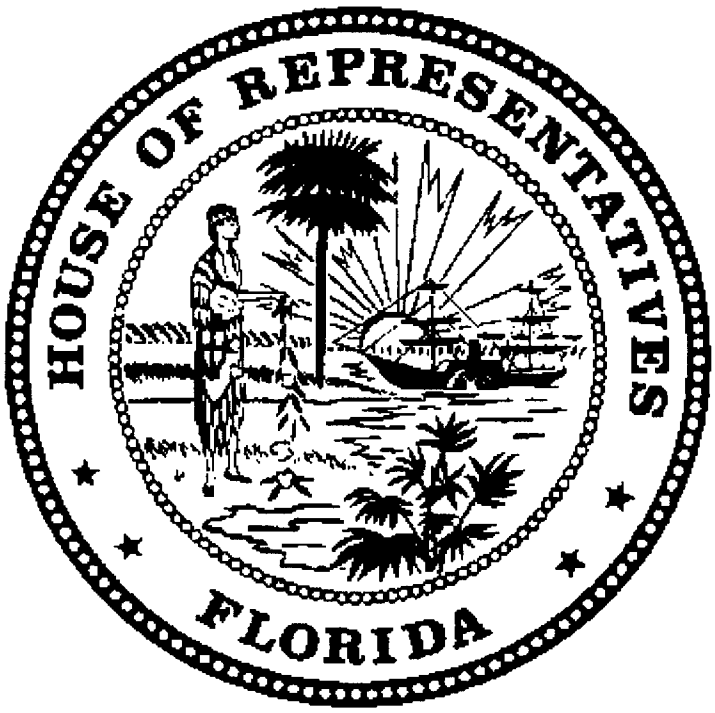

Judiciary Committee

Thursday, March 23, 2017
9:00 AM
404 HOB

Meeting Packet

Richard Corcoran
Speaker

Chris Sprowls
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time:	Thursday, March 23, 2017 09:00 am
End Date and Time:	Thursday, March 23, 2017 12:00 pm
Location:	Sumner Hall (404 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

CS/HB 239 Public Records/Protective Injunction Petitions by Civil Justice & Claims Subcommittee, Lee
CS/HB 399 Guardianship by Civil Justice & Claims Subcommittee, Diamond
CS/HB 529 Soldiers' and Heroes' Memorials Protection Act by Criminal Justice Subcommittee, Drake
CS/HJR 721 Selection and Duties of County Sheriff by Local, Federal & Veterans Affairs Subcommittee, Fischer, Avila
CS/HB 779 Weapons and Firearms by Criminal Justice Subcommittee, Combee
CS/HB 849 Concealed Weapons and Firearms on Private School Property by Criminal Justice Subcommittee, Combee
CS/HB 6503 Relief/Sean McNamee, Todd & Jody McNamee/School Board of Hillsborough County by Civil Justice & Claims Subcommittee, Shaw
CS/HB 6507 Relief/Angela Sanford/Leon County by Civil Justice & Claims Subcommittee, Beshears
CS/HB 6531 Relief/Dustin Reinhardt/Palm Beach County School Board by Civil Justice & Claims Subcommittee, Drake
CS/HB 6533 Relief/Jennifer Wohlgemuth/Pasco County Sheriff's Office by Civil Justice & Claims Subcommittee, Grant, J.

Consideration of the following proposed committee substitute(s):

PCS for HB 245 -- Self-Defense Immunity

NOTICE FINALIZED on 03/21/2017 4:10PM by Bowen.Erika

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 239 Public Records/Protective Injunction Petitions
SPONSOR(S): Civil Justice & Claims Subcommittee; Lee, Jr. and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1062

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	14 Y, 0 N, As CS	Bond	Bond
2) Oversight, Transparency & Administration Subcommittee	11 Y, 0 N	Grosso	Harrington
3) Judiciary Committee		Bond	Camechis

SUMMARY ANALYSIS

An individual who believes that he or she is the victim of domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking may petition the court for an injunction for protection if certain requirements are met.

The bill exempts from public record requirements a petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking when the petition is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017. If such an injunction for protection was dismissed prior to July 1, 2017, the petition, and the contents thereof, are exempt only if the respondent requests.

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

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

The effective date of the bill is July 1, 2017.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for certain court files related to a petition for an injunction against violence; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Art. I, s. 24(a) of the Florida Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to meet its public purpose.[1]

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act[2] provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."[3] However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.[4]

The Open Government Sunset Review Act does not apply to an exemption that applies solely to the Legislature or the State Court System.[5]

Public Records and Court Proceedings and Files

Independent of constitutional and statutory provisions that require court files to be generally open to the public, the courts have found that "both civil and criminal court proceedings in Florida are public events" and that courts must "adhere to the well-established common law right of access to court proceedings and records."[6] A court may close a court file or a portion thereof on equitable grounds, but the ability to do so is limited. The Supreme Court has ruled that "closure of court proceedings or records should occur only when necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to

[1] FLA. CONST. art. I, s. 24(c).
[2] s. 119.15, F.S.
[3] s. 119.15(6)(b), F.S.
[4] Id.
[5] s. 119.15(2)(b), F.S.
[6] *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113, 116 (Fla. 1988)(ruling that court files in divorce cases are generally open despite the desire of the parties for privacy).

a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed."[7]

Public Record Exemptions for Certain Court Records and Files

Currently, s. 119.0714(1), F.S., provides public record exemptions for various types of personal information contained in court files. Information currently exempt from public record requirements includes records prepared by an agency attorney,[8] various law enforcement confidential records,[9] social security numbers,[10] and bank account numbers.[11]

Injunctions for Protection against Specified Acts of Violence

Domestic Violence
Any person who is the victim of domestic violence or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.[12] Section 741.28, F.S., defines the term "domestic violence" as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.[13]

There are two hearings contemplated by the statute. The first is an ex parte hearing that occurs shortly after filing. The only evidence admissible in the ex parte hearing is verified pleadings or affidavits, unless the respondent appears at the hearing *or* has received reasonable notice of the hearing.[14] If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant a temporary injunction ex parte.[15] The court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan.[16] A temporary injunction is only effective for a fixed period that cannot exceed 15 days.[17] However, if the petition is insufficient, the court must dismiss the petition at the ex parte hearing. Importantly, where the petition is dismissed as insufficient at the ex parte hearing, the respondent is not notified of the petition.

If the court at the ex parte hearing determines the petition is sufficient, a temporary injunction is issued and the court must set a second hearing at the earliest possible time.[18] The respondent is notified of the second hearing as a part of the temporary injunction form. The second hearing on the petition must be set for a date on or before the date when the temporary injunction expires. The court may grant a

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[7] *Id.* at 118.
[8] s. 119.0714(1)(a), F.S.
[9] ss. 119.0714(1)(c) through 119.0714(1)(h), F.S.
[10] s. 119.0714(1)(i), F.S.
[11] s. 119.0714(1)(j), F.S.
[12] s. 741.30(1), F.S.; *see also* flcourts.org, *Instructions for Florida Supreme Court Approved Family Law Form 12.980(a) Petition for Injunction for Protection Against Domestic Violence (11/15)*, available online at: https://www.flcourts.org/core/fileparse.php/293/urlt/980a.pdf.
[13] s. 741.30(3), F.S.
[14] s. 741.30(5)(b), F.S.
[15] s. 741.30(5)(a), F.S.
[16] s. 741.30(5), F.S.
[17] s. 741.30(5)(c), F.S.
[18] s. 741.30(4), F.S.

continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance.[19]

At the second hearing, specified injunctive relief may be granted if the court finds that the petitioner is the victim of domestic violence; or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.[20] Alternatively, the court may dismiss the petition at the second hearing based on insufficient evidence or the nonappearance of the petitioner.

Repeat, Dating, and Sexual Violence
Section 784.046, F.S., governs the issuance of injunctions against repeat violence, dating violence, and sexual violence. This process largely parallels the provisions and procedures discussed above regarding domestic violence injunctions. The forms of violence are described as follows:

- Section 784.046(1)(b), F.S., defines the term "repeat violence" to mean two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member. Section 784.046(1)(a), F.S., defines the term "violence" to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.
- Section 784.046(1)(d), F.S., defines the term "dating violence" to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. The existence of such a relationship is determined by considering the following factors:
    - A dating relationship must have existed within the past six months;
    - The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
    - The persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship.
- Section 784.046(1)(c), F.S., defines the term "sexual violence" to mean any one incident of: sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted. For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

Stalking and Cyberstalking
Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This process largely parallels the provisions and procedures discussed above regarding domestic violence injunctions. The terms stalking and cyberstalking are not defined in s. 784.0485, F.S.

Effect of the Bill

The bill creates s. 119.0714(1)(k), F.S., to provide that a petition, and the contents of the petition, for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, is dismissed at an ex parte hearing due to failure to state a claim or a lack of jurisdiction, or is dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued after July 1, 2017, is exempt[21] from s. 119.07(1), F.S., and art. I, s. 24(a) of the Florida Constitution.

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[19] s. 741.30(5)(c), F.S.
[20] s. 741.30(6)(a), F.S.
[21] There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA

As to petitions dismissed prior to July 1, 2017, the bill exempts from public record the petition upon request by the respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the court. The clerk may not charge a fee for removal.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that it is a public necessity to protect certain dismissed injunctions, and the contents of such injunctions, because the existence of such a petition and of the unverified allegations contained in such a petition could be defamatory to an individual, cause unwarranted damage to the reputation of such individual, and that correction of the public record by the removal of such a petition is the sole means of protecting the reputation of an individual named in such a petition.

B. SECTION DIRECTORY:

Section 1 amends s. 119.0714, F.S., regarding court files, court records, and official records.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2017.

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:

   See Fiscal Comments.

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 a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on court clerks because staff responsible for complying with public records requests may require training related to the creation of the public record exemption. In addition, clerks could incur costs associated with redacting the exempt information prior to releasing a

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2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* 85-62 Fla. Op. Att'y Gen. (1985).

record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of clerks.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement and Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement. Article I, s. 24(c) of the Florida Constitution also requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law.

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 February 16, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made style and grammar changes, and removed a reference to the Open Government Sunset Review Act. This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.

A bill to be entitled

An act relating to public records; amending s. 119.0714, F.S.; providing an exemption from public records requirements for petitions, and the contents thereof, for certain protective injunctions that are dismissed in certain circumstances; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (k) is added to subsection (1) of section 119.0714, Florida Statutes, to read:

119.0714 Court files; court records; official records.—

(1) COURT FILES.—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

(k)1. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being

issued on or after July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued before July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution only upon request by an individual named in the petition as a respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, or electronic transmission or in person to the clerk of the court. A fee may not be charged for such request.

Section 2. The Legislature finds that it is a public necessity that a petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being

issued be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that the existence of, and the unverified allegations contained in, such a petition may be defamatory to an individual named in it and cause unwarranted damage to the reputation of such individual. The Legislature further finds that removing such a record from public disclosure is the sole means of protecting the reputation of such an individual.

Section 3. This act shall take effect July 1, 2017.

PCS for HB 245

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 245 Self-Defense Immunity
SPONSOR(S): Judiciary Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		White	Camechis

SUMMARY ANALYSIS

Florida law currently provides immunity from criminal prosecution and civil suit for a person who justifiably uses or threatens to use force to defend himself or herself, other persons, or property. This law is commonly referred to as "Stand Your Ground" (SYG).

When SYG was adopted in 2005, the law did not specify a procedure by which to raise a claim of immunity. As a result, litigation ensued throughout the state regarding the proper procedure by which to raise the claim. The issue was ultimately resolved in 2015 when the Florida Supreme Court ruled in a five-to-two decision that the appropriate procedure is for the criminal defendant to assert the immunity through a motion to dismiss at a pretrial evidentiary hearing where the defendant bears the burden of proof to establish his or her entitlement to the immunity by a preponderance of the evidence.

The bill amends the SYG law to shift the burden of proof to the State when SYG immunity is asserted. Under the bill, once a criminal defendant raises a prima facie case of self-defense immunity, the State must overcome the asserted immunity with clear and convincing evidence.

The bill will have an indeterminate impact on state government expenditures. The bill does not appear to have a fiscal impact on local government revenues or expenditures. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra.*

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Pre-Stand Your Ground

Overview

Before passage of Florida's "Stand Your Ground" (SYG) law in 2005, both statute and common law governed when a person could justifiably use force in self-defense and in the defense of others or property. In 2004, ss. 776.012 and 776.031, F.S., stated that a person was justified in using:

- Force, other than deadly force, if the person reasonably believed such force was necessary to:
  - Defend himself, herself, or another against another's imminent use of unlawful force; or
  - Prevent or terminate another's trespass on or interference with real property other than a dwelling or certain personal property.
- Deadly force if the person reasonably believed such force was necessary to prevent imminent death or great bodily harm to himself, herself, or another or to prevent the imminent commission of a forcible felony.[1]

Statute did not address a duty to retreat; however, Florida common law recognized such duty and required a person to "retreat to the wall" if attacked outside of his or her home or workplace, meaning that a person could not justifiably resort to deadly force without first using every reasonable means to avoid the danger, including retreat.[2] Within the home or workplace, there was no duty to retreat.[3] This exception from the duty to retreat is commonly known as the "Castle Doctrine."[4]

Procedure to Raise Self-Defense

Statute also did not address any procedure by which justifiable use of force could be raised by a defendant; however, pursuant to case law and court rule, such defense had to be raised at trial as an affirmative defense.[5] According to the appellate courts, under Fla. R. Crim. P. 3.190(c)(4), a pretrial motion to dismiss raising self-defense was authorized only if there were "no material disputed facts and the undisputed facts ... [did] not establish a prima facie case of guilt against the defendant."[6]

Stand Your Ground

Overview

In 2005, the Florida Legislature enacted the "Stand Your Ground" (SYG) law.[7] This legislation significantly amended justifiable use of force in this state by:

- Abolishing the common law duty to retreat by stating that a person may use force, including deadly force, and does not have to retreat if he or she:
  - Is not engaged in unlawful activity;

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[1] Section 776.08, F.S., both in 2004 and now, defines the term "forcible felony" as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

[2] *Weiand v. State*, 732 So.2d 1044 (Fla. 1999).

[3] *Id.*; *Frazier v. State*, 681 So.2d 824 (Fla. 2d DCA 1996).

[4] *See Hedges v. State,* 172 So.2d 824, 827 (Fla. 1965) and *Pell v. State*, 122 So. 110 (Fla. 1929) (Florida has long recognized that there is no duty to retreat before using force when in one's home - a principle often referred to as the "Castle Doctrine.").

[5] "An 'affirmative defense' is any defense that assumes the complaint or charges to be correct but raises other facts that, if true, would establish a valid excuse or justification or a right to engage in the conduct in question. An affirmative defense does not concern itself with the elements of the offense at all; it concedes them. In effect, an affirmative defense says, 'Yes, I did it, but I had a good reason.'" *State v. Cohen*, 568 So. 2d 49, 51-52 (Fla. 1990).

[6] *State v. Hull,* 933 So.2d 1279, 1280(Fla. 2d DCA 2006); (trial court improperly granted defendant's motion to dismiss where defendant's self-defense claim presented questions for the factfinder); *see also Lusk v. State,* 531 So. 2d 1377, 1381(Fla. 2d DCA 1988) ("The questions of 'reasonable belief' and the 'amount of force necessary' were factual determinations to be made by the jury after a proper instruction.").

[7] Chapter 2005-27, L.O.F.

    - Is attacked in any other place where he or she has a right to be; and
    - Reasonably believes such force is necessary to prevent death, great bodily harm, or the commission of a forcible felony.[8]
- Creating a presumption, subject to certain exceptions,[9] that a person using deadly force was in reasonable fear of death or great bodily harm to himself, herself, or another when faced with an unlawful intruder in a dwelling, residence, or occupied vehicle.[10]
- Granting a person who justifiably uses force immunity from criminal prosecution and civil action. The term "criminal prosecution" was defined to include arresting, detaining in custody, and charging or prosecuting a defendant, and specified that a person who uses force may not be arrested until law enforcement has probable cause that the force used was unlawful.[11]

Since 2005, the above-described SYG laws have only been amended once. The amendments, which were adopted in 2014, were primarily for purposes of: (a) expanding SYG criminal and civil immunity so that it applies not only to the actual use of force but also to the threatened use of force; (b) clarifying that a person is not entitled to SYG immunity if the person was engaged in a criminal activity (formerly referred as "unlawful activity") when using or threatening to use deadly force; and (c) limiting the immunity from civil actions to actions filed by the person against whom the force was used or threatened and the personal representative or heirs of such person.[12]

Procedure to Raise SYG Immunity

Like the pre-2005 statutes governing the justifiable use of force defense, SYG did not specify a procedure for a defendant to raise a claim of immunity. Shortly after the law took effect, litigation ensued regarding the means by which to raise the claim. Criminal defendants argued it should be raised through a pretrial motion to dismiss. Prosecutors countered that such motion was not authorized where the facts were disputed. Two District Courts of Appeal (DCAs) split on the issue with the:

- First DCA holding in *Peterson v. State*[13] that the wording in SYG "makes clear that [the Legislature] intended to establish a true immunity and not merely an affirmative defense ...." As such, the proper procedure for claiming such immunity is for the defendant to raise the claim pretrial at which time "the trial court must determine whether the defendant has shown by a preponderance of the evidence that the immunity attaches."[14, 15]
- Fourth DCA holding in *Velasquez v. State*[16] and *Dennis v. State*[17] that Fla. R. Crim. P. 3.190(c)(4), requires denial of a motion to dismiss whenever the facts are in dispute. Although SYG may permit an immunity determination at any stage because of the manner in which the law defined "criminal prosecution," such determination may not be made through a pretrial motion to dismiss unless the facts are undisputed.[18]

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[8] s. 776.013(3), F.S. (2005). Sections 776.012 and 776.031, F.S., addressing justifiable use of force, were retained by the 2005 legislation, but were amended to conform to the legislation's abolition of the duty to retreat.

[9] The presumption does not apply if: (a) the person against whom the defensive force was used had the right to be in the dwelling, residence, or vehicle, was the parent, grandparent, or guardian of the person sought to be removed, or, under specified circumstances, was a law enforcement officer; or (b) the person who used defensive force was engaged in unlawful activity or was using the dwelling, residence, or vehicle to further unlawful activity. s. 776.013(2), F.S. (2005).

[10] Such presumption arose if: (a) the person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and (b) the person using the force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred. s. 776.013(1), F.S. (2005).

[11] s. 776.032, F.S. (2005).

[12] ch. 2014-195, L.O.F.

[13] 983 So.2d 27 (Fla. 1st DCA 2008).

[14] *Peterson,* 983 So.2d at 29.

[15] "Preponderance of the evidence" means "proof which leads the factfinder to find that the existence of a contested fact is more probable than its nonexistence." *Department of Health and Rehabilitative Services v. M.B.,* 701 So. 2d 1155 (Fla. 1997).

[16] 9 So.3d 22 (Fla. 4th DCA 2009).

[17] 17 So.3d 305 (Fla. 4th DCA 2009).

[18] *Velasquez,* 9 So.3d at 23-24.

Thereafter, the Florida Supreme Court (FSC) addressed the conflict in *Dennis*. The FSC approved the procedure adopted in *Peterson,* stating that SYG, "grants defendants a substantive right to not be arrested, detained, charged, or prosecuted as a result of the use of legally justified force.[19] Accordingly, "the procedure set out by the First District in *Peterson* best effectuates the intent of the Legislature...."[20]

After *Dennis*, defendants continued to argue that the burden of proof (BOP) to establish they were entitled to the immunity should not have been placed on them. The Fifth DCA considered this argument in *Bretherick v. State,*[21] wherein the defendant asserted that "[p]lacing the burden on a person who acted in self defense, after they have been charged makes the immunity granted largely illusory ...." The Fifth DCA rejected this argument because it was bound by the holding in *Dennis*.[22]

In a concurring opinion in *Bretherick*, Judge Schumann wrote that while she agreed *Dennis* is controlling, she did not think the FSC directly addressed the BOP issue in that case.[23] She also stated, "Kentucky and Kansas, states with statutes that were modeled directly on our 'Stand Your Ground' law, have found that the burden of proof properly rests with the State at the pretrial stage to demonstrate that the use of force in self-defense was unjustified. This construction creates a better procedural vehicle to test the State's case at the earliest possible stage of a criminal proceeding. Self-defense immunity statutes are designed to relieve a defendant from the burdens of criminal prosecution from arrest through trial."[24, 25]

In response to Judge Schumann's concurrence, the majority in *Bretherick* certified the following question: "ONCE THE DEFENSE SATISFIES THE INITIAL BURDEN OF RAISING THE ISSUE, DOES THE STATE HAVE THE BURDEN OF DISPROVING A DEFENDANT'S ENTITLEMENT TO SELF-DEFENSE IMMUNITY AT A PRETRIAL HEARING AS IT DOES AT TRIAL?"[26]

In a July 2015 opinion, five of the seven justices of the FSC answered the certified question in the negative, stating, "[w]e now make explicit what was implicit in *Dennis*—the defendant bears the burden of proof by a preponderance of the evidence at the pretrial evidentiary hearing. This is the conclusion reached by every Florida appellate court to consider this issue both before and after *Dennis*, and it is a conclusion fully consistent with the legislative intent to provide immunity to a limited class of defendants who can satisfy the statutory requirements."[27]

The majority provided the following reasons in support of its conclusion:[28]

- The Legislature did not confer blanket immunity from criminal prosecution with SYG. It provided immunity only if the use of force was justified under SYG. The *Dennis* procedure gave effect to that immunity by authorizing a defendant to establish his or her immunity pretrial. Such procedure provides a defendant with greater protection than the mere ability to assert self-defense at trial.[29]

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[19] *Dennis v. State,* 51 So.3d 456, 458, 462 (Fla. 2010).
[20] *Id.* at 463-464.
[21] 135 So.3d 337 (Fla. 5th DCA 2013).
[22] *Id.* at 340.
[23] *Id.* at 342.
[24] *Id.* at 344.
[25] The BOP placed on the State in Kentucky and Kansas is that the State must establish that there is probable cause that the defendant's use of force was not legally justified. *See Rodgers v. Commonwealth*, 285 S.W.3d 740, 752-56 (Ky. 2009)("The burden is on the Commonwealth to establish probable cause and it may do so by directing the court's attention to the evidence of record including witness statements, investigative letters prepared by law enforcement officers, photographs and other documents of record."); Ky. Rev. Stat. § 503.085; *see State v. Ultreras*, 296 Kan. 828, 844-45 (2013)(" the standard of proof for whether a defendant is entitled to immunity from criminal prosecution ... is probable cause. We further find that the State bears the burden of establishing proof that the force was not justified as part of the probable cause determination...."); Kan. Stat. Ann. § 21-5231.
[26] *Id.* at 341.
[27] *Bretherick v. State,* 170 So.3d 766, 769 (Fla. 2015).
[28] *Id.* at 775.
[29] *Id.*

- No court in this country has "required, at a pretrial evidentiary hearing, the prosecution to disprove beyond a reasonable doubt that the use of force by a defendant was justified. The highest courts in three states—Colorado, Georgia, and South Carolina—agree with a procedure similar to that described in *Peterson*.... ... These courts have adopted a procedure in which the defendant bears the burden of proof, by a preponderance of the evidence at a pretrial evidentiary hearing, in the context of their analogous immunity law."[30]
    - Defendant's reliance on cases from Kentucky and Kansas is misplaced. Neither require the State to disprove beyond a reasonable doubt that the force was justified; rather, it was held that the State must only establish probable cause that the force was not legally justified. Probable cause is the standard the State argued for in *Dennis*. We rejected this argument because this standard does not provide defendants with any greater protection from prosecution than the law did before SYG. Under Fla. R. Crim. P. 3.133, the court must make a probable cause determination before or within 48 hours after arrest.[31]
- Placing the BOP on the defendant is consistent with the procedures for other motions to dismiss. Such procedures "all require the defendant to offer the evidence in support of the motion, rather than placing the burden on the State."[32]
- Placing the burden on the State to prove, beyond a reasonable doubt, that the defendant is not entitled to immunity requires the State to establish the same degree of proof twice—once pretrial and again at trial. This essentially results in two full-blown trials: one before a judge and a second before a jury. Such two-trial process would:
    - Expend tremendously more resources. Undoubtedly, the interests in expense and judicial economy do not outweigh a defendant's right to a fair determination of guilt or innocence; however, such right is not diminished by placing the BOP on the defendant at the pretrial stage because the State must still prove all of the elements of the crime beyond a reasonable doubt at trial.
    - Enable a defendant to file a motion to dismiss, which may not be supported by any evidence, to obtain a preview of the State's case. Moreover, if at the time of the pretrial hearing, the State did not yet possess all the evidence to refute the alleged justifications for the defendant's use of force, the defendant would be found immune. The result is a process is "'fraught with potential for abuse.'"[33]
- The issue in the pretrial evidentiary hearing is whether the defendant was justified in the use of force, not whether the defendant committed the crime. As recognized by the Colorado Supreme Court, "'the accused presumably has a greater knowledge of the existence or nonexistence of the facts which would call into play the protective shield of the statute and, under these circumstances, should be in a better position than the prosecution to establish the existence of those statutory conditions which entitle him to immunity.'"[34]

Justice Canady wrote a dissent in which Justice Polston concurred. Justice Canady indicated:

- The majority fails to recognize that the issue the trial court must resolve pretrial is the same issue that must be resolved by the factfinder at trial; i.e., "whether the evidence establishes beyond a reasonable doubt that the defendant's conduct was not justified under the governing statutory standard. The State does not dispute that a defendant presenting a Stand Your Ground defense can only be convicted if the State proves beyond a reasonable doubt that the defense does not apply. ... By imposing the burden of proof on the defendant at the pretrial evidentiary hearing, the majority substantially curtails the benefit of the immunity from trial conferred by the Legislature under the Stand Your Ground law. There is no reason to believe that the Legislature intended for a defendant to be denied immunity and subjected to trial when that defendant would be entitled to acquittal at trial on the basis of a Stand Your Ground

[30] *Id.* (citations omitted).
[31] *Bretherick,* 135 So.3d at 775-776; *Dennis*, 51 So.3d at 463.
[32] *Bretherick,* 170 So.3d at 769.
[33] *Id.* at 777-778.
[34] *Id.* at 777.

defense. But the majority's decision here guarantees that certain defendants who would be entitled to acquittal at trial will nonetheless be deprived of immunity from trial."[35]

- The majority's argument that "the burden should be placed on the defendant because it is easier for a defendant to prove entitlement to immunity than it is for the State to disprove entitlement to immunity has no more force in the context of a pretrial evidentiary hearing than it does in the context of a trial, where it admittedly has no application. That argument has no basis in the text of the Stand Your Ground law."[36]
- The majority's valid concern that placement of the burden of proof on the defendant may result in two full-blown trials does not justify curtailing immunity from trial for those who lawfully used or threatened force and is a practical matter for the Legislature to consider and resolve.[37]

Effect of the Bill

The bill amends s. 776.032, F.S., to reverse the effect of the FSC's holding in *Bretherick* and shift the BOP to the State at the pretrial stage of a criminal prosecution when the defendant files a motion to dismiss based on SYG immunity. Under the bill, once a criminal defendant raises a prima facie[38] case of self-defense immunity, the State must overcome the asserted immunity with clear and convincing evidence.[39]

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1. Amends s. 776.032, F.S., relating to immunity from criminal prosecution and civil action for justifiable use or threatened use of force

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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

2. Expenditures: The Criminal Justice Impact Conference (CJIC) has not yet met to consider this bill; however, the CJIC considered legislation last year which was substantively the same as this bill and determined that the legislation will have a negative indeterminate impact on the Department of Corrections (i.e., an unquantifiable reduction in the need for prison beds).

   Due to the bill's reduction in the level of proof required to be asserted by a defendant filing a motion to dismiss based on SYG immunity, there may be an increase in the number of motions filed and in the number of cases in which the State will be required to present its case both at a pretrial hearing and trial. These increases may result in additional costs to prosecutors, public defenders, and the

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[35] *Id.* at 779-780.
[36] *Id.* at 780.
[37] *Id.*
[38] "'Prima facie' means that the proponent has fulfilled his duty to produce evidence and there is sufficient evidence for the court to consider the issue." Charles W. Ehrhardt, Florida Evidence § 301.2 (2002). "Prima facie evidence is evidence sufficient to establish a fact unless and until rebutted." *State v. Kahler*, 232 So.2d 166, 168 (Fla. 1970) .
[39] "Clear and convincing evidence" means "evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief, without hesitation, about the matter in issue." FLA. STD. JURY INSTR. (Crim.) ss. 2.3 and 3.6; *see also State v. Graham*, 240 So.2d 486 (Fla. 2d DCA 1970)(stating that clear and convincing evidence "is an intermediate standard of proof, more than the 'preponderance of the evidence' standard used in most civil cases, and less than the 'beyond a reasonable doubt' standard used in criminal cases.").

court. Such additional costs, however, may be offset by a reduction in costs that could result from cases that: (a) do not continue to trial because the defendant's motion to dismiss is granted at the pretrial stage; or (b) result in a plea because the defendant's motion to dismiss is denied at the pretrial stage.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The bill 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

N/A

A bill to be entitled

An act relating to self-defense immunity; amending s. 776.032, F.S.; requiring that the burden of proof in a criminal prosecution be on the party seeking to overcome the immunity claim under certain circumstances; providing an effective date.

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

Section 1. Subsection (1) of section 776.032, Florida Statutes, is republished, and subsection (4) is added to that section, to read:

776.032 Immunity from criminal prosecution and civil action for justifiable use or threatened use of force.—

(1) A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person, personal representative, or heirs of the person against whom the force was used or threatened, unless the person against whom force was used or threatened is a law enforcement officer, as defined in s. 943.10(14), who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using or threatening to use force knew or reasonably should have

known that the person was a law enforcement officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.

(4) In a criminal prosecution, once a prima facie claim of self-defense immunity from criminal prosecution has been raised by the defendant at a pretrial immunity hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity from criminal prosecution provided in subsection (1).

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 399 Guardianship
SPONSOR(S): Civil Justice & Claims Subcommittee, Diamond
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	12 Y, 1 N, As CS	Aziz	Bond
2) Children, Families & Seniors Subcommittee	12 Y, 1 N	Langston	Brazzell
3) Judiciary Committee		Aziz	Camechis

SUMMARY ANALYSIS

Guardianship is a concept whereby a "guardian" acts for another, called the "ward," whom the law regards as incapable of managing his or her own affairs due to age or incapacity. Before a guardian may be appointed to act for the ward, a court must determine the ward is incapable of handling his or her affairs.

When a petition to determine incapacity is filed, the court appoints a three member examining committee to examine the alleged incapacitated person. If two of the three examining committee members conclude that the person is incapacitated then a hearing is scheduled on the petition. A copy of each examining committee member's report must be served on the petitioner and the attorney for the alleged incapacitated person within three days after filing and at least five days before a hearing is held on the petition. While examining committee reports are typically received into evidence without testimony at the hearings, a recent Florida appellate decision has found these reports are inadmissible hearsay. In order for the examining committee report to be admissible, an examining committee member must be present at the adjudicatory hearing on incapacity.

CS/HB 399 provides an examining committee report is admissible at an adjudicatory hearing on incapacity unless an objection is raised. All or any portion of the examining committee member's reports may be objected to by filing and serving a written objection on the other party prior to the adjudicatory hearing. If no objection is made, then the examining committees' reports are admissible into evidence without further proof. The bill creates time limits for serving the examining committee reports on the parties and for raising objections. The bill also extends the deadline for the adjudicatory hearing, unless otherwise waived by the parties, from two weeks after the filing of the examining committee reports to no more than 30 days after the filing of the last filed report.

Following appointment by the court, the guardian files an annual guardianship plan with the court. Currently, if on a calendar-year basis or annual basis, the guardian must file the annual guardianship plan at least 60 days but no more than 90 days before the last day of the anniversary month that the letters of guardianship were signed. The bill requires the guardian to file the plan within 90 days after the last day of the anniversary month that the letters of guardianship were signed unless the court requires a calendar-year filing. Currently, if the court requires a calendar-year filing the plan must be filed after September 1 but no later than December 1 of the current year. The bill requires that, if the court requires a calendar-year filing, the guardianship plan must be filed on or before April 1 of each year.

Currently, a guardian may not initiate a petition for dissolution of marriage for the ward without receiving court approval and consent from the ward's spouse. The bill removes the requirement to obtain the consent of the ward's spouse.

The bill also removes the statutory cap of $6,000 for funeral, interment, and grave marker expenses from the ward's estate. Additionally, the bill changes the time that the guardian has to file a required annual guardianship plan with the court.

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

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview

Guardianship is a concept whereby a "guardian" acts for another, called the "ward," whom the law regards as incapable of managing his or her own affairs due to age or incapacity. Due to the seriousness of the loss of individual rights, guardianships are generally disfavored, and a guardian may not be appointed if the court finds there is a sufficient alternative to guardianship, such as a power of attorney. There are two main forms of guardianship: guardianship over the person and guardianship over the property (or a combination of both), which may be limited or plenary. Guardianships may be established for both adults and minors. For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is mentally competent, this can be accomplished voluntarily. However, in situations where an individual's mental competence is in question, an involuntary guardianship may be required. The involuntary guardianship is established through an adjudication of incompetence, which is based upon the determination of an examining committee.

Examining Committee

Current Situation

Section 744.331, F.S., sets forth the procedures for determining whether a person is incapacitated. The notice of filing of a petition to determine incapacity and the petition for appointment of a guardian must be read to the alleged incapacitated person.[1] The alleged incapacitated person must be provided with an attorney, who cannot serve as the guardian or counsel for the guardian.[2] Within five days of filing a petition for determination of incapacity, the court must appoint an examining committee consisting of three members, which must include a psychiatrist or physician and two other persons, such as a psychologist, a nurse, social worker, gerontologist, or other qualified persons with sufficient knowledge, skill, experience, or training.[3]

Each committee member must examine the person and then issue a report evaluating the person's mental health, functional ability, and physical health.[4] The examining committee members must each submit their examining reports within 15 days after appointment.[5] Within three days after the report is filed and at least five days before the hearing, a copy of the committee member's report must be served on the petitioner and on the attorney for the alleged incapacitated person.[6] If the committee determines that the person is not incapacitated in any respect, the court must dismiss the petition.[7] However, if two of the three examining committee members conclude the person is incapacitated in some respect, the court proceeds to a hearing on the petition and makes a final determination based on the evidence presented by the parties.[8]

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[1] s. 744.331(1), F.S.
[2] *Id.* at (2).
[3] *Id.* at (3).
[4] *Id.* at (3)(e)-(f).
[5] *Id.* at (3)(e).
[6] *Id.* at (4).
[7] *Id.* at (4).
[8] *Id.* at (5).

While examining committee reports are typically received into evidence without testimony at the hearings, a recent Florida appellate decision has found these reports are inadmissible hearsay.[9] In *Shen v. Parkes*, a petition was filed to determine the incapacity of Bishullang Shen.[10] An adjudicatory hearing was held in which none of the examining committee members testified but the written reports of the examining committee were accepted by the court over Mr. Shen's hearsay objection.[11] The hearsay rule requires any assertion offered as testimony can only be received if it is or has been open to test by cross examination or an opportunity for cross-examination, except as provided otherwise by the rules of evidence, court rules, or by statute.[12] The Fourth District Court of Appeals reversed the trial court's ruling and held the examining committee reports are not an exception to the hearsay rule.[13] Therefore, the Fourth District Court of Appeals reversed the lower court's finding of incapacity because the lower court relied upon inadmissible hearsay.

Due to the *Shen* decision, many practitioners feel compelled to require the attendance of examining committee members at every hearing out of concern over a potential hearsay objection relating to the admission of the examining committee report, even when such an objection may never be asserted.[14]

Effect of the Bill

The bill specifies with whom the examining committee members file their reports on and who must serve the report on the petitioner and his or her attorney. It provides each member of the examining committee will file their report with the clerk of the court within 15 days after appointment. Then, the clerk of the court must serve the report, either through electronic mail or U.S. mail, on the petitioner and the attorney for the alleged incapacitated person within three days of receipt. Accordingly, upon service, the clerk must file a certificate of service in the incapacity proceeding. Both the petitioner and the attorney for the alleged incapacitated person must be served with all reports at least 10 days before the hearing on the petition. If such service is not effectuated, either party may move for a continuance of the hearing. The bill provides that the parties may waive the 10 day requirement and consent to the consideration of the report by the court at the adjudicatory hearing. The bill requires a party objecting to the introduction of the examining committee members' reports to provide notice of the objection prior to the hearing.

The bill provides an examining committee report is admissible at an adjudicatory hearing on incapacity unless one of the parties objects. The bill provides a process for objections to the introduction of the examining committee members' reports by filing and serving a written objection on the other party no later than five days before the hearing. The objection can be to all or any portion of the examining committee members' reports and must state the basis upon which the challenge to admissibility is made. The bill provides that if an objection is timely filed and served, the court must apply the rules of evidence in determining the reports' admissibility. If no objection is made, then the examining committee members' reports are admissible into evidence without further proof.

The bill also extends the deadline for the adjudicatory hearing from two weeks after the filing of the examining committee reports to no earlier than 10 days after the examining committee report is filed and no more than 30 days after the filing of the last filed report. The bill provides the 10 day waiting period following the filing of the last examining committee report may be waived.

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[9] s. 90.801(1)(c), F.S., defines hearsay as a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."
[10] *Shen v. Parkes*, 100 So. 3d 1189,1189 (Fla. 4th DCA 2012).
[11] *Id.* at 1190.
[12] Blacks Law Dictionary, "hearsay rule" (8th Edition).
[13] Florida Probate Rule 5.170 provides "In proceedings under the Florida Probate Code and the Florida Guardianship Law the rules of evidence in civil actions are applicable unless specifically changed by the Florida Probate Code, the Florida Guardianship Law, or these rules."
[14] The Florida Bar, Real Property, Probate, and Trust Law Section, White Paper on Proposed Amendment on F.S. Section 744.331 in Light of *Shen v. Parkes*, (on file with the Civil Justice & Claims Subcommittee).

Filing of Annual Guardianship Report

Current Situation

Following appointment by the court, the guardian files an annual guardianship plan with the court.[15] The court may require the report to be filed either on a calendar-year basis or annual basis. If on an annual basis, the guardian must file the annual guardianship plan at least 60 days but no more than 90 days before the last day of the anniversary month that the letters of guardianship were signed[16]. The plan must cover the coming fiscal year. If the court requires a calendar-year guardianship plan be filed, the plan must be filed after September 1 but no later than December 1 of the current year.[17]

Effect of the Bill

The bill changes the time that a guardian has to file an annual guardianship plan with the court. A guardian is required to file the plan within 90 days after the last day of the anniversary month that the letters of guardianship were signed unless the court requires a calendar-year filing. If the court requires a calendar-year filing, the guardianship plan must be filed on or before April 1 of each year. The latest guardianship plan filed with the court will remain in effect until the court approves the subsequent plan. This aligns the filing of the annual guardianship plan with the filing of the annual accounting report under s. 744.367(2), F.S.

Divorce of Ward

Current Situation

Once a person has been deemed incapacitated and a guardian appointed, the guardian is delegated certain rights of the incapacitated person. For example, once appointed, the guardian is delegated the authority to enter into contracts, sue and defend lawsuits, and to apply for government benefits on behalf of the ward.[18] However, certain rights are not granted to a guardian without court approval. A guardian may not initiate a petition for dissolution of marriage for the ward without receiving court approval.[19]

In order for a guardian to initiate a dissolution of a marriage, a court must be persuaded by clear and convincing evidence that the divorce is in the best interests of the incapacitated person and that the ward's spouse has consented to the divorce. In order for the court to grant the guardian's request on behalf of the ward, the court must:

- Appoint an independent attorney to act on behalf of the incapacitated person,
- Receive as evidence independent medical, psychological, and social evaluations of the ward;
- Personally meet with the ward to obtain its own impression of the person's capacity; and
- Find by clear and convincing evidence that the person lacks the capacity to make a decision about the divorce before the court and that the ward's capacity is not likely to change in the foreseeable future.[20]

A guardian may do all of these steps before the court and, if the ward's spouse does not consent to the divorce, then the guardian is remediless. Often, a guardian is seeking a divorce on behalf of the ward to

[15] s. 744.367(1), F.S.
[16] *Id.*
[17] *Id.*
[18] s. 744.3215(3), F.S.
[19] s. 744.3215(4)(c), F.S.
[20] s. 744.3725(1)-(4), F.S.

stop or thwart abuse by the ward's spouse.[21] By allowing a divorce to be contingent upon the approval of the ward's spouse, current law may allow a spouse's abuse to continue unchecked.

Effect of the Bill

The bill removes the requirement for a ward's spouse's consent when a court reviews a guardian's request to begin dissolution of marriage. However, other statutory requirements remain for a guardian seeking a divorce on behalf of the ward.

Funeral Expenses

Current Situation

The guardian must file a petition for the court's authorization to perform certain duties, including but not limited to paying reasonable funeral, interment, and grave marker expenses for the ward from the ward's estate, up to a maximum of $6,000.[22] This cap of $6,000 was set in 1997.

Effect of the Bill

The bill removes the statutory cap of $6,000 for funeral, interment, and grave marker expenses from the ward's estate. The reasonable amount for funeral costs of the ward will be determined by the court on a case-by-case basis.

B. SECTION DIRECTORY:

Section 1 amends s. 744.331, F.S., relating to procedures to determine incapacity.

Section 2 amends s. 744.367, F.S., relating to duty to file annual guardianship report.

Section 3 amends s. 744.3725, F.S., relating to procedure for extraordinary authority.

Section 4 amends s. 744.441, F.S., relating to powers of guardian upon court approval.

Section 5 reenacts s. 744.3215, F.S., relating to rights of person determined incapacitated.

Section 6 provides an effective date of July 1, 2017.

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.

[21] Bella Feinstein, *A New Solution to an Age-Old Problem: Statutory Authorization for Guardian Initiated Divorces*, NAELA JOURNAL, vol. 10, No. 2, p. 220.
[22] s. 744.441(16), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Examining committee members are paid a reasonable fee for their work and testimony.[23] The examining committee members' fees are paid by the guardianship or, if the guardianship is indigent, by the state.[24] Requiring examining committee members to attend every adjudicatory hearing, even when there are no objections to an examining committee member's report, may be an expensive burden on a guardianship or the state. To the extent that this bill will give notice to when an examining committee member needs to testify, the bill may provide a financial savings to either the party petitioning for a guardianship or the state.

Additionally, the bill may provide increased revenues for funeral homes by removing the $6,000 cap placed on payments for a ward's funeral costs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 23, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Changed the reference of "petitioner's counsel" to "petitioner" to reflect pro se filings;
- Allowed for the waiver of the 10 day period between serving the examining committee report and the adjudicatory hearing;

[23] s. 744.331(7)(a), F.S.
[24] s. 744.331(7)(b), F.S.

- Removed the requirement that only the petitioner and the attorney for the incapacitated person may object to the examining committee report; and
- Added changes to the time for the submission of the annual guardianship report.

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

A bill to be entitled

An act relating to guardianship; amending s. 744.331, F.S.; requiring each examining committee member in a proceeding to determine incapacity to file his or her report with the clerk of the court within a specified timeframe after appointment; requiring the clerk of the court to serve each report on specified persons within a specified timeframe; requiring the clerk of the court to file a certificate of service of each report in the incapacity proceeding; revising the timeframe before the hearing on the petition within which specified parties must be served with all reports; authorizing parties to agree to waive the timeframe; authorizing the petitioner and the alleged incapacitated person to move for a continuance if service is not timely effectuated and to object to the introduction of all or any part of a report by filing and serving a written objection to admissibility on the other party within a specified timeframe; specifying that the admissibility of the report is governed by the rules of evidence; requiring that the adjudicatory hearing be conducted within a specified timeframe after the filing of the last filed report; amending s. 744.367, F.S.; increasing the time that a guardian has to file a required annual guardianship

plan with the court if the court does not require filing on a calendar year basis; changing the time that a guardian has to file a required annual guardianship plan with the court if the court requires calendar-year filing; amending s. 744.3725, F.S.; eliminating the requirement that a court must first find that a ward's spouse has consented to dissolution of marriage before the court may authorize a guardian to exercise specified rights; amending s. 744.441, F.S.; removing the cap on funeral expenses that may be paid from a ward's estate; reenacting s. 744.3215(4), F.S., relating to the rights of persons determined incapacitated, to incorporate the amendment made to s. 744.3725, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraphs (e) and (h) of subsection (3) and paragraph (a) of subsection (5) of section 744.331, Florida Statutes, are amended, and paragraph (i) is added to subsection (3) of that section, to read:

744.331 Procedures to determine incapacity.—

(3) EXAMINING COMMITTEE.—

(e) Each member of the examining committee shall examine

the person. Each examining committee member must determine the alleged incapacitated person's ability to exercise those rights specified in s. 744.3215. In addition to the examination, each examining committee member must have access to, and may consider, previous examinations of the person, including, but not limited to, habilitation plans, school records, and psychological and psychosocial reports voluntarily offered for use by the alleged incapacitated person. Each member of the examining committee must file his or her report with the clerk of the court ~~submit a report~~ within 15 days after appointment.

(h) Within 3 days after receipt of each examining committee member's report, the clerk shall serve the report on the petitioner and the attorney for the alleged incapacitated person by electronic mail delivery or United States mail, and, upon service, shall file a certificate of service in the incapacity proceeding. The petitioner and the attorney for the alleged incapacitated person must be served with all reports at least 10 days before the hearing on the petition, unless the reports are not complete, in which case the petitioner and attorney for the alleged incapacitated person may waive the 10 day requirement and consent to the consideration of the report by the court at the adjudicatory hearing. If such service is not timely effectuated, the petitioner or the alleged incapacitated person may move for a continuance of the hearing ~~A copy of each committee member's report must be served on the petitioner and~~

~~on the attorney for the alleged incapacitated person within 3 days after the report is filed and at least 5 days before the hearing on the petition~~.

(i) The petitioner and the alleged incapacitated person may object to the introduction into evidence of all or any portion of the examining committee members' reports by filing and serving a written objection on the other party no later than 5 days before the adjudicatory hearing. The objection must state the basis upon which the challenge to admissibility is made. If an objection is timely filed and served, the court shall apply the rules of evidence in determining the reports' admissibility. For good cause shown, the court may extend the time to file and serve the written objection.

(5) ADJUDICATORY HEARING.—

(a) Upon appointment of the examining committee, the court shall set the date upon which the petition will be heard. The ~~date for the~~ adjudicatory hearing must be conducted at least 10 days, which time period may be waived, but no more than 30 days, after the filing of the last filed report of the examining committee members ~~set no more than 14 days after the filing of the reports of the examining committee members~~, unless good cause is shown. The adjudicatory hearing must be conducted at the time and place specified in the notice of hearing and in a manner consistent with due process.

Section 2. Subsection (1) of section 744.367, Florida

Statutes, is amended to read:

744.367 Duty to file annual guardianship report.—

(1) Unless the court requires filing on a calendar-year basis, each guardian of the person shall file with the court an annual guardianship plan within 90 days after ~~at least 60 days, but no more than 90 days, before~~ the last day of the anniversary month that the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. If the court requires calendar-year filing, the guardianship plan ~~for the forthcoming calendar year~~ must be filed on or before April 1 of each year. The latest annual guardianship plan approved by the court will remain in effect until the court approves a subsequent plan ~~after September 1 but no later than December 1 of the current year~~.

Section 3. Section 744.3725, Florida Statutes, is amended to read:

744.3725 Procedure for extraordinary authority.—Before the court may grant authority to a guardian to exercise any of the rights specified in s. 744.3215(4), the court must:

(1) Appoint an independent attorney to act on the incapacitated person's behalf, and the attorney must have the opportunity to meet with the person and to present evidence and cross-examine witnesses at any hearing on the petition for authority to act;

(2) Receive as evidence independent medical,

psychological, and social evaluations with respect to the incapacitated person by competent professionals or appoint its own experts to assist in the evaluations;

(3) Personally meet with the incapacitated person to obtain its own impression of the person's capacity, so as to afford the incapacitated person the full opportunity to express his or her personal views or desires with respect to the judicial proceeding and issue before the court;

(4) Find by clear and convincing evidence that the person lacks the capacity to make a decision about the issue before the court and that the incapacitated person's capacity is not likely to change in the foreseeable future; and

(5) Be persuaded by clear and convincing evidence that the authority being requested is in the best interests of the incapacitated person.~~; and~~

~~(6) In the case of dissolution of marriage, find that the ward's spouse has consented to the dissolution.~~

The provisions of this section and s. 744.3215(4) are procedural and do not establish any new or independent right to or authority over the termination of parental rights, dissolution of marriage, sterilization, abortion, or the termination of life support systems.

Section 4. Subsection (16) of section 744.441, Florida Statutes, is amended to read:

744.441 Powers of guardian upon court approval.—After obtaining approval of the court pursuant to a petition for authorization to act, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

(16) Pay reasonable funeral, interment, and grave marker expenses for the ward from the ward's estate~~, up to a maximum of $6,000~~.

Section 5. For the purpose of incorporating the amendment made by this act to section 744.3725, Florida Statutes, in a reference thereto, subsection (4) of section 744.3215, Florida Statutes, is reenacted to read:

744.3215 Rights of persons determined incapacitated.—

(4) Without first obtaining specific authority from the court, as described in s. 744.3725, a guardian may not:

(a) Commit the ward to a facility, institution, or licensed service provider without formal placement proceeding, pursuant to chapter 393, chapter 394, or chapter 397.

(b) Consent on behalf of the ward to the performance on the ward of any experimental biomedical or behavioral procedure or to the participation by the ward in any biomedical or behavioral experiment. The court may permit such performance or participation only if:

1. It is of direct benefit to, and is intended to preserve

the life of or prevent serious impairment to the mental or physical health of the ward; or

2. It is intended to assist the ward to develop or regain his or her abilities.

(c) Initiate a petition for dissolution of marriage for the ward.

(d) Consent on behalf of the ward to termination of the ward's parental rights.

(e) Consent on behalf of the ward to the performance of a sterilization or abortion procedure on the ward.

Section 6. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 529 Soldiers' and Heroes' Monuments and Memorials Protection Act
SPONSOR(S): Criminal Justice Subcommittee; Drake and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 418

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Fields	White
2) Local, Federal & Veterans Affairs Subcommittee	13 Y, 0 N	Darden	Miller
3) Judiciary Committee		Fields LF	Camechis

SUMMARY ANALYSIS

Currently, s. 806.13, F.S., provides that a person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages, by any means, real or personal property belonging to another. Punishment for a violation of s. 806.13, F.S., ranges from a second degree misdemeanor to a third degree felony depending on the value of the damage caused and location of the damage. Criminal mischief that damages a house of worship, public telephone, or sexually violent predator detention facility constitutes a third degree felony.

The bill makes it a third degree felony to willfully and maliciously injure, damage, or deface a memorial which honors or commemorates a soldier, a military organization or unit, a first responder, or an astronaut.

The bill may increase the need for prison beds. The Criminal Justice Impact Conference has not yet met to consider the bill. The bill may reduce the need for jail beds to the extent that criminal mischief, which damages a soldier's or hero's memorial, is now a third degree felony, rather than a second or first degree misdemeanor.

The bill provides an effective date of October 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Criminal Mischief

Section 806.13, F.S., provides that a person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages real or personal property belonging to another. Such injury or damage includes, but is not limited to, the placement of graffiti thereon or other acts of vandalism.[1] Criminal mischief varies in severity depending on the value of the damage caused and is punishable as a:

- Second degree misdemeanor[2] if the damage to such property is $200 or less.[3]
- First degree misdemeanor[4] if the damage to such property is greater than $200 but less than $1,000.[5]
- Third degree felony[6] if the damage to such property is $1,000 or greater, or if there is interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which costs $1,000 or more in labor and supplies to restore.[7]

If the person has one or more previous convictions for violating s. 806.13(1), F.S., then any offense under that subsection shall be reclassified as a third degree felony.[8] Moreover, as discussed below, s. 806.13, F.S., specifies enhanced penalties when the criminal mischief occurs in certain locations, with the use of graffiti, or is committed by minors.

Houses of Worship

A person who willfully and maliciously defaces, injures, or damages, by any means, any church, synagogue, mosque, or other place of worship, or any religious article contained therein, commits a third degree felony if the damage to the property is greater than $200.[9]

Public Telephones

A person commits a third degree felony if:

- The person, without the consent of the owner, willfully destroys or substantially damages any public telephone, or telephone cables, wires, fixtures, antennas, amplifiers, or any other apparatus, equipment, or appliances;

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[1] Section 806.13(1)(a), F.S.
[2] A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a fine not exceeding $500. ss. 775.082 and 775.083, F.S.
[3] Section 806.13(1)(b)1., F.S.
[4] A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a fine not exceeding $1,000. ss. 775.082 and 775.083, F.S.
[5] Section 806.13(1)(b)2., F.S.
[6] A third degree felony is punishable by a term of imprisonment not exceeding 5 years and a fine not exceeding $5,000. ss. 775.082 and 775.083, F.S.
[7] Section 806.13(1)(b)3., F.S.
[8] Section 806.13(1)(b)4., F.S.
[9] Section 806.13(2), F.S.

- The destruction or damage renders a public telephone inoperative or opens the body of a public telephone; and
- A conspicuous notice of the provisions of this subsection and its penalties is posted on or near the destroyed or damaged instrument and visible to the public at the time of the commission of the offense.[10]

Sexually Violent Predator Facility

A person who willfully and maliciously defaces, injures, or damages, by any means, a sexually violent predator detention or commitment facility, or any other property contained therein, commits a third degree felony if the damage to property is greater than $200.[11]

Graffiti

A person who violates s. 806.13, F.S., when the violation is related to the placement of graffiti shall, in addition to any other criminal penalty, be required to pay a fine of at least:

- $250 for a first conviction.
- $500 for a second conviction.
- $1,000 for a third or subsequent conviction.[12]

In addition, a person convicted of an offense under 806.13, F.S., when the offense is related to the placement of graffiti, shall be required to perform at least 40 hours of community service and, if possible, perform at least 100 hours of community service that involves the removal of graffiti.[13]

The parent or legal guardian of a minor who has placed graffiti is liable for payment of the fine.[14] The court may waive this requirement if it finds the person does not have the ability to pay the fine. The court may also direct the Department of Highway Safety and Motor Vehicles to revoke the minor's driver license for up to one year.[15] This period may be reduced by performing community service at the rate of a one day reduction for each hour of community service performed.[16]

Effect of the Bill

The bill amends s. 806.13(5), F.S., to make it a third degree felony for a person to willfully and maliciously injure, damage, or deface a soldier's or hero's memorial. The term "soldier's or hero's memorial" means real or personal property belonging to another person which honors or commemorates:

- A soldier or member of the military for the original 13 colonies, the United States, the District of Columbia, or a territory of the United States.
- A military organization or unit of the original 13 colonies, the United States, the District of Columbia, or a territory of the United States.
- A first responder[17] or an astronaut for the National Aeronautics and Space Administration.

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[10] Section 806.13(3), F.S.
[11] Section 806.13(4), F.S.
[12] Section 806.13(6)(a), F.S.
[13] Section 806.13(6)(b), F.S.
[14] Section 806.13(6)(c), F.S.
[15] Section 806.13(7)(a), F.S. If the minor's driver license is already suspended or revoked, the court may extend the period of suspension or revocation up to one year. s. 806.13(7)(b), F.S. If the minor is below the legal age for a driver's license, the court may instruct the Department of Highway Safety and Motor Vehicles to delay issuance of a license for up to one year. s. 806.13(7)(c), F.S..
[16] Section 806.13(8), F.S.
[17] Section 112.1815, F.S.. The term "first responder" means "a law enforcement officer as defined in s. 943.10, a firefighter as defined in s. 633.102, or an emergency medical technician or paramedic as defined in s. 401.23 employed by state or local government. A

The bill also conforms a cross-reference in s. 806.13(9), F.S.

The bill takes effect October 1, 2017.

B. SECTION DIRECTORY:

Section 1: Establishes the "Soldiers' and Heroes' Memorials Protection Act."

Section 2: Amends s. 806.13, F.S., relating to criminal mischief.

Section 3: Provides an effective date of October 1, 2017.

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 bill may increase the need for prison beds because it creates a new third degree felony. The Criminal Justice Impact Conference has not yet met to consider this bill.

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 may reduce the need for jail beds to the extent that criminal mischief, which damages a soldier's or hero's memorial, is now a third degree felony, rather than a second or first degree misdemeanor.

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 provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS:

- Includes property that is not owned by a governmental entity or museum, historical society, or similar organization.
- Includes memorials for first responders.

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

A bill to be entitled

An act relating to the Soldiers' and Heroes' Memorials Protection Act; providing a short title; amending s. 806.13, F.S.; providing criminal penalties for criminal mischief that causes damage to certain memorials that honor or commemorate a soldier, member of the military, a military organization or unit, a first responder, or an astronaut; defining the term "soldier's or hero's memorial"; conforming a cross-reference; providing an effective date.

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

Section 1. This act may be cited as the "Soldiers' and Heroes' Memorials Protection Act."

Section 2. Present subsections (5) through (9) of section 806.13, Florida Statutes, are redesignated as subsections (6) through (10), respectively, present subsection (8) is amended, and a new subsection (5) is added to that section, to read:

806.13 Criminal mischief; penalties; penalty for minor.—

(5) A person who willfully and maliciously injures, damages, or defaces a soldier's or hero's memorial commits a felony of the third degree punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "soldier's or hero's memorial" means real or personal property

belonging to another person which honors or commemorates:

(a) A soldier or member of the military for the original 13 colonies, the United States, the District of Columbia, or a territory of the United States;

(b) A military organization or unit of the original 13 colonies, the United States, the District of Columbia, or a territory of the United States; or

(c) A first responder as defined in s. 112.1815 or an astronaut for the National Aeronautics and Space Administration.

(9)~~(8)~~ A minor whose driver license or driving privilege is revoked, suspended, or withheld under subsection (8) ~~(7)~~ may elect to reduce the period of revocation, suspension, or withholding by performing community service at the rate of 1 day for each hour of community service performed. In addition, if the court determines that due to a family hardship, the minor's driver license or driving privilege is necessary for employment or medical purposes of the minor or a member of the minor's family, the court shall order the minor to perform community service and reduce the period of revocation, suspension, or withholding at the rate of 1 day for each hour of community service performed. As used in this subsection, the term "community service" means cleaning graffiti from public property.

Section 3. This act shall take effect October 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HJR 721 Selection and Duties of County Officers
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee, Fischer and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SJR 134

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	15 Y, 0 N, As CS	Miller	Miller
2) Judiciary Committee		Camechis	Camechis
3) Government Accountability Committee			

SUMMARY ANALYSIS

CS/HJR 721 proposes to amend the State Constitution by limiting the authority to alter the manner of selecting the county property appraiser. As a result, the office of sheriff would be filled only by vote of the county electors for a term of four years. The joint resolution also makes art. VIII, s. 1(d), of the Constitution the sole authority over the selection, duties, and alteration of the offices of the Five Constitutional Officers: property appraiser, tax collector, sheriff, supervisor of elections, and clerk of the circuit court.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. CS/HJR 721 provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

The joint resolution impacts state funds to the extent that the cost of placing the constitutional amendment on the ballot must be administered by the Department of State. The department has estimated the printing and publication costs for advertising a joint resolution and other necessary materials could be at least $108,459.33, possibly greater, depending on the final wording of the joint resolution and the resulting ballot language. This estimate is based on the cost to advertise constitutional amendments for the 2016 general election which was $117.56 per word.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.

The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Article VIII of the State Constitution establishes the authority for home rule by counties and municipalities in Florida. The Legislature is required to divide the state into counties[1] and has the authority to choose to create municipalities.[2]

Pursuant either to general[3] or special law, a county government may be adopted by charter approved by the county voters. A county without a charter has such powers of self-government as provided by general[4] or special law.[5] A county with a charter has all powers of self-government *not inconsistent* with general law or special law approved by the county voters.[6] Article VIII, s. 6(e), of the Florida Constitution incorporates by reference sections of the 1885 Constitution, providing unique authorization[7] for specific home rule charters including those of Duval[8] and Miami-Dade Counties.[9] Currently, twenty Florida counties have adopted charters.[10]

The present Constitution creates five specific county officers: sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court (collectively, the Five Constitutional Offices/Officers).[11] The clerk of the circuit court also serves as the ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of county funds. Each officer is elected separately by the voters of the county for terms of four years. These officers have duties prescribed in general law.[12]

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[1] Art. VIII, s. 1(a), Fla. Const.
[2] Art. VIII, s. 2(a), Fla. Const.
[3] Section 125.60, F.S.
[4] Ch. 125, Part I, F.S.
[5] Art. VIII, s. 1(f), Fla. Const.
[6] Art. VIII, s. 1(g), Fla. Const.
[7] Article VIII, s. 6(e), Fla. Const., states that specific provisions for Duval, Miami-Dade, Monroe, and Hillsborough Counties "shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article."
[8] The consolidated government of the City of Jacksonville was created by ch. 67-1320, Laws of Florida, adopted pursuant to Art. VIII, s. 9, Fla. Const. (1885).
[9] In 1956, an amendment to the 1885 Florida Constitution provided Dade County with the authority to adopt, revise, and amend from time to time a home rule charter government for the county. The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home rule status. Article VIII, s. 11(5) of the 1885 State Constitution, now incorporated by reference in art. VIII, s. 6(e), Fla. Const. (1968), further provided the Metropolitan Dade County Home Rule Charter, and any subsequent ordinances enacted pursuant to the charter, may conflict with, modify, or nullify any existing local, special, or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Charter may implicitly, as well as expressly, amend or repeal a special act that conflicts with a Miami-Dade County ordinance. Effectively, the Miami-Dade Charter can only be altered through constitutional amendment, general law, or County actions approved by referendum. *Chase v. Cowart*, 102 So. 2d 147, 149-50 (Fla. 1958).
[10] Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval (consolidated government with the City of Jacksonville, ch. 67-1320, Laws of Fla.), Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla Counties. The Local Government Formation Manual 2017-2018, Appendix B, at 98-103.
[11] Art. VIII, s. 1(d), Fla. Const. In a separate subsection, the Constitution requires counties to be governed by a board of county commissioners unless otherwise provided in their respective charters, if any. Art. VIII, s. 1(e), Fla. Const., which is not affected by the joint resolution.
[12] *See* ch. 30, F.S. (stating certain duties of the sheriff as a Constitutional officer); ch. 197, F.S. (stating certain duties of the tax collector as a Constitutional officer); ch. 193, Part I, F.S. (stating certain duties of the property appraiser as a Constitutional officer); ch. 102, F.S. (stating certain duties of the supervisor of elections as a Constitutional officer); and ch. 28, F.S. (stating certain duties of the clerk of the circuit court as a Constitutional officer).

The selection and appointment of county officers has always been a matter of uniform policy applicable throughout Florida. The office of sheriff and clerk of the court have been an integral part of county government in Florida since 1822.[13] Beginning in 1845, the Governor appointed the sheriff and the clerk of the court in each county as a continuation of statutory authority.[14] In contrast, by law the General Assembly annually appointed the county tax assessor.[15] With the adoption of the Constitution of 1868, the Governor appointed not only the sheriff and the clerk of the court but also the county tax assessor and tax collector (both subject to the consent of the Senate), and the county treasurer, surveyor, superintendent of common schools, and the five county commissioners.[16] However, since 1885 the sheriff, clerk of court, assessor of taxes, and tax collector generally have been elected by the county voters.[17] Exceptions to this constitutional requirement were made by the statewide electorate in 1934[18] and 1956.[19] As discussed below, while the Constitution of 1968 authorized revision or abolition of the county constitutional offices under certain conditions, the majority of counties retain the elected constitutional officers with only a few acting to abolish these provisions.

The Five Constitutional Offices may be altered only through charter provision or by special act approved by the voters of the county.[20] All non-charter counties have the Five Constitutional Officers with statutorily prescribed duties. The charters of eight counties have changed the manner of selection of at least one of the Five Constitutional Officers or restructured or abolished at least one of the Five Constitutional Offices and transferred the powers to another county office.[21]

Brevard County

Brevard County "expressly preserved" the offices of the sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court as departments of county government, rather than constitutional offices.[22] The county reiterated the ability to transfer or add to the powers of each of the county officers.[23] The county has transferred the powers of the clerk of circuit court as auditor, and custodian of county funds to the county manager.[24] Each of the officers remains elected for four year terms.[25]

Broward County

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[13] Ch. 1, ss. 7, 10, Acts of the Legislative Council of the Territory of Florida (1822), at http://edocs.dlis.state.fl.us/fldocs/leg/actterritory/ (last accessed 2/25/2017).

[14] The Constitution of 1838 authorized the General Assembly to provide for the appointment, election, or removal of officers not otherwise expressly addressed in the Constitution. Art. VI, s. 19, Fla. Const. (1838). That Constitution also carried over all act of the Territorial Legislative Council not in conflict with the Constitution until otherwise changed by law. Art. XVII, s. 1, Fla. Const. (1838).

[15] Ch. 10, s. 9, Laws of Fla. (1845). The General Assembly was the name for the Legislature under the 1838 Constitution. At this time the sheriff acted *ex officio* as the county tax collector. Ch. 10, s. 19, Laws of Fla. (1845).

[16] Art. V, s. 19, Fla. Const. (1868).

[17] Art. VIII, s. 6, Fla. Const. (1885, as amended); art. VIII, s. 1(d), Fla. Const. (1968).

[18] General election of 1934, approving among other amendments SJR 113, creating art. VIII, s. 9, Fla. Const. (1885, as amended). This amendment authorized the Legislature to provide by law for the consolidation of government in Duval County but required the continuation of offices of sheriff and clerk of court.

[19] General election of 1956, approving among other amendments SJR 1046, creating art. VIII, s. 11, Fla. Const. (1885, as amended). This amendment authorized the voters in Dade County to adopt a home rule charter, including the abolishment of any constitutional office provided the powers of that office were properly transferred and exercised.

[20] Art. VIII, s. 1(d), Fla. Const.

[21] Brevard, Broward, Clay, Duval, Miami-Dade, Orange, Osceola, and Volusia Counties.

[22] Brevard County Florida, Code of Ordinances, Charter, Art. 4, s. 4.1, *available at* https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances (last accessed 2/25/2017).

[23] Brevard County Florida, Code of Ordinances, Charter, Art. 4, ss. 4.2.1, 4.2.2, 4.2.3, 4.2.4 & 4.2.5, *available at* https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances (last accessed 2/25/2017).

[24] Brevard County Florida, Code of Ordinances, Charter, Art. 2, s. 2.9.4, and Art. 4, s. 4.2.1, and Code of Ordinances, ch. 2, ss. 2-68 & 2-73, *available at* https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances (last accessed 2/25/2017).

[25] Brevard County Florida, Code of Ordinances, Charter, Art. 4, s. 4.1.1, *available at* https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances (last accessed 2/25/2017).

Broward County has not altered the constitutionally elected offices and duties of the sheriff, property appraiser, and supervisor of elections.[26] However, the office of the tax collector was abolished and the duties were transferred to the Department of Finance and Administrative Services, headed by the Finance and Administrative Services Director appointed by the county administrator.[27] Though the clerk of the circuit court retains the status of constitutional officer, the clerk's constitutional duties as clerk of the county commission were transferred to the county administrator and the clerk's fiscal duties were transferred to the Department of Finance and Administrative Service.[28]

Clay County

Clay County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.[29] Although the clerk of the circuit court also retains the status of constitutional officer, the clerk's constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county manager.[30]

Duval County (Consolidated Government of the City of Jacksonville)

The Charter of the City of Jacksonville has not altered the constitutionally elected offices and duties of the sheriff or the clerk of the circuit court.[31] The clerk retains the status of constitutional officer but the clerk's duties as clerk of the county commission were transferred to the Council Secretary and the constitutional duties as auditor were transferred to the Council Auditor.[32] While the City Charter does not refer to the supervisor of elections, the property appraiser, or the tax collector as constitutional officers, each must be elected.[33] All Five Constitutional Officers are limited to two consecutive full terms in office, after which the incumbent officer must wait a term before again being eligible for the same office.[34]

Miami-Dade County

Miami-Dade County abolished the constitutional offices of the sheriff, tax collector, supervisor of elections, and property appraiser, transferred these powers to the mayor, and granted the mayor the discretion to sub-delegate the powers.[35] The duties of the sheriff were transferred to the Police

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[26] BROWARD COUNTY FLORIDA, Code of Ordinances, Part I, Charter, "Definitions", Oct. 24, 2016, *available at* https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances (last accessed 2/25/2017).
[27] BROWARD COUNTY FLORIDA, Code of Ordinances, Part I, Charter ss. 3.03 & 3.06, Oct. 24, 2016, *available at*, https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances (last accessed 2/25/2017).
[28] BROWARD COUNTY FLORIDA, Code of Ordinances, Part I, Charter, "Definitions" & ss. 3.03.G & 3.06.B, Oct. 24, 2016, *available at* https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances (last accessed 2/25/2017).
[29] CLAY COUNTY FLORIDA, Home Rule Charter, Article III, s. 3.1, 2014 Edition, *available at*, http://www.claycountygov.com/about-us (last accessed 2/25/2017).
[30] CLAY COUNTY FLORIDA, Home Rule Charter, Article III, ss. 3.1 & 2.3, 2014 Edition, *available at* http://www.claycountygov.com/about-us (last accessed 2/25/2017).
[31] Duval County currently lacks the authority to alter the methods by which the clerk of the circuit court or the sheriff are elected, nor can the County abolish the offices. *See* ch. 92-341, s. 1, Laws of Fla.; Charter and Laws of the City of Jacksonville, Florida Part A, ss. 8.01, & 12.06, *available at* https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA (last accessed 2/25/2017); Art. VIII, s. 6(e), Fla. Const, (1968), incorporating by reference Art. VIII, s. 9, Fla. Const. (1885, as amended in 1934).
[32] Charter and Laws of the City of Jacksonville, Florida, Part A, s. 12.06, *available at*, https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA; JACKSONVILLE COUNTY FLORIDA, Code of Ordinances, Title II, ss. 11.103 & 13.103, *available at*, https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA (last accessed 2/25/2017).
[33] Charter and Laws of the City of Jacksonville, Florida, Part A, ss. 9.02, 10.02, & 11.02, , *available at* https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA (last accessed 2/25/2017).
[34] Charter and Laws of the City of Jacksonville, Florida, Part A, ss. 8.04, 9.04, 10.04, 11.04, & 12.11, *available at* https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA (last accessed 2/25/2017).
[35] MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I, s. 9.01, Nov. 4, 2014, available at https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH (accessed

Department, the director of which is appointed by the mayor.[36] The duties of the tax collector were transferred to the Department of Finance, the director of which is jointly appointed by the mayor and the clerk of court.[37] The county property appraiser, although not retained as a constitutional office, remains an elected position.[38] The duties of the supervisor of elections were transferred to the Elections Department, the director of which is appointed by the mayor.[39] The clerk of the circuit court remains a constitutional, elected officer with some changes in duties.[40] Although the clerk is still the clerk of the County Commission, the clerk's financial recorder and custodian duties were transferred to the Department of Financial Services and the clerk's auditing duties were transferred to the Commission Auditor.[41]

Orange County

Orange County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser,[42] and supervisor of elections.[43] Although the clerk of the circuit court also retains the status of constitutional officer,[44] the clerk's constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county comptroller.[45] The county charter provides for term limits: beginning with terms commencing after January 1, 2015, a constitutional officer may serve four consecutive full terms before having to sit out at least one election cycle for that position.[46]

Osceola County

Osceola County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections. The clerk of the circuit court retains the status

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12/19/2016). In the Charter, the supervisor of elections is referred to as the "supervisor of registration" and the property appraiser as the "county surveyor." *See,* id. at Part I, s. 9.01.C..

[36] Historically, the Miami-Dade Police Director was appointed by the county manager. This appointment power was subsequently reallocated to the mayor when the office of county manager was abolished. *See* Miami-Dade County Florida, Code of Ordinances, ss. 2-91, 2-92 & 1-4.4 *available at* https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIIICOOR_CH2AD_ARTXIIMIDEPODE (last accessed 2/25/2017).

[37] MIAMI-DADE COUNTY FLORIDA, Constitutional Amendment and Charter, Part I, s. 5.03, Nov. 4, 2014, *available at* https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH (last accessed 2/25/2017).

[38] MIAMI-DADE COUNTY FLORIDA, Constitutional Amendment and Charter, Part I, s. 5.04.A, Nov. 4, 2014, *available at* https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH (last accessed 2/25/2017).

[39] Though the Miami-Dade charter and ordinances do not expressly so state, the supervisor of elections is an appointed official. See MIAMIDADE.GOV, County Departments, http://miamidade.gov/wps/portal/Main/departments (http://miamidade.gov/wps/portal/Main/departments). *See also* Miami-Dade County Florida, Code of Ordinances, s. 12-11(a).

[40] MIAMIDADE.GOV, County Departments, http://miamidade.gov/wps/portal/Main/departments (last accessed 2/25/2017).

[41] MIAMIDADE.GOV, Miami-Dade County Finance Department, http://www.miamidade.gov/finance/ (last accessed 2/25/2017); MIAMI-DADE COUNTY FLORIDA, Constitutional Amendment and Charter, Part I, s. 9.10, Nov. 4, 2014, *available at* https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH (last accessed 2/25/2017).

[42] At one point the county abolished the constitutional offices of sheriff, tax collector, and property appraiser but ultimately reconstituted the constitutional offices. ORANGE COUNTY FLORIDA, Charter, s. 703, Oct. 31, 2016 *available at* https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances (last accessed 2/25/2017).

[43] ORANGE COUNTY FLORIDA SUPERVISOR OF ELECTIONS, *About the Supervisor*, http://www.ocfelections.com/aboutbillcowles.aspx (accessed 12/19/2016).

[44] ORANGE COUNTY FLORIDA, Code of Ordinances, Part I, s. 2-66, Oct. 31, 2016 *available at* https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances (last accessed 2/25/2017).

[45] ORANGE COUNTY FLORIDA, Code of Ordinances, Part I, s. 2-67, Oct. 31, 2016 *available at* https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances (last accessed 2/25/2017).

[46] Orange County Florida, Charter, s. 703.D, Oct. 31, 2016 *available at* https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances (last accessed 2/25/2017).

of an elected constitutional officer but the clerk's duties as clerk of the county commission, auditor, and custodian of funds were transferred to the county manager.[47]

Volusia County

In 1970 the Legislature approved a charter government for Volusia County that was adopted by the county voters in a referendum.[48] The charter abolished the constitutional offices of the sheriff, tax collector, supervisor of elections, and property appraiser,[49] transferring these powers to new charter offices. The duties of the sheriff were transferred to the Department of Public Safety,[50] later to be divided with the Department of Corrections.[51] The duties of the tax collector were transferred to the Department of Finance.[52] The duties of the property appraiser were transferred to the Department of Appraisal.[53] The duties of the supervisor of elections were transferred to the Department of Elections.[54] The sheriff, property appraiser, and supervisor of elections are elected directors of their respective offices.[55] The tax collector is appointed by the county manager and confirmed by the county council.[56] The clerk of the circuit court remains a constitutionally elected officer[57] except that the clerk's constitutional duties as clerk of the county commission and auditor and custodian of county funds were transferred to and divided between the Department of Central Services and the Department of Finance.[58]

Selection & Removal Procedures

In addition to whether the Five Constitutional Officers are elected or appointed, some counties provide in their charters for term limits, recall procedures, or the non-partisan election of these officers. While not expressly identified in art. VIII, s. 1(d), of the Constitution, these additional "selection and removal procedures" are not interpreted as affecting the selection of the Five Constitutional Officers.

There is no constitutional or statutory prohibition limiting the ability of charter counties to impose additional selection and removal procedures on the Five Constitutional Officers. The broad home rule

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[47] OSCEOLA COUNTY FLORIDA, Home Rule Charter, Article III, s. 3.01, Aug. 11, 2015, *available at* https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534 (last accessed 2/25/2017).
[48] Ch. 70-966, Laws of Fla. The charter was adopted in a referendum held on June 30, 1970.
[49] Ch. 70-966, s. 601.1, Laws of Fla.
[50] Ch. 70-966, s. 601.1(2), Laws of Fla.
[51] VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 601.1(2), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed 3/2/2017).
[52] Ch. 70-966, s. 601.1(1)(a), Laws of Fla., now codified as VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 601.1(1), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed 2/25/2017).
[53] Ch. 70-966, s. 601.1(3), Laws of Fla. The department was later renamed the Department of property appraisal. VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 601.1(3), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed 2/25/2017).
[54] Ch. 70-966, s. 601.1(4), Laws of Fla., now codified as VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 601.1(4), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed 2/25/2017).
[55] VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter ss. 401, 601.1(1)(b), & 602.1, https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed 3/2/2017).
[56] VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 2-111(a), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed 2/25/2017); Organizational chart, http://www.volusia.org/government/county-council/government-organizational-chart.stml (last accessed 2/25/2017).
[57] Ch. 70-966, s. 503, Laws of Fla.
[58] Ch. 70-966, s. 601.1(1)(b), Laws of Fla.; VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 601.1 (1)(b) & (5) https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed 2/25/2017).

power of counties allows them to act so long as the action taken is not "inconsistent with general law, or . . . special law."[59] This suggests that counties can currently modify their selection or removal procedures within the existing art. VIII, s. 1(d) framework through charter amendment or special law.[60]

Term Limits

Three charter counties have imposed term limits on one or more of the Five Constitutional Officers.[61] Although the imposition of term limits on the Five Constitutional Officers is neither constitutionally or statutorily prohibited nor expressly endorsed, the imposition of term limits currently is interpreted to be within the broad home rule power of charter counties.[62]

Recall

Five counties have charters expressly providing for the recall of one or more of the Five Constitutional Officers.[63] Regardless of whether a county charter includes a recall provision, counties have independent statutory authority to conduct a recall of any of the Five Constitutional Officers.[64]

Non-partisan Elections

Seven counties require non-partisan elections for some or all elections of the Five Constitutional Officers.[65] Non-partisan election of the Five Constitutional Officers is neither constitutionally nor statutorily prohibited and is therefore within the broad home rule power of charter counties.[66]

1885 Constitutional Provisions Incorporated by Reference

The Florida Constitution of 1968 expressly incorporated from the 1885 Constitution four sections providing for consolidated or home rule government in four counties:[67] Duval,[68] Monroe,[69] Dade (later renamed Miami-Dade),[70] and Hillsborough.[71] These incorporated provisions were to "remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall

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[59] Art. VIII, s. 1(g), Fla. Const.

[60] Current statute and case law supports this principle. *See* s. 100.361, F.S. (providing that whether or not a charter county adopts a recall provision, the county may exercise recall authority); *Telli v. Broward County*, 94 So. 3d 504, 512-13 (Fla. 2012) (allowing charter counties to adopt term limits on county commissioners and explicitly overruling a prior case which barred this in the case of the Five Constitutional Officers).

[61] Duval, Orange, and Sarasota Counties.

[62] *Telli v. Broward County*, supra at n. 52.

[63] Brevard, Clay, Duval, Miami-Dade, and Sarasota Counties.

[64] Section 100.361, F.S.

[65] Lee, Leon, Miami-Dade, Orange, Palm Beach, Polk, and Volusia Counties. The Legislature expressly provided for non-partisan elections under the charter for Volusia County. Ch. 70-967, Laws of Fla.

[66] *See* Art. III s. 11(a)(1), Fla. Const. (prohibiting the Legislature from enacting special laws which alter local election procedure but excepting charter counties); Ch. 105, F.S. (providing for non-partisan elections and procedure).

[67] Art. VIII, s. 6(e), Fla. Const.

[68] Art. VIII, s. 9, Fla. Const. (1885).

[69] Art. VIII, s. 10, Fla. Const. (1885).

[70] Art. VIII, s. 11, Fla. Const. (1885. Included within the home rule powers authorized by the amendment to the 1885 Constitution was the authority to change the County's name. Art. VIII, s. 11(1)(h), Fla. Const. (1885). In 1997, the County adopted ordinance 97-212, amending the charter and changing the official name to Miami-Dade County. Art. 10, s. 10.01, Miami-Dade County Home Rule Charter, at https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH_ART10NACO (accessed 12/19/2016).

[71] Art VIII, s. 24, Fla. Const. (1885). In 1983, Hillsborough County enacted a new charter pursuant to art. VIII, s. 1, Fla. Const. (1968), rather than art. VIII, s. 24 (1885 Constitution), incorporated by reference through art. VIII s. 6(e), Fla. Const. *See* Hillsborough County Florida, Charter, art. 1, s. 1.01, November 2012, *available at* https://www.municode.com/library/fl/hillsborough_county/codes/code_of_ordinances,_part_a?nodeId=CHHICO_APXALESTPRORNO83-9 (accessed 12/19/2016).

expressly adopt a charter or home rule plan pursuant to this article."[72] Whether amending art. VIII, s. 1(d) alone would be sufficient to make its provisions applicable to these four counties is unclear. Accordingly, the joint resolution specifies that notwithstanding art. VIII, s. 6(e), of the present Constitution, the manner of selection, length of terms, or abolition of office and transfer of powers of the property appraiser for all counties shall be controlled exclusively by art. VIII, s. 1.

Effect of the Joint Resolution

If the joint resolution is adopted and the proposed amendment is approved by the voters, the resulting limitation on revising the status, duties, or office of the sheriff will have no impact on non-charter counties[73] or those charter counties that retained the Five Constitutional Officers without any changes to their selection or authority.[74] Counties whose charters revised or abolished one or more constitutional offices also would be unaffected provided their charters did not revise the duties of the sheriff or abolish the office and continue to require the sheriff be elected to a term of four years.[75] Counties whose charters revised the duties, abolished the office, or do not provide for an elected sheriff would be required to conform the charter and county ordinances to the new constitutional provision.[76] Finally, the proposed amendment makes the provisions of art. VIII, s. 1(d), of the Constitution the exclusive provision for the selection, length of terms, abolition of office, and transfer of duties of the sheriff in each county.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The joint resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose. If approved by the voters, the amendment will take effect on January 8, 2019.[77]

B. SECTION DIRECTORY:

As this legislation is a joint resolution proposing a constitutional amendment, it does not contain bill sections. The joint resolution proposes to amend art. VIII, s. 1(d) of the State Constitution, to limit the authority for counties to alter the manner of selecting the property appraiser, to alter the duties of the office, or to abolish the office and transfer all duties prescribed by general law to another office. If approved by the voters, the amendment will take effect on January 8, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The joint resolution does not have a fiscal impact on state revenues.

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[72] There is a strong presumption that where constitutional language is readopted, the legislature is aware of existing judicial interpretations and accordingly readopts the prior judicial construction unless the constitutional language is changed to abrogate it. *Fla. House of Representatives v. League of Women Voters of Fla.*, 118 So. 3d 198, 205 (Fla. 2013); *Fla. Dep't of Revenue v. City of Gainesville*, 918 So. 2d 250, 264 (Fla. 2005); *Advisory Opinion to Governor*, 96 So. 2d 541, 546 (Fla. 1957); *State ex rel. West v. Butler*, 69 So. 771, 780-82 (Fla. 1915).

[73] Baker, Bay, Bradford, Calhoun, Citrus, Collier, DeSoto, Dixie, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lake, Levy, Liberty, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okaloosa, Okeechobee, Pasco, Putnam, Santa Rosa, St. Johns, St. Lucie, Sumter, Suwannee, Taylor, Union, Walton, and Washington Counties.

[74] Alachua, Charlotte, Columbia, Hillsborough, Lee, Leon, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Wakulla Counties.

[75] Broward, Clay, Duval, Orange , and Osceola.

[76] Brevard, Miami-Dade, and Volusia.

[77] Unless otherwise provided, an amendment approved by at least sixty percent of the electors voting on the measure takes effect on the first Tuesday after the first Monday in January following the election. Art. XI, s. 5(e), Fla. Const.

2. Expenditures:

Article XI, s. 5(d) of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately before the week the election is held. The Department of State, Division of Elections stated the average cost per word to advertise an amendment to the State Constitution was $117.56 for 2016. The department has estimated the publication costs for advertising the joint resolution will be at least $108,459.33, possibly greater, depending on the final wording of the joint resolution and the resulting ballot language.[78].

The department normally is the defendant in lawsuits challenging proposed amendments to the Florida Constitution. The cost for defending these lawsuits has ranged from $10,000 to $150,000, depending on a number of variables.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have a fiscal impact on local revenues.

2. Expenditures:

The joint resolution will have no impact on non-charter counties or those charter counties that retained the Five Constitutional Officers without any changes to their selection or authority. A county whose charter provides for selecting the property appraiser other than by election to a term of four years would incur an indeterminate negative fiscal impact to the extent of having to revise its charter and ordinances to conform to the revised constitutional requirement.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

See, Fiscal Impact on State Government and Local Governments, above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The joint resolution will not create a general law requiring a county or municipality to spend funds or take an action requiring expenditures, reducing the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate, or reducing the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

Adoption of Proposed Amendment

Article XI, s. 1 of the State Constitution, provides for proposed changes to the Constitution by the Legislature:

[78] 2017 Agency Legislative Bill Analysis, Department of State, HB 1 (2/15/2017), available to Legislators and staff at http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=9871 (last accessed 3/2/2017), and a copy of which is maintained on file by the Local, Federal & Veterans Affairs Subcommittee.

SECTION 1: **Proposal by legislature.** – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

If passed by the Legislature, the proposed amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. Submission of a proposed amendment at an earlier special election requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.[79] The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published.[80]

Sixty percent voter approval is required for a proposed constitutional amendment to pass. A proposed amendment or revision approved by the requisite vote of the electors is effective as an amendment to or revision of the state constitution on the first Tuesday after the first Monday in January following the election.[81]

Term Limits on Constitutional Officers

Imposing term limits on some or all of the Five Constitutional Officers could be seen as impacting the manner in which these officers are selected, a charter authority that will be removed if the amendment proposed in the joint resolution is approved by the voters. The current interpretation of art. VIII, s. 1(d) by the Florida Supreme Court is that charter counties have the ability to impose term limits on elected county officers.[82] However, while this interpretation references the present authority of charter counties to revise the manner of selecting the Five Constitutional Officers, the Court clearly based its decision on the "broad home rule authority granted charter counties under the Florida Constitution"[83] and the fact that the Constitution does not expressly prohibit the imposition of term limits by charter counties on the Five Constitutional Officers.[84] Therefore, removing the authority of a charter county to change the manner of election or to abolish and reconstitute the powers of the Five Constitutional Officers under county offices will not impact the ability of charter counties to impose term limits on elected county officers.

Non-Partisan Elections of Constitutional Officers

Amending art. VIII, s. 1(d) to restrict the ability of counties in their charters to choose the Five Constitutional Officers "in another manner therein specified" could be interpreted to limit the ability of charter counties to require that the Constitutional Officers be selected in non-partisan elections. However, because the Constitution prohibits neither the Legislature, through general law, nor charter counties from requiring non-partisan elections for county officers,[85] imposing non-partisan election requirements may well be interpreted as outside of the scope of art. VIII, s. 1(d), just as term limits were so found by the Florida Supreme Court of Florida.[86]

Recall of Constitutional Officers

Recall of county officers by charter counties is statutorily authorized.[87] The amendment proposed by this joint resolution would have no impact on the ability of charter counties to recall the Five Constitutional Officers.

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[79] Art. XI, s. 5(a), Fla. Const.
[80] Art. XI, s. 5(d), Fla. Const.
[81] Art. XI, s. 5(e), Fla. Const.
[82] *Telli v. Broward County*, supra at n. 53, adopting with approval the rationale of the dissent in *Cook v. City of Jacksonville*, 823 So. 2d 86, 95-96 (2002) (Anstead, J., dissenting).
[83] *Telli v. Broward County*, supra at n. 53, 512.
[84] *Id. See also State ex rel. Askew v. Thomas*, 293 So. 2d 40, 42-43 (Fla. 1974).
[85] *See* n. 59, supra.
[86] *See Telli v. Broward County,* supra at n. 53.
[87] Section 100.361, F.S.

B. RULE-MAKING AUTHORITY:

The resolution neither authorizes nor requires implementation by administrative agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted a Proposed Committee Substitute for HJR 721 and reported the Joint Resolution favorably as a committee substitute. This analysis is drawn to the committee substitute adopted by the Local, Federal & Veterans Affairs Subcommittee.

House Joint Resolution

A joint resolution proposing an amendment to Section 1 of Article VIII of the State Constitution to remove authority for a county charter or special law to provide for choosing a sheriff in a manner other than by election or to transfer the duties of the sheriff or abolish the office of the sheriff.

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

That the following amendment to Section 1 of Article VIII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VIII

LOCAL GOVERNMENT

SECTION 1. Counties.—

(a) POLITICAL SUBDIVISIONS. The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.

(b) COUNTY FUNDS. The care, custody and method of disbursing county funds shall be provided by general law.

(c) GOVERNMENT. Pursuant to general or special law, a county government may be established by charter which shall be adopted, amended or repealed only upon vote of the electors of the county in a special election called for that purpose.

(d) COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, a tax collector, a property appraiser, a supervisor of elections, or a clerk of the circuit court ~~any county officer~~ may be chosen in another manner therein specified, or ~~any county office~~ may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. Notwithstanding subsection 6(e) of this article, this subsection provides the exclusive manner for the selection, length of terms, abolition of office, and transfer of duties of the sheriff in each county.

(e) COMMISSIONERS. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members

serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

(f) NON-CHARTER GOVERNMENT. Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

(g) CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

(h) TAXES; LIMITATION. Property situate within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents in unincorporated areas.

(i) COUNTY ORDINANCES. Each county ordinance shall be filed with the custodian of state records and shall become effective at such time thereafter as is provided by general law.

(j) VIOLATION OF ORDINANCES. Persons violating county ordinances shall be prosecuted and punished as provided by law.

(k) COUNTY SEAT. In every county there shall be a county seat at which shall be located the principal offices and permanent records of all county officers. The county seat may not be moved except as provided by general law. Branch offices for the conduct of county business may be established elsewhere in the county by resolution of the governing body of the county in the manner prescribed by law. No instrument shall be deemed recorded until filed at the county seat, or a branch office designated by the governing body of the county for the recording of instruments, according to law.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VIII, SECTION 1

SELECTION AND DUTIES OF COUNTY SHERIFF.—Proposing an amendment to the State Constitution to remove authority for a county charter or a special law to provide for choosing a sheriff in a manner other than by election or to transfer the duties of the sheriff or abolish the office of the sheriff. The

amendment is applicable to all counties and takes effect January 8, 2019, if approved.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HJR 721 (2017)

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	_____

Committee/Subcommittee hearing bill: Judiciary Committee

Representative Fischer offered the following:

Amendment

Remove line 45 and insert:

length of term, abolition of office, and transfer of duties of

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 779 Weapons and Firearms
SPONSOR(S): Criminal Justice Subcommittee, Combee and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 646

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 5 N	White	White
2) Judiciary Committee		White TW	Camechis

SUMMARY ANALYSIS

Florida law generally prohibits the open carrying of firearms and certain weapons. Section 790.053, F.S., makes it a second degree misdemeanor for a person to openly carry on or about his or her person any firearm or electric weapon or device. This section does not apply to a person who has a license to carry concealed weapons or concealed firearms (licensee), if the licensee briefly and openly displays the firearm to the ordinary sight of another person, unless "the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense."

The bill amends s. 790.053, F.S., to change the penalties that apply to an open carry violation by a licensee. Under the bill, a licensee commits:

- A noncriminal violation with a penalty of:
  - $25, payable to the clerk of the court, for a first violation; or
  - $500, payable to the clerk of court, for a second violation.
- A misdemeanor of the second degree for a third or subsequent violation.

A person who is not a licensee continues to be subject to current law's second degree misdemeanor penalty for open carry.

The bill also moves the exception in s. 790.053, F.S., relating to a brief and open display of a firearm by a licensee, to s. 790.06(1), F.S., where it will state:

> A person licensed to carry a concealed firearm under this section whose firearm is temporarily and openly displayed to the ordinary sight of another person does not violate s. 790.053 and may not be arrested or charged with a noncriminal or criminal violation of s. 790.053.

Removal of current law's text relating to the intentional display of a firearm in an angry or threatening does not appear to have any substantive effect given that such behavior will constitute a violation of other criminal statutes.

The bill does not appear to have a fiscal impact on state government. The bill may increase local government revenues and decrease local government expenditures. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra.*

The bill takes effect on July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida's Regulations Relating to the Open and Concealed Carry of Weapons and Firearms

Generally, in Florida, an individual is authorized to own, possess, and lawfully use a firearm and other weapon[1] without a license if the individual is not statutorily prohibited from possessing a firearm or weapon[2] and such possession and use occurs in a lawful manner and location.[3]

Open Carry

Florida law prohibits the open carrying of firearms and certain weapons unless an exception applies. Section 790.053, F.S., makes it a second degree misdemeanor[4] for a person to openly carry on or about his or her person any firearm or electric weapon or device. This section does not apply to a person who has a license to carry concealed weapons or concealed firearms (licensee),[5] if the licensee briefly and openly displays the firearm to the ordinary sight of another person, unless "the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense."[6, 7]

According to data from the Florida Department of Law Enforcement for calendar years 2006 through 2015, the average number of arrests for the second degree misdemeanor violation of s. 790.053, F.S., was 157.5 arrests annually with a low of 113 arrests in CY 2013 and a high of 210 arrests in CY 2008.[8]

Concealed Carry

In order to lawfully carry a concealed weapon or concealed firearm, a person, unless exempted, must obtain a license from the Department of Agriculture and Consumer Services (licensee).[9] Currently, there are approximately 1.7 million licensees in this state.[10]

If a person is unlicensed, s. 790.01, F.S., specifies that it is a:

- A first degree misdemeanor[11] for the person to carry a concealed weapon[12] or electric weapon or device[13] on or about his or her person.[14]

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[1] Section 790.001(13), F.S., defines "weapon" as "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."

[2] There are numerous prohibitions in statute specifying individuals who may not lawfully possess a gun. *See, e.g.,* ss. 790.22 and 790.23, F.S., (prohibiting the possession of firearms and certain weapons by minors, convicted felons, and deliquents, except under specified circumstances).

[3] *See* s. 790.25, F.S.

[4] 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.

[5] The term "concealed weapons or concealed firearms" is defined as "a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun ...." s. 790.06(1), F.S.

[6] s. 790.053(1), F.S.

[7] Section 790.053(2), F.S., also specifies that a person may openly carry for purposes of lawful self-defense a self-defense chemical spray and a nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.

[8] E-mail from Rachel Truxell, Florida Department of Law Enforcement, May 4, 2016 (on file with House of Representatives, Criminal Justice Subcommittee).

[9] s. 790.06, F.S.

[10] As of February 28, 2017, 1,721,862 Floridians held a standard concealed carry license. Fla. Dept. of Ag., *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited March 2, 2017).

[11] 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.

[12] Section 790.001(3)(a), F.S., defines the term "concealed weapon" as "any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person." The weapons listed in this definition require licensure to carry them in a concealed manner.

[13] Section 790.001(14), F.S., defines the term "electric weapon or device" as "any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury."

- A third degree felony[15] to carry a concealed firearm.[16, 17, 18]

These prohibitions do not apply to:

- A person who carries a concealed weapon, or a person who may lawfully possess a firearm and who carries a concealed firearm, on or about his or her person while in the act of evacuating during certain mandatory evacuation orders.
- A person who carries for purposes of lawful self-defense in a concealed manner:
  - A self-defense chemical spray.[19]
  - A nonlethal stun gun or dart-firing stun gun[20] or other nonlethal electric weapon or device that is designed solely for defensive purposes.[21]

Exemptions from Open Carry Prohibitions and Licensure Requirements: Section 790.25(3), F.S., provides that certain persons under specified circumstances are exempt from the requirements for a license to carry concealed weapons or concealed firearms in s. 790.06, F.S., and the limitations on open carrying in s. 790.053, F.S. These persons and circumstances include:

- Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization.
- Citizens of this state subject to duty under certain sections of law if on duty or when training or preparing themselves for military duty.
- Persons carrying out or training for emergency management duties under chapter 252, F.S.
- Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of chapter 354, F.S., and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state.
- Officers or employees of the state or United States duly authorized to carry a concealed weapon.
- Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.
- Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits.
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition.

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[14] s. 790.01(1), F.S.

[15] 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.

[16] Section 790.001(2), F.S., defines the term, "concealed firearm" as "any firearm, as defined in subsection (6), which is carried on or about a person in such a manner as to conceal the firearm from the ordinary sight of another person."

[17] s. 790.01(2), F.S.

[18] The carrying of a concealed weapon in violation of s. 790.01, F.S., is statutorily designated as a breach of peace for which an officer may make a warrantless arrest if the officer has reasonable grounds or probable cause to believe that the offense of carrying a concealed weapon is being committed. s. 790.02, F.S.

[19] Section 790.001(3)(b), F.S., defines the term "self-defense chemical spray" as "a device carried solely for purposes of lawful self-defense that is compact in size, designed to be carried on or about the person, and contains not more than two ounces of chemical."

[20] Section 790.001(15), F.S., defines the term "dart-firing stun gun" as "any device having one or more darts that are capable of delivering an electrical current."

[21] s. 790.01(3), F.S.

- A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business.
- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place.
- A person firing weapons in a safe and secure indoor range for testing and target practice.
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession.
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business.
- A person possessing arms at his or her home or place of business.
- Investigators employed by the public defenders and capital collateral regional counsel of the state while carrying out official duties.[22]

Effect of Bill

The bill amends s. 790.053, F.S., to change the penalties that apply to a violation of the prohibition against open carry by a licensee. Under the bill, a licensee commits:

- A noncriminal violation with a penalty of:
  - $25, payable to the clerk of the court, for a first violation; or
  - $500, payable to the clerk of court, for a second violation.
- A misdemeanor of the second degree for a third or subsequent violation.

If a person is not a licensee, the second degree misdemeanor penalty under current law for any violation of the prohibition continues to apply.

The bill also repeals the exception in s. 790.053, F.S., which provides that it is a not a violation of the prohibition against open carry for a licensee to briefly and openly display the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense. This exception is moved to s. 790.06(1), F.S., where it states:

> A person licensed to carry a concealed firearm under this section whose firearm is temporarily and openly displayed to the ordinary sight of another person does not violate s. 790.053 and may not be arrested or charged with a noncriminal or criminal violation of s. 790.053.

Removal of current law's text relating to the intentional display of a firearm in an angry or threatening manner is clarifying and does not appear to have any substantive effect given that such behavior will constitute criminal assault[23] or a violation of s. 790.10, F.S.,[24] unless it is a justifiable use of force.

The bill reenacts ss. 943.051(3)(b), 985.11(1)(b), and . 985.11(1)(b), F.S., to incorporate amendments made by the act to provisions of law which are cross-referenced in the reenacted sections.

The bill takes effect on July 1, 2017.

B. SECTION DIRECTORY:

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[22] s. 790.25(3), F.S.

[23] *See* ss. 784.011 and 784.021, F.S. (providing that assault is a first degree misdemeanor and that assault with a deadly weapon is a third degree felony, respectively).

[24] s. 790.10, F.S. (makes it a first degree misdemeanor to rudely, carelessly, angrily, or threateningly exhibit a weapon or firearm in the presence of a person).

Section 1. Amends s. 790.053, F.S., relating to the open carrying of weapons.

Section 2. Amends s. 790.06, F.S., relating to license to carry concealed weapon or firearm.

Section 3. Reenacting s. 943.051(3)(b), F.S., relating to criminal justice information.

Section 4. Reenacting s. 985.11(1)(b), F.S., relating to fingerprinting and photographing.

Section 5. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: Clerks of court may receive revenue from the fines created by the bill for the first two violations of the open carry prohibition in s. 790.53, F.S., by a licensee.

2. Expenditures: The bill may reduce the need for jail beds because it decriminalizes the first two violations of the open carry prohibition in s. 790.53, F.S., by a licensee.

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: This 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

On March 15, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS:

- Creates a tiered penalty system for a violation of s. 790.053, F.S., which is applicable only to licensees. This penalty system is substituted for the bill's creation of a $25 fine for any violation of s. 790.053, F.S., by any person.
- States in s. 790.06(1), F.S., that a licensee may not be arrested or charged with a violation of s. 790.053, F.S., for temporarily and openly displaying his or her firearm; whereas, the bill stated that such licensee could not be arrested or charged with a crime.
- Removes the provision authorizing a Cabinet member licensee to carry anywhere not prohibited by federal law if he or she does not have full-time security.
- Removes the amendment to s. 790.06(12)(d), F.S., that reduced the second degree misdemeanor penalty in current law to a $25 fine.

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

A bill to be entitled

An act relating to weapons and firearms; amending s. 790.053, F.S.; deleting a statement of applicability relating to violations of carrying a concealed weapon or firearm; reducing the penalties applicable to a person licensed to carry a concealed weapon or firearm for a first or second violation of specified provisions relating to openly carrying weapons; making a fine payable to the clerk of the court; amending s. 790.06, F.S.; providing that a person licensed to carry a concealed weapon or firearm does not violate certain provisions if the firearm is temporarily and openly displayed; reenacting ss. 943.051(3)(b) and 985.11(1)(b), F.S., both relating to fingerprinting of a minor for violating specified provisions, to incorporate the amendment made to s. 790.053, F.S., in references thereto; providing an effective date.

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

Section 1. Section 790.053, Florida Statutes, is amended to read:

790.053 Open carrying of weapons.—

(1) Except as otherwise provided by law and in subsection (2), it is unlawful for any person to openly carry on or about

his or her person any firearm or electric weapon or device. ~~It is not a violation of this section for a person licensed to carry a concealed firearm as provided in s. 790.06(1), and who is lawfully carrying a firearm in a concealed manner, to briefly and openly display the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense.~~

(2) A person may openly carry, for purposes of lawful self-defense:

(a) A self-defense chemical spray.

(b) A nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.

(3)(a) A ~~Any~~ person violating this section who is not licensed under s. 790.06 commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person violating this section who is licensed under s. 790.06 commits:

1. A noncriminal violation with a penalty of:

a. Twenty-five dollars, payable to the clerk of the court, for a first violation; or

b. Five hundred dollars, payable to the clerk of court, for a second violation.

2. A misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for a third or subsequent

violation.

Section 2. Subsection (1) of section 790.06, Florida Statutes, is amended to read:

790.06 License to carry concealed weapon or firearm.—

(1) The Department of Agriculture and Consumer Services is authorized to issue licenses to carry concealed weapons or concealed firearms to persons qualified as provided in this section. Each such license must bear a color photograph of the licensee. For the purposes of this section, concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined in s. 790.001(9). Such licenses shall be valid throughout the state for a period of 7 years after ~~from~~ the date of issuance. Any person in compliance with the terms of such license may carry a concealed weapon or concealed firearm notwithstanding the provisions of s. 790.01. The licensee must carry the license, together with valid identification, at all times in which the licensee is in actual possession of a concealed weapon or firearm and must display both the license and proper identification upon demand by a law enforcement officer. A person licensed to carry a concealed firearm under this section whose firearm is temporarily and openly displayed to the ordinary sight of another person does not violate s. 790.053 and may not be arrested or charged with a noncriminal or criminal violation of s. 790.053. Violations of

the provisions of this subsection shall constitute a noncriminal violation with a penalty of $25, payable to the clerk of the court.

Section 3. For the purpose of incorporating the amendment made by this act to section 790.053, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 943.051, Florida Statutes, is reenacted to read:

943.051 Criminal justice information; collection and storage; fingerprinting.—

(3)

(b) A minor who is charged with or found to have committed the following offenses shall be fingerprinted and the fingerprints shall be submitted electronically to the department, unless the minor is issued a civil citation pursuant to s. 985.12:

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(1).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014(3).

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property, as provided in s. 790.115.

Section 4. For the purpose of incorporating the amendment made by this act to section 790.053, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 985.11, Florida Statutes, is reenacted to read:

985.11 Fingerprinting and photographing.—

(1)

(b) Unless the child is issued a civil citation or is participating in a similar diversion program pursuant to s. 985.12, a child who is charged with or found to have committed one of the following offenses shall be fingerprinted, and the fingerprints shall be submitted to the Department of Law Enforcement as provided in s. 943.051(3)(b):

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s.

790.01(1).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014.

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, resulting in bodily harm to a firefighter, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

A law enforcement agency may fingerprint and photograph a child taken into custody upon probable cause that such child has committed any other violation of law, as the agency deems appropriate. Such fingerprint records and photographs shall be retained by the law enforcement agency in a separate file, and these records and all copies thereof must be marked "Juvenile Confidential." These records are not available for public

disclosure and inspection under s. 119.07(1) except as provided in ss. 943.053 and 985.04(2), but shall be available to other law enforcement agencies, criminal justice agencies, state attorneys, the courts, the child, the parents or legal custodians of the child, their attorneys, and any other person authorized by the court to have access to such records. In addition, such records may be submitted to the Department of Law Enforcement for inclusion in the state criminal history records and used by criminal justice agencies for criminal justice purposes. These records may, in the discretion of the court, be open to inspection by anyone upon a showing of cause. The fingerprint and photograph records shall be produced in the court whenever directed by the court. Any photograph taken pursuant to this section may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime.

Section 5. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 849 Concealed Weapons and Firearms on Private School Property
SPONSOR(S): Criminal Justice Subcommittee, Combee and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 2 N, As CS	Homburg	White
2) Judiciary Committee		White	Camechis

SUMMARY ANALYSIS

Currently, Florida law, subject to limited exceptions, prohibits a person, including a person who has a license to carry a concealed weapon or concealed firearm (licensee), from carrying such weapon or firearm at a school. The term "school" means "any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic." The only person excepted from this prohibition is a law enforcement officer.

Florida law does not prohibit or address the carrying of a concealed weapon or concealed firearm by a licensee at a religious institution in this state. An owner of private property on which a religious institution is located may determine whether to authorize or prohibit concealed carry by licensees on the property. If prohibited, the private property owner can enforce the prohibition through trespass law.

The bill amends current law that prohibits licensees from carrying a concealed weapon or concealed firearm at a school. Under the bill, a licensee is not prohibited from carrying a concealed weapon or concealed firearm on private school property if a religious institution is located on the property; thereby, allowing the private property owner to determine whether to authorize or prohibit such carry by licensees on the property.

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

The bill takes effect on July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

Overview

A United States (US) citizen or resident who is 21 years of age or older may apply to the Department of Agriculture and Consumer Services for a concealed weapon or concealed firearm[1] license (CWL). To qualify for a CWL, the person must: be able to safely handle a weapon and firearm; not have been convicted of a felony, unless his or her firearm rights have been restored; not be dependent on alcohol or controlled substances; and satisfy other requirements.[2] A person who receives a CWL may carry a concealed weapon or firearm in this state, unless proscribed by state or federal statute.[3]

There are 1,707,116 CWL holders in Florida.[4] The age profile of these licensees is:

- 327,063 license holders are between the ages of 21-35;
- 439,805 license holders are between the ages of 36-50;
- 539,141 license holders are between the ages of 51-65; and
- 427,478 license holders are age 66 and older.[5]

Weapons and Firearms in Schools

General Prohibitions

Section 790.115, F.S., regulates the possession and discharge of weapons and firearms on school property. "School" is defined to mean "any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic."[6] The section does not apply to to law enforcement officers.[7, 8]

Under this section, a person is prohibited from possessing any firearm,[9] electric weapon or device,[10] destructive device,[11] or other weapon,[12] including a razor blade or box cutter, except:

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[1] The term "concealed weapons or concealed firearms" is defined as "a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun ...." s. 790.06(1), F.S.

[2] s. 790.06(2), F.S. Further requirements for the applicant include demonstrating competence with a firearm, not having been adjudicated incapacitated within 5 years, not having been committed to a mental institution within 5 years, not having had adjudication withheld on a felony or domestic battery charge within 3 years, not having an injunction for domestic or repeat violence in effect against them, and not being prohibited from owning a firearm under another provision of Florida or federal law.

[3] s. 790.06(12)(a)15., F.S.

[4] DACS, *Number of Licensees by Type as of February 28, 2017,* *http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf* (last visited on March 1, 2017).

[5] DACS, *Concealed Weapon or Firearm License Holder Profile as of February 28, 2017,* *http://www.freshfromflorida.com/content/download/7500/118857/cw_holders.pdf* (last visited on March 1, 2017).

[6] s. 790.115(2)(a)3., F.S.

[7] This applies to law enforcement officers as defined in s. 943.10(1)-(4),(6)-(9), or(14), F.S.

[8] s. 790.115(3), F.S.

[9] "Firearm" means" any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime." s. 790.001(6), F.S.

[10] The term "electric weapon or device" means "any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury." s. 790.001(14), F.S.

[11] The term "destructive device" is defined in part to mean, "any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas ...." s. 790.001(4), F.S. The remainder of the definition specifies more included items, as well as exclusions.

- 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; or
- That a person may carry a firearm:
    - In a case to a firearms program, class, or function if approved in advance by the principal or chief administrative officer;
    - In a case to a career center having a firearms training range; or
    - In a vehicle pursuant unless a school district adopts written and published policies that waive this exception for purposes of student and campus parking privileges.[13]

A person who violates this provision commits:

- A third degree felony, unless the person is a CWL holder in which case the offense is a second degree misdemeanor.[14]
- A second degree felony[15] if the person discharged a firearm during the violation. This penalty applies to persons with or without a CWL.[16]

The section also makes it third degree felony[17] for a person to exhibit any weapon, firearm, or dangerous device[18] in the presence of another person in a rude, careless, angry, or threatening manner during school hours or during the time of a school sanctioned school activity.[19, 20]

Prohibitions Applicable to CWL Holders

Pursuant to s. 790.06(12)(a)10., 11., and 13, F.S., a CWL holder is not authorized to carry a concealed weapon or firearm, either openly or concealed, into:

- An elementary or secondary school facility or administration building;
- A career center; or
- A 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 specified type of stun gun or nonlethal electric weapon.

A violation of the aforementioned prohibitions by a CWL holder constitutes a second degree misdemeanor.[21]

Weapons and Firearms in Religious Institutions

Florida law does not prohibit or otherwise address the carrying of weapons or firearms in religious institutions. An owner of private property on which a religious institution is located may determine whether to authorize or prohibit concealed carry by CWL holders. If prohibited, the private property owner can enforce the prohibition through trespass[22] law, which provides that a person commits a:

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[12] "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." s. 790.001(13), F.S.

[13] s. 790.115(2)(a), F.S.

[14] s. 790.115(2)(a), (b), and (e), F.S.

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

[16] s. 790.115(2)(d) and (e), F.S.

[17] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

[18] For the purpose of subsection. 790.115(1), F.S. this includes any sword, sword cane, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade, box cutter, or common pocketknife.

[19] This prohibition applies on the grounds or facilities of any school, school bus, or school bus stop, or within 1,000 feet of the real property that comprises a public or private elementary, middle, or secondary school. s. 790.115(1), F.S.

[20] This prohibition does not apply if the exhibition of the weapon takes place on private real property if the owner of the property invited the person on the property.

[21] s. 790.06(12)(d), F.S.

[22] Trespass occurs when a person: (a) without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance; or (b) having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so. s. 810.08(1), F.S.

- Third degree felony if he or she trespasses in a structure or conveyance while armed with a firearm or other dangerous weapon or firearm.[23]
- Third degree felony if he or she trespasses on school property[24] while in possession of a weapon or firearm.[25]

Federal Law

The Gun Free School Zones Act of 1990 (Act) prohibits the possession of a firearm in a school zone.[26] A school zone is defined as any area on or within 1,000 feet of a public, parochial, or private school.[27] There is an exception, however, for persons licensed to carry a firearm by the state in which the school zone is located.[28] Licensees are not prohibited under the Act from carrying within a school zone, unless prohibited by state law.

Effect of the Bill

The bill amends s. 790.115(3), F.S., to provide that the section and s. 790.06(12)(a)10., 11., and 13. do not prohibit a CWL holder from carrying a concealed weapon or concealed firearm on private school property if a religious institution is located on the property. As discussed above, "school" in this context means any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.

The bill defines "religious institution" as:

- A church, ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on and includes those bona fide religious groups that do not maintain specific places of worship; and
- A separate group or corporation that forms an integral part of a religious institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and that is not primarily supported by funds solicited outside its own membership or congregation.[29]

Although the bill removes the statutory prohibitions against concealed carry by CWP holders on private school property where a religious institution is located, the private property owner, in his or her discretion, can prohibit such carry through trespass law.

The bill provides an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.115, F.S., relating to possessing or discharging weapons or firearms on school grounds.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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

[23] s. 810.08(2)(c), F.S.
[24] "School property" is defined to mean "the grounds or facility of any kindergarten, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic." s. 810.095(2), F.S.
[25] s. 810.095(1), F.S.
[26] Crime Control Act of 1990, PL 101-647, 18 U.S.C. §922(q)(2)(A).
[27] 18 U.S.C. §921(a)(25).
[28] 18 U.S.C. §922(q)(2)(B)(ii).
[29] ss. 496.404 and 775.0861,, F.S.

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The bill 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 15, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS only amends current law to provide that a licensee is not prohibited from carrying a concealed weapon or concealed firearm on private school property if a religious institution is located on the property. In contrast, the original bill amended law governing licensee carry on both public and private school property regardless of whether a religious institution was co-located on the property.

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

A bill to be entitled

An act relating to concealed weapons and firearms on private school property; amending s. 790.115, F.S.; providing that persons licensed to carry a concealed weapon and concealed firearm are not prohibited by specified laws from such carrying on certain private school property; providing an effective date.

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

Section 1. Subsection (3) of subsection 790.115, Florida Statutes, is amended to read:

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

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

(b) This section and s. 790.06(12)(a)10., 11., and 13. do not prohibit a person who is licensed under s. 790.06 from carrying a concealed weapon or concealed firearm on private school property if a religious institution, as defined in s. 775.0861, is located on the property.

Section 2. This act shall take effect July 1, 2017.

STORAGE NAME: h6503.CJC
DATE: 3/6/2017

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 6503; Relief/Sean McNamee, Todd & Jody McNamee/School Board of Hillsborough County
Sponsor: Shaw
Companion Bill: SB 40 by Galvano
Special Master: Parker Aziz

Basic Information:

Claimants:	Sean McNamee, and his parents, Todd McNamee and Jody McNamee
Respondent:	School Board of Hillsborough County
Amount Requested:	$1,700,000
Type of Claim:	Local equitable claim; result of a settlement agreement
Respondent's Position:	The School Board of Hillsborough County supports passage of the claim bill.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. There are no outstanding costs remaining.
Prior Legislative History:	This is the first time this claim has been introduced to the Legislature.

Procedural Summary: On September 12, 2014, Sean McNamee, along with his parents Todd and Jody McNamee ("Claimants"), filed a lawsuit against the School Board of Hillsborough County ("School Board") in the Circuit Court of the Thirteenth Judicial Circuit, in and for Hillsborough County. A year later, on September 14, 2015, the parties attended a court-ordered mediation and agreed to settle the lawsuit for $2,000,000. Pursuant to the settlement, the School Board has paid the sovereign immunity limit of $300,000.

Facts of Case: On the afternoon of October 9, 2013, a sixteen year old Sean McNamee was participating in the Wharton High School football team practice when he struck his head on a machine used to paint the field. The machine had been inadvertently left on the practice field by head coach David Mitchell. The football players, in accordance with Coach Mitchell's instructions, were wearing no pads and no helmets and performing passing drills. At approximately 3:45 PM, Sean, while attempting to catch a pass, collided with another player and fell on the machine used to paint the field. Sean's fellow players stopped the drill and alerted the coaching staff of Sean's fall. The coaching staff instructed Sean to go to the locker room to be seen by the athletic trainer, Timothy Koecher.

Security cameras at the school show Sean walking to the locker room alone. A few minutes later, Trainer Koecher leads Sean into the training room next to the locker room. Trainer Koecher is seen on camera entering and exiting the training room and building three times in a span of approximately 30 minutes, often leaving Sean alone with his head injury. When Trainer Koecher was with Sean, he evaluated Sean's head and instructed Sean to place ice on the injury site. In the student injury report filled out by Trainer Koecher, he notes a bruise on Sean's head, mentions applying ice and contacting Sean's mother, Jody. Trainer Koecher failed to notice any symptoms that Sean was concussed or call for emergency care. It would later be discovered that Sean's skull was fractured.

Sean, suffering from agonizing pain, left the training room and building unattended at 4:20 PM and drove off in his car. Roughly thirty minutes later, Coach Mitchell and Trainer Koecher return to the training room looking for Sean and discovered that Sean had left. After arriving home, Sean's speech became incoherent and his father, Todd, drove him to the emergency room at Florida Hospital Tampa. The doctors discovered Sean's skull was fractured with internal bleeding and swelling in the brain. To reduce the pressure on his brain, a craniotomy was performed in which a portion of Sean's skull was removed to reduce the swelling. Nine days later, Sean emerged from a medically induced coma. In December of 2013, a cranioplasty was performed to put Sean's skull fragment back, secured with a titanium plate.

Following extensive therapy, Sean was able to return to school but his injury would continue to plague him. Dr. Veronica Clement, a neuropsychologist, evaluated Sean in January of 2014 and found significant impairment in Sean's cognitive functioning. Starting in 2015, Sean began to experience seizures that often require hospitalization and plague him still today. Sean has made great strides in recovering from his injury, including graduating from high school, but from testimony given at the special master hearing by Sean's parents, Sean's seizures and memory loss will likely deny him the ability to live an independent life.

Given Sean's extensive medical procedures, he has incurred significant medical costs and still has outstanding medical liens of $230,941.16. Per the terms of the settlement agreement, the School Board has aided Sean and his parents in securing an insurance policy to help pay the outstanding liens. Additionally, Sean's parents have set up an irrevocable trust to provide for Sean's needs, in which the remaining claim bill award will fund.

Recommendation: I respectfully recommend that HB 6503 be reported **FAVORABLY**.

Parker Aziz, Special Master Date: March 6, 2017

cc: Representative Shaw, House Sponsor
Senator Galvano, Senate Sponsor
Daniel Looke, Senate Special Master

A bill to be entitled

An act for the relief of Sean McNamee and his parents, Todd McNamee and Jody McNamee, by the School Board of Hillsborough County; providing for an appropriation to compensate them for injuries and damages sustained by Sean McNamee as a result of the negligence of employees of the School Board of Hillsborough County; providing a limitation on the payment of compensation, fees, and costs; providing an effective date.

WHEREAS, on October 9, 2013, Sean McNamee, a minor student and member of the football team at Wharton High School, participated in a warm-up session as part of organized team activities at the start of football practice, and

WHEREAS, during a passing drill, Sean McNamee lost his balance when he came into contact with another player, and while falling to the ground, struck his head on a paint machine used to line the practice field which had been improperly left in the practice area, and

WHEREAS, Sean McNamee appeared confused, disoriented, and not "symptom free" while in the training and locker rooms for evaluation and treatment by the school's athletic trainer, and

WHEREAS, the coaching and training staff did not properly evaluate or assess Sean McNamee for a concussion or head injury, left him unattended, did not call 911 or summon a physician or

ambulance, and did not immediately notify Sean's parents of the possibility that their son had sustained a brain injury, and

WHEREAS, the coaching and training staff responsible for the supervision and welfare of participating student athletes should have known of the severity of the injury experienced by Sean McNamee and were responsible for ensuring he received appropriate and timely evaluation and attention, and

WHEREAS, after being left alone for an extended time, Sean McNamee drove himself home, endangering himself and others, and there his sister found him incoherent and acting strangely, and she notified their father, Todd McNamee, who rushed him to the emergency department at Florida Hospital Tampa, and

WHEREAS, physicians at Florida Hospital Tampa diagnosed Sean McNamee with a traumatic brain injury from a depressed temporal bone fracture with epidural and subdural hemorrhage which required multiple brain surgeries, including emergency decompression craniotomy, a 9-day induced coma, and reconstruction with a titanium plate permanently inserted into his fractured skull, and

WHEREAS, as a result of the traumatic brain injury and delayed treatment, Sean McNamee suffers from permanent and significant changes in his cognitive functions and from an epileptic seizure disorder with breakthrough episodes, and

WHEREAS, Sean McNamee and his parents Todd McNamee and Jody McNamee brought suit against the School Board of Hillsborough

County in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Case No 14-CA-009239, and the parties entered into a court-ordered mediation on September 14, 2015, and

WHEREAS, the School Board of Hillsborough County approved a settlement in the amount of $2 million, paid the statutory limit of $300,000 under s. 768.28, Florida Statutes, and further agreed to support the passage of this claim bill in the amount of $1.7 million for the unpaid portion of the settlement, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The School Board of Hillsborough County is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $1.7 million payable to the Sean R. McNamee Irrevocable Trust as compensation for injuries and damages sustained as a result of the negligence of employees of the School Board of Hillsborough County.

Section 3. The amount paid by the School Board of Hillsborough County under s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of

the factual situation described in this act which resulted in injuries to Sean McNamee and damages to Todd McNamee and Jody McNamee. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $340,000, the total amount paid for lobbying fees may not exceed $85,000, and no amount may be paid for costs and other similar expenses relating to this claim.

Section 4. This act shall take effect upon becoming a law.

In Re: Senate Bill 40 (Relief of Sean McNamee by the School Board of Hillsborough County)

Claimants' Supplemental Attorney/Lobbyist Fees and Costs Affidavit

Affiants, David D. Dickey, Esq. and Matthew Blair, after appearing personally before the undersigned authority and being duly sworn, deposes and states that:

1. I am over eighteen years of age. The statements made in this affidavit are based upon my personal knowledge.

2. David Dickey is an attorney licensed to practice law in the State of Florida since 1992 and along with Steven Yerrid, Esq. and other members of The Yerrid Law Firm, represent Claimants Sean McNamee and his parents Todd McNamee and Jody McNamee, for legal services resulting from a head injury that occurred on October 9, 2013 at Wharton High School in Hillsborough County, Florida, including this claim bill.

3. Matthew Blair is a registered lobbyist and along with other members of the Corcoran & Johnson firm represent Claimants for lobbying services associated with this bill.

4. The claimants, attorneys and lobbyist have contractually agree to cap the total amount of all attorney's fees and lobbyist's fees at 25% of the total claim award in accordance with Florida Statute § 768.28(8) with the total attorney's fees being 20% and the Lobbyist fee being 5% of any amount awarded by the Legislature.

5. The Yerrid Law Firm incurred costs in the amount of $9,056.52, of which $405.16 was for copying, legal research fees, courier charges, and other miscellaneous in-house charges, associated with the legal services for claimants' representation, that was reimbursed from the statutory cap payment previously recovered.

6. There are no additional outstanding costs that will be paid by claimants from any amount awarded by the Legislature. The attorneys and lobbyist have agreed to waive any additional costs.

FURTHER AFFIANT SAYETH NOT.

DAVID D. DICKEY, Esq.

SWORN TO and SUBSCRIBED before me this 28th day of February, 2017, by David D. Dickey, Esq., who is personally known to me.

Notary Public, State of _____
Name: _____
Commission Number: _____
Commission Expires: _____

CARMEN R. SULLIVAN
Notary Public - State of Florida
My Comm. Expires Oct 7, 2018
Commission # FF 131548
Bonded Through National Notary Assn.

FURTHER AFFIANT SAYETH NOT.

MICHELLE A. KAZOURIS
MY COMMISSION # FF 038908
EXPIRES: August 7, 2017
Bonded Thru Budget Notary Services

MATTHEW BLAIR

SWORN TO and SUBSCRIBED before me this 28th day of February, 2017, by Matthew Blair, who is personally known to me.

Notary Public, State of Florida

Name: Michelle A. KAZOURIS
Commission Number: FF038908
Commission Expires: 8/7/2017

STORAGE NAME: h6507.CJC
DATE: 3/10/2017

March 9, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6507 - Representative Beshears
Relief/Angela Sanford/Leon County

THIS IS A CONTESTED CLAIM FOR $1,150,000 BASED ON A MEDIATION AGREEMENT AGAINST LEON COUNTY, INVOLVING THE NEGLIGENT OPERATION OF LEON COUNTY AMBULANCE THAT INJURED ANGELA SANFORD ON SEPTEMBER 5, 2013.

FINDING OF FACT:

On September 5, 2013, at 11:28 PM, a Leon County ambulance violently collided with a dark SUV at the intersection of West Tharpe Street and North Martin Luther King Jr. Boulevard in Tallahassee. The ambulance, en route to a call, was traveling at 44 MPH and failed to stop at the red light when it entered the intersection, in direct violation of Leon County E.M.S. Standard Operating Guidelines. The occupants in the SUV, Patrick Sanford, Angela Sanford, and Daniel McNair were injured by the collision with Angela Sanford receiving the full force of the impact.

The Accident

The Sanford's and McNair were driving home from a concert. Patrick Sanford, a law enforcement officer, was driving the Sanford's black Buick Enclave with Angela Sanford in the passenger seat and McNair in the back seat. Patrick Sanford had recently worked a long shift and was operating on only

about three hours of sleep. While enjoying the concert, Patrick Sanford consumed three beers over approximately six hours. The Sanford's SUV was heading north on MLK Jr. Boulevard, a four lane road, in the right, northbound lane. Patrick Sanford's view of traffic heading west on Tharpe Street was obscured due to trees, fencing, and a large Publix grocery store. While the speed limit for MLK Jr. Boulevard was 30 MPH, Patrick Sanford was traveling at 43 MPH.

At the same time, Benjamin Hunter was driving a Leon County Med 24 ambulance and traveling west on Tharpe Street en route to an accident. As Benjamin Hunter approached the intersection of Tharpe Street and MLK Jr. Boulevard, the light was red. After the collision, Benjamin Hunter would tell investigators that the light was yellow; however the video footage from Hunter's ambulance clearly shows the light was red. Approximately four seconds before entering the intersection, Benjamin Hunter initiated the ambulance's emergency lights and sirens. Hunter did not stop or slow down as he entered the intersection traveling at 44 MPH.

The Sanford vehicle entered the intersection first, as Patrick Sanford had the green light and did not hear[1] the ambulance or see it due to a Publix grocery store, trees and a fence obscuring his vision of traffic on Tharpe Street. When the SUV was almost midway through the intersection, the ambulance collided into its passenger side. Belted into the front passenger seat, Angela Sanford's body took the brunt of the impact.

After the collision, Hunter and his coworker exited the ambulance and rendered aid to the occupants of the Sanford's SUV. Hunter and his coworker were not injured in the collision.

Injuries
All of the occupants of the Sanford's SUV sustained injuries.

For two weeks, Angela Sanford was kept on a ventilator and in a medically induced coma. Her injuries were severe and included:

- A brain injury,
- A collapsed lung,
- A ruptured bladder,
- A lacerated liver,
- 13 fractured ribs,
- 6 spinal fractures, and
- A fractured clavicle, sternum, fibula, knee, scapula, pelvis, hip sockets, sacroiliac joints, and femur.

She spent 25 days in the intensive care unit and another 31 days in rehab. After persevering through rehabilitation, Angela

[1] Claimant's argue that their Buick Enclave was equipped with QuietTuning, an exclusive engineering process that reduces and blocks unwanted noise from entering the SUV's cabin.

Sanford is no longer confined to a wheel chair but still suffers from drop foot, double vision, permanent hip pain and will require a total hip replacement in the future. She has no memory of the accident or the immediate months preceding and following it.

Patrick Sanford suffered a bulging disc in his back due to the collision and Daniel McNair broke two bones in his left hand.

Benjamin Hunter provided a blood sample for a toxicology report and the report found no drugs or alcohol present. Patrick Sanford was approached by police at the hospital and was offered a chance to submit a blood sample for testing. According to Sanford, the police requested the sample as he received news that his wife may not survive and, due to his emotional state, he refused to offer a sample.

The Leon County's Sheriff's Office found Hunter at fault for the crash; however the State Attorney's Office recommended that no citations should be issued.

Leon County EMS disciplined Hunter and he was suspended without pay for three 12-hour shifts.

LITIGATION HISTORY:

Rather than go through a trial, both Leon County and the Sanford's (Claimants) agreed to go to mediation where a settlement agreement was reached in the amount of $1,450,000. The settlement agreement breaks down the amounts in two payments. The first payment allowed under the statutory cap is divided by the following:

Kevin McNair	$50,000
Patrick Sanford	$100,000
Mason Sanford	$15,000
Hudson Sanford	$15,000
Chase Sanford[2]	$15,000
Angela Sanford	$105,000
Total	$300,000

However, the agreement also provides that Leon County and its insurer "agree to the entry of Judgment in this action, in the total amount of $1,150,000.00 in favor of Angela Sanford." On April 13, 2015, a final judgment in the amount of $1,150,000 was entered by the trial court for Angela Sanford against Leon County.[3]

Leon County retained the right to contest the claim bill in the

[2] Mason, Hudson, and Chase Sanford are the three children of Patrick and Angela Sanford.
[3] Typical claims against the state or municipalities will enter a final judgment for either the settlement amount or jury verdict and then pay the statutory caps out of that final judgment. Therefore, the claim bill presented before the Legislature is the sum left undisbursed from the final judgment.

mediation settlement agreement.

CLAIMANT'S POSITION: Benjamin Hunter, while acting as an employee of Leon County, negligently operated a county ambulance by not coming to a complete stop at a traffic light in accordance with Leon County EMS's Standard Operating Guidelines. The result of his negligence caused Angela Sanford's injuries.

RESPONDENT'S POSITION: The County disputes the cause of the accident and the degree of damages. While admitting Benjamin Hunter misidentified the traffic signal, Leon County argues Patrick Sanford's driving was at greater fault by driving tired, intoxicated, and failing to yield to an ambulance with its emergency lights and sirens activated. Furthermore, Leon County argues Angela Sanford's damages are overestimated.

CONCLUSION OF LAW: Benjamin Hunter's failure to slow down and to stop at the red light was negligent and his negligence resulted in Angela Sanford's injuries.

Duty
A driver of a motor vehicle has a duty to use reasonable care, in light of the circumstances, to prevent injuring persons within the vehicle's path.[4] Both drivers, Patrick Sanford and Benjamin Hunter, had a duty of reasonable care to other drivers on the road. However, Hunter's role as an ambulance driver elevated his duty of reasonable care given the dangers and urgency of his job. Florida statutes allow the driver of an ambulance, when responding to an emergency call, to drive through a red light or stop sign but only after "slowing down as may be necessary for safe operation."[5] A driver responding to the emergency call is not relieved "from the duty to drive with due regard for the safety of all persons."[6]

Benjamin Hunter, driving a Leon County ambulance, in route to an emergency call, owed the Sanford's a duty to use reasonable care and to drive with regard for the safety of all persons.

Breach
Leon County E.M.S. Standard Operating Guidelines provide that "when driving to an emergency all drivers of emergency vehicles will come to a full and complete stop at all red lights and stop signs." Benjamin Hunter initially told investigators from Leon County Sheriff's office that he believed the light was yellow. After reviewing his own dash camera's recording, Hunter admitted the light was in fact red and acknowledges if a light is red, the driver of the ambulance is to come to a stop and

[4] *Gowdy v. Bell*, 993 So. 2d 585, 586 (Fla. 1st DCA 2008).
[5] Section 316.072(5), F.S.
[6] Section 316.072(5)(c), F.S.

clear the intersection. Benjamin Hunter's failure to come to a complete stop at the red traffic signal was in violation of Leon County E.M.S. Standard Operating Guidelines and a breach of his duty to drive with reasonable care.

Causation
In order for a driver to be held liable for his or her negligence, it must be shown that failure to act as a reasonable person would result in an injury.[7] Brian Hunter's failure to notice the red light, slow down and arrive at a complete stop to ensure traffic with the right of way heeded the ambulance's siren, was a direct and proximate cause of the collision. If Benjamin Hunter would have stopped at the red light, Patrick Sanford's SUV would have safely passed through the intersection.

Contributory Negligence
The County argues that Patrick Sanford's failure to notice the ambulance, failure to take evasive actions and his speed contributed to the collision. Certainly, if this claim had been tried before a jury, Patrick Sanford's actions would be found to be contributory negligent in the collision. However, Patrick Sanford's negligence does not bar recovery.[8] This Special Master finds Patrick Sanford's speed contributed to the collision but after reviewing the video and the scene, there also existed natural barriers that obscured Patrick Sanford's ability to see the lights of the ambulance as it approached the intersection. Furthermore, this claim is before the Legislature because *both* parties agreed to a mediated settlement agreement that this Special Master finds contemplated the actions of Patrick Sanford and arrives at a reasonable amount which takes into account the contributory negligence of Patrick Sanford.

Damages
Angela Sanford suffered severe injuries in the collision. She has amassed medical bills in the amount of $744,128.53. Additionally, Claimant's expert assesses Angela Sanford's loss of future earning capacity at $765,944 and future medical costs at $3,304,516.

Leon County, while recognizing the great strides Angela Sanford has made in her recovery, objects to the amount of the claim. Specifically, in calculating the loss of future earning capacity, the County argues Claimant's expert considered income Angela Sanford would have earned as a school teacher, despite the fact that she is not licensed to teach in Florida nor has she taught school in several years. The County also objects to the amount of future medical costs as excessive since several medications and treatments prescribed in the analysis are, according to the County, not needed. At the special master hearing, counsel for Leon County assessed

[7] *Ry. Exp. Agency v. Brabham*, 62 So. 2d 713, 714-15 (Fla. 1952).
[8] Section 768.81(2), F.S.

future medical costs at $350,000 to $400,000.

After considering the severe damages suffered by Angela Sanford and arguments from both parties, this Special Master finds the amount of $1,150,000 to be a fair and just amount.

ATTORNEY'S/ LOBBYING FEES: Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total $30,000.

LEGISLATIVE HISTORY: In the 2016 Legislative Session, this claim was introduced as House Bill 3511 by Representative Beshears and Senate Bill 22 by Senator Montford. The House Bill died in Civil Justice Subcommittee while the Senate Bill was heard and voted out of three Senate Committees (Judiciary/Community Affairs/Fiscal Policy) but ultimately died on the Senate Calendar.

COLLATERAL SOURCES: Angela Sanford received $50,000 pursuant to an uninsured motorist policy. Attorney's fees were not taken out of that payment.

RESPONDENT'S ABILITY TO PAY: Leon County is insured up to $3,000,000 and has received no indication from its insurer that the entire amount of the claim bill, if passed, will not be paid.

RECOMMENDATIONS: I respectfully recommend that House Bill 6507 be reported FAVORABLY.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Beshears, House Sponsor
Senator Montford, Senate Sponsor
Lauren Jones, Senate Special Master

A bill to be entitled

An act for the relief of Angela Sanford by Leon County; providing for an appropriation to compensate her for injuries and damages sustained as a result of the negligence of an employee of Leon County; providing that certain payments and the appropriation satisfy all present and future claims related to the negligent act; providing a limitation on the payment of compensation, fees, and costs; providing an effective date.

WHEREAS, on September 5, 2013, Angela Sanford was a belted, front-seat passenger in a car that was traveling on a green light through the intersection of West Tharpe Street and North Martin Luther King, Jr., Boulevard in Tallahassee, and

WHEREAS, at the same time, a Leon County ambulance operated by Leon County employee Benjamin Hunter entered the intersection despite a red light displayed on the traffic signal, which was clearly visible the entire time Mr. Hunter approached the intersection, and

WHEREAS, the ambulance collided with the car in which Angela Sanford was traveling and struck the passenger side door at a speed in excess of 40 miles per hour, and

WHEREAS, Mr. Hunter failed to operate his ambulance in a reasonably safe manner and conducted himself in direct violation

of the Leon County Emergency Medical Services Standard Operating Guidelines, which specifically require all emergency vehicles to come to a full and complete stop at a red light, and

WHEREAS, although Mr. Hunter later claimed that the light was yellow, the video from the ambulance's onboard camera clearly showed that the light was red for the entire 8 seconds of the video, and

WHEREAS, the investigation conducted by the Leon County Sheriff's Office concluded that Mr. Hunter was solely at fault in the accident, and

WHEREAS, Mr. Hunter also admitted, and the evidence showed, that fences, trees, and buildings at the corner of the intersection blocked the other driver's view of the ambulance as it approached the intersection, and

WHEREAS, as a result of the crash, which left her in a coma, Angela Sanford sustained life-threatening injuries, including a traumatic brain bleed that resulted in permanent cognitive and depressive disorders, a lacerated liver, a ruptured bladder, a cranial nerve injury resulting in permanent double vision, a fractured pelvis requiring hardware insertion, a fractured clavicle requiring hardware insertion, bilateral hip socket fractures requiring hardware insertion, a fractured knee, a fractured shoulder blade, 13 fractured ribs, permanent peroneal nerve palsy known as foot drop, and numerous other injuries which have now left her totally disabled and

permanently unable to return to her career as an elementary school teacher, and

WHEREAS, following mediation, on April 13, 2015, a final judgment in the amount of $1.15 million was entered by the trial court in favor of Angela Sanford against Leon County, and

WHEREAS, Angela Sanford's medical expenses exceeded $744,000 at the time of the judgment, and

WHEREAS, Leon County carried liability insurance with OneBeacon Insurance Group, Ltd., a Bermuda-domiciled company, which will pay 100 percent of any appropriation up to the policy limit of $3 million, and

WHEREAS, Leon County has already paid $300,000 to other persons injured in this accident in satisfaction of sovereign immunity limits set forth in s. 768.28, Florida Statutes, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. Leon County is authorized and directed to appropriate from funds of the county not otherwise appropriated, or from the county's liability insurance coverage, and to draw a warrant in the sum of $1.15 million, payable to Angela Sanford as compensation for injuries and damages sustained.

Section 3. The amount paid by Leon County pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Angela Sanford. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $230,000, the total amount paid for lobbying fees may not exceed $57,500, and the total amount paid for costs and other similar expenses relating to this claim may not exceed $30,000.

Section 4. This act shall take effect upon becoming a law.

ANGELA SANFORD vs. LEON COUNTY
Attorney's Affidavit

STATE OF FLORIDA

COUNTY OF LEON

BEFORE ME, the undersigned authority, personally appeared Halley B. Lewis, III, and Chris Dudley, who after being duly sworn, depose and say that the following information is true and correct according to their best knowledge and belief:

1. The attorney's contingent fee pursuant to contract and Florida Statutes is 25%. This would amount to $287,500 on the final judgment amount of $1,150,000. *However, counsel has agreed to reduce this amount to $269,657.79 so that his client's net recovery after attorney's fees and costs is an even $850,000.*

2. The lobbyist's contingent fee pursuant to a separate contract with the client is 5% of her net recovery after attorney's fees and costs. This will amount to $42,500 on her net recovery of $850,000.

3. The lobbying fees are separate and distinct from the attorney's fees. However, as pointed out in Paragraphs 1 and 4, counsel has reduced his fees and costs by a sum total of $32,308.75 to help his client cover a large portion of the lobbying fees.

4. The costs of litigation in the underlying case totaled $44,808.75. These were set forth in detail in the previous affidavit. *However, counsel has agreed to reduce this amount to $30,342.21 so that his client's net recovery after attorney's fees and costs is an even $850,000.*

5. No costs were paid by the statutory cap as those funds were used to compensate the other persons who were injured in this accident.

6. In the accounting of the $44,808.75 in costs, $9,554.32 of that was for in-house costs associated with overhead, copying, investigation, research, etc., and $35,254.43 was for actual costs paid out to third parties such as accident reconstructionists, medical experts, treating physicians, court reporters, illustrations prepared as exhibits, video reenactment, etc.

Halley B. Lewis, III
Attorney for Angela Sanford

Chris Dudley
Lobbyist for Angela Sanford

SWORN TO AND SUBSCRIBED BEFORE ME this 28 day of February, 2017, by HAL LEWIS and CHRIS DUDLEY, who are personally known to me or produced his driver's license as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 28 day of FEBRUARY, 2017.

Notary Signature:

Printed Name: Angela Scott

My Commission Expires:

ANGELA C. SCOTT
Commission # FF 124013
Expires June 26, 2018
Bonded Thru Troy Fain Insurance 800-385-7019

ANGELA SANFORD vs. LEON COUNTY
Attorney's Affidavit

STATE OF FLORIDA

COUNTY OF LEON

BEFORE ME, the undersigned authority, personally appeared Halley B. Lewis, III, and Chris Dudley, who after being duly sworn, depose and say that the following information is true and correct according to their best knowledge and belief:

1. The attorney's fees pursuant to contract and Florida Statutes are 25%. This equals $287,500.00 on the final judgment amount of $1,150,000, with that amount being broken down as 20% to Plaintiffs' counsel ($230,000.00) and 5% to the lobbyist ($57,500.00).

2. As shown above, the lobbying fees are *included* in the 25% attorney's fees.

3. The costs of litigation in the underlying case totaled $44,808.75. These were set forth in detail in the previous affidavit. They are extensive because this case was fully litigated.

4. No costs were paid by the statutory cap as those funds were used to compensate the other persons who were injured in this accident.

5. In the accounting of the $44,808.75 in costs, $9,554.32 of that was for in-house costs associated with overhead, copying, investigation, research, etc., and $35,254.43 was for

actual costs paid out to third parties such as accident reconstructionist, medical experts, treating physicians, court reporters, illustrations prepared as exhibits, video reenactment, etc.

6. However, in an effort to appease the legislature and to benefit the victim, Plaintiff's counsel has agreed to accept $30,000 as full reimbursement for *all* costs.

Halley B. Lewis, III
Attorney for Angela Sanford

Chris Dudley
Lobbyist for Angela Sanford

SWORN TO AND SUBSCRIBED BEFORE ME this 9 day of March, 2017, by Hal Lewis and Chris Dudley, who are personally known to me or produced his driver's license as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 9 day of March, 2017.

Notary Signature:

Printed Name: Angela C. Scott

My Commission Expires:

ANGELA C. SCOTT
Commission # FF 124013
Expires June 26, 2018
Bonded Thru Troy Fain Insurance 800-385-7019

STORAGE NAME: h6531.CJC
DATE: 3/6/2017

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 6531; Relief/Dustin Reinhardt/Palm Beach County School Board
Sponsor: Drake
Companion Bill: SB 304 by Thurston
Special Master: Parker Aziz

Basic Information:

Claimants:	Dustin Reinhardt
Respondent:	Palm Beach County School Board
Amount Requested:	$4,700,000; with $1,700,000 paid upon passage and $3,000,000 to purchase annuities.
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The Palm Beach County School Board does not oppose the enactment of this claim bill.
Collateral Sources:	Claimant has received $1,373,000 in collateral sources as the result of settlements with the school teacher, the tire owner, and Claimant's own uninsured motorist policy.
Attorney's/Lobbying Fees:	Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. There are no outstanding costs remaining.
Prior Legislative History:	This is the first time this instant claim has been presented to the Legislature.

Procedural Summary: On February 25, 2015, a complaint was filed by Scott Reinhardt, individually and as legal guardian of Dustin Reinhardt, in the Circuit Court of the Fifteenth Judicial Circuit in Palm Beach County, alleging negligence on behalf of the School Board of Palm Beach County ("School Board"). The case was settled in January 2017 for $5,000,000. The terms of the settlement agreement provide, following the School Board's disbursement of $300,000, $1,700,000 be paid upon enactment of a claim bill, and the School Board will purchase $3,000,000 worth of

annuities that will start payment on September 2023. The School Board approved the settlement on January 18, 2017 and the statutory cap of $300,000 has been paid.

Facts of Case: In September 2013, a sixteen-year old Dustin Reinhardt was starting his junior year at Seminole Ridge High School in Loxahatchee, Florida. As part of his curriculum, Dustin was taking an auto-shop class. On Wednesday, September 4, 2013, Dustin and a friend were inflating air into a large tractor truck tire. This tire was larger than the normal tires that outfit most cars and instead was from the friend's swamp buggy. Dustin had the tire lying flat on the ground and was attempting to fill the rubber inner tube with air from the air hose that was attached to the ceiling. Mr. Raymond Craig, the auto-shop teacher, walked by and instructed Dustin to stand the tire up right and not to stand directly over the tire. Mr. Craig walked away as Dustin continued to inflate the tire.

What happened next is not entirely clear. The tire exploded and the tire's steel rim struck Dustin in his face and head. Dustin was taken by helicopter to St. Mary's Medical Center in West Palm Beach, where he underwent multiple surgeries including skull and facial reconstruction. The steel rim had fractured his skull and crushed several parts of his face. He lost his right eye. A bone from a cadaver was used to reconstruct his forehead. Dustin was placed in a medically induced coma and would spend the next four weeks in the Intensive Care Unit. Dustin was later transferred to a rehab facility at St. Mary's Medical Center and on October 24, 2013, Dustin was discharged home.

Six months later, there was another incident at the Seminole Ridge High School's auto-shop class. In April 2014, a student suffered broken bones and a punctured lung after being hit by a car another student was driving. The School Board ultimately fired Mr. Craig. It was discovered that Mr. Craig had failed to properly supervise the students and follow any approved curriculum. Since these incidents, the School Board has overhauled the auto-shop class by requiring extensive training of both instructors and students, completed a national accreditation for the auto-shop program, and prohibits outside parts from being brought to the shop without thorough inspection. The School Board does not possess tire cages that commercial auto-shops have as a safety precaution for exploding tires. However, the School Board has reported it no longer allows such large tires, similar to the one Dustin was working on, to be worked on in the class and has tire changing equipment designed for and used for ordinary car and truck tires.

Not long after being discharged home, Dustin's father, Scott, came to the realization that Dustin needed full time care and supervision. Dustin had difficulty controlling his anger and could not control his eating. In March of 2013, Dustin was placed at the Florida Institute for Neurologic Rehabilitation to receive supervision and therapy. In December 2016, Dustin moved to NeuroInternational, a comprehensive vocational rehab and support facility located in Sarasota.

Dustin's injuries are severe and life altering. He suffered a traumatic brain injury and the loss of his right eye. He suffered extensive facial fractures, hematoma, and contusions. He underwent a bi-frontal craniotomy. Dr. Lichtblau, a board certified doctor in physical medicine and rehabilitation, evaluated Dustin and believes Dustin will never be able to be gainfully employed. From the evidence presented, it is clear Dustin will need care and supervision for the rest of his life.

His brain injury has impacted his memory and decision making. This has only been highlighted in the years following the accident. While at the Florida Institute for Neurologic Rehabilitation, Dustin spilled gasoline on himself while working on the facility's grounds. Another patient, whom Dustin viewed as a friend, walked up to Dustin and lit Dustin's shirt on fire. Dustin suffered second and third degree burns. Dustin is now 20 years-old but only has the mental capacity of a 12 year-old. Scott Reinhardt, Dustin's father, serves as Dustin's legal guardian.

Dustin accrued significant medical bills but fortunately, the School Board has a catastrophic insurance policy through Mutual of Omaha which has covered all of Dustin's medical expenses and the cost of his rehab facility. However, the insurance policy only provides for ten years of payments

and will cease in September of 2023. In addition to the $1,700,000 paid upon enactment of the claim bill, the settlement agreement between Dustin and the School Board provides for the purchase of three separate one million dollar annuities, which will start payment on September 2023.

Recommendation: I respectfully recommend that House Bill 6531 be reported **FAVORABLY**.

Parker Aziz, Special Master Date: March 6, 2017

cc: Representative Drake, House Sponsor
Senator Thurston, Senate Sponsor
Cindy Brown, Senate Special Master

A bill to be entitled

An act for the relief of Dustin Reinhardt by the Palm Beach County School Board; providing for an appropriation and annuity to compensate him for injuries sustained as a result of the negligence of employees of the Palm Beach County School District; providing that certain payments and the amount awarded under the act satisfy all present and future claims related to the negligent act; providing a limitation on the payment of compensation, fees, and costs; providing an effective date.

WHEREAS, in September 2013, Dustin Reinhardt was a student at Seminole Ridge Community High School in Loxahatchee in Palm Beach County, and was involved in the Army Junior Reserve Officer Training Corps for which he received honors for his participation, and

WHEREAS, on September 4, 2013, while in auto shop class at Seminole Ridge Community High School, Dustin Reinhardt was inflating a large truck tire, which proceeded to explode, striking him in his head, and

WHEREAS, immediately following the explosion, Dustin Reinhardt was airlifted to St. Mary's Medical Center in West Palm Beach where he underwent multiple surgeries, including skull and facial reconstruction procedures, was placed in a

chemically induced coma, and spent more than 4 weeks in the intensive care unit, and

WHEREAS, Dustin Reinhardt has continued to be impacted by the injuries he incurred from the explosion, including the loss of vision in his right eye, short-term memory loss, and a recent diagnosis of severe traumatic brain injury, and

WHEREAS, the traumatic brain injury will impair Dustin Reinhardt's executive function and has resulted in symptoms such as the exhibition of socially inappropriate behavior, difficulty in planning and taking initiative, difficulty with verbal fluency, an inability to multitask, and difficulty in processing, storing, and retrieving information, and

WHEREAS, because of the explosion, Dustin Reinhardt continues to live in supervised care at the Neuro International and is unlikely to ever live an independent life, and

WHEREAS, the injuries that Dustin Reinhardt sustained were foreseeable and preventable and the school had a duty to prevent his injuries, and

WHEREAS, the parties have agreed to a settlement in the sum of $5 million, and the Palm Beach County School Board has paid $300,000 of the settlement pursuant to the statutory limits of liability set forth in s. 768.28, Florida Statutes, leaving a remaining balance of $4.7 million, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The Palm Beach County School Board is authorized and directed to:

(1) Appropriate from funds of the school board not otherwise encumbered and, no later than 30 days after the effective date of this act, draw a warrant in the sum of $1.7 million payable to Dustin Reinhardt, to be placed in the Special Needs Trust created for the exclusive use and benefit of Dustin Reinhardt, as compensation for injuries and damages sustained.

(2) Purchase an annuity for the sum of $3 million for Dustin Reinhardt's benefit. The annuity must provide annual disbursements to Dustin Reinhardt, to be placed in the Special Needs Trust created for the exclusive use and benefit of Dustin Reinhardt, for 3 years, with the first disbursement occurring on or before September 1, 2023, and the following disbursements occurring the following 2 years thereafter. Each annual disbursement must be at least $1 million.

Section 3. The amount paid by the Palm Beach County School Board pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Dustin Reinhardt. Of the amount awarded

under this act, the total amount paid for attorney fees may not exceed $340,000, the total amount paid for lobbying fees may not exceed $85,000, and no amount may be paid for costs and other similar expenses relating to this claim. Attorney or lobbyist fees may not be assessed against the value of the annuity.

Section 4. This act shall take effect upon becoming a law.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY. CIVIL ACTION.

CASE NO. 2015CA002262XXXXMBAO

SCOTT REINHARDT, individually and as legal guardian of DUSTIN REINHARDT,

Plaintiffs,

v.

THE SCHOOL DISTRICT OF PALM BEACH COUNTY

Defendant.
_____/

AFFIDAVIT

STATE OF FLORIDA

: **SS.:**

BEFORE ME, the undersigned authority, personally appeared JONATHAN COX and PATRICK BELL, who being first duly sworn, state under oath:

1. JONATHAN COX of Keller, Keller & Caracuzzo is the lead attorney in the above referenced matter.
2. PATRICK BELL of Capitol Solutions LLC was retained as the lobbyist in the above referenced matter.
3. The undersigned, JONATHAN COX, attests that pursuant to the contract entered into with the claimant, legal fees will be 20% of the gross amount that may be awarded by the Legislature.
4. The undersigned, JONATHAN COX and PATRICK BELL, attest that pursuant to the contract entered into by them, PATRICK BELL's fee will be 5% of the gross amount that may be awarded by the Legislature.
5. The undersigned, JONATHAN COX, attests that his fee, including the firm's fee, and the lobbyist's fee will not exceed the cap on attorneys' fees set forth in Florida Statutes 768.28(8): "No attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement".

6. There are no legal costs pending. No legal costs were paid from the statutory cap payment.

FURTHER THE AFFIANTS SAYETH NAUGHT.

JONATHAN M COX

SUBSCRIBED AND SWORN to before me this 27th day of February, 2017.

Notary Public, State of Florida

CHRISTINA ZANZIG
MY COMMISSION # FF 089892
EXPIRES: May 13, 2018
Bonded Thru Budget Notary Services

My Commission Expires:

PATRICK BELL

SUBSCRIBED AND SWORN to before me this 28 day of February 2017.

Notary Public, State of Florida

My Commission Expires:

DIANE W. GREGG
MY COMMISSION EXPIRES
June 29, 2018
#FF 128817
Bonded thru
Troy Fain - Insurance
NOTARY PUBLIC, STATE OF FLORIDA

STORAGE NAME: h6533.CJC
DATE: 3/6/2017

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 6533; Relief/Jennifer Wohlgemuth/Pasco County Sheriff's Office
Sponsor: Grant
Companion Bill: CS/SB 36 by Judiciary, Montford
Special Master: Parker Aziz

Basic Information:

Claimants:	Jennifer Wohlgemuth
Respondent:	Pasco County Sheriff's Office
Amount Requested:	$2,600,000, to be paid out over 8 years
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The Pasco County Sheriff's Office does not oppose the claim bill.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. There are no outstanding costs remaining.
Prior Legislative History:	This is the seventh session this claim has been presented to the Legislature. In the prior six sessions, this claim has never been heard in a House committee. In the past two sessions, the Senate bill was heard in Senate Judiciary Committee before dying in Senate Committee on Community Affairs.

Procedural Summary: On March 15, 2007, Traci Wohlgemuth as plenary guardian of her daughter, Jennifer Wohlgemuth, filed suit against the Pasco County Sherriff's Office, Case No. 512007 CA 000859, in the 6th Judicial Circuit, in and for Pasco County, Florida, alleging negligence. Mrs. Wohlgemuth received a verdict in a bench trial against the Pasco County Sherriff's Office, awarding total damages of $9,141,267.32. The court found that Deputy Petrillo was 95% responsible for Jennifer's injuries, and that Jennifer was responsible for the remaining 5%, due to her alleged failure to wear a seat belt. Accordingly, the court entered its Amended Final Judgment

in the amount of $8,724,754.40. The Pasco County Sherriff appealed the Amended Final Judgment to the Second District Court of Appeals. Oral arguments were heard on March 2, 2010, and eight days later on March 10, 2010, the 2nd DCA affirmed the trial court's Final Judgment. Pursuant to the Judgment, Pasco County Sherriff's Office paid the sovereign immunity limit of $100,000.

On April 15, 2016, the parties entered into a settlement agreement for the amount of $2,600,000. Under the terms of the agreement, Pasco County Sheriff's Office will pay $325,000 a year for 8 years. If Jennifer Wohlgemuth dies anytime during the 8 years of payments, any future payments will cease and the agreement will become null and void. The first payment will be paid by October 31st of the year the Governor signs the claim bill.

Facts of Case: In the very early morning of January 3, 2005, 21-year-old Jennifer Wohlgemuth was driving southbound on Regency Park Boulevard with two of her friends. At approximately 1:35 a.m., Pasco County Sherriff's Deputy Kenneth Petrillo, while training another officer, was driving one of four law enforcement vehicles engaged in a high-speed chase. The other law enforcement vehicles (one New Port Richey police vehicle and two Port Richey police vehicles) were in pursuit a vehicle drive by a possible drunk driver. Deputy Petrillo's vehicle was seven to ten seconds behind the other pursuit vehicles. Testimony from several witnesses indicated that Deputy Petrillo's vehicle's siren and flashing red/blue lights were not engaged. Testimony from other witnesses provided his lights were on, however, the FHP investigator concluded that evidence of his lights being on was inconclusive. After the crash, Deputy Petrillo's siren switch was found to be in the radio mode, indicating that the siren was not activated at the time of the crash. Additionally, video from a nearby gas station showed reflections of the first three pursuit vehicles red/blue lights but failed to show red/blue lights on Deputy Petrillo's vehicle. While still engaged in the pursuit, Deputy Petrillo sped through a red light at Ridge Road and Regency Park Boulevard, and directly struck the passenger side of Jennifer's vehicle. Jennifer's car traveled 147 feet from the impact location and after the accident Deputy Petrillo's vehicle caught on fire.

Witness testimony estimates Deputy Petrillo's speeds ranging upwards of 110 MPH; however, accident reconstruction models indicate that the actual speed of Deputy Petrillo's vehicle was roughly 60 MPH at the time of impact. In either respect, Deputy Petrillo was travelling well above posted speed limits. An Internal Affairs review of the accident determined that Deputy Petrillo violated Pasco County Sherriff's Office policies and Florida Statutes regarding police pursuit. Deputy Petrillo was disciplined by Internal Affairs and received a 30 day suspension without pay, was re-assigned for 45 days, and was required to conduct a training course for his fellow deputies regarding pursuits and safety.

Blood draws were taken from Jennifer while she was unconscious. Toxicology reports indicated that Jennifer had been drinking that night with a blood alcohol level of .022 which is below the impairment standard of .05.[1] Toxicology reports also indicated that Jennifer tested positive for cocaine metabolites and benzodiazepine. Witnesses observed her drinking two "Jaeger Bombs" at roughly 11:00 p.m. the night immediately preceding the accident. It was also reported that Mrs. Wohlgemuth was in possession of several pills of Xanax. Despite these reports, there is no evidence that Jennifer was actually impaired at the time of the accident.

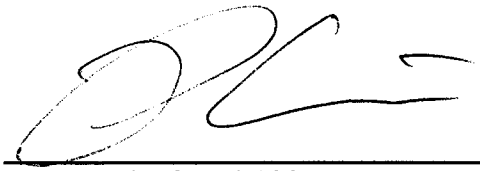
Jennifer's injuries were a direct and proximate result of Deputy Petrillo's breach of the duty he owed to her. Jennifer sustained significant injuries and was immediately transported to the hospital. As a result of the accident, Jennifer was in a coma for 18 days, unable to speak for several months, and did not return home from the hospital until August 2005. Jennifer suffered serious brain injuries, including subdural hematoma of the right frontal lobe and a subarachnoid hemorrhage. Due to the

[1] s. 316.1934(2)(b), F.S. (Toxicology report in excess of .05 but less than .08 may be considered with other evidence in determining whether a person was under the influence of alcoholic beverage to the extent that his or her normal faculties were impaired.).

swelling in her brain, part of her skull was removed. Jennifer continues to suffer from her injuries from the accident, including, severe memory loss, partial loss of vision, lack of balance, urinary problems, anxiety, depression, dysarthric speech, acne, and weight fluctuations. Jennifer's behavior and impulse control are similar to those of a 7-year-old and require her to be supervised at all times. Her injuries have severely limited her ability to drive, hold a job, or live independently.

Recommendation: Jennifer's attorneys have indicated a special needs trust has been established and any amount awarded in the claim bill will be placed in the trust. The bill should be amended to direct any amount awarded in the bill be placed in the special needs trust.

Accordingly, I respectfully recommend that House Bill 6533 be reported **FAVORABLY**.



Parker Aziz, Special Master Date: March 6, 2017

cc: Representative Grant, House Sponsor
Senator Montford, Senate Sponsor
Tracy Sumner, Senate Special Master

A bill to be entitled

An act for the relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office; providing for an appropriation to compensate her for injuries and damages sustained as a result of the negligence of an employee of the Pasco County Sheriff's Office; providing a limitation on the payment of compensation, fees, and costs; providing an effective date.

WHEREAS, in the early morning of January 3, 2005, 21-year-old Jennifer Wohlgemuth was lawfully and properly operating her vehicle and traveling southbound on Regency Park Boulevard, and

WHEREAS, at the same time, Deputy Kenneth Petrillo, an officer of the Pasco County Sheriff's Office, was driving one of four law enforcement vehicles engaged in a high-speed pursuit, and

WHEREAS, Deputy Petrillo's vehicle was traveling eastbound on Ridge Road, well behind the other law enforcement vehicles, which had already cleared the intersection of Ridge Road and Regency Park Boulevard in Pasco County, and

WHEREAS, Deputy Petrillo did not activate his vehicle's siren or flashing lights and sped through the intersection on a red light at a speed of at least 20 miles per hour over the posted speed limit, and

WHEREAS, Deputy Petrillo's vehicle violently struck the

passenger side of Jennifer Wohlgemuth's vehicle as she entered the intersection on a green light while observing the speed limit, and

WHEREAS, none of the numerous witnesses to the crash heard Deputy Petrillo's siren or saw flashing lights, and

WHEREAS, after the crash, Deputy Petrillo's siren switch was found to be in the radio mode, which indicates that the siren was not activated at the time of the crash, and

WHEREAS, an internal affairs investigation of the accident found that Deputy Petrillo violated the policies of the Pasco County Sheriff's Office, and he was suspended for 30 days without pay and subjected to other disciplinary measures, and

WHEREAS, as a result of the accident, Jennifer Wohlgemuth was in a coma for 3 weeks, was unable to speak for several months after emerging from the coma, and did not return home until August 2005, and

WHEREAS, Jennifer Wohlgemuth suffered profound brain injuries, including a subdural hematoma of the right frontal lobe and subarachnoid hemorrhage that resulted in the removal of a portion of her skull, and

WHEREAS, due to the damage to her frontal lobe, Jennifer Wohlgemuth's behavior and impulse control are similar to those of a 10-year-old child and require that she be supervised 24 hours a day, 7 days a week, and

WHEREAS, Jennifer Wohlgemuth currently suffers from severe

memory loss, partial loss of vision, lack of balance, urinary problems, anxiety, depression, dysarthric speech, acne, and weight fluctuations, and

WHEREAS, as a result of her significant memory impairment and lack of judgment, Jennifer Wohlgemuth is unable to drive, work at a job, or live independently and is under the guardianship of Traci Wohlgemuth, and

WHEREAS, a 3-day bench trial was held in the Sixth Judicial Circuit in the case of *Traci Wohlgemuth, as guardian of Jennifer K. Wohlgemuth, an incompetent, v. Robert White, as Sheriff of Pasco County, Florida*, which was assigned case number 51-2007-CA-000859, and on March 12, 2009, the trial court rendered a verdict in Jennifer Wohlgemuth's favor, awarding her total damages of $9,141,267.32, and

WHEREAS, the trial court found that Deputy Petrillo was 95 percent responsible for Jennifer Wohlgemuth's injuries and that Ms. Wohlgemuth was responsible for the remaining 5 percent due to her alleged failure to wear a seat belt, and

WHEREAS, on August 4, 2009, the trial court entered its amended final judgment in the amount of $8,724,754.40, and

WHEREAS, the Pasco County Sheriff's Office appealed the amended final judgment to the Second District Court of Appeal, and the appellate court affirmed the trial court's final judgment on March 10, 2010, and

WHEREAS, in accordance with s. 768.28, Florida Statutes,

the Pasco County Sheriff's Office paid the statutory limit of $100,000, and the remaining amount of $8,624,754.40 remains unpaid, and

WHEREAS, the Pasco County Sheriff's Office and Jennifer Wohlgemuth have since entered into a settlement agreement regarding the unpaid amount, with the sheriff's office promising to make annual payments to Ms. Wohlgemuth and agreeing not to oppose this claim bill, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The Pasco County Sheriff's Office is authorized and directed to appropriate from funds of the sheriff's office and to pay Jennifer Wohlgemuth the settlement amount of $2.6 million, to be placed in the Special Needs Trust created for the exclusive use and benefit of Jennifer Wohlgemuth as compensation for injuries and damages sustained due to the negligence of an employee of the sheriff's office. Payment shall be made in the amount of $325,000 per year for 8 consecutive years. The first payment must be made no later than October 31, 2017. Payments must be made by October 31 each subsequent year until paid in full. However, if Jennifer Wohlgemuth dies before October 31, 2024, payments shall cease with her death and the award under

this act shall be deemed paid in full.

Section 3. The amount paid by the Pasco County Sheriff's Office under s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the injuries and damages to Jennifer Wohlgemuth. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $520,000, the total amount paid for lobbyist fees may not exceed $130,000, and no amount may be paid for costs and other similar expenses relating to this claim.

Section 4. This act shall take effect upon becoming a law.

IN RE: SENATE BILL 0036—RELIEF OF JENNIFER WOHLGEMUTH V. PASCO COUNTY SHERIFF'S OFFICE, DOAH CASE NO. 11-4088

AFFIDAVIT OF D. FRANK WINKLES, ESQUIRE

STATE OF FLORIDA
COUNTY OF Hillsborough

BEFORE ME, the undersigned authority, personally appeared, D. Frank Winkles, who bring first duly sworn, deposes and says:

1. Attorney's fee, as a percentage of any amount that may be awarded by the Legislature, will be twenty-five percent 25% of the awarded amount.

2. Lobbyist's fee, as a percentage of any amount that may be awarded by the Legislature, will be five percent (5%) of the awarded amount.

3. The attorney's fee specified in (1.) does include the lobbyist fee; lobbyist's fee will not be "in addition to" attorney fee set forth in (1.).

4. The percentage specified in (1.) of 25% includes all costs and fees.

5. There are no outstanding costs.

6. The costs paid from the statutory cap payment were $98,065.05 and were delineated in correspondence to the Special Masters dated November 9, 2016.

D. Frank Winkles, Attorney

The foregoing instrument was acknowledged before me this 28 day of February 2017, by D. Frank Winkles, who ✓ is personally known to me or ____ provided identification in the form of _____.

Kristina Mazza
Notary Signature

KRISTINA MAZZA
State of Florida-Notary Public
Commission # GG 21141
My Commission Expires
August 14, 2020

Notary Name (Printed)
NOTARY PUBLIC, State of Florida

(Serial number, if any)

IN RE: SENATE BILL 0036—RELIEF OF JENNIFER WOHLGEMUTH V. PASCO COUNTY SHERIFF'S OFFICE, DOAH CASE NO. 11-4088

AFFIDAVIT OF HAYDEN R. DEMPSEY, LOBBYIST

STATE OF FLORIDA
COUNTY OF Hillsborough

BEFORE ME, the undersigned authority, personally appeared, Hayden R. Dempsey, who bring first duly sworn, deposes and says:

1. Attorney's fee, as a percentage of any amount that may be awarded by the Legislature, will be twenty-five percent 25% of the awarded amount.

2. Lobbyist's fee , as a percentage of any amount that may be awarded by the Legislature, will be five percent (5%) of the awarded amount.

3. The attorney's fee specified in (1.) does include the lobbyist fee; lobbyist's fee will not be "in addition to" attorney fee set forth in (1.).

4. The percentage specified in (1.) of 25% includes all costs and fees.

5. There are no outstanding costs.

6. I hereby agree to the above-stated terms as provided in an affidavit signed by Frank Winkles, Esquire, on February 28, 2017.

Hayden R. Dempsey

The foregoing instrument was acknowledged before me this 28th day of February 2017, by Hayden R. Dempsey, who ___ is personally known to me or ✓ provided identification in the form of FL D# D512331474030

Notary Signature

M. COX-MUSCHETT
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF024623
Expires 6/13/2017

M Cox-Muschett
Notary Name (Printed)
NOTARY PUBLIC, State of Florida

FF024623
(Serial number, if any)