 association must provide notice to the address that the
104 developer identifies for that purpose and thereafter as one or
105 more of the owners of the unit advise the association in
106 writing, or if no address is given or the owners of the unit do
107 not agree, to the address provided on the deed of record. An
108 officer of the association, or the manager or other person
109 providing notice of the association meeting, must provide an
110 affidavit or United States Postal Service certificate of
111 mailing, to be included in the official records of the
112 association affirming that the notice was mailed or hand
113 delivered in accordance with this provision.

114 4. The members of the board of a residential condominium
115 shall be elected by written ballot or voting machine. Proxies
116 may not be used in electing the board in general elections or
117 elections to fill vacancies caused by recall, resignation, or
118 otherwise, unless otherwise provided in this chapter. This
119 subparagraph does not apply to an association governing a
120 timeshare condominium.

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121 a. At least 60 days before a scheduled election, the
122 association shall mail, deliver, or electronically transmit, by
123 separate association mailing or included in another association
124 mailing, delivery, or transmission, including regularly
125 published newsletters, to each unit owner entitled to a vote, a
126 first notice of the date of the election. A unit owner or other
127 eligible person desiring to be a candidate for the board must
128 give written notice of his or her intent to be a candidate to
129 the association at least 40 days before a scheduled election.
130 Together with the written notice and agenda as set forth in
131 subparagraph 3., the association shall mail, deliver, or
132 electronically transmit a second notice of the election to all
133 unit owners entitled to vote, together with a ballot that lists
134 all candidates. Upon request of a candidate, an information
135 sheet, no larger than 8 1/2 inches by 11 inches, which must be
136 furnished by the candidate at least 35 days before the election,
137 must be included with the mailing, delivery, or transmission of
138 the ballot, with the costs of mailing, delivery, or electronic
139 transmission and copying to be borne by the association. The
140 association is not liable for the contents of the information
141 sheets prepared by the candidates. In order to reduce costs, the
142 association may print or duplicate the information sheets on
143 both sides of the paper. The division shall by rule establish
144 voting procedures consistent with this sub-subparagraph,
145 including rules establishing procedures for giving notice by
146 electronic transmission and rules providing for the secrecy of



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147 ballots. Elections shall be decided by a plurality of ballots
148 cast. There is no quorum requirement; however, at least 20
149 percent of the eligible voters must cast a ballot in order to
150 have a valid election. A unit owner may not permit any other
151 person to vote his or her ballot, and any ballots improperly
152 cast are invalid. A unit owner who violates this provision may
153 be fined by the association in accordance with s. 718.303. A
154 unit owner who needs assistance in casting the ballot for the
155 reasons stated in s. 101.051 may obtain such assistance. The
156 regular election must occur on the date of the annual meeting.
157 Notwithstanding this sub-subparagraph, an election is not
158 required unless more candidates file notices of intent to run or
159 are nominated than board vacancies exist.

160 b. Within 90 days after being elected or appointed to the
161 board of an association of a residential condominium, each newly
162 elected or appointed director shall certify in writing to the
163 secretary of the association that he or she has read the
164 association's declaration of condominium, articles of
165 incorporation, bylaws, and current written policies; that he or
166 she will work to uphold such documents and policies to the best
167 of his or her ability; and that he or she will faithfully
168 discharge his or her fiduciary responsibility to the
169 association's members. In lieu of this written certification,
170 within 90 days after being elected or appointed to the board,
171 the newly elected or appointed director may submit a certificate
172 of having satisfactorily completed the educational curriculum



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173 administered by a division-approved condominium education
174 provider within 1 year before or 90 days after the date of
175 election or appointment. The written certification or
176 educational certificate is valid and does not have to be
177 resubmitted as long as the director serves on the board without
178 interruption. A director of an association of a residential
179 condominium who fails to timely file the written certification
180 or educational certificate is suspended from service on the
181 board until he or she complies with this sub-subparagraph. The
182 board may temporarily fill the vacancy during the period of
183 suspension. The secretary shall cause the association to retain
184 a director's written certification or educational certificate
185 for inspection by the members for 5 years after a director's
186 election or the duration of the director's uninterrupted tenure,
187 whichever is longer. Failure to have such written certification
188 or educational certificate on file does not affect the validity
189 of any board action.

190 c. Any challenge to the election process must be commenced
191 within 60 days after the election results are announced.

192 5. Any approval by unit owners called for by this chapter
193 or the applicable declaration or bylaws, including, but not
194 limited to, the approval requirement in s. 718.111(8), must be
195 made at a duly noticed meeting of unit owners and is subject to
196 all requirements of this chapter or the applicable condominium
197 documents relating to unit owner decisionmaking, except that
198 unit owners may take action by written agreement, without



Amendment No. 1

199 meetings, on matters for which action by written agreement
200 without meetings is expressly allowed by the applicable bylaws
201 or declaration or any law that provides for such action.

202 6. Unit owners may waive notice of specific meetings if
203 allowed by the applicable bylaws or declaration or any law. ~~If~~
204 ~~authorized by the bylaws,~~ Notice of meetings of the board of
205 administration, unit owner meetings, except unit owner meetings
206 called to recall board members under paragraph (j), and
207 committee meetings may be given by electronic transmission to
208 unit owners who consent to receive notice by electronic
209 transmission.

210 7. Unit owners have the right to participate in meetings
211 of unit owners with reference to all designated agenda items.
212 However, the association may adopt reasonable rules governing
213 the frequency, duration, and manner of unit owner participation.

214 8. A unit owner may tape record or videotape a meeting of
215 the unit owners subject to reasonable rules adopted by the
216 division.

217 9. Unless otherwise provided in the bylaws, any vacancy
218 occurring on the board before the expiration of a term may be
219 filled by the affirmative vote of the majority of the remaining
220 directors, even if the remaining directors constitute less than
221 a quorum, or by the sole remaining director. In the alternative,
222 a board may hold an election to fill the vacancy, in which case
223 the election procedures must conform to sub-subparagraph 4.a.
224 unless the association governs 10 units or fewer and has opted



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225 out of the statutory election process, in which case the bylaws
226 of the association control. Unless otherwise provided in the
227 bylaws, a board member appointed or elected under this section
228 shall fill the vacancy for the unexpired term of the seat being
229 filled. Filling vacancies created by recall is governed by
230 paragraph (j) and rules adopted by the division.

231 10. This chapter does not limit the use of general or
232 limited proxies, require the use of general or limited proxies,
233 or require the use of a written ballot or voting machine for any
234 agenda item or election at any meeting of a timeshare
235 condominium association or nonresidential condominium
236 association.

237
238 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
239 association of 10 or fewer units may, by affirmative vote of a
240 majority of the total voting interests, provide for different
241 voting and election procedures in its bylaws, which may be by a
242 proxy specifically delineating the different voting and election
243 procedures. The different voting and election procedures may
244 provide for elections to be conducted by limited or general
245 proxy.

246 Section 2. Section 718.128, Florida Statutes, is created
247 to read:

248 718.128 Electronic voting.—The association may conduct
249 elections and other unit owner votes through an internet-based



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250 online voting system if a unit owner consents, in writing, to
251 online voting and if the following requirements are met:

252 (1) The association provides each unit owner with:

253 (a) A method to authenticate the unit owner's identity to
254 the online voting system.

255 (b) For elections of the board, a method to transmit an
256 electronic ballot to the online voting system that ensures the
257 secrecy and integrity of each ballot.

258 (c) A method to confirm, at least 14 days before the
259 voting deadline, that the unit owner's electronic device can
260 successfully communicate with the online voting system.

261 (2) The association uses an online voting system that is:

262 (a) Able to authenticate the unit owner's identity.

263 (b) Able to authenticate the validity of each electronic
264 vote to ensure that the vote is not altered in transit.

265 (c) Able to transmit a receipt from the online voting
266 system to each unit owner who casts an electronic vote.

267 (d) For elections of the board of administration, able to
268 permanently separate any authentication or identifying
269 information from the electronic election ballot, rendering it
270 impossible to tie an election ballot to a specific unit owner.

271 (e) Able to store and keep electronic votes accessible to
272 election officials for recount, inspection, and review purposes.

273 (3) A unit owner voting electronically pursuant to this
274 section shall be counted as being in attendance at the meeting
275 for purposes of determining a quorum. No other substantive vote



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276 of the unit owners may be taken on any issue other than the
277 issues specifically identified in the electronic vote, when a
278 quorum is established based on unit owners voting electronically
279 pursuant to this section.

280 (4) This section applies to an association that provides
281 for and authorizes an online voting system pursuant to this
282 section by a board resolution. A board resolution regarding
283 online voting must provide that unit owners receive notice of
284 the opportunity to vote through an online voting system, must
285 establish reasonable procedures and deadlines for unit owners to
286 consent, in writing, to online voting, and must establish
287 reasonable procedures and deadlines for unit owners to opt-out
288 of online voting after giving consent. Written notice of a
289 meeting at which a board resolution regarding online voting will
290 be considered must be mailed, delivered, or electronically
291 transmitted to the unit owners and posted conspicuously on the
292 condominium property or association property at least 14 days
293 before the meeting. Evidence of compliance with this 14-day
294 notice requirement must be made by an affidavit executed by the
295 person providing the notice and filed with the official records
296 of the association.

297 (5) A unit owner's consent to online voting is valid until
298 the unit owner opts-out of online voting according to the
299 procedures established by the board of administration pursuant
300 to paragraph (4).



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301 (6) This section may apply to any matter that requires a
302 vote of the unit owners.

303 Section 3. Paragraph (d) of subsection (1) of section
304 719.106, Florida Statutes, is amended to read:

305 719.106 Bylaws; cooperative ownership.—

306 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
307 documents shall provide for the following, and if they do not,
308 they shall be deemed to include the following:

309 (d) Shareholder meetings.—There shall be an annual meeting
310 of the shareholders. All members of the board of administration
311 shall be elected at the annual meeting unless the bylaws provide
312 for staggered election terms or for their election at another
313 meeting. Any unit owner desiring to be a candidate for board
314 membership must comply with subparagraph 1. The bylaws must
315 provide the method for calling meetings, including annual
316 meetings. Written notice, which must incorporate an
317 identification of agenda items, shall be given to each unit
318 owner at least 14 days before the annual meeting and posted in a
319 conspicuous place on the cooperative property at least 14
320 continuous days preceding the annual meeting. Upon notice to the
321 unit owners, the board must by duly adopted rule designate a
322 specific location on the cooperative property upon which all
323 notice of unit owner meetings are posted. In lieu of or in
324 addition to the physical posting of the meeting notice, the
325 association may, by reasonable rule, adopt a procedure for
326 conspicuously posting and repeatedly broadcasting the notice and

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327 the agenda on a closed-circuit cable television system serving
328 the cooperative association. However, if broadcast notice is
329 used in lieu of a posted notice, the notice and agenda must be
330 broadcast at least four times every broadcast hour of each day
331 that a posted notice is otherwise required under this section.
332 If broadcast notice is provided, the notice and agenda must be
333 broadcast in a manner and for a sufficient continuous length of
334 time to allow an average reader to observe the notice and read
335 and comprehend the entire content of the notice and the agenda.
336 Unless a unit owner waives in writing the right to receive
337 notice of the annual meeting, the notice of the annual meeting
338 must be sent by mail, hand delivered, or electronically
339 transmitted to each unit owner. An officer of the association
340 must provide an affidavit or United States Postal Service
341 certificate of mailing, to be included in the official records
342 of the association, affirming that notices of the association
343 meeting were mailed, hand delivered, or electronically
344 transmitted, in accordance with this provision, to each unit
345 owner at the address last furnished to the association.

346 1. The board of administration shall be elected by written
347 ballot or voting machine. A proxy may not be used in electing
348 the board of administration in general elections or elections to
349 fill vacancies caused by recall, resignation, or otherwise
350 unless otherwise provided in this chapter.

351 a. At least 60 days before a scheduled election, the
352 association shall mail, deliver, or transmit, whether by



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353 separate association mailing, delivery, or electronic
354 transmission or included in another association mailing,
355 delivery, or electronic transmission, including regularly
356 published newsletters, to each unit owner entitled to vote, a
357 first notice of the date of the election. Any unit owner or
358 other eligible person desiring to be a candidate for the board
359 of administration must give written notice to the association at
360 least 40 days before a scheduled election. Together with the
361 written notice and agenda as set forth in this section, the
362 association shall mail, deliver, or electronically transmit a
363 second notice of election to all unit owners entitled to vote,
364 together with a ballot that lists all candidates. Upon request
365 of a candidate, the association shall include an information
366 sheet, no larger than 8 1/2 inches by 11 inches, which must be
367 furnished by the candidate at least 35 days before the election,
368 to be included with the mailing, delivery, or electronic
369 transmission of the ballot, with the costs of mailing, delivery,
370 or transmission and copying to be borne by the association. The
371 association is not liable for the contents of the information
372 sheets provided by the candidates. In order to reduce costs, the
373 association may print or duplicate the information sheets on
374 both sides of the paper. The division shall by rule establish
375 voting procedures consistent with this subparagraph, including
376 rules establishing procedures for giving notice by electronic
377 transmission and rules providing for the secrecy of ballots.
378 Elections shall be decided by a plurality of those ballots cast.

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379 There is no quorum requirement. However, at least 20 percent of
380 the eligible voters must cast a ballot in order to have a valid
381 election. A unit owner may not permit any other person to vote
382 his or her ballot, and any such ballots improperly cast are
383 invalid. A unit owner who needs assistance in casting the ballot
384 for the reasons stated in s. 101.051 may obtain assistance in
385 casting the ballot. Any unit owner violating this provision may
386 be fined by the association in accordance with s. 719.303. The
387 regular election must occur on the date of the annual meeting.
388 This subparagraph does not apply to timeshare cooperatives.
389 Notwithstanding this subparagraph, an election and balloting are
390 not required unless more candidates file a notice of intent to
391 run or are nominated than vacancies exist on the board. Any
392 challenge to the election process must be commenced within 60
393 days after the election results are announced.

394 b. Within 90 days after being elected or appointed to the
395 board, each new director shall certify in writing to the
396 secretary of the association that he or she has read the
397 association's bylaws, articles of incorporation, proprietary
398 lease, and current written policies; that he or she will work to
399 uphold such documents and policies to the best of his or her
400 ability; and that he or she will faithfully discharge his or her
401 fiduciary responsibility to the association's members. Within 90
402 days after being elected or appointed to the board, in lieu of
403 this written certification, the newly elected or appointed
404 director may submit a certificate of having satisfactorily

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405 completed the educational curriculum administered by an
406 education provider as approved by the division pursuant to the
407 requirements established in chapter 718 within 1 year before or
408 90 days after the date of election or appointment. The
409 educational certificate is valid and does not have to be
410 resubmitted as long as the director serves on the board without
411 interruption. A director who fails to timely file the written
412 certification or educational certificate is suspended from
413 service on the board until he or she complies with this sub-
414 subparagraph. The board may temporarily fill the vacancy during
415 the period of suspension. The secretary of the association shall
416 cause the association to retain a director's written
417 certification or educational certificate for inspection by the
418 members for 5 years after a director's election or the duration
419 of the director's uninterrupted tenure, whichever is longer.
420 Failure to have such written certification or educational
421 certificate on file does not affect the validity of any board
422 action.

423 2. Any approval by unit owners called for by this chapter,
424 or the applicable cooperative documents, must be made at a duly
425 noticed meeting of unit owners and is subject to this chapter or
426 the applicable cooperative documents relating to unit owner
427 decisionmaking, except that unit owners may take action by
428 written agreement, without meetings, on matters for which action
429 by written agreement without meetings is expressly allowed by



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430 the applicable cooperative documents or law which provides for
431 the unit owner action.

432 3. Unit owners may waive notice of specific meetings if
433 allowed by the applicable cooperative documents or law. ~~If~~
434 ~~authorized by the bylaws,~~ Notice of meetings of the board of
435 administration, shareholder meetings, except shareholder
436 meetings called to recall board members under paragraph (f), and
437 committee meetings may be given by electronic transmission to
438 unit owners who consent to receive notice by electronic
439 transmission.

440 4. Unit owners have the right to participate in meetings
441 of unit owners with reference to all designated agenda items.
442 However, the association may adopt reasonable rules governing
443 the frequency, duration, and manner of unit owner participation.

444 5. Any unit owner may tape record or videotape meetings of
445 the unit owners subject to reasonable rules adopted by the
446 division.

447 6. Unless otherwise provided in the bylaws, a vacancy
448 occurring on the board before the expiration of a term may be
449 filled by the affirmative vote of the majority of the remaining
450 directors, even if the remaining directors constitute less than
451 a quorum, or by the sole remaining director. In the alternative,
452 a board may hold an election to fill the vacancy, in which case
453 the election procedures must conform to the requirements of
454 subparagraph 1. unless the association has opted out of the
455 statutory election process, in which case the bylaws of the

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456 association control. Unless otherwise provided in the bylaws, a
457 board member appointed or elected under this subparagraph shall
458 fill the vacancy for the unexpired term of the seat being
459 filled. Filling vacancies created by recall is governed by
460 paragraph (f) and rules adopted by the division.

461
462 Notwithstanding subparagraphs (b)2. and (d)1., an association
463 may, by the affirmative vote of a majority of the total voting
464 interests, provide for a different voting and election procedure
465 in its bylaws, which vote may be by a proxy specifically
466 delineating the different voting and election procedures. The
467 different voting and election procedures may provide for
468 elections to be conducted by limited or general proxy.

469 Section 4. Section 719.129, Florida Statutes, is created
470 to read:

471 719.129 Electronic voting.—The association may conduct
472 elections and other unit owner votes through an internet-based
473 online voting system if a unit owner consents, in writing, to
474 online voting and if the following requirements are met:

475 (1) The association provides each unit owner with:

476 (a) A method to authenticate the unit owner's identity to
477 the online voting system.

478 (b) For elections of the board, a method to transmit an
479 electronic ballot to the online voting system that ensures the
480 secrecy and integrity of each ballot.

481 (c) A method to confirm, at least 14 days before the



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482 voting deadline, that the unit owner's electronic device can
483 successfully communicate with the online voting system.

484 (2) The association uses an online voting system that is:

485 (a) Able to authenticate the unit owner's identity.

486 (b) Able to authenticate the validity of each electronic
487 vote to ensure that the vote is not altered in transit.

488 (c) Able to transmit a receipt from the online voting
489 system to each unit owner who casts an electronic vote.

490 (d) For elections of the board of administration, able to
491 permanently separate any authentication or identifying
492 information from the electronic election ballot, rendering it
493 impossible to tie an election ballot to a specific unit owner.

494 (e) Able to store and keep electronic votes accessible to
495 election officials for recount, inspection, and review purposes.

496 (3) A unit owner voting electronically pursuant to this
497 section shall be counted as being in attendance at the meeting
498 for purposes of determining a quorum. No other substantive vote
499 of the unit owners may be taken on any issue other than the
500 issues specifically identified in the electronic vote, when a
501 quorum is established based on unit owners voting electronically
502 pursuant to this section.

503 (4) This section applies to an association that provides
504 for and authorizes an online voting system pursuant to this
505 section by a board resolution. A board resolution regarding
506 online voting must provide that unit owners receive notice of
507 the opportunity to vote through an online voting system, must



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508 establish reasonable procedures and deadlines for unit owners to
509 consent, in writing, to online voting, and must establish
510 reasonable procedures and deadlines for unit owners to opt-out
511 of online voting after giving consent. Written notice of a
512 meeting at which a board resolution regarding online voting will
513 be considered must be mailed, delivered, or electronically
514 transmitted to the unit owners and posted conspicuously on the
515 condominium property or association property at least 14 days
516 before the meeting. Evidence of compliance with this 14-day
517 notice requirement must be made by an affidavit executed by the
518 person providing the notice and filed with the official records
519 of the association.

520 (5) A unit owner's consent to online voting is valid until
521 the unit owner opts-out of online voting pursuant to the
522 procedures established by the board of administration pursuant
523 to paragraph (4).

524 (6) This section may apply to any matter that requires a
525 vote of the unit owners.

526 Section 5. Paragraph (c) of subsection (2) of section
527 720.303, Florida Statutes, is amended to read:

528 720.303 Association powers and duties; meetings of board;
529 official records; budgets; financial reporting; association
530 funds; recalls.—

531 (2) BOARD MEETINGS.—



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532 (c) The bylaws shall provide for giving notice to parcel
533 owners and members of all board meetings and, if they do not do
534 so, shall be deemed to provide the following:

535 1. Notices of all board meetings must be posted in a
536 conspicuous place in the community at least 48 hours in advance
537 of a meeting, except in an emergency. In the alternative, if
538 notice is not posted in a conspicuous place in the community,
539 notice of each board meeting must be mailed or delivered to each
540 member at least 7 days before the meeting, except in an
541 emergency. Notwithstanding this general notice requirement, for
542 communities with more than 100 members, the bylaws may provide
543 for a reasonable alternative to posting or mailing of notice for
544 each board meeting, including publication of notice, provision
545 of a schedule of board meetings, or the conspicuous posting and
546 repeated broadcasting of the notice on a closed-circuit cable
547 television system serving the homeowners' association. However,
548 if broadcast notice is used in lieu of a notice posted
549 physically in the community, the notice must be broadcast at
550 least four times every broadcast hour of each day that a posted
551 notice is otherwise required. When broadcast notice is provided,
552 the notice and agenda must be broadcast in a manner and for a
553 sufficient continuous length of time so as to allow an average
554 reader to observe the notice and read and comprehend the entire
555 content of the notice and the agenda. The association ~~bylaws or~~
556 ~~amended bylaws~~ may provide for giving notice by electronic
557 transmission in a manner authorized by law for meetings of the

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558 board of directors, committee meetings requiring notice under
559 this section, and annual and special meetings of the members;
560 however, a member must consent in writing to receiving notice by
561 electronic transmission.

562 2. An assessment may not be levied at a board meeting
563 unless the notice of the meeting includes a statement that
564 assessments will be considered and the nature of the
565 assessments. Written notice of any meeting at which special
566 assessments will be considered or at which amendments to rules
567 regarding parcel use will be considered must be mailed,
568 delivered, or electronically transmitted to the members and
569 parcel owners and posted conspicuously on the property or
570 broadcast on closed-circuit cable television not less than 14
571 days before the meeting.

572 3. Directors may not vote by proxy or by secret ballot at
573 board meetings, except that secret ballots may be used in the
574 election of officers. This subsection also applies to the
575 meetings of any committee or other similar body, when a final
576 decision will be made regarding the expenditure of association
577 funds, and to any body vested with the power to approve or
578 disapprove architectural decisions with respect to a specific
579 parcel of residential property owned by a member of the
580 community.

581 Section 6. Section 720.317, Florida Statutes, is created
582 to read:



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583 720.317 Electronic voting.—The association may conduct
584 elections and other membership votes through an internet-based
585 online voting system if a member consents, in writing, to online
586 voting and if the following requirements are met:

587 (1) The association provides each member with:

588 (a) A method to authenticate the member's identity to the
589 online voting system.

590 (b) A method to confirm, at least 14 days before the
591 voting deadline, that the member's electronic device can
592 successfully communicate with the online voting system.

593 (c) A method that is consistent with the election and
594 voting procedures in the association's bylaws.

595 (2) The association uses an online voting system that is:

596 (a) Able to authenticate the member's identity.

597 (b) Able to authenticate the validity of each electronic
598 vote to ensure that the vote is not altered in transit.

599 (c) Able to transmit a receipt from the online voting
600 system to each member who casts an electronic vote.

601 (d) Able to permanently separate any authentication or
602 identifying information from the electronic election ballot,
603 rendering it impossible to tie an election ballot to a specific
604 member. This paragraph only applies if the association's bylaws
605 provide for secret ballots for the election of directors.

606 (e) Able to store and keep electronic ballots accessible
607 to election officials for recount, inspection, and review
608 purposes.

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609 (3) A member voting electronically pursuant to this
610 section shall be counted as being in attendance at the meeting
611 for purposes of determining a quorum. No other substantive vote
612 of the membership may be taken on any issue other than the
613 issues specifically identified in the electronic vote, when a
614 quorum is established based on members voting electronically
615 pursuant to this section.

616 (4) This section applies to an association that provides
617 for and authorizes an online voting system pursuant to this
618 section by a board resolution. A board resolution regarding
619 online voting must provide that members receive notice of the
620 opportunity to vote through an online voting system, must
621 establish reasonable procedures and deadlines for members to
622 consent, in writing, to online voting, and must establish
623 reasonable procedures and deadlines for members to opt-out of
624 online voting after giving consent. Written notice of a meeting
625 at which a board resolution regarding online voting will be
626 considered must be mailed, delivered, or electronically
627 transmitted to the unit owners and posted conspicuously on the
628 condominium property or association property at least 14 days
629 before the meeting. Evidence of compliance with this 14-day
630 notice requirement must be made by an affidavit executed by the
631 person providing the notice and filed with the official records
632 of the association.

633 (5) A member's consent to online voting is valid until the
634 member opts-out of online voting pursuant to the procedures



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635 established by the board of administration pursuant to paragraph
636 (4).

637 (6) This section may apply to any matter that requires a
638 vote of the members.

639 Section 7. This act shall take effect July 1, 2015.

640

641 -----

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

643 Remove everything before the enacting clause and insert:

644 An act relating to community associations; amending ss. 718.112,
645 719.106, and 720.303, F.S.; deleting the limitation on
646 condominium, cooperative, and homeowners' associations providing
647 electronic notice of certain meetings only when authorized by
648 the association's bylaws; creating ss. 718.128, 719.129, and
649 720.317, F.S.; authorizing condominium, cooperative, and
650 homeowners' associations to conduct votes of the membership by
651 online voting under certain conditions; providing that a member
652 voting electronically is counted toward the determination of a
653 quorum; providing applicability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4005 Licenses to Carry Concealed Weapons or Firearms

SPONSOR(S): Steube and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 176

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	8 Y, 4 N	Cunningham	Cunningham
2) Higher Education & Workforce Subcommittee	11 Y, 2 N	Banner	Sherry
3) Judiciary Committee		Cunningham	Havlicak <i>RN</i>

SUMMARY ANALYSIS

Currently, s. 790.06(12)(a)13., F.S., prohibits those with a valid concealed weapons or concealed firearms license from carrying a concealed weapon or firearm into any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile.

In the wake of several campus shootings, many states are considering legislation about whether or not to permit concealed carry license holders to carry concealed weapons and firearms on college campuses. As of March, 2014, there were 20 states that banned carrying a concealed weapon or firearm on a college campus. In 23 states, the decision to ban or allow concealed carry on campuses is made by each college or university individually. Only 7 states allow concealed carry on college campuses - Colorado, Idaho, Kansas, Mississippi, Oregon, Utah, and Wisconsin.

The bill repeals s. 790.06(12)(a)13., F.S. As a result, those with a valid concealed weapons or concealed firearms license will be allowed to carry a concealed weapon or concealed firearm into any college or university facility.

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

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Concealed Carry Licensure

Section 790.06, F.S., authorizes the Department of Agriculture and Consumer Services (DACS) to issue licenses to carry concealed weapons or concealed firearms to qualified applicants. The statute defines concealed weapons or concealed firearms as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but not a machine gun.¹

As of February 28, 2015, there were 1,364,584 people with concealed carry licenses in Florida.² The age profile of concealed carry license holders is as follows:

- 249,259 license holders between the ages of 21-35;
- 357,166 license holders between the ages of 36-50;
- 433,167 license holders between the ages of 51-65; and
- 334,749 license holders age 66 and up.³

In order to obtain a concealed carry license, a person must complete, under oath, and submit to DACS,⁴ an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with the criteria contained in ss. 790.06(2) and (3), F.S. (described below);
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., and is knowledgeable of its provisions;
- A conspicuous warning that the application is executed under oath and that a false answer to any question, or the submission of any false document by the applicant, subjects the applicant to criminal penalties; and
- A statement that the applicant desires a concealed weapon or firearm license as a means of lawful self-defense.⁵

The applicant must also submit the following to DACS:

- A nonrefundable license fee not to exceed \$70 (if the applicant has not previously been issued a statewide license) or \$60 (for renewal of a statewide license);
- A full set of fingerprints administered by a law enforcement agency, DACS, or an approved tax collector;
- Documented proof of completion of a firearms safety and training course; and
- A full frontal view color photograph of the applicant taken within the preceding 30 days.⁶

Section 790.06(2), F.S., requires DACS to issue a concealed carry license if the applicant:

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and

¹ s. 790.06(1), F.S.

² DACS, *Number of Licensees by Type as of Feb. 28, 2015*,

http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited on March 31, 2015).

³ DACS, *Concealed Weapon or Firearm License Holder Profile, as of Feb. 28, 2015*,

http://www.freshfromflorida.com/content/download/7500/118857/cw_holders.pdf (last visited on March 31, 2015).

⁴ Section 790.0625, F.S., authorizes DACS, at its discretion, to appoint tax collectors, as defined in s. 1(d) of Art. VIII of the State Constitution, to accept applications on behalf of the division for concealed weapon or firearm licenses. Such appointments are for specified locations that will best serve the public interest and convenience in applying for these licenses.

⁵ s. 790.06(4), F.S.

⁶ s. 790.06(5), F.S.

Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;

- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm pursuant to s. 790.23, F.S., by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It is presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm by completing a specified firearms safety and training course;
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

DACS must deny an application if the applicant has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence constituting a misdemeanor, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged.⁷

DACS must revoke a concealed weapons or firearms license if the licensee has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence within the preceding 3 years.⁸

DACS must, upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, suspend a concealed carry license or the processing of an application for such license if the licensee or applicant is:

⁷ s.790.06(3), F.S.

⁸ *Id.*

- Arrested or formally charged with a crime that would disqualify such person from having a license until final disposition of the case; or
- Is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.⁹

In addition, DACS is required to suspend or revoke a concealed license if the licensee:

- Is found to be ineligible under the criteria set forth in s. 790.06(2), F.S.;
- Develops or sustains a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is convicted of a felony which would make the licensee ineligible to possess a firearm pursuant to s. 790.23, F.S.;
- Is found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state, relating to controlled substances;
- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is convicted of a second violation of s. 316.193, F.S., or a similar law of another state, within 3 years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;
- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of another state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of another state.¹⁰

Concealed carry licenses are valid for 7 years from the date of issuance. Licensees must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer. Failure to have proper documentation and display it upon demand is a noncriminal violation punishable by a penalty of \$25, payable to the clerk of the court.¹¹

Locations Where Concealed Carry is Prohibited

Section 790.06(12)(a), F.S., specifies that a concealed carry license does not authorize a person to carry a concealed weapon or firearm into:

1. Any place of nuisance as defined in s. 823.05;
2. Any police, sheriff, or highway patrol station;
3. Any detention facility, prison, or jail;
4. Any courthouse;
5. Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;
6. Any polling place;
7. Any meeting of the governing body of a county, public school district, municipality, or special district;
8. Any meeting of the Legislature or a committee thereof;
9. Any school, college, or professional athletic event not related to firearms;
10. Any elementary or secondary school facility or administration building;
11. Any career center;
12. Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
13. Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;

⁹ *Id.*

¹⁰ s. 790.06(10), F.S.

¹¹ s. 790.06(1), F.S.

14. The inside of the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
15. Any place where the carrying of firearms is prohibited by federal law.

Any person who willfully carries a concealed weapon or firearm into any of the above-listed locations commits a second degree misdemeanor.¹²

Concealed Carry on College and University Campuses

In the wake of several campus shootings, many states are considering legislation about whether or not to permit concealed carry license holders to carry concealed weapons and firearms on college campuses. For some, these events point to a need to ease existing firearm regulations and allow concealed weapons and firearms on campuses. Others argue the solution is tightening restrictions to keep guns off campuses.¹³

As of March, 2014, there were 20 states that banned carrying a concealed weapon or firearm on a college campus.¹⁴ In 23 states, the decision to ban or allow concealed carry on campuses is made by each college or university individually.¹⁵ Only 7 states allow concealed carry on college campuses - Colorado, Idaho, Kansas, Mississippi, Oregon, Utah, and Wisconsin.¹⁶

Effect of the Bill

The bill repeals s. 790.06(12)(a)13., F.S. allowing all persons with a valid concealed carry license to carry a concealed weapon or concealed firearm into any college or university facility.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.06, F.S., relating to license to carry concealed weapon or firearm.

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.

2. Expenditures:

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

¹² A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

¹³ *Guns on Campus: Overview*, National Conference of State Legislatures, <http://www.ncsl.org/research/education/guns-on-campus-overview.aspx> (last visited on March 31, 2015).

¹⁴ California, Florida, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, South Carolina, Tennessee, Texas, and Wyoming. *Id.*

¹⁵ Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Indiana, Iowa, Kentucky, Maine, Maryland, Minnesota, Montana, New Hampshire, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, and West Virginia. *Id.*

¹⁶ *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to licenses to carry concealed weapons
 3 or firearms; amending s. 790.06, F.S.; deleting a
 4 provision prohibiting concealed carry licensees from
 5 openly carrying a handgun or carrying a concealed
 6 weapon or firearm into a college or university
 7 facility; providing an effective date.

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

10
 11 Section 1. Paragraph (a) of subsection (12) of section
 12 790.06, Florida Statutes, is amended to read:

13 790.06 License to carry concealed weapon or firearm.—

14 (12)(a) A license issued under this section does not
 15 authorize any person to openly carry a handgun or carry a
 16 concealed weapon or firearm into:

- 17 1. Any place of nuisance as defined in s. 823.05;
- 18 2. Any police, sheriff, or highway patrol station;
- 19 3. Any detention facility, prison, or jail;
- 20 4. Any courthouse;
- 21 5. Any courtroom, except that nothing in this section
 22 would preclude a judge from carrying a concealed weapon or
 23 determining who will carry a concealed weapon in his or her
 24 courtroom;

- 25 6. Any polling place;
- 26 7. Any meeting of the governing body of a county, public

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

27 school district, municipality, or special district;
 28 8. Any meeting of the Legislature or a committee thereof;
 29 9. Any school, college, or professional athletic event not
 30 related to firearms;
 31 10. Any elementary or secondary school facility or
 32 administration building;
 33 11. Any career center;
 34 12. Any portion of an establishment licensed to dispense
 35 alcoholic beverages for consumption on the premises, which
 36 portion of the establishment is primarily devoted to such
 37 purpose;
 38 ~~13. Any college or university facility unless the licensee~~
 39 ~~is a registered student, employee, or faculty member of such~~
 40 ~~college or university and the weapon is a stun gun or nonlethal~~
 41 ~~electric weapon or device designed solely for defensive purposes~~
 42 ~~and the weapon does not fire a dart or projectile;~~
 43 13.14. The inside of the passenger terminal and sterile
 44 area of any airport, provided that no person shall be prohibited
 45 from carrying any legal firearm into the terminal, which firearm
 46 is encased for shipment for purposes of checking such firearm as
 47 baggage to be lawfully transported on any aircraft; or
 48 14.15. Any place where the carrying of firearms is
 49 prohibited by federal law.
 50 Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7111 PCB HHSC 15-03 Conscience Protection for Private Child-Placing Agencies
SPONSOR(S): Health & Human Services Committee; Brodeur and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1016

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health & Human Services Committee	12 Y, 6 N	Tuszynski	Calamas
1) Judiciary Committee		Weber <i>ms</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Conscience protection laws prevent individuals and entities from being required to perform services that violate their religious beliefs or moral convictions. These statutes have historically related to abortion, sterilization, and contraception, but conscience protection legislation was recently enacted in relation to adoption services. Two states have enacted legislation that permits private child-placing agencies to refuse to perform adoption services if a proposed placement would violate the agency's written religious or moral convictions or policies.

HB 7111 creates adoption services conscience protection within s. 409.175, F.S., to allow private child-placing agencies to object to performing, assisting in, recommending, consenting to, or participating in the placement of a child if a placement violates the agency's written religious or moral convictions or policies.

The bill also protects the licensure, grants, contracts, and ability to participate in government programs for those agencies that object to performing adoption services required for the placement of a child if that placement violates the agency's written religious or moral convictions or policies.

The bill does not have a fiscal impact on state or local government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Adoptions

"Adoption is the legal procedure by which a child becomes, through court action, part of a family other than that of his or her birth parents."¹ Adoption services are performed by all community-based lead agencies throughout the state² as well as private child-placing agencies. All child-placing agencies must be licensed by the Department of Children and Families (DCF), and include any person, corporation, or agency, public or private, other than a parent or legal guardian, that places or arranges for placement of a child in an adoptive home.^{3,4} As of December 2014, Florida has 82 licensed private child-placing agencies that perform both public and private adoptions.⁵ Licensure of these agencies requires compliance with personnel requirements, written policies, financial reports, purpose statements, intake procedures, and record keeping.⁶

Child Welfare System Adoptions

Adoption is a method of achieving permanency for children who have suffered abuse, neglect, or abandonment and who are unable to be reunified with their biological parents. Research indicates that children generally have better outcomes through adoption than through placement in long-term foster care.⁷

In Florida, DCF provides child welfare services.⁸ Statute requires child welfare services, including adoption services, to be delivered through community-based care (CBC) lead agencies contracted by DCF.⁹ For example, CBC's provide pre- and post-adoption services such as information and referral services, support groups, adoption-related libraries, case management and training.¹⁰

During Fiscal Year 2013, 3,415 adoptions of children within the child welfare system were finalized in Florida. Over the last 6 federal fiscal years, the number of finalized adoptions has ranged from 2,945 to 3,870 annually.¹¹

The vast majority of children adopted in FY 2013 were adopted by either relatives (49.83%) or foster parents (24.8%). Non-relative parents comprised 24% of adoptions.¹²

¹ The Florida Bar, *Adoptions in Florida Pamphlet*,

<http://www.floridabar.org/tfb/TFBConsum.nsf/48e76203493b82ad852567090070c9b9/40018bdf1f308fe985256b2f006c5c11?OpenDocument#WHA T%20IS%20ADOPTION%3F> (last visited Mar. 30, 2015). [hereinafter *Adoptions in Florida Pamphlet*]

² s. 409.986(1), F.S.

³ s. 409.175, F.S.

⁴ Rule 65C-15, F.A.C.

⁵ Email from Nicole Stookey, Deputy Director of Legislative Affairs, Department of Children and Families RE: Adoptions, licensure numbers (March 16, 2015).

⁶ Rule 65C-15, F.A.C.

⁷ Evan B. Donaldson, *Keeping the Promise: Critical Need for Post-Adoption Services to Enable Children and Families to Succeed* 8, ADOPTIONINSTITUTE (Oct. 2010), <http://adoptioninstitute.org/publications/keeping-the-promise-the-critical-need-for-post-adoption-services-to-enable-children-and-families-to-succeed/>.

⁸ s. 20.19(4)(a)3., F.S.

⁹ s. 409.986(1), F.S.

¹⁰ Explore Adoption, *Frequently Asked Questions*, <http://www.adoptflorida.org/docs/faqs.pdf> (last visited Mar. 30, 2015).

¹¹ U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION ON CHILDREN, YOUTH, AND FAMILIES, *Adoption of Children with Public Child Welfare Agency Involvement by State: FY 2004 - FY 2013*, <http://www.acf.hhs.gov/programs/cb/resource/adoptions-with-agency-involvement-by-state-fy2004-fy2013> (last visited Mar. 27, 2015).

¹² U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION ON CHILDREN, YOUTH, AND FAMILIES, *Prior Relationship of Adoptive Parent(s) to Child: 10/1/2012 - 9/30/2013*, <http://www.acf.hhs.gov/programs/cb/resource/prior-relation-2013> (last visited Mar. 30, 2015).

Private Adoptions

Private adoptions are adoptions that occur outside of the child welfare system. Licensed child-placing agencies act as intermediaries between natural and potential adoptive parents providing adoption services. These services include home studies, counseling, education, legal services, and post-placement services.¹³ These adoptions are arranged by licensed child-placing agencies and require judicial action but are not otherwise tracked by the state.¹⁴

Conscience Protections

Healthcare

Historically, conscience protections grant health care providers the ability to refuse to perform services related to abortion, sterilization, and more recently contraception, if those services are contrary to the provider's religious beliefs.¹⁵ In 1973, the Church¹⁶ Amendment became the first conscience clause enacted into law.¹⁷ It was passed in response to the United States Supreme Court's decision in *Roe v. Wade*¹⁸ and stated that public officials may not require individuals or entities who receive public funds to perform medical procedures, or make facilities available for procedures, that are "contrary to [the individual or entity's] religious beliefs or moral convictions."¹⁹

By 1978 almost all states had conscience protection legislation related to abortion.²⁰ Today, every state but West Virginia has conscience protection statutes for individual providers in relation to abortion.²¹ Section 390.0111(8), F.S., grants conscience protection for hospitals, physicians, or any person who refuses to participate in the termination of a pregnancy in Florida.²² In addition to these state statutes there are federal statutes providing conscience protections for health care providers related to abortion.²³

Similarly, 17 states have conscience protection statutes for individual providers related to sterilization, and 10 states have conscience protection statutes for individual providers related to contraception.²⁴ Florida does not have specific conscience protection for sterilization but has conscience protection for physicians or other persons for refusing to furnish contraception.²⁵

¹³ See *Adoptions in Florida Pamphlet*, *supra* note 1.

¹⁴ *Id.*

¹⁵ See generally, Erin Whitcomb, *A Most Fundamental Freedom of Choice: An International Review of Conscientious Objection to Elective Abortion*, 24 ST. JOHN'S J. LEGAL COMMENT. 771, 783-90 (2010); Catherine Grealis, *Religion in the Pharmacy: A Balanced Approach to Pharmacists' Right to Refuse to Provide Plan B*, 97 GEO. L.J. 1715, 1718-20 (2009); and Kimberly A. Parr, *Beyond Politics: A Social and Cultural History of Federal Healthcare Conscience Protections*, 35 AM. J.L. & MED. 620, 620-23 (2009).

¹⁶ Sen. Frank Church (R-ID).

¹⁷ 42 U.S.C. § 300a-7.

¹⁸ 410 U.S. 113 (1973).

¹⁹ 42 U.S.C. § 300a-7(b).

²⁰ Rachel Benson Gold, *Conscience Makes a Comeback in the Age of Managed Care*, THE GUTTMACHER REPORT ON PUBLIC POLICY (Feb. 1998), <https://www.guttmacher.org/pubs/tgr/01/1/gr010101.html>.

²¹ GUTTMACHER INSTITUTE - STATE POLICIES IN BRIEF, *Refusing to Provide Health Services*, http://www.guttmacher.org/statecenter/spibs/spib_RPHS.pdf (last visited Mar. 30, 2015). [hereinafter GUTTMACHER INSTITUTE, *Refusing to Provide Health Services*]

²² s. 390.0111(8), F.S.

²³ 42 U.S.C. § 2996f(b)(8) (prohibiting federal funds to be used in litigation to procure nontherapeutic abortion or to compel any individual to perform an abortion contrary to the religious beliefs or moral convictions of such individual or institution); 20 U.S.C. § 1688 (providing neutrality with respect to abortion in Title IX); 42 U.S.C. § 238n (prohibiting discrimination by the Federal Government against any health care entity that does not provide, train in, or refer for abortions); 42 U.S.C. § 1395w-22(j)(3)(B) (providing conscience protection for providers who accept Medicare); 42 U.S.C. § 1396u-2(b)(3) (providing conscience protection for providers who accept Medicaid); and *Patient Protection and Affordable Care Act*, Pub. L. No. 111-148, 124 Stat 119 (2010) (allowing qualified health plans under the Patient Protection and Affordable Care Act to choose whether to cover abortions).

²⁴ GUTTMACHER INSTITUTE, *Refusing to Provide Health Services*.

²⁵ s. 381.0051(5), F.S.

Education

Conscience protection has also emerged in education. In 2011, Missouri amended its Constitution to include, “no student shall be compelled to perform or participate in academic assignments or educational presentations that violate his or her religious beliefs.”²⁶ Although most do not amend their constitutions, “the vast majority of states have adopted legislation allowing parents to opt their children out of educational curriculum that they contend conflicts with their religious beliefs.”²⁷ In 2013, the state of New Hampshire enacted a broad statutory provision allowing any parent to opt out of specific curricula based on any “objectionable” reason.²⁸

Adoption Services

Two states have enacted adoption services conscience protection legislation: North Dakota in 2003,²⁹ and Virginia in 2012.³⁰ Both the North Dakota and Virginia adoption services conscience protection laws protect private child-placing agencies from:

- Being required to perform any duties related to the placement of a child for adoption if the proposed placement would violate the agency’s written religious or moral convictions or policies.
- Denial of initial licensure, revocation of licensure, or failure to renew licensure based on the agency’s objection to performing the duties required to place a child for adoption in violation of the agency’s written religious or moral convictions or policies.
- Denial of grants, contracts, or participation in government programs based on the agency’s objection to performing the duties required to place a child for adoption in violation of the agency’s written religious or moral convictions or policies.

North Dakota’s statute states that the agency’s refusal to perform the duties required to place a child for adoption does not constitute a determination that the proposed adoption is not in the best interest of the child.³¹ The Virginia statute is silent as to a best interest determination and states that the refusal to perform the duties required to place a child for adoption is limited to the extent allowed by federal law and shall not form a basis of any claim for damages.³² Neither law has been challenged on constitutional grounds.

In 2006, Catholic Charities of Boston stopped providing adoption services based on a conflict between church teaching and state law.³³ Like Florida, to participate in adoption placements in Massachusetts, whether or not the agency receives state funding, the child-placing agencies must be licensed.³⁴ However, Massachusetts law prohibits discrimination based on sexual orientation.³⁵ Catholic Charities explained in a press release that “[i]n spite of much effort and analysis, Catholic Charities of Boston finds that it cannot reconcile the teaching of the Church, which guides our work, and the statutes and regulation of the Commonwealth.”³⁶ The previous year, Catholic Charities had been responsible for over a third of all Boston area private adoptions.³⁷ Catholic Charities of San Francisco stopped

²⁶ MO. CONST. art. 1 s. 5.

²⁷ Claire Marshall, *The Spread of Conscience Clause Legislation*, 39 HUMAN RIGHTS MAGAZINE No. 2 (2013), available at http://www.americanbar.org/publications/human_rights_magazine_home/2013_vol_39/january_2013_no_2_religious_freedom/the_spread_of_conscience_clause_legislation.html.

²⁸ N.H. Rev. Stat. Ann. § 186:11.

²⁹ N.D. Cent. Code §§ 50-12-03 and 50-12-07.1.

³⁰ Va. Code Ann. § 63.2-1709.3.

³¹ N.D. Cent. Code § 50-12-07.1.

³² Va. Code Ann. § 63.2-1709.3(D).

³³ *Catholic Charities pulls out of adoptions*, THE WASHINGTON TIMES (Mar. 17, 2006), <http://www.washingtontimes.com/news/2006/mar/14/20060314-010603-3657r/>.

³⁴ Mass. Gen. Laws Ann. ch. 15D, § 8.

³⁵ Mass. Gen. Laws Ann. ch. 151B, § 4.

³⁶ J. Bryan Hehir & Jeffrey Kaneb, *Statement of Catholic Charities, Archdiocese of Boston, On Adoption Programs*, ARCHDIOCESE OF BOSTON NEWS/EVENTS (Mar. 10, 2006), http://www.bostoncatholic.org/uploadedFiles/News_releases_2006_statement060310-2.pdf.

³⁷ Colleen Theresa Rutledge, *Caught in the Crossfire: How Catholic Charities of Boston Was Victim to the Clash Between Gay Rights and Religious Freedom*, 15 DUKE J. GENDER L. & POL’Y 297, 298 (2008).

providing adoption services for the same reasons that same year,³⁸ and similar events occurred in Illinois in 2011.³⁹

Private adoption service agencies in Florida already place children in homes that conform to their written religious beliefs and moral convictions. For example, Florida Baptist Children's Homes states that they are "committed to providing forever, Christian families for children placed in our care, and . . . helping families answer God's call to adopt."⁴⁰ Additionally, the Jewish Adoption and Family Care Options states that they were created "to ensure that Jewish children who were being removed from their home due to abuse or neglect . . . would at least be able to take with them the one piece of their identity that comes from their connection with their Jewish heritage."⁴¹

Effect of Proposed Changes

This bill creates conscience protection in s. 409.175, F.S. The conscience protection addresses licensure, contracts, and liability of private child placing agencies.

The bill relieves any private child-placing agency from the requirement to participate in any placement of a child that would violate the agency's written religious or moral convictions or policies.

The bill creates licensure protection by barring the Department of Children and Families from denial or revocation of licensure because of a private child-placing agency's refusal to participate in a placement against the agency's written religious or moral convictions or policies.

The bill provides private contract protection by barring the state, local government, or community-based care lead agency from denial of any grant, contract, or participation in a government program because of a private child-placing agency's refusal to participate in a placement against the agency's written religious or moral convictions or policies.

The bill creates liability protection for private child-placing agencies for refusal to participate in a placement that would violate its written religious or moral convictions or policies.

B. SECTION DIRECTORY:

Section 1: Amends s. 409.175, F.S., relating to licensure of family foster homes, residential child-caring agencies, and child-placing agencies.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

³⁸ Cicero A. Estrella, *Catholic Charities scaling back its role in adoption services*, SFGATE (Aug. 3, 2006), <http://www.sfgate.com/bayarea/article/SAN-FRANCISCO-Catholic-Charities-scaling-back-2515267.php>.

³⁹ Laurie Goodstein, *Illinois Catholic Charities close over adoption rule*, THE BOSTON GLOBE (Dec. 29, 2011), <http://www.bostonglobe.com/news/nation/2011/12/29/illinois-catholic-charities-close-rather-than-allow-same-sex-couples-adopt-children/Km9RBLkpKzABNLJbUGhvJM/story.html>.

⁴⁰ FLORIDA BAPTIST CHILDREN'S HOMES, <https://www.fbchomes.org/our-care/adoption/> (last viewed Mar. 27, 2015).

⁴¹ JAFKO, *Preserving our Jewish Heritage*, <https://www.jafco.org/who-we-are/preserving-our-jewish-heritage/> (last visited Mar. 27, 2015).

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:

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:

Equal Protection

The equal protection clause of the United States Constitution requires that no state shall deny any person within its jurisdiction "equal protection of the laws."⁴² Furthermore, Florida's equal protection clause states that "no person shall be deprived of any right because of race, religion, national origin, or physical disability."⁴³ The bill may raise an equal protection issue where a couple or individual, who is otherwise qualified to adopt, is denied by a private adoption agency for reasons that are protected under the bill.

A court's response to an equal protection claim depends on the classification of people involved. A court will analyze government action that discriminates against people according to race, ethnicity, religion, and national origin with the strictest scrutiny.⁴⁴ In addition to those protected classes, federal and state courts also recognize quasi-suspect classes.⁴⁵ If a claim does not involve a fundamental right, a suspect class, or quasi-suspect class, then a court will analyze with rational basis scrutiny, whereby the court will uphold a law if it bears a reasonable relationship to the attainment of a legitimate government objective.⁴⁶

⁴² U.S. CONST. amend XIV, s. 1.

⁴³ FLA. CONST. art. I, s. 2.

⁴⁴ Under strict scrutiny, the government must show that a law with discriminatory effect advances a compelling state interest, is narrowly tailored, and is the least restrictive means for advancing that interest. *Loving v. Virginia*, 388 U.S. 1, 11 (1967).

⁴⁵ BLACK'S LAW DICTIONARY (10th ed. 2014) defines quasi-suspect classification as "[a] statutory classification based on gender or legitimacy, and therefore subject to intermediate scrutiny under equal-protection analysis." BLACK'S defines intermediate scrutiny as "[a] standard lying between the extremes of rational-basis review and strict scrutiny. Under the standard, if a statute contains a quasi-suspect classification (such as gender or legitimacy), the classification must be substantially related to the achievement of an important governmental objective."

⁴⁶ *Vance v. Bradley*, 440 U.S. 93, 97 (1979).

The Supreme Court of the United States has a history of disallowing private discrimination and finding that a state sanctioned private parties' discrimination against a protected class.⁴⁷ For example, in *Shelley v. Kraemer*, the Supreme Court found that judicial enforcement of racially restrictive covenants in private neighborhoods was sufficient to give rise to state action that promoted discrimination and was in violation of the Fourteenth Amendment.⁴⁸

In recent years, some courts have begun recognizing homosexuals as a quasi-suspect class and applying intermediate scrutiny to find laws with discriminatory effects against homosexuals unconstitutional.⁴⁹ Further, some courts, including a Florida state court, have found that laws prohibiting qualified homosexuals from participating in state-sanctioned activity, like adoption, that qualified heterosexuals can participate in freely are not justifiable even under the deferential rational basis review and are unconstitutional.⁵⁰ However, in 2004, the Eleventh Circuit Court of Appeals held that Florida's law prohibiting homosexuals from adopting did not burden a fundamental right and withstood rational basis scrutiny.⁵¹ This case remains good law⁵² and established federal precedent that, under Florida law, homosexuals are not a suspect or quasi-suspect class.

Religious Freedom

Article 1, section 3 of the Florida Constitution states,

*There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof.*⁵³

Florida's Religious Freedom Restoration Act of 1998 (FRFRA), ch. 761, F.S., guarantees that

(1) The government *shall not substantially burden*⁵⁴ *a person's exercise of religion*, even if the burden results from a rule of general applicability . . .⁵⁵

It may be argued that the language of this bill does not create a new right for private adoption agencies⁵⁶ but rather codifies an existing right guaranteed by both the Florida Constitution and the FRFRA—the right to be free from the government compelling them, as religious adherents, to engage in conduct their religion forbids. As the Supreme Court of the United States determined in *Burwell v. Hobby Lobby Stores, Inc.*, the phrase “a person’s” in the federal version of the Religious Freedom Restoration Act “include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.”⁵⁷

⁴⁷ *Reitman v. Mulkey*, 387 U.S. 369, 375 (1967) (reasoning that “(t)he instant case presents an undeniably analogous situation’ wherein the State had taken affirmative action designed to make private discriminations legally possible.”); and *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 717 (1961) (finding that discrimination by a lessee of an agency created by the State was sufficient to find that there was “discriminatory state action in violation of the Equal Protection Clause of the Fourteenth Amendment.”).

⁴⁸ *Shelley v. Kraemer*, 334 U.S. 1, 21 (1948).

⁴⁹ *See Windsor v. U.S.*, 699 F.3d 169 (2d Cir. 2012), *affirmed on other grounds* 133 S.Ct. 2675 (2013); *Golinski v. Office of Personnel Mgmt.*, 824 F.Supp.2d 968 (N.D. Cal. 2012).

⁵⁰ *Florida Dept. of Children and Families v. Adoption of X.X.G.*, 45 So.3d 79 (Fla. 3d DCA 2010); *Bassett v. Snyder*, 2014 WL 5847607 (E.D. Mich. 2014). BLACK’S LAW DICTIONARY (10th ed. 2014) defines the “rational-basis test” as “[t]he criterion for judicial analysis of a statute that does not implicate a fundamental right or a suspect or quasi-suspect classification under the Due Process or Equal Protection Clause, whereby the court will uphold a law if it bears a reasonable relationship to the attainment of a legitimate governmental objective. Rational basis is the most deferential of the standards of review that courts use in due-process and equal-protection analysis.”

⁵¹ *Lofton v. Secretary of Dept. of Children and Family Services*, 358 F.3d 804, 818 (11th Cir. 2004).

⁵² The Supreme Court denied certiorari on January 10, 2005. *See Lofton v. Secretary, Florida Dept. of Children and Families*, 543 U.S. 1081 (2005).

⁵³ FLA. CONST. art. I, s. 3.

⁵⁴ In 2004, the Florida Supreme Court held that “a substantial burden on the free exercise of religion is one that either compels the religious adherent to engage in conduct that his religion forbids or forbids him to engage in conduct that his religion requires.” *Warner v. City of Boca Raton*, 887 So. 2d 1023, 1033 (Fla. 2004) (emphasis added).

⁵⁵ s. 761.03(1), F.S.

⁵⁶ In *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2768-70 (2014), the Supreme Court of the United States determined that the phrase “a person’s” in the federal version of the Religious Freedom Restoration Act “include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.” *Id.* at 2768.

⁵⁷ 134 S.Ct. 2751, 2768-70 (2014).

B. RULE-MAKING AUTHORITY:

Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to conscience protection for private child-placing agencies; amending s. 409.175, F.S.; providing that a private child-placing agency is not required to place a child or be involved in the placement of a child which would violate the agency's written religious or moral convictions or policies; prohibiting the Department of Children and Families from taking actions related to licensure based on the agency's refusal to place a child or be involved in the placement of a child which violates the agency's written religious or moral convictions or policies; prohibiting certain entities from withholding grants, contracts, or participation in government programs from a private child-placing agency based on the agency's refusal to place a child or be involved in the placement of a child which violates the agency's written religious or moral convictions or policies; providing that such refusal does not provide the basis for a claim for injunctive relief or punitive damages; providing an effective date.

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

Section 1. Subsection (18) is added to section 409.175, Florida Statutes, to read:

HB7111

2015

27 409.175 Licensure of family foster homes, residential
 28 child-caring agencies, and child-placing agencies; public
 29 records exemption.—

30 (18) (a) A private child-placing agency is not required to
 31 perform, assist in, recommend, consent to, or participate in the
 32 placement of a child when the proposed placement would violate
 33 the agency's written religious or moral convictions or policies.

34 (b) The department may not deny an application for an
 35 initial license or renewal of a license, or revoke the license,
 36 of a private child-placing agency because of the agency's
 37 refusal to perform, assist in, recommend, consent to, or
 38 participate in the placement of a child which violates the
 39 agency's written religious or moral convictions or policies.

40 (c) The state or a local government or community-based
 41 care lead agency may not withhold a grant, contract, or
 42 participation in a government program from a private child-
 43 placing agency because of the agency's refusal to perform,
 44 assist in, recommend, consent to, or participate in the
 45 placement of a child which violates the agency's written
 46 religious or moral convictions or policies.

47 (d) Refusal of a private child-placing agency to perform,
 48 assist in, recommend, consent to, or participate in the
 49 placement of a child which violates the agency's written
 50 religious or moral convictions or policies does not provide the
 51 basis for a claim for injunctive relief or punitive damages.

52 Section 2. 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 Brodeur offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

6 Section 1. Subsection (18) is added to section 409.175,
7 Florida Statutes, to read:

8 409.175 Licensure of family foster homes, residential
9 child-caring agencies, and child-placing agencies; public
10 records exemption.-

11 (18) (a) A private child-placing agency is not required to
 12 perform, assist in, recommend, consent to, or participate in the
 13 placement of a child or to facilitate the licensure of a family
 14 foster home when the proposed placement or licensure would
 15 violate the agency's written religious or moral convictions or
 16 policies.



Amendment No. 1

17 (b) The department may not deny an application for, deny a
18 renewal of, or revoke a license of a private child-placing
19 agency, or that of a family foster home or residential child-
20 caring agency affiliated with a private child-placing agency,
21 because of the refusal of the private child-placing agency to
22 perform, assist in, recommend, consent to, or participate in the
23 placement of a child or to facilitate the licensure of a family
24 foster home which violates the agency's written religious or
25 moral convictions or policies.

26 (c) The state or a local government or community-based
27 care lead agency may not withhold a grant, contract, or
28 participation in a government program from a licensed private
29 child-placing agency, or from a family foster home or
30 residential child-caring agency affiliated with a private child-
31 placing agency, because of the refusal of the private child-
32 placing agency to perform, assist in, recommend, consent to, or
33 participate in the placement of a child or to facilitate the
34 licensure of a family foster home which violates the agency's
35 written religious or moral convictions or policies.

36 (d) Refusal of a private child-placing agency to perform,
37 assist in, recommend, consent to, or participate in the
38 placement of a child or to facilitate the licensure of a family
39 foster home which violates the agency's written religious or
40 moral convictions or policies does not provide the basis for a
41 claim for injunctive relief or compensatory or punitive damages



Amendment No. 1

42 against such private child-placing agency or any operator,
43 owner, or personnel thereof.

44 Section 2. This act shall take effect July 1, 2015.
45

46 -----
47 **T I T L E A M E N D M E N T**

48 Remove everything before the enacting clause and insert:
49 An act relating to conscience protection for actions of private
50 child-placing agencies; amending s. 409.175, F.S.; providing
51 that a private child-placing agency is not required to place a
52 child or be involved in the placement of a child or facilitate
53 the licensure of a foster home which would violate the agency's
54 written religious or moral convictions or policies; prohibiting
55 the Department of Children and Families from taking actions
56 related to licensure based on the agency's refusal to place a
57 child or be involved in the placement of a child or facilitate
58 the licensure of a foster home which violates the agency's
59 written religious or moral convictions or policies; prohibiting
60 certain entities from withholding grants, contracts, or
61 participation in government programs from a private child-
62 placing agency or affiliated agencies or homes based on the
63 agency's refusal to place a child or be involved in the
64 placement of a child or the licensure of a foster home which
65 violates the agency's written religious or moral convictions or
66 policies; providing that such refusal does not provide the basis



Amendment No. 1

67 for a claim for injunctive relief or compensatory or punitive
68 damages; providing an effective date.



Amendment No. 1a

COMMITTEE/SUBCOMMITTEE ACTION

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

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

3
4 **Amendment to Amendment (163827) by Representative Brodeur**
5 **(with title amendment)**

6 Between lines 43 and 44 of the amendment, insert:

7 (e) This subsection does not allow a private child-placing
8 agency to discriminate against an individual or couple on any
9 grounds prohibited by any federal, state, or local law,
10 regulation, or code of ethics governing social workers, adoption
11 entities, or any other child welfare professionals.

12
13 -----
14 **T I T L E A M E N D M E N T**

15 Remove line 68 of the amendment and insert:



COMMITTEE/SUBCOMMITTEE AMENDMENT

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Amendment No. 1a

16 | damages; providing that specified provisions do not allow a
17 | private child-placing agency to discriminate against individuals
18 | or couples on certain grounds; providing an effective date.