Judiciary Committee

Monday, April 24, 2017
2:00 PM
404 HOB

Meeting Packet

Richard Corcoran
Speaker

Chris Sprowls
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time:	Monday, April 24, 2017 02:00 pm
End Date and Time:	Monday, April 24, 2017 05:00 pm
Location:	Sumner Hall (404 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

CS/HB 267 Estates by Civil Justice & Claims Subcommittee, Berman
CS/HB 329 Child Protection by Health & Human Services Committee, Harrell
CS/CS/HB 345 Criminal Justice Standards and Training Commission by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Asencio
CS/HB 393 Compensation of Victims of Wrongful Incarceration by Criminal Justice Subcommittee, DuBose
CS/HB 697 Federal Immigration Enforcement by Local, Federal & Veterans Affairs Subcommittee, Metz
CS/HB 699 Internet Identifiers by Criminal Justice Subcommittee, Mariano
CS/HB 1091 Arrest Warrants for State Prisoners by Criminal Justice Subcommittee, Plakon
CS/CS/HB 1337 Child Support and Parenting Time Plans by Government Operations & Technology Appropriations Subcommittee, Civil Justice & Claims Subcommittee, Diaz, J.
CS/HB 1379 Department of Legal Affairs by Civil Justice & Claims Subcommittee, Diaz, J.

Consideration of the following proposed committee substitute(s):

PCS for CS/HB 677 -- Justifiable Use of Force
PCS for HB 693 -- Criminal Offenses
PCS for CS/CS/HB 735 -- Covenants and Restrictions
PCS for CS/HB 953 -- Legislative Redistricting and Congressional Reapportionment

NOTICE FINALIZED on 04/22/2017 4:25PM by Bowen.Erika

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 267 Estates
SPONSOR(S): Civil Justice & Claims Subcommittee; Berman
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 724

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	15 Y, 0 N, As CS	MacNamara	Bond
2) Agriculture & Property Rights Subcommittee	11 Y, 0 N	Thompson	Smith
3) Judiciary Committee		MacNamara	Camechis

SUMMARY ANALYSIS

A surviving spouse has a right to elect a share of the deceased spouse's estate, different than what the surviving spouse would have received under the will, known as the elective share. Current law provides which assets are included in determining the value of a decedent's elective estate. The elective share is 30% of that elective estate. Current law also provides the procedural requirements a surviving spouse must follow in order to claim the elective share.

The state's Constitution provides protections for certain property referred to as homestead. Whether the value of the homestead property is included in the elective share calculation depends upon how the homestead property is titled. The bill provides that the value of the homestead property is included in the calculation regardless of how such property is titled, unless the surviving spouse waives his or her right to such homestead property. The bill also provides a method for valuing such homestead property for purposes of the elective share.

Paying the elective share may require transfer of property from others in satisfaction of a required contribution to the elective share. The bill adds an assessment of interest for contribution unpaid more than 2 years after the death of the decedent. The bill provides for an award of attorney fees and costs in certain elective share proceedings. The bill also extends the period of time the surviving spouse can petition a court for an extension of time to file for the elective share and expands the scope of trusts that are included under the savings clause to include an elective share trust, even where a marital deduction is not elected.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Probate is the legal process for determining and paying for the debts of the deceased and distributing the deceased's property to heirs. If the deceased left a valid will, the estate is "testate", and the assets are distributed according to the will. If the deceased did not leave a valid will, the estate is "intestate," and the assets are distributed according to constitutional and statutory guidelines.

Notwithstanding the general freedom and right that one has to distribute his or her property by will as one sees fit, there are two significant limitations to such right that apply to the estate of a decedent who was married at the time of his or her death:

- Exempt property and homestead property transfer to the surviving spouse outside of probate.
- The elective share provisions provide for a set inheritance for a surviving spouse, different than the spouse would otherwise receive by operation of the will; and

The bill amends portions of the Florida Probate Code pertaining to the elective share.

Background - Homestead Property Law

Homestead property constitutional provisions and laws are designed to protect a surviving spouse from financial ruin. Article X, s. 4 of the state Constitution protects homestead property in three different ways: limits on property tax; protection from forced sale by creditors; and restrictions on a homestead owner's right to alienate or devise the homestead property. Only the third, restricting devise of a homestead, is relevant to this bill. Statutory law, at ss. 732.401(1) and (2), F.S., addresses the descent (transfer of property to descendants) of homestead property where no devise is allowed. The statute provides:

> (1) [T]he homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes.
>
> (2) In lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes.

Background - Elective Share, In General

Like the constitutional and statutory homestead laws, elective share law is also designed to protect a surviving spouse from financial ruin caused by the death of the other spouse.[1] The state's elective share laws are codified in Part II of ch. 732, F. S. Sections 732.201 - 732.2155, F.S., in the aggregate give the surviving spouse of a decedent who was domiciled in the state on his or her death the right to a forced share of the decedent's estate. Generally stated, the elective share is 30% of the aggregate value of the all of the decedent's assets at death. There are technical rules that govern what is included in the asset base against which the elective share can be taken, and the valuation of those assets for elective share purposes.

The elective share is reduced by the value of any property passing to the spouse in the decedent's will, under intestacy, or as a pretermitted spouse (not mentioned in the will because the will was written

[1] *In re Anderson's Estate*, 394 So.2d 1146 (Fla. 4th DCA 1981).

prior to the marriage). The elective share is in addition to the spouse's right to exempt property, a family allowance, and homestead.[2]

The right to claim the elective share may be exercised by the surviving spouse or, with court approval, by an attorney in fact or guardian of the property of the surviving spouse. Before approving the election, the court must determine that the election is in the best interests of the surviving spouse during the spouse's probable lifetime. The statute provides several requirements and guidelines for the right of election:

- The election must be made within 6 months after the decedent's death and during the surviving spouse's lifetime;
- A petition by an attorney in fact or by a guardian of the property of the surviving spouse for approval to make the election must be filed within 6 months after the decedent's death and during the surviving spouse's lifetime. If the petition is timely filed, the time for making the election must be extended for at least 30 days after the rendition of the order allowing the election;
- Once made, the election is irrevocable; and
- The election must be made by filing a notice of election containing the legal description of the homestead property for recording in the official record books of the county or counties where the homestead property is located.[3]

Prior to an election being made, expenses relating to the ownership of the homestead are allocated between the surviving spouse, as life tenant, and the decedent's descendants, as remaindermen, in accordance with ch. 738, F.S. If an election is made, expenses relating to the ownership of the homestead shall be allocated between the surviving spouse and the descendants as tenants in common in proportion to their respective shares, effective as of the date the election is filed for recording.[4]

Once the entry of the order determining the surviving spouse's entitlement to the elective share has occurred, the personal representative must file and serve a petition to determine the amount of the elective share.[5] The petition is to contain:

- The name and address of each direct recipient known to the personal representative;
- A description of the proposed distribution of assets to satisfy the elective share, and the time and manner of distribution; and
- An identification of those direct recipients, if any, from whom a specified contribution will be required and a statement of the amount of contribution sought from each.

Fla. Prob. R. 5.340 requires an inventory of the elective estate to be served together with the petition. Within 20 days after the service of the petition to determine the amount of the elective share, any interested person is permitted to serve an objection to the amount of, or distribution of, assets to satisfy the elective share. The objection must state with particularity the grounds upon which it is based. If an objection is served, the personal representative has to promptly serve a copy of the objection on all interested persons who have not previously been served.

If no objection is timely served, the court must enter an order on the petition. The order that is entered is required to:

- State the amount of the elective share;

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[2] s. 732.2105, F.S.
[3] s. 732.401(2)(a-e), F.S. The statute also contains language to include in the notice.
[4] s. 732.401(3), F.S.
[5] Fla. Prob. R. 5.360(c).

- Identify the assets to be distributed to the surviving spouse in satisfaction of the elective estate; and
- If contribution is necessary, specify the amount of contribution for which each direct recipient is liable.

Background - Interaction between Protected Homestead and the Elective Share

When a spouse dies, the manner in which the marital residence was titled at the time of death can impact the amount of the elective share to which the surviving spouse is entitled. Specifically, the elective share calculation can be different depending on whether the marital residence was owned as tenants by the entirety by both spouses (in which case the marital residence by statute is not "protected homestead") or was owned solely by the deceased spouse (in which case the marital residence is "protected homestead"), even though in both cases the surviving spouse may end up with the same ownership interest in the marital residence.

This anomaly results from the interaction between the Florida homestead statutes and the elective share statutes. Property that is the protected homestead of the decedent is presently excluded from the calculation of the elective estate under s. 732.2045, F.S., and is not an asset to be considered for purposes of satisfaction of the elective share under s. 732.2075, F.S. Conversely, property owned by the decedent and the surviving spouse as tenants by the entireties is included in the calculation of the elective estate at one-half of the fair market value of the property as of the decedent's date of death under s. 732.2035(3), F.S., and at the same value for purposes of satisfaction of the elective share under s. 732.2075, F.S. Accordingly, the surviving spouse of a decedent with protected homestead (that is, where the home was owned solely by the decedent) would receive more upon the decedent's death (the homestead plus the elective share) than a surviving spouse that owned property with the decedent where the property was not considered protected homestead (that is, where the home was owned as tenants by the entireties). This different treatment is based on an asset titling decision (or mistake) and not on any apparent policy difference.

Effect of the Bill

Treatment of the Homestead Property as it Relates to the Elective Share

The bill includes the protected homestead in the value of the elective estate, thereby equalizing the calculation of the elective share regardless of how the homestead was titled. Additionally, the bill provides for the valuation of the interest in the protected homestead that the surviving spouse receives as part of his or her elective share. Specifically, the bill provides that the value of the protected homestead is:

- The fair market value of the protected homestead on the date of the decedent's death if the surviving spouse received a fee simple interest in the property;
- One half of the fair market value of the protected homestead on the date of the decedent's death if the spouse takes a life estate in the property or elects to take an undivided one-half interest as a tenant in common; or
- In the event the surviving spouse validly waives his or her homestead rights, but nevertheless receives an interest in the protected homestead, the value of the spouse's interest is determined as property interests that are not protected homestead.

The bill provides a definition for fair market value for purposes of valuing the elective estate as the "net aggregate amount, as of the date of the decedent's death, of all mortgages, liens, and security interests in which the protected homestead is subject and for which the decedent is liable, but only to the extent that such amount is not otherwise deducted as a claim paid or payable from the elective share.

The bill excludes the protected homestead from the elective estate if the surviving spouse waives his or her homestead rights in a marital agreement under s. 732.702, F.S., or otherwise, and receives no

interest in it. This has the effect of preventing a spouse who has waived his or her right to the homestead in a premarital or post-marital agreement during the decedent's lifetime from circumventing the marital agreement by claiming a portion of the homestead's value indirectly by taking the elective share after the decedent's death.

Timely Election

The surviving spouse must make a timely election to take the elective share; otherwise the right to the elective share is forfeited.

The surviving spouse's right of election may be exercised by various persons. It, of course, may be exercised by the surviving spouse. It may also be exercised by an attorney in fact or a guardian of the property of the surviving spouse as long as there is the approval of the court having jurisdiction of the probate proceeding.[6] The court, before it approves the election, is required to determine that the election is in the best interests of the surviving spouse, during the spouse's probable lifetime.

The election must be filed on or before the earlier of the date that is 6 months after the date of service of a copy of the notice of administration on the surviving spouse (or served on an attorney in fact or guardian of the property of the surviving spouse), or the date that is two years after the date of the decedent's death.[7]

Before the deadline, the surviving spouse may petition the court for an extension of time to make an election. The court, for good cause shown, may extend the time for the election. If the court grants the petition for an extension, then the election must be filed within the time allowed by the extension.[8] A petition for an extension of time for making the election or for approval to make the election tolls the time for making the election.[9]

The bill amends s. 732.2135(2), F.S., to add that a surviving spouse (or attorney in fact, or guardian of the property of the surviving spouse) may also petition the court for an extension of time for making an election within the 40 days after the date of termination of any proceeding which affects the amount the spouse is entitled to receive under s. 732.2075(1), F.S., but no more than 2 years after the decedent's death.

Contribution

In some instances, a person receives property of the deceased that is necessary for the estate to pay the elective share amount. Contribution refers to the amount such person owes. An order requiring contribution bears interest at the statutory rate commencing 90 days after entry by the probate court. This bill amends ss. 732.2085(3)(a) and 732.2145(1), F.S., to add that interest on a required contribution starts to accrue 2 years after death of the deceased, even if an order of contribution has not been entered at that time.

Attorney Fees

The bill grants courts the power to award attorney fees and costs when there is an objection or dispute over entitlement to or the amount of the elective share, the property interests included in the elective share or its value, or the satisfaction of the elective share. It adopts the same standard for granting an award of costs and attorney fees that is used in and is applicable to surcharge actions and proceedings to modify a will or trust.[10] A court may direct payment from the estate or from a party's interest in the

[6] *See* s. 732.2125(2), F.S.
[7] s. 732.2135(1), F.S.
[8] s. 732.2135(2), F.S.
[9] s. 732.2135(4), F.S.
[10] ss. 733.609, 732.615, 732.616 and 736.1004, F.S.

elective share or the elective estate, or may enter a judgment that can be satisfied from other property of the party.

Section 732.2135(5), F.S., gives the probate court the right to award attorney's fees and costs against the surviving spouse makes an elective share election in bad faith. Bad faith is not defined in this context. The bill repeals the subsection, repealing the ability of the probate court to award attorney's fees for bad faith filing of an elective share election under this statute.

The Savings Clause and Elective Share Trusts

Under the Code, a trust referred to as an "elective share trust," may be established for the benefit of a surviving spouse. If properly formed, the elective share trust avoids a claim to an elective share. An elective share trust is a trust under which:

- The surviving spouse is entitled for life to the use of the property or to all of the income, payable at least annually;
- The surviving spouse has the right under the terms of the trust or state law to require the trustee either to make the property productive or to convert it within a reasonable time; and
- During the spouse's life, no person other than the spouse has the power to distribute income or principal to anyone other than the spouse.

Moreover, s. 738.606, F.S., part of the Florida Uniform Principal Income Act, provides special protections when a marital deduction may be taken under the Internal Revenue Code or comparable law of any state. Specifically, where a deduction is allowed for all or part of a trust that must be distributed to the grantor's spouse, and the assets of which consist substantially of property that does not produce sufficient income for the spouse, the spouse may require the trustee to make the property productive of income, convert property within a reasonable time, or exercise the power conferred by ss. 738.104 and 738.1041, F.S., related to a trustee's power to adjust.

Under current law, not all elective share trusts will be made subject to a marital deduction election.

The bill expands the scope of the savings clause found in s. 738.606, F.S., to include an "elective share trust," as that term is defined in s. 732.2025(2), F. S. As with marital trusts intended to qualify for the estate tax marital deduction (which trusts are presently protected by the savings provisions of s. 738.606, F.S.), to qualify as an elective share trust, the governing instrument that creates the trust must give the surviving spouse the power to compel the trustee to convert property that is not productive of income into property that is productive.

Because not all elective share trusts will be made subject to a marital deduction election, the bill specifically extends the savings provision of s. 738.606, F.S., to those elective share trusts for which a marital deduction is not elected in order to satisfy the requirements for an elective share trust.

Effective Date of the Bill

The changes made by this bill apply to the estates of decedents dying after July 1, 2017.

B. SECTION DIRECTORY:

Section 1 amends s. 732.2025, F.S., relating to definitions.

Section 2 amends s. 732.2035, F.S. relating to property entering into the elective share.

Section 3 amends s. 732.2045, F.S., relating to exclusions and overlapping application.

Section 4 amends s. 732.2055, F.S., relating to valuation of the elective share.

Section 5 amends s. 732.2075, F.S., relating to sources from which elective share payable.

Section 6 amends s. 732.2085, F.S., relating to liability of direct recipients and beneficiaries.

Section 7 amends s. 732.2095, F.S., relating to valuation of property satisfying elective share.

Section 8 amends s. 732.2115, F.S. relating to protection of payors and other third parties.

Section 9 amends s. 732.2135, F.S., relating to time of election; extensions; withdrawal.

Section 10 amends s. 732.2145, F.S., relating to order of contribution and duty to collect.

Section 11 creates s. 732.2151, F.S., relating to award of fees and costs.

Section 12 amends s. 738.606, F.S., relating to property not productive of income.

Section 13 relates to applicability.

Section 14 provides for 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 government revenue.

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:

The bill may have a fiscal impact as a result of awarding attorney fees and costs in certain elective share proceedings. The impact could be positive for attorneys, beneficiaries, or spouses who are required to file actions while pursuing claims related to the elective share. The impact could also be negative on estates and beneficiaries defending against such actions as an award for attorney fees and costs against the estate could come out of assets in the estate.

The bill may have a fiscal impact for parties responsible for contributing towards the elective share and parties awaiting contributions to satisfy their elective share. An award of interest would have a negative impact on beneficiaries responsible for contributing to the elective share and a positive impact on surviving spouses who have not had their elective share satisfied.

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 March 13, 2017, the Civil Justice & Claims Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by removing a section that would have changed the percentage of the elective estate that constitutes the surviving spouses elective share. 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 estates; amending s. 732.2025, F.S.; conforming cross-references; amending s. 732.2035, F.S.; providing that a decedent's property interest in the protected homestead is included in the elective estate; amending s. 732.2045, F.S.; revising the circumstances under which the decedent's property interest in the protected homestead is excluded from the elective estate; amending s. 732.2055, F.S.; providing for the valuation of the decedent's protected homestead under certain circumstances; amending s. 732.2075, F.S.; conforming cross-references; amending s. 732.2085, F.S.; requiring the payment of interest on any unpaid portion of a person's required contribution toward the elective share with respect to certain property; amending s. 732.2095, F.S.; revising provisions relating to the valuation of a surviving spouse's interest in property to include protected homestead; conforming cross-references; amending s. 732.2115; conforming a cross-reference; amending s. 732.2135, F.S.; revising the period within which a specified person may petition the court for an extension of time for making an election; removing a provision authorizing assessment of attorney fees and costs if an election is made in

bad faith; amending s. 732.2145, F.S.; requiring the payment of interest on any unpaid portion of a person's required contribution toward the elective share after a certain date; creating s. 732.2151, F.S.; providing for the award of fees and costs in certain elective share proceedings; providing that a court may direct payment from certain sources; providing applicability; amending s. 738.606, F.S.; providing that a surviving spouse may require a trustee of a marital or elective share trust to make property productive of income; providing applicability; providing an effective date.

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

Section 1. Subsections (1) and (9) of section 732.2025, Florida Statutes, are amended to read:

732.2025 Definitions.—As used in ss. 732.2025-732.2155, the term:

(1) "Direct recipient" means the decedent's probate estate and any other person who receives property included in the elective estate by transfer from the decedent, including transfers described in s. 732.2035(9) ~~s. 732.2035(8)~~, by right of survivorship, or by beneficiary designation under a governing instrument. For this purpose, a beneficiary of an insurance

policy on the decedent's life, the net cash surrender value of which is included in the elective estate, is treated as having received property included in the elective estate. In the case of property held in trust, "direct recipient" includes the trustee but excludes the beneficiaries of the trust.

(9) "Revocable trust" means a trust that is includable in the elective estate under s. 732.2035(5) ~~s. 732.2035(4)~~.

Section 2. Section 732.2035, Florida Statutes, is amended to read:

732.2035 Property entering into elective estate.—Except as provided in s. 732.2045, the elective estate consists of the sum of the values as determined under s. 732.2055 of the following property interests:

(1) The decedent's probate estate.

(2) The decedent's interest in property which constitutes the protected homestead of the decedent.

(3) The decedent's ownership interest in accounts or securities registered in "Pay On Death," "Transfer On Death," "In Trust For," or coownership with right of survivorship form. For this purpose, "decedent's ownership interest" means, in the case of accounts or securities held in tenancy by the entirety, one-half of the value of the account or security, and in all other cases, that portion of the accounts or securities which the decedent had, immediately before death, the right to withdraw or use without the duty to account to any person.

(4) ~~(3)~~ The decedent's fractional interest in property, other than property described in subsection (3) ~~(2)~~ or subsection (8) ~~(7)~~, held by the decedent in joint tenancy with right of survivorship or in tenancy by the entirety. For this purpose, "decedent's fractional interest in property" means the value of the property divided by the number of tenants.

(5) ~~(4)~~ That portion of property, other than property described in subsection (2) and subsection (3), transferred by the decedent to the extent that at the time of the decedent's death the transfer was revocable by the decedent alone or in conjunction with any other person. This subsection does not apply to a transfer that is revocable by the decedent only with the consent of all persons having a beneficial interest in the property.

(6)(a) ~~(5)(a)~~ That portion of property, other than property described in subsection (2) ~~(3)~~, subsection (4), subsection (5), or subsection (8) ~~(7)~~, transferred by the decedent to the extent that at the time of the decedent's death:

1. The decedent possessed the right to, or in fact enjoyed the possession or use of, the income or principal of the property; or

2. The principal of the property could, in the discretion of any person other than the spouse of the decedent, be distributed or appointed to or for the benefit of the decedent.

In the application of this subsection, a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement shall be treated as a right to that portion of the income of the property necessary to equal the annuity, unitrust, or other payment.

(b) The amount included under this subsection is:

1. With respect to subparagraph (a)1., the value of the portion of the property to which the decedent's right or enjoyment related, to the extent the portion passed to or for the benefit of any person other than the decedent's probate estate; and

2. With respect to subparagraph (a)2., the value of the portion subject to the discretion, to the extent the portion passed to or for the benefit of any person other than the decedent's probate estate.

(c) This subsection does not apply to any property if the decedent's only interests in the property are that:

1. The property could be distributed to or for the benefit of the decedent only with the consent of all persons having a beneficial interest in the property; or

2. The income or principal of the property could be distributed to or for the benefit of the decedent only through the exercise or in default of an exercise of a general power of appointment held by any person other than the decedent; or

3. The income or principal of the property is or could be

distributed in satisfaction of the decedent's obligation of support; or

4. The decedent had a contingent right to receive principal, other than at the discretion of any person, which contingency was beyond the control of the decedent and which had not in fact occurred at the decedent's death.

(7) ~~(6)~~ The decedent's beneficial interest in the net cash surrender value immediately before death of any policy of insurance on the decedent's life.

(8) ~~(7)~~ The value of amounts payable to or for the benefit of any person by reason of surviving the decedent under any public or private pension, retirement, or deferred compensation plan, or any similar arrangement, other than benefits payable under the federal Railroad Retirement Act or the federal Social Security System. In the case of a defined contribution plan as defined in s. 414(i) of the Internal Revenue Code of 1986, as amended, this subsection shall not apply to the excess of the proceeds of any insurance policy on the decedent's life over the net cash surrender value of the policy immediately before the decedent's death.

(9) ~~(8)~~ Property that was transferred during the 1-year period preceding the decedent's death as a result of a transfer by the decedent if the transfer was either of the following types:

(a) Any property transferred as a result of the

termination of a right or interest in, or power over, property that would have been included in the elective estate under subsection (5)~~(4)~~ or subsection (6)~~(5)~~ if the right, interest, or power had not terminated until the decedent's death.

(b) Any transfer of property to the extent not otherwise included in the elective estate, made to or for the benefit of any person, except:

1. Any transfer of property for medical or educational expenses to the extent it qualifies for exclusion from the United States gift tax under s. 2503(e) of the Internal Revenue Code, as amended; and

2. After the application of subparagraph 1., the first annual exclusion amount of property transferred to or for the benefit of each donee during the 1-year period, but only to the extent the transfer qualifies for exclusion from the United States gift tax under s. 2503(b) or (c) of the Internal Revenue Code, as amended. For purposes of this subparagraph, the term "annual exclusion amount" means the amount of one annual exclusion under s. 2503(b) or (c) of the Internal Revenue Code, as amended.

(c) Except as provided in paragraph (d), for purposes of this subsection:

1. A "termination" with respect to a right or interest in property occurs when the decedent transfers or relinquishes the right or interest, and, with respect to a power over property, a

termination occurs when the power terminates by exercise, release, lapse, default, or otherwise.

2. A distribution from a trust the income or principal of which is subject to subsection (5)~~(4)~~, subsection (6)~~(5)~~, or subsection (10)~~(9)~~ shall be treated as a transfer of property by the decedent and not as a termination of a right or interest in, or a power over, property.

(d) Notwithstanding anything in paragraph (c) to the contrary:

1. A "termination" with respect to a right or interest in property does not occur when the right or interest terminates by the terms of the governing instrument unless the termination is determined by reference to the death of the decedent and the court finds that a principal purpose for the terms of the instrument relating to the termination was avoidance of the elective share.

2. A distribution from a trust is not subject to this subsection if the distribution is required by the terms of the governing instrument unless the event triggering the distribution is determined by reference to the death of the decedent and the court finds that a principal purpose of the terms of the governing instrument relating to the distribution is avoidance of the elective share.

(10)~~(9)~~ Property transferred in satisfaction of the elective share.

Section 3. Paragraph (i) of subsection (1) of section 732.2045, Florida Statutes, is amended to read:

732.2045 Exclusions and overlapping application.—

(1) EXCLUSIONS.—Section 732.2035 does not apply to:

(i) Property which constitutes the protected homestead of the decedent if the surviving spouse validly waived his or her homestead rights as provided under s. 732.702, or otherwise under applicable law, and such spouse did not receive any interest in the protected homestead upon ~~whether held by the decedent or by a trust at~~ the decedent's death.

Section 4. Section 732.2055, Florida Statutes, is amended to read:

732.2055 Valuation of the elective estate.—For purposes of s. 732.2035, "value" means:

(1)(a) In the case of protected homestead:

1. If the surviving spouse receives a fee simple interest, the fair market value of the protected homestead on the date of the decedent's death.

2. If the spouse takes a life estate as provided in s. 732.401(1), or validly elects to take an undivided one-half interest as a tenant in common as provided in s. 732.401(2), one-half of the fair market value of the protected homestead on the date of the decedent's death.

3. If the surviving spouse validly waived his or her homestead rights as provided under s. 732.702 or otherwise under

applicable law, but nevertheless receives an interest in the protected homestead, other than an interest described in s. 732.401, including an interest in trust, the value of the spouse's interest is determined as property interests that are not protected homestead.

(b) For purposes of this subsection, fair market value is net of the aggregate amount, as of the date of the decedent's death, of all mortgages, liens, and security interests to which the protected homestead is subject and for which the decedent is liable, but only to the extent that such amount is not otherwise deducted as a claim paid or payable from the elective estate.

(2) In the case of any policy of insurance on the decedent's life includable under s. 732.2035(5), (6), or (7) ~~s. 732.2035(4), (5), or (6)~~, the net cash surrender value of the policy immediately before the decedent's death.

(3)~~(2)~~ In the case of any policy of insurance on the decedent's life includable under s. 732.2035(9) ~~s. 732.2035(8)~~, the net cash surrender value of the policy on the date of the termination or transfer.

(4)~~(3)~~ In the case of amounts includable under s. 732.2035(8) ~~s. 732.2035(7)~~, the transfer tax value of the amounts on the date of the decedent's death.

(5)~~(4)~~ In the case of other property included under s. 732.2035(9) ~~s. 732.2035(8)~~, the fair market value of the property on the date of the termination or transfer, computed

after deducting any mortgages, liens, or security interests on the property as of that date.

(6) ~~(5)~~ In the case of all other property, the fair market value of the property on the date of the decedent's death, computed after deducting from the total value of the property:

(a) All claims paid or payable from the elective estate; and

(b) To the extent they are not deducted under paragraph (a), all mortgages, liens, or security interests on the property.

Section 5. Paragraph (b) of subsection (1), paragraph (b) of subsection (2), and paragraph (c) of subsection (3) of section 732.2075, Florida Statutes, are amended to read:

732.2075 Sources from which elective share payable; abatement.—

(1) Unless otherwise provided in the decedent's will or, in the absence of a provision in the decedent's will, in a trust referred to in the decedent's will, the following are applied first to satisfy the elective share:

(b) To the extent paid to or for the benefit of the surviving spouse, amounts payable under any plan or arrangement described in s. 732.2035(8) ~~s. 732.2035(7)~~.

(2) If, after the application of subsection (1), the elective share is not fully satisfied, the unsatisfied balance shall be allocated entirely to one class of direct recipients of

the remaining elective estate and apportioned among those recipients, and if the elective share amount is not fully satisfied, to the next class of direct recipients, in the following order of priority, until the elective share amount is satisfied:

(b) Class 2.—Recipients of property interests, other than protected charitable interests, included in the elective estate under s. 732.2035(3), (4), or (7) ~~s. 732.2035(2), (3), or (6)~~ and, to the extent the decedent had at the time of death the power to designate the recipient of the property, property interests, other than protected charitable interests, included under s. 732.2035(6) and (8) ~~s. 732.2035(5) and (7)~~.

For purposes of this subsection, a protected charitable interest is any interest for which a charitable deduction with respect to the transfer of the property was allowed or allowable to the decedent or the decedent's spouse under the United States gift or income tax laws.

(3) If, after the application of subsections (1) and (2), the elective share amount is not fully satisfied, the additional amount due to the surviving spouse shall be determined and satisfied as follows:

(c) If there is more than one trust to which this subsection could apply, unless otherwise provided in the decedent's will or, in the absence of a provision in the

decedent's will, in a trust referred to in the decedent's will, the unsatisfied balance shall be apportioned pro rata to all such trusts in proportion to the value, as determined under s. 732.2095(2)(f) ~~s. 732.2095(2)(d)~~, of the surviving spouse's beneficial interests in the trusts.

Section 6. Paragraph (a) of subsection (3) of section 732.2085, Florida Statutes, is amended to read:

732.2085 Liability of direct recipients and beneficiaries.—

(3) If a person pays the value of the property on the date of a sale or exchange or contributes all of the property received, as provided in paragraph (2)(b):

(a) No further contribution toward satisfaction of the elective share shall be required with respect to that property. However, if a person's required contribution is not fully paid by 2 years after the date of the death of the decedent, such person must also pay interest at the statutory rate on any portion of the required contribution that remains unpaid.

Section 7. Section 732.2095, Florida Statutes, is amended to read:

732.2095 Valuation of property used to satisfy elective share.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Applicable valuation date" means:

1. In the case of transfers in satisfaction of the

elective share, the date of the decedent's death.

2. In the case of property held in a qualifying special needs trust on the date of the decedent's death, the date of the decedent's death.

3. In the case of other property irrevocably transferred to or for the benefit of the surviving spouse during the decedent's life, the date of the transfer.

4. In the case of property distributed to the surviving spouse by the personal representative, the date of distribution.

5. Except as provided in subparagraphs 1., 2., and 3., in the case of property passing in trust for the surviving spouse, the date or dates the trust is funded in satisfaction of the elective share.

6. In the case of property described in s. 732.2035(2), (3), or (4) ~~s. 732.2035(2) or (3)~~, the date of the decedent's death.

7. In the case of proceeds of any policy of insurance payable to the surviving spouse, the date of the decedent's death.

8. In the case of amounts payable to the surviving spouse under any plan or arrangement described in s. 732.2035(8) ~~s. 732.2035(7)~~, the date of the decedent's death.

9. In all other cases, the date of the decedent's death or the date the surviving spouse first comes into possession of the property, whichever occurs later.

(b) "Qualifying power of appointment" means a general power of appointment that is exercisable alone and in all events by the decedent's spouse in favor of the spouse or the spouse's estate. For this purpose, a general power to appoint by will is a qualifying power of appointment if the power may be exercised by the spouse in favor of the spouse's estate without the consent of any other person.

(c) "Qualifying invasion power" means a power held by the surviving spouse or the trustee of an elective share trust to invade trust principal for the health, support, and maintenance of the spouse. The power may, but need not, provide that the other resources of the spouse are to be taken into account in any exercise of the power.

(2) Except as provided in this subsection, the value of property for purposes of s. 732.2075 is the fair market value of the property on the applicable valuation date.

(a) If the surviving spouse has a life interest in property not in trust that entitles the spouse to the use of the property for life, <u>including, without limitation, a life estate in protected homestead as provided in s. 732.401(1),</u> the value of the spouse's interest is one-half of the value of the property on the applicable valuation date.

<u>(b) If the surviving spouse elects to take an undivided one-half interest in protected homestead as a tenant in common as provided in s. 732.401(2), the value of the spouse's interest</u>

is one-half of the value of the property on the applicable valuation date.

(c) If the surviving spouse validly waived his or her homestead rights as provided in s. 732.702 or otherwise under applicable law but nevertheless receives an interest in protected homestead, other than an interest described in s. 732.401, including, without limitation, an interest in trust, the value of the spouse's interest is determined as property interests that are not protected homestead.

(d) ~~(b)~~ If the surviving spouse has an interest in a trust, or portion of a trust, which meets the requirements of an elective share trust, the value of the spouse's interest is a percentage of the value of the principal of the trust, or trust portion, on the applicable valuation date as follows:

1. One hundred percent if the trust instrument includes both a qualifying invasion power and a qualifying power of appointment.

2. Eighty percent if the trust instrument includes a qualifying invasion power but no qualifying power of appointment.

3. Fifty percent in all other cases.

(e) ~~(c)~~ If the surviving spouse is a beneficiary of a trust, or portion of a trust, which meets the requirements of a qualifying special needs trust, the value of the principal of the trust, or trust portion, on the applicable valuation date.

(f) ~~(d)~~ If the surviving spouse has an interest in a trust that does not meet the requirements of either an elective share trust or a qualifying special needs trust, the value of the spouse's interest is the transfer tax value of the interest on the applicable valuation date; however, the aggregate value of all of the spouse's interests in the trust shall not exceed one-half of the value of the trust principal on the applicable valuation date.

(g) ~~(e)~~ In the case of any policy of insurance on the decedent's life the proceeds of which are payable outright or to a trust described in paragraph (d) ~~(b)~~, paragraph (e) ~~(c)~~, or paragraph (f) ~~(d)~~, the value of the policy for purposes of s. 732.2075 and paragraphs (d), (e), and (f) ~~(b), (c), and (d)~~ is the net proceeds.

(h) ~~(f)~~ In the case of a right to one or more payments from an annuity or under a similar contractual arrangement or under any plan or arrangement described in s. 732.2035(8) ~~s. 732.2035(7)~~, the value of the right to payments for purposes of s. 732.2075 and paragraphs (d), (e), and (f) ~~(b), (c), and (d)~~ is the transfer tax value of the right on the applicable valuation date.

Section 8. Section 732.2115, Florida Statutes, is amended to read:

732.2115 Protection of payors and other third parties.—Although a property interest is included in the decedent's

elective estate under s. 732.2035(3)-(9) ~~s. 732.2035(2)-(8)~~, a payor or other third party is not liable for paying, distributing, or transferring the property to a beneficiary designated in a governing instrument, or for taking any other action in good faith reliance on the validity of a governing instrument.

Section 9. Section 732.2135, Florida Statutes, is amended to read:

732.2135 Time of election; extensions; withdrawal.—

(1) Except as provided in subsection (2), the election must be filed on or before the earlier of the date that is 6 months after the date of service of a copy of the notice of administration on the surviving spouse, or an attorney in fact or guardian of the property of the surviving spouse, or the date that is 2 years after the date of the decedent's death.

(2) Within the period provided in subsection (1), or 40 days after the date of termination of any proceeding which affects the amount the spouse is entitled to receive under s. 732.2075(1), whichever is later, but no more than 2 years after the decedent's death, the surviving spouse or an attorney in fact or guardian of the property of the surviving spouse may petition the court for an extension of time for making an election. For good cause shown, the court may extend the time for election. If the court grants the petition for an extension, the election must be filed within the time allowed by the

extension.

(3) The surviving spouse or an attorney in fact, guardian of the property, or personal representative of the surviving spouse may withdraw an election at any time within 8 months after the decedent's death and before the court's order of contribution.

(4) A petition for an extension of the time for making the election or for approval to make the election shall toll the time for making the election.

~~(5) If the court determines that an election is made or pursued in bad faith, the court may assess attorney's fees and costs against the surviving spouse or the surviving spouse's estate.~~

Section 10. Subsection (1) of section 732.2145, Florida Statutes, is amended to read:

732.2145 Order of contribution; personal representative's duty to collect contribution.—

(1) The court shall determine the elective share and contribution. Any amount of the elective share not satisfied within 2 years of the date of death of the decedent shall bear interest at the statutory rate until fully satisfied, even if an order of contribution has not yet been entered. Contributions shall bear interest at the statutory rate beginning 90 days after the order of contribution. The order is prima facie correct in proceedings in any court or jurisdiction.

Section 11. Section 732.2151, Florida Statutes, is created to read:

732.2151 Award of fees and costs in elective share proceedings.—

(1) The court may award taxable costs as in chancery actions, including attorney fees, in any proceeding under this part in which there is an objection to or dispute over:

(a) The entitlement to or the amount of the elective share;

(b) The property interests included in the elective estate, or its value; or

(c) The satisfaction of the elective share.

(2) When awarding taxable costs or attorney fees, the court may do one or more of the following:

(a) Direct payment from the estate.

(b) Direct payment from a party's interest in the elective share or the elective estate.

(c) Enter a judgement that can be satisfied from other property of the party.

(3) In addition to any of the fees that may be awarded under subsections (1) and (2), if the personal representative does not file a petition to determine the amount of the elective share as required by the Florida Probate Rules, the electing spouse or the attorney-in-fact, guardian of the property, or personal representative of the electing spouse may be awarded

from the estate reasonable costs, including attorney fees, incurred in connection with the preparation and filing of the petition.

(4) This section applies to all proceedings commenced on or after July 1, 2017, without regard to the date of the decedent's death.

Section 12. Subsection (1) of section 738.606, Florida Statutes, is amended to read:

738.606 Property not productive of income.—

(1) If a marital deduction under the Internal Revenue Code or comparable law of any state is allowed for all or part of a trust, or if assets are transferred to a trust that satisfies the requirements of s. 732.2025(2)(a) and (c), and such assets have been used in whole or in part to satisfy an election by a surviving spouse under s. 732.2125 and ~~the income of which must be distributed to the grantor's spouse and the assets of which~~ consist ~~substantially~~ of property that, in the aggregate, does not provide the spouse with sufficient income from or use of the trust assets, and if ~~the~~ amounts the trustee transfers from principal to income under s. 738.104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, even though, in the case of an elective share trust, a marital deduction is not made or is only partially made, the spouse may require the trustee of

such marital trust or elective share trust to make property productive of income, convert property within a reasonable time, or exercise the power conferred by ss. 738.104 and 738.1041. The trustee may decide which action or combination of actions to take.

Section 13. Applicability.—Except as otherwise provided in this act, the amendments made by this act apply to decedents whose death occurred on or after July 1, 2017.

Section 14. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 329 Child Protection
SPONSOR(S): Health & Human Services Committee; Harrell and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 762

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	12 Y, 2 N	Stranburg	Bond
2) Health & Human Services Committee	17 Y, 0 N, As CS	Langston	Calamas
3) Judiciary Committee		Stranburg	Camechis

SUMMARY ANALYSIS

Current law provides that the public policy of the state is for each minor to have frequent and continuing contact with both parents after the parents separate or divorce. In determining a time-sharing plan for contact with both parents, a court must weigh a number of factors in deciding what is in the best interests of the child.

A recovery residence is a form of group housing advertised as a peer-supported, alcohol-free, and drug-free living environment. These residences may be voluntarily certified through a program administered by the Department of Children and Families. The certification program requires the recovery residence to provide various documentation and establish certain policies in the recovery residence.

The bill prohibits a time-sharing plan from requiring a minor child to visit a parent residing in a recovery residence between the hours of 9 p.m. and 7 a.m., unless the court determines it is in the minor child's best interest.

The bill also provides that a certified recovery residence may allow minor children to visit a resident parent, but may not allow the children to remain between the hours of 9 p.m. and 7 a.m., unless:

- A court has determined it is in the minor child's best interest; or
- The parent does not yet have a time-sharing plan and the recovery residence is a specialized residence for pregnant women or parents whose children reside with them.

The bill prohibits a minor child from visiting a parent at a recovery residence at any time if any resident of the recovery residence is required to register as a sexual predator or sexual offender.

The bill does not 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:

Background

Parenting and Time-sharing

Current law provides that it is the public policy of the state that each minor child has frequent and continuing contact with both parents.[1] A court must order shared parental responsibility for a minor child unless the court finds shared responsibility would be detrimental to the child.[2] In determining timesharing with each parent, a court must consider the best interests of the child based on a list of factors.[3] These factors include:

- The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required;
- the anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties;
- the demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent;
- the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- The geographic viability of the parenting plan;
- The moral fitness of the parents;
- The mental and physical health of the parents;
- The home, school, and community record of the child;
- The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference;
- The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child;
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child;
- The demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the minor child; and
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

A final factor allows the court to take into account any other factor relevant to the determination of a specific parenting plan, including the time-sharing schedule.[4]

Recovery Residences

Recovery residences (also known as "sober homes" or "sober living homes") are alcohol- and drug-free living environments for individuals in recovery who are attempting to maintain abstinence from alcohol and drugs.[5] These residences offer no formal treatment but perhaps mandate or strongly encourage

[1] s. 61.13(2)(c)1, F.S.
[2] s. 61.13(2)(c)2, F.S.
[3] s. 61.13(3), F.S.
[4] s. 61.13(3)(t), F.S.
[5] Douglas L. Polcin, Ed.D., MFT and Diane Henderson, B.A., *A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses,* J Psychoactive Drugs, Jun 2008; 40(2): 153–159,

attendance at 12-step groups; and are self-funded through resident fees.[6] A recovery residence is defined in law as a residential dwelling unit, or other form of group housing, offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.[7]

Recovery residences may elect to participate in a voluntary certification program administered through the Department of Children and Families (DCF).[8] Pursuant to the voluntary certification program, DCF approved two credentialing entities to design the certification programs and issue certificates: The Florida Association of Recovery Residences certifies the recovery residences and the Florida Certification Board certifies recovery residence administrators.

Current law sets criteria for certification of recovery residences and recovery residence administrators, including a requirement that the certified recovery residences be actively managed by a certified recovery residence administrator.[9] Level 2 background screenings are required for all recovery residence owners, directors and chief financial officers and for administrators seeking certification. DCF may exempt an individual from the disqualifying offenses of a Level 2 background screening if the individual meets certain criteria and the recovery residence attests it is in the best interest of the program.[10]

The credentialing entities must deny, suspend or revoke certification if a recovery residence or a recovery residence administrator fails to meet and maintain certain criteria.[11] The credentialing entity must inspect recovery residences prior to the initial certification and during every subsequent renewal period, and must automatically terminate certification if it is not renewed within one year of the issuance date. It is a first degree misdemeanor[12] for any person who advertises a recovery residence or himself or herself as a "certified recovery residence" or "certified recovery residence administrator", respectively, unless the residence or person has obtained certification pursuant to this section.[13]

DCF publishes a list of all certified recovery residences and recovery residences administrators on its website.[14] As of March 1, 2017, there were 257 certified recovery residences in the state.[15]

Effect of Proposed Changes

The bill provides that a time-sharing plan pursuant to s. 61.13, F.S., may not require a minor child to visit a parent residing in a recovery residence between the hours of 9 p.m. and 7 a.m., unless the court determines it is in the minor child's best interest. When determining whether it is in a minor child's best interest to visit the parent residing at a recovery residence, the court must take into account:

- Whether the parent resides in a specialized residence for pregnant women or parents with children;
- The number of adults living in the recovery residence; and
- The parent's level of recovery.

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[6] Id.
[7] s. 397.311(36), F.S.
[8] s. 397.487, F.S.
[9] ss. 397.487 and 397.4871, F.S.
[10] s. 397.4872, F.S.
[11] s. 397.487, F.S.
[12] A first degree misdemeanor is punishable by not more than one year imprisonment and not more than a $1,000 fine. ss. 775.082, 775.083, F.S.
[13] ss. 397.487 and 397.4871, F.S.
[14] s. 397.4872, F.S.
[15] FLORIDA ASSOCIATION OF RECOVERY RESIDENCES, *Certified Residences*, http://farronline.org/certification/certified-residences/ (last visited April 6, 2017).

Courts are prohibited from ordering visitation at a recovery residence if any resident of the recovery residence is required to register as a sexual predator pursuant to s. 755.21, F.S., or a sexual offender pursuant to s. 943.0435, F.S.

Additionally, the bill provides that, as a requirement to certification, a recovery residence may not allow minor children to visit or remain between the hours of 9 p.m. and 7 a.m., unless a court has determined it is in the minor child's best interest or it is a specialized residence for pregnant women or parents whose children reside with them. A certified recovery residence may allow minor children to visit resident parents during the other hours of the day, unless any resident is required to register as a sexual predator pursuant to s. 755.21, F.S., or a sexual offender pursuant to s. 943.0435, F.S., in which case it may not allow minor children to visit at any time. If it is a specialized residence for pregnant women or parents whose children reside with them and the parent does not have a time-sharing plan, the recovery residence may allow minor children to visit between the hours of 9 p.m. and 7 a.m., if the parent files for the establishment of a time-sharing plan within 14 days of moving into the residence.

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

B. SECTION DIRECTORY:

Section 1 amends s. 61.13, F.S., relating to parenting and time-sharing.

Section 2 amends s. 397.487, F.S., relating to recovery residences.

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:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 6, 2017, the Health & Human Services Committee adopted an amendment that allowed minor children to visit a parent at a recovery residence between the hours of 9 p.m. and 7 a.m. in certain circumstances and prohibited minor children from visiting at any time if any resident is required to register as a sexual predator pursuant to s. 755.21, F.S., or a sexual offender pursuant to s. 943.0435, F.S. The bill was reported favorably as a committee substitute. This analysis is drafted to the committee substitute as reported by the Health & Human Services Committee.

A bill to be entitled

An act relating to child protection; amending s. 61.13, F.S.; prohibiting a time-sharing plan from requiring or being interpreted to require visitation at a recovery residence between specified hours; providing exceptions; requiring the court to consider certain factors to determine the best interest of the child; prohibiting the court from ordering visitation at a recovery residence under specified circumstances; amending s. 397.487, F.S.; authorizing a certified recovery residence to allow a minor child to visit a recovery residence, excluding visits during specified hours; providing exceptions; prohibiting a certified recovery residence from allowing visitation under specified circumstances; providing an effective date.

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

Section 1. Subsection (9) is added to section 61.13, Florida Statutes, to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(9)(a) A time-sharing plan may not require that a minor child visit a parent who is a resident of a recovery residence, as defined by s. 397.311, between the hours of 9 p.m. and 7

a.m., unless the court makes a specific finding that such visitation is in the best interest of the child. In determining the best interest of the minor child in such cases, the court shall take into account factors including, but not limited to, whether the parent resides in a specialized residence for pregnant women or parents whose children reside with them, the number of adults living in the recovery residence, and the parent's level of recovery.

(b) A time-sharing plan that does not mention a recovery residence may not be interpreted to require that a minor child visit a parent who is a resident of a recovery residence, as defined by s. 397.311, between the hours of 9 p.m. and 7 a.m.

(c) A court may not order visitation at a recovery residence if any resident of the recovery residence is currently required to register as a sexual predator under s. 775.21 or as a sexual offender under s. 943.0435.

Section 2. Subsection (10) is added to section 397.487, Florida Statutes, to read:

397.487 Voluntary certification of recovery residences.—

(10)(a) A certified recovery residence may allow a minor child to visit a parent who is a resident of the recovery residence, provided that a minor child may not visit or remain in the recovery residence between the hours of 9 p.m. and 7 a.m. unless:

1. A court makes a specific finding that such visitation

is in the best interest of the minor child; or

2. The recovery residence is a specialized residence for pregnant women or parents whose children reside with them. Such recovery residences may allow children to visit or reside in the residence if the parent does not yet have a time-sharing plan pursuant to s. 61.13, provided that the parent files with the court for establishment of a plan within 14 days of moving into the residence.

(b) A certified recovery residence may not allow a minor child to visit a parent who is a resident of the recovery residence at any time if any resident of the recovery residence is currently required to register as a sexual predator under s. 775.21 or as a sexual offender under s. 943.0435.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 345 Criminal Justice Standards and Training Commission
SPONSOR(S): Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Asencio and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	White	White
2) Justice Appropriations Subcommittee	13 Y, 0 N, As CS	Welty	Gusky
3) Judiciary Committee		White	Camechis

SUMMARY ANALYSIS

The Criminal Justice Standards and Training Commission (Commission), within the Florida Department of Law Enforcement (FDLE), is required to ensure that applicants entering a criminal justice basic recruit program have passed a Commission-approved basic abilities examination. This examination is formally referred to as the Basic Abilities Test (BAT).

To implement this responsibility, the Commission currently contracts with two out-of-state vendors and Miami Dade College to develop and administer the BAT. Each vendor administers a different test; training and selection centers have the discretion to choose which test to administer. The FDLE reports the current system has resulted in inconsistency throughout the state with respect to the difficulty levels of the BATs and fees assessed for the exam. Currently, fees for the BAT range from $18 for tests administered at state correctional facilities to $75 for tests administered at other locations, with a statewide average of $46.

The federal Department of Justice reviewed BAT test scores from 2010 to 2015, and found that the tests had an adverse impact on minority test takers. With respect to this finding, the FDLE reports that changes to the BAT have been implemented and lower passage rates for the BAT have been retroactively applied. If the state does not correct the deficiencies identified by the OCR, there is a risk that the state may lose all or a portion of federal funding received from the Justice Assistance Grant (JAG) Program (also known as "Byrne Grants") and Residential Substance Abuse Treatment for State Prisoners (also known as "RSAT Grants") Program.

The bill amends s. 943.12, F.S., to require the Commission, on or before January 1, 2019, to implement, administer, maintain, and revise a BAT for all applicants for basic recruit training in law enforcement and corrections. The Commission must adopt rules establishing procedures for administration of the BAT, and must establish standards for acceptable performance on the test.

The bill authorizes the Commission to establish a basic abilities examination fee in rule that solely offsets FDLE costs to design, implement, maintain, revise, and administer the examination. The nonrefundable fee may not exceed $23 for one scheduled BAT attempt. Fees collected for the BAT must be deposited in the Criminal Justice Standards and Training Trust Fund. Revenues from the fee will generate up to $460,000 per year. The bill provides that the fee shall take effect upon the implementation of the revised BAT on or before January 1, 2019.

Individuals who seek entrance into a criminal justice basic recruit program will have to pay a fee of up to $23 to take the BAT, which may be an increase or decrease from the fee currently charged by a vendor.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Criminal Justice Standards and Training Commission (Commission),[1] is established within the Florida Department of Law Enforcement (FDLE). The Commission is statutorily-assigned responsibilities relating to the training, certification, and discipline of full-time, part-time, and auxiliary law enforcement officers,[2] correctional officers,[3] and correctional probation officers,[4] which include:

- Certifying, and revoking the certification of, officers, instructors, including agency in-service training instructors, and criminal justice training schools.[5]
- Establishing uniform minimum employment standards for the various criminal justice disciplines.
- Establishing uniform minimum training standards for the training of officers in the various criminal justice disciplines.
- Establishing minimum curricular requirements for criminal justice training schools.
- Making, publishing, or encouraging studies on any aspect of criminal justice education and training or recruitment, including the development of defensible and job-related psychological, selection, and performance evaluation tests.
- Implementing, administering, maintaining, and revising a job-related officer certification examination for each criminal justice discipline.[6]

Basic Abilities Test

Section 943.17, F.S., requires the Commission, in relevant part, to ensure that applicants entering into a criminal justice basic recruit program have passed a Commission-approved basic abilities test (BAT).[7] The BAT must be administered in Florida and tailored to the applicable discipline for which the recruit is seeking program admission.[8]

Currently, the Commission contracts with three vendors for the development and administration of the BAT. Two of the providers, I/O Solutions and Morris & McDaniel, are out-of-state vendors. The third provider is Miami Dade College. Each of the vendors administers a different test. Training centers and selection centers have the discretion to choose which test to administer.[9]

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[1] *See* s. 943.11(1)(a), F.S. (providing that the commission must consist of 19 members, including: the Secretary of Corrections or a designated assistant; the Attorney General or a designee; the Director of the Division of the Florida Highway Patrol; and 16 members appointed by the Governor who are employed in specified law enforcement roles.).

[2] Section 943.10(1), F.S., defines "law enforcement officer" to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

[3] Section 943.10(2), F.S., defines "correctional officer" to mean any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution.

[4] Section 943.10(3), F.S., defines "correctional probation officer" to mean a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community.

[5] Section 943.10(16), F.S., defines "criminal justice training school" to mean any private or public criminal justice training school certified by the Commission.

[6] s. 943.12, F.S.

[7] s. 943.17(1)(g), F.S. and Rule 11B-35.0011(1), F.A.C.

[8] Rule 11B-35.0011(1), F.A.C. The rule includes references to law enforcement, correctional, or correctional probation disciplines.

[9] FDLE, Agency Analysis of HB 345 (2017), pp. 2-3 (July 1, 2017) (on file with the Justice Appropriations Subcommittee).

As a result of the current system, the difficulty levels among the BATs lack consistency across the state. There is also inconsistency across the state as to the fee a student is responsible to pay for taking the BAT. Fees for the BAT currently range from $18 to $75 with a statewide average of $46. Additionally, some testing administration sites charge an additional surcharge of $25. All fees and surcharges collected are retained by the three providers and test administration sites.[10]

Department of Justice Review of the BAT
In 2015, the Office of Civil Rights (OCR) within the Department of Justice reviewed test results from each of the three providers for 2010-2015, for the law enforcement BAT. Subsequently, in October 2015, the OCR sent a letter to the FDLE indicating that each of the three law enforcement BATs had a statistically significant adverse impact[11] on minority test takers; however, the OCR further indicated that the I/O Solutions' test exhibited a higher degree of adverse impact to minority test takers compared to the other two law enforcement BATs provided by Morris & McDaniel and Miami Dade College. Due to this finding, the OCR recommended that the FDLE discontinue use of the I/O Solutions' test and expand use of the BAT offered by the other two providers.[12]

Fiscal Year 2016-2017 Proviso Language
During the 2016 Regular Session, proviso language was adopted, which specifies:

> From the funds in Specific Appropriations 1267 through 1276, the Department of Law Enforcement shall report on the status of development of the basic abilities test for all applicants for basic recruit training in law enforcement and corrections. The report shall include recommendations regarding statutory language necessary for implementation of the basic abilities test, including establishment of a standardized fee structure that does not deter low-income and middle-income persons from taking the test. The report and recommendations shall be provided to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2017.[13]

In its report on December 30, 2016, the FDLE indicated with respect to the issue raised by OCR that:

> OCR recommended FDLE discontinue using I/O Solutions; however, this would have left a large void in service throughout the state. After several communications with OCR and I/O Solutions, the parties agreed I/O Solution would change its test and lower the passing rate. FDLE also agreed to retroactively apply the new passing rate to applicants who had taken the test during the previous five years. OCR is aware of the proposal for FDLE to develop a single test and sees this as a major part of the solution to address adverse impact. They continue to monitor the situation.[14]

The report further indicated that FDLE will develop a single BAT to be administered throughout the state. Specifically, the report stated:

> FDLE will assume the role of content development for the BAT and evaluate each question's validity based on the performance of the test takers. ... FDLE also determined Miami Dade College, a current provider, is capable of fulfilling the requirements for administration of the BAT statewide. ... FDLE has been in formal discussion with college representatives and has

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[10] *Id.*
[11] Adverse impact means "[a] selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact." 29 C.F.R. 1607.4 D.
[12] Letter from the U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights to the FDLE (October 23, 2015) (on file with the Florida House of Representatives, Criminal Justice Subcommittee).
[13] HB 5001 (2016), Specific Appropriations 1267-1276.
[14] FDLE, *Report on the Status of Development of the Basic Abilities Test*, pp. 2-3 (December 30, 2016) (on file with the Florida House of Representatives, Criminal Justice Subcommittee).

> a tentative agreement with them through a proposed Memorandum of Understanding .... Under the agreement, Miami Dade College assumes sole responsibility for administration of the BAT ... and will ensure the test is consistently and fairly administered.[15]

With regard to fees for the BAT, the report proposed a test fee capped at $50, which includes an allowance for up to a $10 administrative fee. The report stated, "The fee is structured to allow all parties responsible for the development and administration of the BAT to recover some, if not all, of their costs. It is based on expected costs for both Miami Dade College and FDLE. Miami Dade College has proposed a fee of $20 per test to cover their costs and the department estimates its costs will also be covered by receiving $20 per test."[16]

Finally, the report proposed draft legislation that is substantively the same as this bill.[17]

Effect of Bill

The bill amends s. 943.12, F.S., which specifies the Commission's powers and duties, to require the Commission, on or before January 1, 2019, to implement, administer, maintain, and revise a BAT for all applicants for basic recruit training in law enforcement and corrections. The Commission must adopt rules establishing procedures for the administration of the BAT, and must establish standards for acceptable performance on the test.

The bill amends s. 943.17(1), F.S., to authorize the Commission to establish a basic abilities examination fee in rule that solely offsets department costs to design, implement, maintain, revise, and administer the examination. The nonrefundable fee shall not exceed $23 for one scheduled BAT attempt. Fees collected for the BAT must be deposited in the Criminal Justice Standards and Training Trust Fund (CJSTTF).[18] The bill provides that the fee shall take effect upon the implementation of the revised BAT on or before January 1, 2019.

Finally, the bill reenacts and amends s. 943.25, F.S., to change a cross-reference so that it allows expenditures from the CJSTTF for the BAT, and reenacts s. 943.173, F.S., to incorporate the amendments made by the bill to s. 943.17, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.12, F.S., relating to powers, duties, and functions of the Commission.

Section 2. Amends s. 943.17, F.S., relating to basic recruit, advanced, and career development training programs.

Section 3. Provides an effective date for the fee authorized in the bill.

Section 4. Reenacts s. 943.173, F.S., relating to examinations.

Section 5. Reenacts and amends s. 943.25, F.S., relating to criminal justice trust funds.

Section 6. Provides an effective date.

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[15] *Id.* at 3-4.

[16] *Id.* at 4.; FDLE, Agency Analysis of HB 345 (2017) at p. 4.

[17] *Id.* at 5.

[18] Section 943.25, F.S., establishes the Criminal Justice Standards and Training Trust Fund within the FDLE for purposes that include providing for the payment of: (a) necessary and proper expenses incurred by the operation of the Commission and the Criminal Justice Professionalism Program; and (b) commission-approved criminal justice advanced and specialized training and criminal justice training school enhancements.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The FDLE projects that 20,000 individuals will take the BAT annually, which would generate approximately $460,000 of additional revenue if the Commission establishes the fee at the statutory maximum amount of $23. These funds will be deposited in the Criminal Justice Standards and Training Trust Fund to solely offset the department's costs to design, implement, maintain, revise, and administer the BAT.

2. Expenditures: The FDLE will incur initial start-up costs and on-going annual costs to develop, maintain, and administer the BAT. These costs will be offset, in part, by the examination fee authorized by the bill.

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: Individuals who seek entrance into a criminal justice basic recruit program will have to pay a fee of up to $23 to take the BAT, which may be an increase or decrease from the fee currently charged by a vendor. Two of the current test vendors, I/O Solutions and Morris and McDaniel, will no longer receive fees for developing the BAT once the Commission assumes that responsibility.

D. FISCAL COMMENTS: The Office of Civil Rights (OCR) expressed concerns regarding the Basic Abilities Test in Florida for is disparate impact on Blacks and Hispanics.[19] Recipients of federal funding under the Safe Streets Act may not use a selection device that is inconsistent with the federal guidelines for selection. If the state does not correct the deficiencies identified by the OCR, there is a risk that the state may lose all or a portion of federal funding from the Justice Assistance Grant (JAG) Program (also known as "Byrne Grants") and Residential Substance Abuse Treatment for State Prisoners (also known as "RSAT Grants") Program.

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 requires the Commission to adopt rules establishing procedures for the administration of the BAT.

[19] Michael L. Alston, Director Office of Civil Rights. Concerns and Recommendations Regarding Fla. Dep't of Law Enforcement's Law Enforcement Basic Abilities Test (15-OCR-0783) October 23, 2015. (on file with Justice Appropriations Subcommittee).

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 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:

- Extended the deadline for the CJSTC's requirement to implement, administer, maintain, and review the BAT from January 1, 2018, to January 1, 2019.
- Provides that the BAT fee is nonrefundable; whereas, the bill provided that it was nonrefundable if the applicant does not appear for the examination or does not achieve an acceptable score on the exam.
- Provides that the fees collected for the BAT are to be deposited in the CJSTTF; whereas, the bill provided that the fees would be disbursed according to CJSTC rule.

On April 17, 2017, the Justice Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute (CS). The CS authorizes the Commission to establish a basic abilities examination fee in rule that solely offsets department costs to design, implement, maintain, revise, and administer the BAT and caps the fee at $23, rather than $50, per examination.

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

A bill to be entitled

An act relating to the Criminal Justice Standards and Training Commission; amending s. 943.12, F.S.; requiring the Criminal Justice Standards and Training Commission to implement, administer, maintain, and revise a basic abilities examination by a specified date; requiring the commission to establish specified procedures and standards; amending s. 943.17, F.S.; requiring the commission to set a fee for the basic abilities examination; requiring a nonrefundable fee for each examination attempt; requiring that examination fees be deposited in the Criminal Justice Standards and Training Trust Fund; providing a condition for when the examination fee takes effect; reenacting s. 943.173(3), F.S., relating to examinations, administration, and materials not being public records, to incorporate the amendment made to s. 943.17, F.S., in a reference thereto; reenacting and amending s. 943.25(2), F.S., relating to criminal justice trust funds; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Subsection (18) is added to section 943.12,

Florida Statutes, to read:

943.12 Powers, duties, and functions of the commission.—The commission shall:

(18) On or before January 1, 2019, implement, administer, maintain, and revise a basic abilities examination for all applicants for basic recruit training in law enforcement and corrections. The commission shall establish by rule procedures for the administration of the basic abilities examination. The commission shall also establish standards for acceptable performance on the examination.

Section 2. Paragraph (g) of subsection (1) of section 943.17, Florida Statutes, is amended, and paragraph (h) is added to that subsection, to read:

943.17 Basic recruit, advanced, and career development training programs; participation; cost; evaluation.—The commission shall, by rule, design, implement, maintain, evaluate, and revise entry requirements and job-related curricula and performance standards for basic recruit, advanced, and career development training programs and courses. The rules shall include, but are not limited to, a methodology to assess relevance of the subject matter to the job, student performance, and instructor competency.

(1) The commission shall:

(g) Assure that entrance into the basic recruit training program for law enforcement and correctional officers be limited

to those who have passed a basic abilities ~~skills~~ examination ~~and assessment instrument~~, based on a job task analysis in each discipline and adopted by the commission.

(h) Set a basic abilities examination fee by rule that solely offsets department costs to design, implement, maintain, revise, and administer the examination. The fee shall not exceed $23 per examination, so as to not cause an undue financial burden on those individuals seeking to enter the professions of law enforcement or corrections. The fee applies to one scheduled examination attempt and is not refundable. Fees collected pursuant to this paragraph shall be deposited in the Criminal Justice Standards and Training Trust Fund.

Section 3. Paragraph (h) of subsection (1) of s. 943.17, Florida Statutes, as created by this act, shall take effect upon the implementation of the revised basic abilities examination on or before January 1, 2019, as specified in s. 943.12(18), Florida Statutes.

Section 4. For the purpose of incorporating the amendment made by this act to section 943.17, Florida Statutes, in a reference thereto, subsection (3) of section 943.173, Florida Statutes, is reenacted to read:

943.173 Examinations; administration; materials not public records; disposal of materials.—

(3) All examinations, assessments, and instruments and the results of examinations, other than test scores on officer

certification examinations, including developmental materials and workpapers directly related thereto, prepared, prescribed, or administered pursuant to ss. 943.13(9) or (10) and 943.17 are exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Provisions governing access to, maintenance of, and destruction of relevant documents pursuant to this section shall be prescribed by rules adopted by the commission.

Section 5. Subsection (2) of section 943.25, Florida Statutes, is reenacted and amended to read:

943.25 Criminal justice trust funds; source of funds; use of funds.—

(2) There is created, within the Department of Law Enforcement, the Criminal Justice Standards and Training Trust Fund for the purpose of providing for the payment of necessary and proper expenses incurred by the operation of the commission and the Criminal Justice Professionalism Program and providing commission-approved criminal justice advanced and specialized training and criminal justice training school enhancements and of establishing the provisions of s. 943.17 and developing the specific tests provided under s. 943.12 ~~943.12(9)~~. The program shall administer the Criminal Justice Standards and Training Trust Fund and shall report the status of the fund at each regularly scheduled commission meeting.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 393 Compensation of Victims of Wrongful Incarceration
SPONSOR(S): Criminal Justice Subcommittee; DuBose
TIED BILLS: **IDEN./SIM. BILLS:** SB 556

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Aziz	White
2) Justice Appropriations Subcommittee	12 Y, 0 N	Welty	Gusky
3) Judiciary Committee		White	Camechis

SUMMARY ANALYSIS

In 2008, the Legislature passed the "Victims of Wrongful Incarceration Compensation Act" (Act) to compensate a person, who is determined to be actually innocent of a felony offense, for his or her wrongful incarceration. To be eligible for compensation, such person, in relevant part, must not have been:

- Convicted of *any felony* before or during the wrongful incarceration or during a term of parole or community supervision served for the wrongful conviction.
- Serving a concurrent sentence for *any other felony* while the person was wrongfully incarcerated.

The bill amends the above-described eligibility requirements to narrow the types of felonies which disqualify a person from receiving compensation for a wrongful incarceration. Under the bill, the term "disqualifying felony" is defined to mean, "any felony other than one or more felonies of the third degree that arise from a single criminal act, transaction, or episode." Accordingly, only persons who have a first or second degree felony conviction or who have a third degree felony conviction arising from a second or subsequent criminal act, transaction, or episode will be disqualified from receiving compensation under the Act.

The bill has an indeterminate fiscal impact on state government as it is unknown how many applicants would be eligible under the expanded criteria. The bill does not appear to have a fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Victims of Wrongful Incarceration Compensation Act

In Florida, 13 people have been exonerated or released from incarceration since 2000 as a result of post-conviction DNA testing.[1] The Victims of Wrongful Incarceration Compensation Act (Act) has been in effect since July 1, 2008. The Act provides a process by which persons whose conviction and sentence has been vacated based upon exonerating evidence may petition the court to seek and obtain compensation as a "wrongfully incarcerated person"[2] who is "eligible for compensation."[3]

Petition Process

To receive compensation under the Act, a person must return to the court where the judgment and sentence were vacated and file a petition seeking status as a "wrongfully incarcerated person." Section 961.03(1)(a), F.S., requires that a petition must:

- State that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence; and
- State that the person is not disqualified, under the provisions of s. 961.04, F.S., from seeking compensation under the Act.

A copy of the petition must be provided to the prosecuting authority of the felony for which the petitioner was incarcerated. In response to the petition, the prosecuting authority may either:

- Stipulate to the petitioner's innocence and eligibility for compensation;
- Contest the evidence of actual innocence; or
- Contest the eligibility of the petitioner to compensation.[4]

Without a stipulation from the prosecuting authority of the petitioner's innocence and eligibility, the original sentencing court, based on the pleadings and the supporting documents, must determine whether the petitioner's eligibility for compensation has been established by a preponderance of the evidence. If the court finds the petitioner is not eligible for compensation, it must dismiss the petition.[5]

If the court finds the petitioner is eligible for compensation and the prosecuting authority contests the actual innocence of the petitioner, the court must set forth its findings and transfer the petition to the Division of Administrative Hearings (DOAH) for a hearing before an administrative law judge (ALJ). The ALJ must make factual findings regarding the petitioner's actual innocence and draft a recommended order on the determination of whether the petitioner has established by clear and convincing evidence that he or she is a wrongfully incarcerated person.[6] The ALJ must file its findings and recommended

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[1] Frank Lee Smith, Jerry Townsend, Wilton Dedge, Luis Diaz, Alan Crotzer, Orlando Boquete, Larry Bostic, Chad Heins, Cody Davis, William Dillon, James Bain, Anthony Caravella, and Derrick Williams are the thirteen people released from prison or exonerated in this state based on DNA testing. Florida Innocence Project, http://floridainnocence.org/content/?page_id=34. (last visited on March 22, 2017).

[2] Section 961.02(4), F.S., defines a "wrongfully incarcerated person" as a "person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and, with respect to whom pursuant to the requirements of s. 961.03,F.S., the original sentencing court has issued its order finding that the person neither committed the act nor the offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense."

[3] Section 961.02(5), F.S., defines "eligible for compensation" to mean "a person who meets the definition of 'wrongfully incarcerated person' and is not disqualified from seeking compensation under the criteria prescribed in s. 961.04." The Act does not currently provide a definition of "actual innocence"; instead some provisions of the Act repeat a lengthy description of a concept of actual innocence. *See* ss. 961.02(4), 961.03(3), and (7), F.S.

[4] s. 961.03(2)(a) and (b), F.S.

[5] s. 961.03(4)(a), F.S.

[6] s. 961.03(4)(b), F.S.

order within 45 days of the hearing's adjournment.[7] The original sentencing court must review the findings and recommendation of the ALJ and issue its own order declining or adopting the recommended order within 60 days.[8]

Eligibility
To be eligible for compensation, a wrongfully incarcerated person must not have a disqualifying felony, which means the person:

- Was convicted or pled guilty or nolo contendere to a felony offense in this state, a federal offense that is a felony, or to an offense in another state that would be a felony in this state before his or her wrongful conviction or incarceration.
- Was convicted of, or pled guilty or nolo contendere to, a felony offense while wrongfully incarcerated;
- Was serving a concurrent sentence for another felony for which the person was not wrongfully convicted while wrongfully incarcerated; or
- Committed a felony while serving on parole or community supervision for the wrongful conviction. [9]

These eligibility requirements are commonly referred to as the "Clean Hands" requirements.

Application Process
A petitioner who is found to be a "wrongfully incarcerated person" has two years to initiate an application for compensation with the Department of Legal Affairs after the original sentencing court enters its order.[10] Only the petitioner, not his or her estate or personal representative of the estate, may apply for compensation.[11] Section 961.05(4), F.S., lists the content requirements of an application for compensation. In part, it requires that the application include:

- A certified copy of the order vacating the conviction and sentence;
- A certified copy of the original sentencing court's order finding the claimant to be a wrongfully incarcerated person who is eligible for compensation under the Act;
- Certified copies of the original judgment and sentence; and
- Documentation demonstrating the length of the sentence served, including documentation from the Department of Corrections regarding the person's admission into and release from the custody of the Department of Corrections.[12]

Compensation
Under s. 961.06, F.S., a "wrongfully incarcerated person" is entitled to:

- Monetary compensation, at the rate of $50,000 for each year of wrongful incarceration;
- A waiver of tuition and fees for up to 120 hours of instruction at a public career center, community college, or state university;
- A refund of fines, penalties, and court costs imposed and paid;
- Reasonable attorney's fees and expenses incurred and paid; and
- Immediate expunction, including administrative expunction, of the person's criminal record of the wrongful arrest, conviction, and incarceration.[13]

Total compensation awarded may not exceed $2 million.[14]

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[7] s. 961.03 (5)(c) and (d), F.S.
[8] s. 961.03(5)(d), F.S.
[9] ss. 961.04 and 961.06(2), F.S.
[10] s. 961.05(1) and (2), F.S.
[11] s. 961.05(2), F.S.
[12] s. 961.05(4), F.S.
[13] s. 961.06(1), F.S.
[14] *Id.*

Wrongful Incarceration Claims in Florida
To date, four persons have been compensated under the administrative process for a total of $4,276,901. Six other claimants had their claims denied, based on either ineligibility or incomplete applications.[15]

Claim Bills
Since the Act's inception, a number of claim bills have been filed on behalf of wrongfully incarcerated persons who are ineligible for compensation under the Act due to a felony conviction before or during the wrongful incarceration. At least two such persons have received compensation for a wrongful incarceration through the claim bill process. For example in 2012, a claims bill was adopted for the wrongful incarceration of William Dillon. Due to a prior felony conviction for a single Quaalude, Dillon was barred from seeking compensation under the Act.[16, 17]

Other States - Clean Hands Requirements
Currently, there are 29 states that have a process to compensate wrongfully incarcerated individuals. Of this number, nine states have some form of clean hands provision that prohibits compensation for convictions.[18] Three of the nine states revoke compensation if the person is later convicted of a felony.[19] Florida, however, is the only state that bars applicants for a prior felony conviction.

Effect of the Bill
The bill amends the eligibility requirements of the Act in ss. 961.04 and 961.06, F.S., to narrow the types of felonies which disqualify a person from receiving compensation for a wrongful incarceration. The bill defines the term "disqualifying felony" to mean, "any felony other than one or more felonies of the third degree which arise from a single criminal act, transaction, or episode."[20] Accordingly, only persons with a first[21] or second degree felony[22] conviction or with a third degree felony[23] conviction arising from a *second or subsequent* criminal act, transaction, or episode will be disqualified from receiving compensation under the Act.

The bill reenacts ss. 961.03, 961.05, 961.055, and 961.056, F.S., to incorporate the amendments made by the act.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 961.02, F.S., relating to definitions.

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[15] Email correspondence with the Office of the Attorney General (Jan. 14, 2016 and March 1, 2017) (on file with House of Representatives Criminal Justice Subcommittee). Persons whose claims have been successful are Leroy McGee (2010), James Bain (2011), Luis Diaz (2012), and James Richardson (2015). Jarvis McBride's claim was denied (2012). Three persons had their claims rejected based on incomplete applications. These are Robert Lewis (2011), Edwin Lampkin (2012), and Robert Glenn Mosley (2014). Two other claimants were determined to be ineligible for compensation (Ricardo Johnson (2013) and Joseph McGowan (2015)).
[16] Chapter 2012-229, L.O.F. (compensating William Dillon for wrongful incarceration despite ineligibility for compensation under the Act).
[17] *See also* ch. 2008-259, L.O.F. (compensating Alan Crotzer for wrongful incarceration despite ineligibility for compensation under the Act).
[18] 50 State Survey of Wrongful Incarceration Compensation Law, June 2014 (on file with the House of Representatives Criminal Justice Subcommittee).
[19] Alabama, Texas, and Virginia. *Id.*
[20] To determine whether offenses arose out of the same criminal episode, a reviewing court must consider whether: (a) there are multiple victims; (b) the offenses occurred in multiple locations, and (c) there has been a 'temporal break' between offenses. *State v. Paul*, 934 So. 2d 1167, 1173 (Fla.2006) (overruled on other grounds by *Valdes*, 3 So. 3d 1067).
[21] A first degree felony is punishable by up to 30 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[22] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[23] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.

Section 2. Amends s. 961.04, F.S., relating to eligibility for compensation for wrongful incarceration.

Section 3. Amends s. 961.06, F.S., relating to compensation for wrongful incarceration.

Section 4. Reenacts s. 961.03, F.S., relating to determination of status as a wrongfully incarcerated person; determination of eligibility for compensation.

Section 5. Reenacts s. 961.05, F.S., relating to application for compensation or a wrongful incarceration; administrative expunction; determination of entitlement to compensation.

Section 6. Reenacts s. 961.055, F.S., relating to application for compensation for a wrongfully incarcerated person; exemption from application by nolle prosequi.

Section 7. Reenacts s. 961.056, F.S., relating to alternative application for compensation for a wrongful incarcerated person.

Section 8. 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 any impact on state revenues

2. Expenditures: The bill expands the pool of persons eligible for compensation due to wrongful incarceration, which could increase state expenditures to provide such compensation. The increase is indeterminate because data regarding the number of wrongfully incarcerated persons who may now qualify for compensation under the Act is unavailable. The Act is funded through a continuing appropriation.[24]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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

[24] s. 961.07, F.S.

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 28, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute (CS). The PCS substituted the newly defined term "disqualifying felony" for the term "violent felony" in the original bill.

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

A bill to be entitled

An act relating to compensation of victims of wrongful incarceration; amending s. 961.02, F.S.; making technical changes; defining the term "disqualifying felony"; amending s. 961.04, F.S.; revising the circumstances under which a wrongfully incarcerated person is ineligible for compensation under the Victims of Wrongful Incarceration Compensation Act; amending s. 961.06, F.S.; providing that a wrongfully incarcerated person who commits a disqualifying felony, rather than any felony law violation, which results in revocation of parole or community supervision is ineligible for compensation; reenacting s. 961.03(1)(a), (2), (3), and (4), F.S., relating to determination of status as a wrongfully incarcerated person and of eligibility for compensation, to incorporate the amendment made to s. 961.04, F.S., in references thereto; reenacting ss. 961.05(6), 961.055(1), and 961.056(4), F.S., relating to determination of entitlement to compensation, application for compensation for a wrongfully incarcerated person, and an alternative application for compensation for a wrongfully incarcerated person, respectively, to incorporate the amendments made to s. 961.06, F.S., in references thereto; providing an

effective date.

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

Section 1. Section 961.02, Florida Statutes, is amended to read:

961.02 Definitions.—As used in ss. 961.01-961.07, the term:

(1) "Act" means the Victims of Wrongful Incarceration Compensation Act.

(2) "Department" means the Department of Legal Affairs.

(3) "Disqualifying felony" means any felony other than one or more felonies of the third degree that arise from a single criminal act, transaction, or episode.

(4) ~~(3)~~ "Division" means the Division of Administrative Hearings.

(5) "Eligible for compensation" means that a person meets the definition of the term "wrongfully incarcerated person" and is not disqualified from seeking compensation under the criteria prescribed in s. 961.04.

(6) "Entitled to compensation" means that a person meets the definition of the term "eligible for compensation" and satisfies the application requirements prescribed in s. 961.05, and may receive compensation pursuant to s. 961.06.

(7) ~~(4)~~ "Wrongfully incarcerated person" means a person

whose felony conviction and sentence have been vacated by a court of competent jurisdiction and who is the subject of an order issued by the original sentencing court pursuant to s. 961.03~~, with respect to whom pursuant to the requirements of s. 961.03, the original sentencing court has issued its order~~ finding that the person did not commit ~~neither committed~~ the act or ~~nor the~~ offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.

Section 2. Section 961.04, Florida Statutes, is amended to read:

961.04 Eligibility for compensation for wrongful incarceration.—A wrongfully incarcerated person is not eligible for compensation under the act if:

(1) Before the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any disqualifying felony ~~offense~~, or a crime committed in another jurisdiction the elements of which would constitute a disqualifying felony in this state, or a crime committed against the United States which would constitute ~~is designated~~ a disqualifying felony, excluding any delinquency disposition;

(2) During the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to,

regardless of adjudication, any disqualifying felony ~~offense~~; or

(3) During the person's wrongful incarceration, the person was also serving a concurrent sentence for another felony for which the person was not wrongfully convicted.

Section 3. Subsection (2) of section 961.06, Florida Statutes, is amended to read:

961.06 Compensation for wrongful incarceration.—

(2) In calculating monetary compensation under paragraph (1)(a), a wrongfully incarcerated person who is placed on parole or community supervision while serving the sentence resulting from the wrongful conviction and who commits anything less than a disqualifying felony ~~law violation~~ that results in revocation of the parole or community supervision is eligible for compensation for the total number of years incarcerated. A wrongfully incarcerated person who commits a disqualifying felony ~~law violation~~ that results in revocation of the parole or community supervision is ineligible for any compensation under subsection (1).

Section 4. For the purpose of incorporating the amendment made by this act to section 961.04, Florida Statutes, in references thereto, paragraph (a) of subsection (1) and subsections (2), (3), and (4) of section 961.03, Florida Statutes, are reenacted to read:

961.03 Determination of status as a wrongfully incarcerated person; determination of eligibility for

compensation.—

(1)(a) In order to meet the definition of a "wrongfully incarcerated person" and "eligible for compensation," upon entry of an order, based upon exonerating evidence, vacating a conviction and sentence, a person must set forth the claim of wrongful incarceration under oath and with particularity by filing a petition with the original sentencing court, with a copy of the petition and proper notice to the prosecuting authority in the underlying felony for which the person was incarcerated. At a minimum, the petition must:

1. State that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence; and

2. State that the person is not disqualified, under the provisions of s. 961.04, from seeking compensation under this act.

(2) The prosecuting authority must respond to the petition within 30 days. The prosecuting authority may respond:

(a) By certifying to the court that, based upon the petition and verifiable and substantial evidence of actual innocence, no further criminal proceedings in the case at bar can or will be initiated by the prosecuting authority, that no questions of fact remain as to the petitioner's wrongful incarceration, and that the petitioner is not ineligible from

seeking compensation under the provisions of s. 961.04; or

(b) By contesting the nature, significance, or effect of the evidence of actual innocence, the facts related to the petitioner's alleged wrongful incarceration, or whether the petitioner is ineligible from seeking compensation under the provisions of s. 961.04.

(3) If the prosecuting authority responds as set forth in paragraph (2)(a), the original sentencing court, based upon the evidence of actual innocence, the prosecuting authority's certification, and upon the court's finding that the petitioner has presented clear and convincing evidence that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense, shall certify to the department that the petitioner is a wrongfully incarcerated person as defined by this act. Based upon the prosecuting authority's certification, the court shall also certify to the department that the petitioner is eligible for compensation under the provisions of s. 961.04.

(4)(a) If the prosecuting authority responds as set forth in paragraph (2)(b), the original sentencing court shall make a determination from the pleadings and supporting documentation whether, by a preponderance of the evidence, the petitioner is ineligible for compensation under the provisions of s. 961.04,

regardless of his or her claim of wrongful incarceration. If the court finds the petitioner ineligible under the provisions of s. 961.04, it shall dismiss the petition.

(b) If the prosecuting authority responds as set forth in paragraph (2)(b), and the court determines that the petitioner is eligible under the provisions of s. 961.04, but the prosecuting authority contests the nature, significance or effect of the evidence of actual innocence, or the facts related to the petitioner's alleged wrongful incarceration, the court shall set forth its findings and transfer the petition by electronic means through the division's website to the division for findings of fact and a recommended determination of whether the petitioner has established that he or she is a wrongfully incarcerated person who is eligible for compensation under this act.

Section 5. For the purpose of incorporating the amendment made by this act to section 961.06, Florida Statutes, in a reference thereto, subsection (6) of section 961.05, Florida Statutes, is reenacted to read:

961.05 Application for compensation for wrongful incarceration; administrative expunction; determination of entitlement to compensation.—

(6) If the department determines that a claimant meets the requirements of this act, the wrongfully incarcerated person who is the subject of the claim becomes entitled to compensation,

subject to the provisions in s. 961.06.

Section 6. For the purpose of incorporating the amendment made by this act to section 961.06, Florida Statutes, in a reference thereto, subsection (1) of section 961.055, Florida Statutes, is reenacted to read:

961.055 Application for compensation for a wrongfully incarcerated person; exemption from application by nolle prosequi.—

(1) A person alleged to be a wrongfully incarcerated person who was convicted and sentenced to death on or before December 31, 1979, is exempt from the application provisions of ss. 961.03, 961.04, and 961.05 in the determination of wrongful incarceration and eligibility to receive compensation pursuant to s. 961.06 if:

(a) The Governor issues an executive order appointing a special prosecutor to review the defendant's conviction; and

(b) The special prosecutor thereafter enters a nolle prosequi for the charges for which the defendant was convicted and sentenced to death.

Section 7. For the purpose of incorporating the amendment made by this act to section 961.06, Florida Statutes, in a reference thereto, subsection (4) of section 961.056, Florida Statutes, is reenacted to read:

961.056 Alternative application for compensation for a wrongfully incarcerated person.—

(4) If the department determines that a claimant making application under this section meets the requirements of this chapter, the wrongfully incarcerated person is entitled to compensation under s. 961.06.

Section 8. This act shall take effect October 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 677 Justifiable Use of Force
SPONSOR(S): Judiciary Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1052

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

SUMMARY ANALYSIS

Chapter 776, F.S., authorizes a person to justifiably use or threaten to use force in order to defend himself, herself, another, or property. Generally, in Florida, this right extends to a person, without requiring a duty to retreat, so long as the person is in a place where he or she has a right to be and is not engaged in criminal activity.

Chapter 776, F.S., codifies the right to justifiable use of force, non-deadly and deadly, as follows:

- Section 776.012, F.S., relating to the defense of person;
- Section 776.013, F.S., relating to home protection; and
- Section 776.031, F.S., relating to the defense of property.

In 2014, the Legislature amended s. 776.13(3), F.S., relating to the right to self-defense in a person's dwelling, residence, or vehicle. This subsection currently states, "A person who is attacked in his or her dwelling, residence, or vehicle has no duty to retreat and has the right to stand his or her ground and use or threaten to use force, including deadly force ..." as follows with respect to the use of force in defense of person:

- Non-deadly force may be used or threatened to be used against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force.
- Deadly force may be used or threatened to be used against another if the person reasonably believes such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony if the person is not engaged in criminal activity and is in a place where he or she has a right to be.

The PCS amends the above-described provisions to:

- Remove the term "attacked" to avoid any implication that an actual physical assault is required before the justifiable use of force is authorized. Such interpretation is inconsistent with the rest of the chapter, which allows a person to use defensive force as soon as the person reasonably believes such force is necessary to *prevent* or terminate another person's use of unlawful force.
- Remove the term "vehicle" so that the statute only applies to dwellings and residences.
- Broaden its application to any dwelling or residence in which a person has the right to be.
- Authorize a person to use deadly force without a duty to retreat when in a dwelling or residence where the person has a right to be notwithstanding engagement in criminal activity when necessary to prevent imminent death, great bodily harm, or a forcible felony.

The PCS also reorders the provisions of s. 776.013, F.S., so they are more logically organized.

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

The PCS takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Justifiable Use of Force

Chapter 776, F.S., authorizes a person to use or threaten to use force in order to defend himself, herself, another, or property. In 2005, the Legislature enacted into law what is commonly referred to as the "Stand Your Ground" (SYG) law.[1] This law codified the common law's "Castle Doctrine" which provides that a person, who is threatened with an intruder in his or her own home, has no duty to retreat and may defend himself or herself and his or her castle.[2] The castle doctrine has been explained by the courts as:

> [T]he proposition that a person's dwelling house is a castle of defense for himself and his family, and an assault on it with intent to injure him or any lawful inmate of it may justify the use of force as protection, and even deadly force if there exist reasonable and factual grounds to believe that unless so used, a felony would be committed.[3]

The essential policy behind the Castle Doctrine is that a person in his or her home or "castle" has satisfied his or her duty to retreat "to the wall."[4] In *Weiand v. State*, the policy for the doctrine was explained as follows:

> It is not now and never has been the law that a man assailed in his own dwelling is bound to retreat. If assailed there, he may stand his ground and resist the attack. He is under no duty to take to the fields and the highways, a fugitive from his own home. More than 200 years ago it was said by Lord Chief Justice Hale: In case a man "is assailed in his own house, he need not flee as far as he can, as in other cases of se defendendo [self-defense], for he hath the protection of his house to excuse him from flying, as that would be to give up the protection of his house to his adversary by flight." *Flight is for sanctuary and shelter, and shelter, if not sanctuary, is in the home . . . . The rule is the same whether the attack proceeds from some other occupant or from an intruder.*[5]

The 2005 SYG law also generally eliminated the duty to retreat before justifiably using force in any place a person has a right to be. Most recently in 2014, the Legislature amended ch. 776, F.S., to also entitle a person to "threaten to use" force in the same manner in which he or she is justified in actually using force.[6]

Home Protection

Currently, s. 776.013(3), F.S., authorizes a person who is attacked[7] in his or her dwelling, residence, or vehicle to stand his or her ground and use or threaten to use force, including deadly force, if he or she uses or threatens to use force either in accordance with:

- Sections 776.012(1) or (2), F.S. (defense of person); or
- Sections 776.031(1) or (2), F.S. (defense of property).

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[1] ch. 2005-27, L.O.F.

[2] Steven Jansen & M. Elaine Nugent-Borakove, *Expansions to the Castle Doctrine, Implications for Policy and Practice*, NATIONAL DISTRICT ATTORNEYS ASSOCIATION, at 3, *available at* http://www.ndaa.org/pdf/Castle%20Doctrine.pdf.

[3] *Weiand*, 732 So. 2d at note 5 (citing *Falco v. State*, 407 So. 2d 203, 208 (Fla. 1981)).

[4] *James*, 867 So. 2d at 416.

[5] *Weiand*, 732 So. 2d at 1049-50 (emphasis original).

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

[7] *Emphasis added.* This change resulted from the amendments to s. 776.013(3) made in 2014. ch. 2014-195, L.O.F.

Both ss. 776.012(2) and 776.031(2), F.S., relating to the use of deadly force, do not afford the right to use deadly force without a duty to retreat, if the person using or threatening to use force is engaged in criminal activity. Currently, a person engaged in criminal activity in a dwelling, residence, or vehicle, who seeks to assert self-defense is required to attempt to retreat before using or threatening to use such force and is not entitled to the benefit of the presumption of fear generally afforded to those located in a such a place after an unlawful or forced entry by another. The current requirement does not comport with the Castle Doctrine which authorized a person threatened in his or her own home to defend themselves with no duty to retreat.

Additionally, as s. 776.013(3), F.S., is currently drafted, it may be interpreted to require a person to first be attacked in his or her dwelling, residence, or vehicle before being entitled to lawfully use defensive force. Such a result is inconsistent with the remainder of ch. 776, F.S., which entitles a person to use defensive force if he or she reasonably believes such force is necessary to *prevent* or terminate another's use of unlawful force.

Section 776.013(1), F.S., provides special privileges related to the justifiable use or threat of use of force for a person in a dwelling, residence, or occupied vehicle. The law creates a presumption of reasonable fear or imminent peril of death or great bodily harm on behalf of the person using or threatening to use defensive deadly force if:

- The person against whom the defensive force was used or threatened was in the process of unlawfully and forcefully entering, or had entered, a dwelling,[8] residence,[9] or occupied vehicle,[10] 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
- The person who uses or threatens to use defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

However, the presumption is limited from applying in certain circumstances including when the person against whom the force is used or threatened to be used:

- Has a right to be in or is a lawful owner of the dwelling, residence, or occupied vehicle; [11]
- Is in lawful custody of a child or grandchild and sought to remove the child or grandchild from the dwelling, residence, or occupied vehicle;[12] or
- Is a law enforcement officer who enters the dwelling, residence, or occupied vehicle in the performance of his or her duties.[13]

Additionally, the presumption does not apply when the person who uses or threatens to use force is engaged in criminal activity or is using the dwelling, residence, or occupied vehicle to further a criminal activity.

Section 776.013(4), F.S., provides that a person who unlawfully and by force enters or attempts to enter a person's dwelling residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

The circumstances under which a person in his or her dwelling, residence, or vehicle is entitled to a presumption of reasonable fear appear in the law before the section codifying the right to use or

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[8] "Dwelling" is defined to mean "a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night." s. 776.013(5)(a), F.S.

[9] "Residence" is defined to mean "a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest." s. 776.013(5)(b), F.S.

[10] "Vehicle" is defined to mean "a conveyance of any kind, whether or not motorized, which is designed to transport people or property." s. 776.013(5)(c), F.S.

[11] As long as the person does not have an injunction for protection from domestic violence or a no-contact order against him or her. s. 776.013(2)(a), F.S.

[12] s. 776.013(2)(b), F.S.

[13] s. 776.013(2)(c), F.S.

threaten to use justifiable force. Therefore, the organization of s. 776.013, F.S., may be somewhat confusing.

Defense of Property

Section 776.031, F.S., authorizes the justifiable use of force in defense of property. A person is justified in using or threatening to use non-deadly force against another person, and has no duty to retreat, when the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious interference with, property that is either:

- Real property (other than a dwelling) or personal property; and
- Lawfully in his or her possession or the possession of another who is a member or his or her immediate family or household or of a person whose property he or she has a legal duty to protect.

Furthermore, a person is justified in using or threatening to use deadly force only if he or she reasonably believes such conduct is necessary to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in this manner does not have a duty to retreat and has a right to stand his or her ground if the person:

- Is not engaged in criminal activity; and
- Is in a place where he or she has a right to be.

Defense of Person

Section 776.012, F.S., authorizes the justifiable use of force in defense of person. The law authorizes a person to use or threaten to use non-deadly force against another when that person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. A person who uses or threatens to use force in this manner does not have a duty to retreat before using or threatening to use such force.

Additionally, a person is justified in using or threatening to use deadly force if he or she reasonably believes such force is necessary to prevent:

- Imminent death or great bodily harm to himself, herself, or another; or
- The imminent commission of a forcible felony.[14]

A person using or threatening to use deadly force in this manner does not have a duty to retreat and has a right to stand his or her ground if the person:

- Is not engaged in criminal activity; and
- Is in a place where he or she has a right to be.

Limitations of the Justifiable Use of Force

Florida law prohibits or limits a person from asserting the defense of justifiable use of force in specified cases when a person uses or threatens to use force:

- To resist an arrest by a law enforcement officer, or to resist a law enforcement officer, acting in good faith, who is engaged in the execution of a legal duty;[15]
- In attempting to commit, committing, or escaping after the commission of a forcible felony;[16]
- If the person was the initial aggressor, unless:
    - He or she has exhausted every reasonable means to escape the danger other than the use of force and the person reasonably believes that he or she is in imminent death or great bodily harm; or

[14] Crimes which are classified as a "forcible felony" include: 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." s. 776.08, F.S.

[15] s. 776.051, F.S.

[16] s. 776.041(1), F.S.

- In good faith, the person withdraws from physical contact and indicates clearly to the assailant that he or she desires to terminate the use or threatened use of force, but the assailant continues or resumes the use or threatened use of force.[17]

These limitations apply regardless of where the use or threatened use of force occurs.

Effect of Bill

As discussed above, s. 776.13(3), F.S., currently states, "A person who is attacked in his or her dwelling, residence, or vehicle has no duty to retreat and has the right to stand his or her ground and use or threaten to use force, including deadly force ..." as follows with respect to use of force in defense of person:

- Non-deadly force may be used or threatened to be used against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force.
- Deadly force may be used or threatened to be used against another if the person reasonably believes such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony if the person is not engaged in criminal activity and is in a place where he or she has a right to be.

The bill amends the above-described provisions to:

- Remove the term "attacked" to avoid any implication that an actual physical assault is required before the justifiable use of force is authorized. Such interpretation is inconsistent with the rest of the chapter, which allows a person to use defensive force as soon as the person reasonably believes such force is necessary to *prevent* or terminate another person's use of unlawful force.
- Remove the term "vehicle" so that the statute only applies to dwellings and residences.[18]
- Broaden its application to any dwelling or residence in which a person has the right to be.
- Authorize a person to use deadly force without a duty to retreat when in a dwelling or residence where the person has a right to be notwithstanding engagement in criminal activity when necessary to prevent imminent death, great bodily harm, or a forcible felony.

Additionally, the bill reorganizes the current subsections within s. 776.013, F.S., to move the subsection authorizing a person's right to stand his or her ground, without a duty to retreat, to appear before the subsections relating to the presumption of fear set forth in the statute. This reorganization makes no substantive change to the law; instead, it more logically organizes the section.

B. SECTION DIRECTORY:

Section 1: Amending s. 776.013, F.S., relating to home protection; use or threatened use of deadly force; presumption of fear of death or great bodily harm.

Section 2: Providing an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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

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

[17] s. 776.041(2), F.S.

[18] The right to use defensive force in a vehicle will be controlled by ss. 776.012 and 776.031, F.S. However, the presumption of fear of death or great bodily harm set forth in s. 776.013, F.S. will still apply to occupied vehicles.

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: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to justifiable use of force; amending s. 776.013, F.S.; revising the right to use or threaten force, including deadly force, when a person is in a dwelling, residence, or vehicle; authorizing a person to use or threaten to use non-deadly or deadly force in a dwelling or residence under certain circumstances; providing an effective date.

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

Section 1. Subsections (1) through (3) of section 776.013, Florida Statutes, are amended to read:

776.013 Home protection; use or threatened use of deadly force; presumption of fear of death or great bodily harm.—

(1) A person who is in a dwelling or residence in which the person has a right to be has no duty to retreat and has the right to stand his or her ground and use or threaten to use:

(a) Non-deadly force against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force; or

(b) Deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or

another or to prevent the imminent commission of a forcible felony.

(2)~~(1)~~ A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used or threatened 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 who uses or threatens to use defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(3)~~(2)~~ The presumption set forth in subsection (2)~~(1)~~ does not apply if:

(a) The person against whom the defensive force is used or threatened has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

(b) The person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used or threatened; or

(c) The person who uses or threatens to use defensive force is engaged in a criminal activity or is using the dwelling, residence, or occupied vehicle to further a criminal activity; or

(d) The person against whom the defensive force is used or threatened is a law enforcement officer, as defined in s. 943.10(14), who enters or attempts to enter a dwelling, residence, or vehicle 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 entering or attempting to enter was a law enforcement officer.

~~(3) A person who is attacked in his or her dwelling, residence, or vehicle has no duty to retreat and has the right to stand his or her ground and use or threaten to use force, including deadly force, if he or she uses or threatens to use force in accordance with s. 776.012(1) or (2) or s. 776.031(1) or (2).~~

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

PCS for HB 693

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 693 Criminal Offenses
SPONSOR(S): Judiciary Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1102

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

SUMMARY ANALYSIS

Section 812.155, F.S., creates criminal offenses related to hiring, leasing, or obtaining personal property or equipment with the intent to defraud. These offenses prohibit a person from:

- Obtaining any personal property or equipment by trick, deceit, or fraudulent or willful false representation;
- Hiring or leasing personal property or equipment with intent to defraud; and
- Knowingly abandoning or refusing to return hired or leased personal property or equipment at the conclusion of the rental period where the failure to return such property or equipment is done without the consent of the person letting such property or equipment.

The offenses described above are currently second degree misdemeanors if the offense involves property valued at less than $300, or third degree felonies if the property is valued at $300 or more. The $300 thresholds were added in in 1992 and have not been amended since that time.

The PCS amends s. 812.155(1) through (3), F.S., to increase the threshold amounts for the felony offenses described above from $300 to $750.

Due to the PCS's increased thresholds for the commission of felony offenses, the PCS may reduce the need for prison beds and increase the need for county jail beds or probation.

The PCS takes effect on July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview of Property Crimes and Dollar Thresholds

In many states, the amount of harm or damage caused by a defendant is a factor used to determine the severity of an offense; thus, the penalties for an offense may be based on the value of damaged or stolen goods.[1] Typically, "states set a monetary amount that qualifies as a felony theft offense, also known as the felony theft threshold."[2] According to a report published by the National Conference of State Legislatures ("NCSL"), "[t]he majority of states—30 and the District of Columbia—have felony theft thresholds of $1,000 or greater, 15 have set them at $500 to $950, and five have thresholds below $500. Legislatures have recently revisited thresholds to ensure these amounts keep pace with inflation and the increase in price of consumer goods. Since 2005, at least 26 states and the District of Columbia have increased the felony theft threshold."[3]

Offenses Related to the Hiring, Leasing, or Obtaining Personal Property or Equipment

Section 812.155, F.S., creates criminal offenses related to hiring, leasing, or obtaining personal property or equipment with the intent to defraud. These offenses prohibit a person from:

1) Obtaining any personal property or equipment by trick, deceit, or fraudulent or willful false representation;[4]
2) Hiring or leasing personal property or equipment with intent to defraud;[5] and
3) Knowingly abandoning or refusing to return hired or leased personal property or equipment at the conclusion of the rental period where the failure to return such property or equipment is done without the consent of the person letting such property or equipment.[6]

The offenses described above are second degree misdemeanors if the offense involves property valued at less than $300, or third degree felonies if the property is valued at $300 or more.

The $300 thresholds were added in in Chapter 1992-79,[7] Laws of Florida, and have not been amended since that time. According to the Bureau of Labor Statistics, $300 in 1992 has the same buying power as $529.62 in 2017. This is based on the Consumer Price Index ("CPI") Inflation Calculator. The CPI Inflation Calculator uses the average CPI for a given calendar year. This data represents changes in prices of all goods and services purchased for consumption by urban households. This index value has been calculated every year since 1913.[8]

Effect of the Bill

The bill amends s. 812.155(1) through (3), F.S., to increase the threshold amounts from $300 to $750 for the three offenses listed above.

The bill takes effect on July 1, 2017.

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[1] Alison Lawrence, *Making Sense of Sentencing: State Systems and Policies*, National Conference of State Legislatures ("NCSL Report") at 2, June 2015, *available at* https://www.ncsl.org/documents/cj/sentencing.pdf (last viewed Feb. 23, 2017).
[2] *Id.*
[3] *Id.*
[4] s. 812.155(1), F.S.
[5] s. 812.155(2), F.S.
[6] s. 812.155(3), F.S.
[7] Chapter 1992-79, L.O.F., refers to "s. 812.15, F.S." rather than "s. 812.155, F.S." However, the text of that chapter refers to s. 812.155, F.S.
[8] For the current year, the latest monthly index value is used." *See* Website for the Bureau of Labor Statistics, *available at* https://www.bls.gov/data/inflation_calculator.htm (last viewed April 22, 2017).

B. SECTION DIRECTORY:

Section 1. Amends s. 812.155, F.S., relating to hiring, leasing, or obtaining personal property or equipment with the intent to defraud; failing to return hired or leased personal property; rules of evidence.

Section 2. 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 government revenues.

2. Expenditures: The Criminal Justice Impact Conference has not yet considered the bill. It is anticipated that the bill will reduce the need for prison beds, but the exact amount is not yet known.

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 raises the thresholds for felonies and misdemeanors. Because the bill raises the threshold for misdemeanor offenses, the bill may increase the need for jail beds, as individuals previously eligible for state sanctions may now instead receive a county jail or probation sanction.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other: None.

B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

A bill to be entitled

An act relating to fraudulently obtaining or retaining personal property or equipment; amending s. 812.155, F.S.; revising the threshold amounts for certain offenses of hiring, leasing, or obtaining personal property or equipment with the intent to defraud and failing to return hired or leased personal property or equipment; providing an effective date.

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

Section 1. Subsections (1) through (3) of section 812.155, Florida Statutes, are amended to read:

812.155 Hiring, leasing, or obtaining personal property or equipment with the intent to defraud; failing to return hired or leased personal property or equipment; rules of evidence.—

(1) OBTAINING BY TRICK, FALSE REPRESENTATION, ETC.— Whoever, with the intent to defraud the owner or any person lawfully possessing any personal property or equipment, obtains the custody of the personal property or equipment by trick, deceit, or fraudulent or willful false representation commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, unless the value of the personal property or equipment is of a value of $750 ~~$300~~ or more; in that case the person commits a felony of the third degree, punishable as

provided in s. 775.082, s. 775.083, or s. 775.084.

(2) HIRING OR LEASING WITH THE INTENT TO DEFRAUD.—Whoever, with intent to defraud the owner or any person lawfully possessing personal property or equipment of the rental thereof, hires or leases the personal property or equipment from the owner or the owner's agents or any person in lawful possession thereof commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, unless the value of the personal property or equipment is of a value of $750 ~~$300~~ or more; in that case the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) FAILURE TO RETURN HIRED OR LEASED PERSONAL PROPERTY.—Whoever, after hiring or leasing personal property or equipment under an agreement to return the personal property to the person letting the personal property or equipment or his or her agent at the termination of the period for which it was let, shall, without the consent of the person or persons knowingly abandon or refuse to return the personal property or equipment as agreed, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, unless the value of the personal property or equipment is of a value of $750 ~~$300~~ or more; in that case the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 697 Federal Immigration Enforcement
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee; Metz and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 786

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	9 Y, 5 N	Stranburg	Bond
2) Local, Federal & Veterans Affairs Subcommittee	9 Y, 5 N, As CS	Darden	Miller
3) Judiciary Committee		Stranburg	Camechis

SUMMARY ANALYSIS

Although the federal government has broad powers over immigration enforcement, federal immigration agencies rely on state and local law enforcement agencies to assist and cooperate in the enforcement of federal immigration laws. The bill creates the "Rule of Law Adherence Act" (Act) to require state and local governments and law enforcement agencies, including their officials and employees, to support and cooperate with federal immigration enforcement. Specifically, the bill:

- prohibits a state or local governmental entity or law enforcement agency from having a law, policy, practice, procedure, or custom which impedes a law enforcement agency from communicating or cooperating with a federal immigration agency on immigration enforcement;
- prohibits any restriction on a state or local governmental entity or law enforcement agency's ability to use, maintain, or exchange immigration information for certain enumerated purposes;
- requires a state or local governmental entity and law enforcement agency to comply with and support the enforcement of federal immigration law;
- provides procedures for a law enforcement agency and court to follow when an arrested person cannot provide proof of lawful presence in the United States or is subject to an immigration detainer;
- requires any sanctuary policies currently in effect be repealed within 90 days of the effective date of the Act;
- authorizes a board of county commissioners to enact an ordinance to recover costs for complying with an immigration detainer;
- requires an official or employee of a state or local governmental entity or law enforcement agency to report a violation of the Act to the Attorney General or state attorney, failure to report a violation may result in suspension or removal from office;
- authorizes the Attorney General or a state attorney to seek an injunction against a state or local governmental entity or law enforcement agency that violates the Act;
- requires a state or local governmental entity or law enforcement agency that violates the Act to pay a civil penalty of at least $1,000 but no more than $5,000 for each day the policy was in effect;
- creates a civil cause of action for a person injured by the conduct of an alien unlawfully present in the United States against a state or local governmental entity or law enforcement agency whose violation of the Act contributed to the person's injury;
- prohibits the expenditure of public funds to reimburse or defend a public official or employee who violates the Act; and
- suspends state grant funding eligibility for 5 years for a state government or local government entity or law enforcement agency that violates the Act.

The bill may have an indeterminate impact on local government expenditures. The bill does not appear to have a fiscal impact on state government.

The bill has an effective date of October 1, 2017, for provisions creating penalties. All other provisions of the bill have an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The federal government has "broad, undoubted power over the subject of immigration and the status of aliens," and thus has established an "extensive and complex" set of rules governing the admission and removal of aliens, along with conditions for aliens' continued presence within the United States.[1] While the federal government's authority over immigration is well established, the Supreme Court has recognized that not "every state enactment which in any way deals with aliens is a regulation of immigration and thus per se preempted" by the federal government.[2] The Tenth Amendment's reservation of powers to the states includes traditional "police powers" concerning the promotion and regulation of safety, health, and welfare within the state.[3] Pursuant to the exercise of these police powers, states and municipalities have frequently enacted measures which address aliens residing in their communities.[4] The federal government's power to preempt activity in the area of immigration may be further limited by the constitutional bar against directly "commandeering" state or local governments into the service of federal immigration agencies.[5]

Information-Sharing

United States Immigration and Customs Enforcement (ICE) relies heavily on local law enforcement sharing information regarding an arrestee or inmate to identify and apprehend aliens who are unlawfully present in the United States. Over the years, some states and localities have restricted government agencies or employees from sharing information with federal immigration agencies.[6]

In 1996, Congress sought to end these restrictions on information-sharing through the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)[7] and Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).[8] Neither PRWORA nor IIRIRA require state or local government entities to share immigration-related information with federal authorities. Instead, they bar any restrictions that prevent state or local government entities or officials from voluntarily communicating with federal immigration agencies regarding a person's immigration status.[9]

Immigration Detainers

An immigration detainer is a document by which ICE advises state and local law enforcement agencies of its interest in individual aliens whom those agencies are currently holding in relation to criminal violations.[10] ICE issues a detainer in three situations:

- To notify a law enforcement agency that ICE intends to assume custody of an alien in the agency's custody once the alien is no longer detained by the agency;
- To request information from a law enforcement agency about an alien's impending release so ICE may assume custody before the alien is released from the agency's custody; and

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[1] *Arizona v. United States*, 132 S. Ct. 2492, 2497 (2012).
[2] *De Canas v. Bica*, 424 U.S. 351, 355 (1976); *see Arizona*, 132 S. Ct. 2492.
[3] *Western Turf Ass'n v. Greenberg*, 204 U.S. 359, 363 (1907).
[4] Congressional Research Service, R43457, *State and Local "Sanctuary" Policies Limiting Participation in Immigration Enforcement* 3 (July 20, 2015).
[5] *See Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992).
[6] Congressional Research Service, *supra* note 4, at 9.
[7] 8 U.S.C. s.1644.
[8] 8 U.S.C. s.1373.
[9] 8 U.S.C. ss. 1373, 1644.
[10] *See* 8 U.S.C. ss. 1226, 1357;Congressional Research Service, *supra* note 4, at 13.

- To request that a law enforcement agency maintain custody of an otherwise releasable alien for no longer than 48 hours to allow ICE to assume custody.[11]

The federal courts and the federal government have characterized an ICE detainer as a request that does not require the receiving local law enforcement agency to comply with the detainer.[12] The federal courts have held any purported requirement that states hold aliens for ICE may run afoul of the anti-commandeering principles of the Tenth Amendment. For example, in *Galarza v. Szalczyk*, the U.S. Court of Appeals for the Third Circuit noted that if states and localities were required to detain aliens for ICE pursuant to a detainer, they would have to "expend funds and resources to effectuate a federal regulatory scheme," something found to be impermissible in prior Supreme Court decisions regarding commandeering.[13]

Additionally, a number of recent federal courts have held that ICE detainers requesting that local law enforcement detain (as opposed to notify) an otherwise releasable individual must specify that there is sufficient probable cause to detain that individual.[14]

Jurisdictions with Policies that May Be Affected by the Bill

A number of states and municipalities have adopted formal or informal policies which prohibit or limit police cooperation with federal immigration enforcement efforts.[15] Municipalities that have adopted such policies are sometimes referred to as "sanctuary cities," though there is no consensus as to the meaning of this term. The term "sanctuary" jurisdiction is not defined by federal law, though it has been used by the Office of the Inspector General at the U.S. Department of Justice to reference "jurisdictions that may have [laws, ordinances, or policies] limiting the role of local law enforcement agencies and officers in the enforcement of immigration laws."[16] Examples of such polices include: not asking an arrested or incarcerated person for his or her immigration status, not informing ICE about an alien in custody, not alerting ICE before releasing an alien from custody, not transporting an undocumented criminal alien to the nearest ICE location, and declining to honor an immigration detainer.[17]

A bulletin issued by the Florida Sheriffs Association highlighted recent federal court decisions[18] relating to ICE detainers and explained that "sheriffs should be aware that any detention of an ICE detainee without probable cause may subject the sheriff's office to liability for an unlawful seizure."[19] The bulletin

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[11] Law Enforcement Systems and Analysis, Department of Homeland Security, *Declined Detainer Outcome Report*, October 8, 2014 (redacted public version), at 3.

[12] *See, e.g., Garza v. Szalczyk,* 745 F. 3d 634, 640-44 (3d Cir. 2014) (noting that all Courts of Appeals that have commented on the character of ICE detainers refer to them as "requests" or as part of an "informal procedure."); *Ortega v. U.S. Immigration & Customs Enforcement*, 737 F. 3d 435, 438 (6th Cir. 2013); *Miranda-Olivares v. Clackamas County*, 2014 WL 1414305, slip op. (D. Oregon April 11, 2014); Memorandum from R. A. Cuevas, Jr. to Board of County Commissioners of Miami-Dade County, RE: Resolution directing the Mayor to implement policy on responding to detainer requests from the United States Department of Homeland Security Immigration Enforcement, Resolution R-1008-13, p. 14 (Dec. 3, 2013) (containing correspondence from David Ventura, Assistant Director, U.S. Immigration and Customs Enforcement to Miguel Marquez, County Counsel, County of Santa Clara re: U.S. Immigration and Customs Enforcement Secure Communities Initiative).

[13] *Garza*, 745 F. 3d at 644.

[14] *Morales v. Chadburn*, 793 F. 3d 208, 214-217 (1st Cir. 2015); *Miranda-Olivares*, slip op. at 9-11; *Mendoza v. Osterberg*, 2014 WL 3784141 (D. Neb. 2014); *Uroza v. Salt Lake County*, 2013 WL 653968 (D. Utah 2013); *Galarza v. Szalczyk*, 2012 WL 1080020 (E.D.Pa. Mar.30, 2012) *rev'd on other grounds*, 745 F.3d 634 (3d Cir.2014).

[15] *See* Congressional Research Service, *supra* note 4, at 7-20 (providing examples of various types of "sanctuary" policies used across the country).

[16] U.S. Dep't of Justice, Office of the Inspector General, Audit Division, *Cooperation of SCAAP Recipients in the Removal of Criminal Aliens from the United States*, January 2007 (redacted public version), at vii, n.44 (defining "sanctuary" policies for purposes of study).

[17] *Id.* at 11-17.

[18] *Galarza*, 745 F. 3d at 634; *Miranda-Olivares*, 2014 WL 1414305. Neither of these cases are binding authority in Florida.

[19] Florida Sheriffs Association, *Legal Alert: ICE Detainers* (on file with the Civil Justice Subcommittee).

advised sheriff departments to "request a copy of the warrant or the order of deportation to determine that probable cause in fact exists for the continued detention."[20]

There is no requirement under federal law to show probable cause for the issuance of an ICE detainer.[21] Under the Priority Enforcement Program, in effect from 2015 to 2017, ICE included a determination of probable cause as part of the immigration detainer form.[22] The Priority Enforcement Program was terminated effective February 20, 2017; however, the immigration detainer form developed for the program is still in use on an interim basis, pending the development of a new form.[23] Should the new forms remove probable cause findings consistent with federal statutory law, jurisdictions implementing the recommendations of the Florida Sheriffs Association bulletin may be in violation of the requirements of this bill.

The county commission in Miami-Dade adopted a policy in 2010 that provided that an ICE detainer would only be honored if the federal government agrees to reimburse the county for costs incurred in complying with the detainer and the inmate subject to the detainer has a previous conviction for a forcible felony or the inmate has pending charges for a non-bondable offense.[24] In January 2017, the mayor of Miami-Dade County reversed this policy and the county now accepts immigration detainers from ICE.[25] If the requirements of this bill had been in effect, this policy change would have placed Miami-Dade County in compliance.

Effect of Proposed Changes

The bill creates ch. 908, F.S., consisting of ss. 908.101-908.402, F.S., to create the "Rule of Law Adherence Act." The Act requires state and local governments and law enforcement agencies to support and cooperate with federal immigration enforcement.

Legislative Findings and Intent

The bill creates s. 908.101, F.S., to provide legislative findings regarding immigration enforcement. The bill states it is an important state interest that state entities, local government entities, and their officials owe an affirmative duty to assist the Federal Government with enforcement of federal immigration laws within this state, including complying with federal immigration detainers. The bill also finds an important state interest in ensuring that efforts to enforce immigration laws are not impeded or thwarted by state or local laws, policies, practices, procedures, or customs as necessary in the interest of public safety and adherence to federal law. Accordingly, state agencies, local governments, and their officials who encourage persons unlawfully present in the United States to locate within this state or who shield such persons from responsibility for their actions breach this duty and should be held accountable.

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[20] *Id.*
[21] *See* 8 U.S.C. s. 1357(a). *See generally* Congressional Research Service, R42690, *Immigration Detainers: Legal Issues* (May 7, 2015).
[22] U.S. Immigration and Customs Enforcement, *Priority Enforcement Program*, https://www.ice.gov/pep (last accessed April 12, 2017). *See also* Dept. of Homeland Sec., *Form I-247D: Immigration Detainer – Request for Voluntary Action,* May 2015, https://www.ice.gov/sites/default/files/documents/Document/2016/I-247D.PDF (last accessed April 12, 2017).
[23] Memorandum from John Kelly, Sec'y of Homeland Sec., to Kevin McAleenan, Acting Commissioner of U.S. Customs and Border Protection, et al., *Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017), available at https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf (last accessed April 12, 2017).
[24] Resolution No. R-1008-13, Board of County Commissioners, Miami-Dade County, Florida (Dec. 3, 2010).
[25] Douglas Hanks, *Miami-Dade turned over 11 people to immigration authorities in week under new policy*, Miami Herald, February 3, 2017, http://www.miamiherald.com/news/local/community/miami-dade/article130688064.html (last accessed April 12, 2017).

Prohibition against Sanctuary Policies

The bill creates s. 908.201, F.S., to prohibit a state or local governmental entity, or a law enforcement agency[26] from adopting or having in effect a sanctuary policy. A "sanctuary policy" is defined in the bill as "a law, policy, practice, procedure, or custom adopted or permitted by a state entity, law enforcement agency, or local governmental entity which contravenes 8 U.S.C. s. 1373(a) or (b)[27], or which knowingly prohibits or impedes a law enforcement agency from communicating or cooperating with a federal immigration agency with respect to immigration enforcement [.]" Examples of prohibited sanctuary polices include limiting or preventing a state or local governmental entity or law enforcement agency from:

- complying with an immigration detainer;[28]
- complying with a request from a federal immigration agency to notify the agency prior to the release of an inmate in the state or local governmental entity or law enforcement agency's custody;
- providing a federal immigration agency access to an inmate for interview;
- initiating an immigration status investigation; or
- providing a federal immigration agency with the incarceration status or release date of an inmate.

Cooperation with Federal Immigration Authorities

The bill creates s. 908.202, F.S., to prohibit any restriction on a state or local governmental entity or law enforcement agency's ability to:

- send information regarding a person's immigration status to, or requesting or receiving such information from, a federal immigration agency;
- record and maintain immigration information for purposes of the Act;
- exchange immigration information with a federal immigration agency, state or local governmental entity, or law enforcement agency;
- use immigration information to determine eligibility for a public benefit, service, or license;
- use immigration information to verify a claim of residence or domicile if such a determination of is required under federal or state law, local government ordinance or regulation, or pursuant to a court order;
- use immigration information to comply with an immigration detainer; or
- use immigration information to confirm the identity of an individual who is detained by a law enforcement agency;

The bill requires a state or local governmental entity and a law enforcement agency to fully comply with and support the enforcement of federal immigration law. This requirement only applies with regard to an official, representative, agent, or employee of such entity or agency when he or she is acting within the scope of his or her official duties or employment.

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[26] The definitions of "state entity," "local governmental entity," and "law enforcement agency" in the bill include officials, persons holding public office, representatives, agents, and employees of those entities or agencies.

[27] 8 U.S.C. s. 1373(a) and (b) generally bar any restrictions that prevent state or local government entities or officials from voluntarily communicating with federal immigration agencies regarding a person's immigration status. *See also Congressional Research Service*, *supra* note 4, at 10.

[28] "Immigration detainer" is defined in the bill as "a facially sufficient written or electronic request issued by a federal immigration agency using that agency's official form to request another law enforcement agency detain a person based on an inquiry into the person's immigration status or an alleged violation of a civil immigration law, including detainers issued pursuant to 8 U.S.C. ss. 1226 and 1357." A detainer is considered facially sufficient when it is complete and indicates on its face, or is supported by an accompanying affidavit or order that indicates, the federal immigration official has reason to believe that the person to be detained may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States.

Additionally, the bill provides that a law enforcement agency that has received verification from a federal immigration official that an alien in the agency's custody is unlawfully present in the United States, the agency may transport the alien to a federal facility in this state or to a point of transfer to federal custody outside the jurisdiction of the agency. However, the law enforcement agency must obtain judicial authorization before transporting the alien to a point of transfer outside of this state.

The bill requires a judge in a criminal case to order a secure correctional facility[29] to reduce a defendant's sentence by not more than 7 days to facilitate transfer to federal custody if the defendant is subject to an immigration detainer. The judge must indicate on the record that the defendant is subject to an immigration detainer or otherwise indicate that the defendant is subject to transfer into federal custody when making the order to the secure correctional facility. If a judge does not have this information at the time of sentencing, he or she must issue the order to the secure correctional facility as soon as such information becomes available.

The cooperation and support requirements in newly-created s. 908.202, F.S., do not require a state or local governmental entity or law enforcement agency to provide a federal immigration agency with information related to a victim or witness to a criminal offense, if the victim or witness cooperates in the investigation or prosecution of the crime. A victim or witness's cooperation pursuant to this exemption must be documented in the entity or agency's investigative records, and the entity or agency must retain the records for at least 10 years for the purposes of audit, verification, or inspection by the Auditor General.

Duties Related to Arrested Persons and Immigration Detainers

The bill creates s. 908.203, F.S., detailing procedures for a law enforcement agency when a person is arrested and cannot provide proof of lawful presence in the United States. Within 48 hours of the arrest, the agency must review any information available from a federal immigration agency. If such information reveals that the person is unlawfully present in the United States, the agency must provide immediate notice of the person's arrest and charges to a federal immigration agency, inform the judge authorized to grant or deny the person's release on bail of that fact, and record that fact in the person's case file. An agency is not required to perform this duty on a person who is transferred to them from another agency if the previous agency performed the duty before the transferring of custody. A judge who receives notice of a person's immigration status pursuant to this duty must record that person's status in the court record.

The bill also creates s. 908.204, F.S., to provide duties of a law enforcement agency related to an immigration detainer. If an agency has custody of a person subject to an immigration detainer, the agency must inform the judge authorized to grant or deny bail that the person is subject to an immigration detainer. The judge must record the fact that the person is subject to a detainer in the court record, regardless of whether the notice is received before or after judgment in the case.

The agency must record that the person is subject to an immigration detainer in the person's case file and must comply with, honor, and fulfill the requests made in the detainer. An agency is not required to fulfill this duty on a person who is transferred to them from another agency if the previous agency performed the duty before the transferring of custody.

Reimbursement of Costs for Complying with an Immigration Detainer

The bill creates s. 908.205, F.S., to authorize a board of county commissioners to adopt an ordinance requiring any individual detained pursuant to a lawful and valid immigration detainer to reimburse the county for any expenses incurred in detaining the individual. However, an individual is not liable under

[29] The term "secure correctional facility" is defined as a state correctional institution in s. 944.02, F.S., or a county detention facility or municipal detention facility in s. 951.23, F.S.

an ordinance enacted pursuant to this provision if a federal immigration agency determines that the immigration detainer was improperly issued.

The bill also authorizes a local government or law enforcement agency to petition the federal government to reimbursement of costs. The petition may be made for a local government or law enforcements agency's detention costs and the costs of compliance with federal requests when those costs are incurred in support of federal immigration law.

Duty to Report

The bill creates s. 908.206, F.S., to require an official or employee of a state or local governmental entity or law enforcement agency to promptly report a known or probable violation of the Act to the Attorney General or the state attorney. An official or employee's willful and knowing failure to report a violation may result in his or her suspension or removal from office pursuant to general law and the Florida Constitution.[30]

The bill provides protections under the Whistle-blower's Act[31] to any official or employee of a state or local governmental entity or law enforcement agency who is retaliated against by the entity or agency or denied employment because he or she complied with the duty to report in s. 908.206, F.S.

Enforcement of Violations of the Act

The bill creates s. 908.301, F.S., to require that the Attorney General provide a form on the Department of Legal Affairs' website for a person to submit a complaint alleging a violation of the Act. The bill does not prohibit a person from filing an anonymous complaint or a complaint in a different format than the one prescribed by this section. Any person has standing to submit a complaint.

The bill creates s. 908.302, F.S., to provide for the enforcement of violations of the Act and establish penalties for such violations. The state attorney for the county in which a state entity is headquartered, or a local governmental entity or law enforcement agency is located, has primary responsibility for investigating complaints of violations of the Act. The results of any investigation must be provided to the Attorney General in a timely manner.

A state or local government entity or law enforcement agency for which the state attorney has received a complaint must comply with a document request by the state attorney related to the complaint. If the state attorney determines that the complaint is valid, within 10 days of the determination, the state attorney must provide written notification to the entity that the complaint has been filed, that the state attorney has found the complaint valid, and that the state attorney is authorized to file an action to enjoin the violation if the entity does not come into compliance with ch. 908, F.S., on or before the 60th day after notification is provided.

Within 30 days of receiving written notification of a valid complaint, a state or local government entity or law enforcement agency must provide the state attorney with a copy of:

- the entity's written policies and procedures with respect to federal immigration agency enforcement action, including policies with respect to immigration detainers;
- each immigration detainer received by the entity from a federal immigration agency in the current calendar year-to-date and the two prior calendar years; and

[30] Art. IV, s. 7 of the Florida Constitution provides that the governor may suspend "any state officer not subject to impeachment . . . or any county officer for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor." The senate then "may. . . remove from office or reinstate the suspended official . . ."

[31] Section 112.3187, F.S.

- each response sent by the entity for an immigration detainer for the current year and two prior calendar years.

The Attorney General, the state attorney that conducted the investigation, or a state attorney ordered by the Governor pursuant to s. 27.14, F.S.,[32] may institute proceedings in circuit court to enjoin a state or local governmental entity or law enforcement agency that violates the Act. The court must expedite the action, including setting a hearing at the earliest practicable date.

Upon adjudication by the court or as provided in a consent decree declaring that a state or local governmental entity or law enforcement agency has violated the Act, the court must enjoin the unlawful policy or practice and order that the entity or agency pay a civil penalty of at least $1,000 but not more than $5,000 for each day the policy or practice was in effect commencing on October 1, 2017, or the date the sanctuary policy was first enacted, whichever is later.

A "sanctuary policymaker" is defined in the bill as "a state or local elected official, or an appointed official of a local governmental entity governing body, who has voted for, allowed to be implemented, or voted against repeal or prohibition of a sanctuary policy." The bill requires a consent decree, injunction, or order granting civil penalties to identify each sanctuary policymaker. The court must provide a copy of the final order to the Governor within 30 days after the date of rendition. A sanctuary policymaker identified in a final order is subject to suspension or removal from office by the Governor pursuant to general law and the Florida Constitution.[33]

A state or local governmental entity or law enforcement agency ordered to pay a civil penalty must remit payment to the Chief Financial Officer. The Chief Financial Officer must deposit such payments into the General Revenue Fund.

The bill also prohibits the expenditure of public funds to defend or reimburse any sanctuary policy maker or any official, representative, agent, or employee of a state entity, local governmental entity, or law enforcement agency who knowingly and willfully violates the Act.

Cause of Action against State or Local Governmental Entity, Law Enforcement Agency

The bill creates s. 908.303, F.S., to provide a civil cause of action for a person injured by (or the personal representative of a person killed by) the tortious conduct of an alien unlawfully present in the United States against any state or local governmental entity or law enforcement agency in violation of newly-created ss. 908.201, 908.202, and 908.204, F.S. To prevail in the new cause of action, the plaintiff must prove by the greater weight of the evidence:

- The existence of a sanctuary policy; and
- Failure to comply with any provision of newly-created s. 908.202, F.S., resulting in the alien having access to the person injured or killed when the tortious conduct occurred.

The bill requires a final judgment in favor of a plaintiff to identify each sanctuary policymaker. The court must provide a copy of the final judgment to the Governor within 30 days after the date of rendition. A sanctuary policymaker identified in a final judgment is subject to suspension or removal from office by the Governor pursuant to general law and the Florida Constitution.[34]

A cause of action pursuant to this section may not be brought against a public official or employee of a state or local government or law enforcement agency, including a sanctuary policymaker.

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[32] Section 27.14, F.S., authorizes the Governor to issue an executive order requiring a state attorney from another circuit to replace another state attorney in an investigation or case in which the latter state attorney is disqualified or "for any other good and sufficient reason [when] the Governor determines that the ends of justice would be best served [.]."
[33] *See* note 30, *supra*.
[34] *See* note 30, *supra*.

Lastly, the bill provides that the Act does not create a private cause of action against a state entity, local governmental entity, or law enforcement agency that complies with the Act.

Ineligibility for State Grant Funding

The bill creates s. 908.304, F.S., to prohibit a state or local government entity or law enforcement agency that had a sanctuary policy in violation of ch. 908, F.S., from receiving funding for non-federal grant programs administered by state agencies. This prohibition runs for 5 years from the date of adjudication that the entity had a sanctuary policy in violation of ch. 908, F.S.

The state attorney must notify the state's Chief Financial Officer (CFO) of an adjudicated violation by an entity and provide the CFO with a copy of the final court injunction, order, or judgment. Upon receiving the notice, the CFO must timely inform all state agencies that administer non-federal grant funding of the violation by the entity. The CFO must then direct such agencies to cancel all pending grant applications and enforce the ineligibility of the entity for the 5-year period.

The bill provides that the prohibition on grant funding does not apply to:

- funding that is received as a result of an appropriation to a specifically named state entity, local government entity, or law enforcement agency in the General Appropriations Act or other law; and
- grants awarded prior to the date of an adjudication of violation of ch. 908, F.S.

Additional Provisions

The bill provides that any sanctuary policy in effect on the effective date of the Act must be repealed within 90 days of the effective date of the Act.

The bill creates s. 908.401, F.S., providing that ch. 908, F.S., does not apply to the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. s. 1232g.

The bill creates s. 908.402, F.S., to prohibit a state or local government entity or law enforcement agency, or a person employed by or otherwise under the direction of such an entity, to base its actions pursuant to ch. 908, F.S., on the gender, race, religion, national origin, or physical disability of a person except to the extent allowed by the United States Constitution or the state constitution.

The bill also creates s. 908.207, F.S., to provide that the Act be implemented to the fullest extent permitted by federal immigration law and the legislative findings and intent declared in s. 908.101, F.S.

The bill provides that ss. 908.302 and 908.303, F.S., relating to enforcement and penalties for violations of the act and creating a civil cause of action for personal injury or wrongful death attributed to a sanctuary policy, respectively, will take effect on October 1, 2017. The bill provides an effective date of July 1, 2017, to all other portions of the bill.

B. SECTION DIRECTORY:

Section 1 creates a short title.

Section 2 creates ch. 908, F.S., consisting of ss. 908.101-908.402, F.S., entitled "Federal Immigration Enforcement."

Section 3 creates an unnumbered section that requires any sanctuary policy in effect on the effective date of the act must be repealed within 90 days after that effective date.

Section 4 provides an effective date October 1, 2017, for ss. 908.302 and 908.303, F.S., and an effective date of July 1, 2017, for all other provisions in the bill.

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:

   See "Expenditures" section below.

2. Expenditures:

   The bill requires a local government or law enforcement agency to honor an ICE immigration detainer. Any costs incurred by a local government or law enforcement agency in holding an individual pursuant to an immigration detainer are not reimbursed by ICE.[35] However, the bill authorizes a board of county commissioners to enact an ordinance to recover costs for complying with an immigration detainer.[36] The bill also authorizes a local government entity or law enforcement agency to petition the federal government to recover costs of detention and complying with a federal request in support of federal immigration law.[37] Accordingly, the bill may have an indeterminate negative impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

It is unknown how much it costs local governments to comply with immigration detainers. According to the Board of County Commissioners in Miami-Dade County, compliance with immigration detainers in 2011 and 2012 cost the county $1,002,700 and $667,076, respectively.[38]

As noted above, recent federal courts have determined that a local law enforcement agency is not required to honor an ICE detainer because such detainers are requests to detain.[39] Federal courts have also held that an ICE detainer must be supported by probable cause.[40] Based on these two lines of federal cases, it appears that a law enforcement agency that voluntarily complies with an ICE detainer that is not supported by probable cause may be subject to legal action.[41]

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[35] Resolution No. R-1008-13, *supra* note 24.
[36] *See* "Reimbursement of Costs for Complying with an Immigration Detainer" section above.
[37] *Id.*
[38] Resolution No. R-1008-13, *supra* note 24.
[39] *See* "Immigration Detainers" section above.
[40] *Id.*
[41] *See Legal Alert*, *supra* note 19.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to require a county or municipality to spend funds or take an action requiring the expenditure of funds as described in article VII, section 18 of the Florida Constitution, specifically by requiring the county or municipality to comply with an immigration detainer. However, the bill contains legislative findings that state and local government assistance and cooperation with federal immigration enforcement fulfills an important state interest, and it authorizes a board of county commissioners to enact an ordinance to recover costs for complying with an immigration detainer.[42] Moreover, it appears that any expenditure that may be required by the bill applies to "all persons similarly situated" because the bill applies to all state and local governmental entities and all law enforcement agencies.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Newly-created s. 908.301, F.S., in the bill requires the Attorney General to prescribe and provide through the Department of Legal Affairs' website a form for a person to submit a complaint alleging a violation of the Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes a reference to a specific immigration program, clarifying that state or local law enforcement agencies must view any information available from a federal immigration agency;
- Requires a state or local law enforcement agency to provide immediate notice of the arrest and charges of a person determined to not be a citizen of the United States and unlawfully present under federal immigration law; and
- Creates a civil cause of action for personal injury or wrongful death attributable to a state entity, local government entity, or state or local law enforcement agency not complying in an immigration detainer.

This analysis is drafted to the committee substitute as passed by the Local, Federal & Veterans Affairs Subcommittee.

[42] *See* "Legislative Findings and Intent" and "Reimbursement of Costs for Complying with an Immigration Detainer" sections above.

A bill to be entitled

An act relating to federal immigration enforcement; providing a short title; creating chapter 908, F.S., relating to federal immigration enforcement; providing legislative findings and intent; providing definitions; prohibiting sanctuary policies; requiring state entities, local governmental entities, and law enforcement agencies to comply with and support the enforcement of federal immigration law; specifying duties concerning certain arrested persons; specifying duties concerning immigration detainers; prohibiting restrictions by such entities and agencies on taking certain actions with respect to information regarding a person's immigration status; providing requirements concerning certain criminal defendants subject to immigration detainers or otherwise subject to transfer to federal custody; authorizing a law enforcement agency to transport an unauthorized alien under certain circumstances; providing an exception to reporting requirements for crime victims or witnesses; requiring recordkeeping relating to crime victim and witness cooperation in certain investigations; authorizing a board of county commissioners to adopt an ordinance to recover costs for complying with an immigration detainer; authorizing local governmental

entities and law enforcement agencies to petition the Federal Government for reimbursement of certain costs; requiring report of violations; providing penalties for failure to report a violation; providing whistle-blower protections for persons who report violations; requiring the Attorney General to prescribe the format for submitting complaints; providing requirements for entities to comply with document requests from state attorneys concerning violations; providing for investigation of possible violations; providing for injunctive relief and civil penalties; requiring written findings; prohibiting the expenditure of public funds for specified purposes; providing a cause of action for personal injury or wrongful death attributed to a sanctuary policy; providing that a trial by jury is a matter of right; requiring written findings; providing for applicability to certain education records; prohibiting discrimination on specified grounds; providing for implementation; requiring repeal of existing sanctuary policies within a specified period; providing effective dates.

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

Section 1. Short title.—This act may be cited as the "Rule

of Law Adherence Act."

Section 2. Chapter 908, Florida Statutes, consisting of sections 908.101-908.402, is created to read:

CHAPTER 908

FEDERAL IMMIGRATION ENFORCEMENT

PART I

FINDINGS AND DEFINITIONS

908.101 Legislative findings and intent.—The Legislature finds that it is an important state interest that state entities, local governmental entities, and their officials owe an affirmative duty to all citizens and other persons lawfully present in the United States to assist the Federal Government with enforcement of federal immigration laws within this state, including complying with federal immigration detainers. The Legislature further finds that it is an important state interest that, in the interest of public safety and adherence to federal law, this state support federal immigration enforcement efforts and ensure that such efforts are not impeded or thwarted by state or local laws, policies, practices, procedures, or customs. State entities, local governmental entities, and their officials who encourage persons unlawfully present in the United States to locate within this state or who shield such persons from personal responsibility for their unlawful actions breach this duty and should be held accountable.

908.102 Definitions.—As used in this chapter, the term:

(1) "Federal immigration agency" means the United States Department of Justice, the United States Department of Homeland Security, or any successor agency and any division of such agency, including United States Immigration and Customs Enforcement, United States Customs and Border Protection, or any other federal agency charged with the enforcement of immigration law. The term includes an official or employee of such agency.

(2) "Immigration detainer" means a facially sufficient written or electronic request issued by a federal immigration agency using that agency's official form to request that another law enforcement agency detain a person based on an inquiry into the person's immigration status or an alleged violation of a civil immigration law, including detainers issued pursuant to 8 U.S.C. ss. 1226 and 1357. For purposes of this subsection, an immigration detainer is deemed facially sufficient if:

(a) The federal immigration agency's official form is complete and indicates on its face that the federal immigration official has reason to believe that the person to be detained may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States; or

(b) The federal immigration agency's official form is incomplete and fails to indicate on its face that the federal immigration official has reason to believe that the person to be detained may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United

States, but is supported by an accompanying affidavit or order that indicates that the federal immigration agency has reason to believe that the person to be detained may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States.

(3) "Inmate" means a person in the custody of a law enforcement agency.

(4) "Law enforcement agency" means an agency in this state charged with enforcement of state, county, municipal, or federal laws or with managing custody of detained persons in the state and includes municipal police departments, sheriff's offices, state police departments, state university and college police departments, and the Department of Corrections. The term includes an official or employee of such agency.

(5) "Local governmental entity" means any county, municipality, or other political subdivision of this state. The term includes a person holding public office or having official duties as a representative, agent, or employee of such entity.

(6) "Sanctuary policy" means a law, policy, practice, procedure, or custom adopted or permitted by a state entity, local governmental entity, or law enforcement agency which contravenes 8 U.S.C. s. 1373(a) or (b), or which knowingly prohibits or impedes a law enforcement agency from communicating or cooperating with a federal immigration agency with respect to federal immigration enforcement, including, but not limited to,

limiting or preventing a state entity, local governmental entity, or law enforcement agency from:

(a) Complying with an immigration detainer;

(b) Complying with a request from a federal immigration agency to notify the agency before the release of an inmate or detainee in the custody of the state entity, local governmental entity, or law enforcement agency;

(c) Providing a federal immigration agency access to an inmate for interview;

(d) Initiating an immigration status investigation; or

(e) Providing a federal immigration agency with an inmate's incarceration status or release date.

(7) "Sanctuary policymaker" means a state or local elected official, or an appointed official of a local governmental entity governing body, who has voted for, allowed to be implemented, or voted against repeal or prohibition of a sanctuary policy.

(8) "State entity" means the state or any office, board, bureau, commission, department, branch, division, or institution thereof, including institutions within the State University System and the Florida College System. The term includes a person holding public office or having official duties as a representative, agent, or employee of such entity.

PART II

DUTIES

908.201 Sanctuary policies prohibited.—A state entity, law enforcement agency, or local governmental entity may not adopt or have in effect a sanctuary policy.

908.202 Cooperation with federal immigration authorities.—

(1) A state entity, local governmental entity, or law enforcement agency shall fully comply with and, to the full extent permitted by law, support the enforcement of federal immigration law. This subsection is only applicable to an official, representative, agent, or employee of such entity or agency when he or she is acting within the scope of his or her official duties or within the scope of his or her employment.

(2) Except as otherwise expressly prohibited by federal law, a state entity, local governmental entity, or law enforcement agency may not prohibit or in any way restrict another state entity, local governmental entity, or law enforcement agency from taking any of the following actions with respect to information regarding a person's immigration status:

(a) Sending such information to or requesting, receiving, or reviewing such information from a federal immigration agency for purposes of this chapter.

(b) Recording and maintaining such information for purposes of this chapter.

(c) Exchanging such information with a federal immigration agency or another state entity, local governmental entity, or law enforcement agency for purposes of this chapter.

(d) Using such information to determine eligibility for a public benefit, service, or license pursuant to federal or state law or an ordinance or regulation of a local governmental entity.

(e) Using such information to verify a claim of residence or domicile if a determination of residence or domicile is required under federal or state law, an ordinance or regulation of a local governmental entity, or a judicial order issued pursuant to a civil or criminal proceeding in this state.

(f) Using such information to comply with an immigration detainer.

(g) Using such information to confirm the identity of a person who is detained by a law enforcement agency.

(3)(a) This subsection only applies in a criminal case in which:

1. The judgment requires the defendant to be confined in a secure correctional facility; and

2. The judge:

a. Indicates in the record under s. 908.204 that the defendant is subject to an immigration detainer; or

b. Otherwise indicates in the record that the defendant is subject to a transfer into federal custody.

(b) In a criminal case described by paragraph (a), the judge shall, at the time of pronouncement of a sentence of confinement, issue an order requiring the secure correctional

facility in which the defendant is to be confined to reduce the defendant's sentence by a period of not more than 7 days on the facility's determination that the reduction in sentence will facilitate the seamless transfer of the defendant into federal custody. For purposes of this paragraph, the term "secure correctional facility" means a state correctional institution, as defined in s. 944.02, or a county detention facility or a municipal detention facility, as defined in s. 951.23.

(c) If the applicable information described by subparagraph (a)2. is not available at the time the sentence is pronounced in the case, the judge shall issue the order described by paragraph (b) as soon as the information becomes available.

(4) Notwithstanding any other provision of law, if a law enforcement agency has received verification from a federal immigration agency that an alien in the law enforcement agency's custody is unlawfully present in the United States, the law enforcement agency may securely transport such alien to a federal facility in this state or to another point of transfer to federal custody outside the jurisdiction of the law enforcement agency. A law enforcement agency shall obtain judicial authorization before securely transporting such alien to a point of transfer outside of this state.

(5) This section does not require a state entity, local governmental entity, or law enforcement agency to provide a

federal immigration agency with information related to a victim of or a witness to a criminal offense if such victim or witness timely and in good faith responds to the entity's or agency's request for information and cooperation in the investigation or prosecution of such offense.

(6) A state entity, local governmental entity, or law enforcement agency that, pursuant to subsection (5), withholds information regarding the immigration information of a victim of or witness to a criminal offense shall document such victim's or witness's cooperation in the entity's or agency's investigative records related to the offense and shall retain such records for at least 10 years for the purpose of audit, verification, or inspection by the Auditor General.

908.203 Duties related to certain arrested persons.—

(1) If a person is arrested and is unable to provide proof of his or her lawful presence in the United States, not later than 48 hours after the person is arrested and before the person is released on bond, a law enforcement agency performing the booking process shall:

(a) Review any information available from a federal immigration agency.

(b) If information obtained under paragraph (a) reveals that the person is not a citizen of the United States and is unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss.

1101 et seq., the law enforcement agency shall:

1. Provide immediate notice of the person's arrest and charges to a federal immigration agency.

2. Provide notice of that fact to the judge authorized to grant or deny the person's release on bail under chapter 903.

3. Record that fact in the person's case file.

(2) A law enforcement agency is not required to perform a duty imposed by subsection (1) with respect to a person who is transferred to the custody of the agency by another law enforcement agency if the transferring agency performed that duty before transferring custody of the person.

(3) A judge who receives notice of a person's immigration status under this section shall ensure that such status is recorded in the court record.

908.204 Duties related to immigration detainer.—

(1) A law enforcement agency that has custody of a person subject to an immigration detainer issued by a federal immigration agency shall:

(a) Provide to the judge authorized to grant or deny the person's release on bail under chapter 903 notice that the person is subject to an immigration detainer.

(b) Record in the person's case file that the person is subject to an immigration detainer.

(c) Comply with, honor, and fulfill the requests made in the immigration detainer.

(2) A law enforcement agency is not required to perform a duty imposed by paragraph (1)(a) or paragraph (1)(b) with respect to a person who is transferred to the custody of the agency by another law enforcement agency if the transferring agency performed that duty before transferring custody of the person.

(3) A judge who receives notice that a person is subject to an immigration detainer shall ensure that such fact is recorded in the court record, regardless of whether the notice is received before or after a judgment in the case.

908.205 Reimbursement of costs.—

(1) A board of county commissioners may adopt an ordinance requiring a person detained pursuant to an immigration detainer to reimburse the county for any expenses incurred in detaining the person pursuant to the immigration detainer. A person detained pursuant to an immigration detainer is not liable under this section if a federal immigration agency determines that the immigration detainer was improperly issued.

(2) A local governmental entity or law enforcement agency may petition the Federal Government for reimbursement of the entity's or agency's detention costs and the costs of compliance with federal requests when such costs are incurred in support of the enforcement of federal immigration law.

908.206 Duty to report.—

(1) An official, representative, agent, or employee of a

state entity, local governmental entity, or law enforcement agency shall promptly report a known or probable violation of this chapter to the Attorney General or the state attorney having jurisdiction over the entity or agency.

(2) An official, representative, agent, or employee of a state entity, local governmental entity, or law enforcement agency who willfully and knowingly fails to report a known or probable violation of this chapter may be suspended or removed from office pursuant to general law and s. 7, Art. IV of the State Constitution.

(3) A state entity, local governmental entity, or law enforcement agency may not dismiss, discipline, take any adverse personnel action as defined in s. 112.3187(3) against, or take any adverse action described in s. 112.3187(4)(b) against, an official, representative, agent, or employee for complying with subsection (1).

(4) Section 112.3187 of the Whistle-blower's Act applies to an official, representative, agent, or employee of a state entity, local governmental entity, or law enforcement agency who is dismissed, disciplined, subject to any adverse personnel action as defined in s. 112.3187(3) or any adverse action described in s. 112.3187(4)(b), or denied employment because he or she complied with subsection (1).

908.207 Implementation.—This chapter shall be implemented to the fullest extent permitted by federal law regulating

immigration and the legislative findings and intent declared in s. 908.101.

PART III

ENFORCEMENT

908.301 Complaints.—The Attorney General shall prescribe and provide through the Department of Legal Affairs' website the format for a person to submit a complaint alleging a violation of this chapter. This section does not prohibit the filing of an anonymous complaint or a complaint not submitted in the prescribed format. Any person has standing to submit a complaint under this chapter.

908.302 Enforcement; penalties.—

(1) The state attorney for the county in which a state entity is headquartered or in which a local governmental entity or law enforcement agency is located has primary responsibility and authority for investigating credible complaints of a violation of this chapter. The results of an investigation by a state attorney shall be provided to the Attorney General in a timely manner.

(2)(a) A state entity, local governmental entity, or law enforcement agency for which the state attorney has received a complaint shall comply with a document request from the state attorney related to the complaint.

(b) If the state attorney determines that a complaint filed against a state entity, local governmental entity, or law

enforcement agency is valid, the state attorney shall, not later than the 10th day after the date of the determination, provide written notification to the entity that:

1. The complaint has been filed.

2. The state attorney has determined that the complaint is valid.

3. The state attorney is authorized to file an action to enjoin the violation if the entity does not come into compliance with the requirements of this chapter on or before the 60th day after the notification is provided.

(c) No later than the 30th day after the day a state entity or local governmental entity receives written notification under paragraph (b), the state entity or local governmental entity shall provide the state attorney with a copy of:

1. The entity's written policies and procedures with respect to federal immigration agency enforcement actions, including the entity's policies and procedures with respect to immigration detainers.

2. Each immigration detainer received by the entity from a federal immigration agency in the current calendar year-to-date and the two prior calendar years.

3. Each response sent by the entity for an immigration detainer described by subparagraph 2.

(3) The Attorney General, the state attorney who conducted

the investigation, or a state attorney ordered by the Governor pursuant to s. 27.14 may institute proceedings in circuit court to enjoin a state entity, local governmental entity, or law enforcement agency found to be in violation of this chapter. The court shall expedite an action under this section, including setting a hearing at the earliest practicable date.

(4) Upon adjudication by the court or as provided in a consent decree declaring that a state entity, local governmental entity, or law enforcement agency has violated this chapter, the court shall enjoin the unlawful sanctuary policy and order that such entity or agency pay a civil penalty to the state of at least $1,000 but not more than $5,000 for each day that the sanctuary policy was in effect commencing on October 1, 2017, or the date the sanctuary policy was first enacted, whichever is later, until the date the injunction was granted. The court shall have continuing jurisdiction over the parties and subject matter and may enforce its orders with imposition of additional civil penalties as provided for in this section and contempt proceedings as provided by law.

(5) An order approving a consent decree or granting an injunction or civil penalties pursuant to subsection (4) must include written findings of fact that describe with specificity the existence and nature of the sanctuary policy in violation of s. 908.201 and that identify each sanctuary policymaker who voted for, allowed to be implemented, or voted against repeal or

prohibition of the sanctuary policy. The court shall provide a copy of the consent decree or order granting an injunction or civil penalties that contains the written findings required by this subsection to the Governor within 30 days after the date of rendition. A sanctuary policymaker identified in an order approving a consent decree or granting an injunction or civil penalties may be suspended or removed from office pursuant to general law and s. 7, Art. IV of the State Constitution.

(6) A state entity, local governmental entity, or law enforcement agency ordered to pay a civil penalty pursuant to subsection (4) shall remit payment to the Chief Financial Officer, who shall deposit such payment into the General Revenue Fund.

(7) Except as required by law, public funds may not be used to defend or reimburse a sanctuary policymaker or an official, representative, agent, or employee of a state entity, local governmental entity, or law enforcement agency who knowingly and willfully violates this chapter.

908.303 Civil cause of action for personal injury or wrongful death attributed to a sanctuary policy; trial by jury; required written findings.—

(1) A person injured in this state by the tortious acts or omissions of an alien unlawfully present in the United States, or the personal representative of a person killed in this state by the tortious acts or omissions of an alien unlawfully present

in the United States, has a cause of action for damages against a state entity, local governmental entity, or law enforcement agency in violation of ss. 908.201 and 908.202 upon proof by the greater weight of the evidence of:

(a) The existence of a sanctuary policy in violation of s. 908.201; and

(b)1. A failure to comply with a provision of s. 908.202 resulting in such alien's having access to the person injured or killed when the tortious acts or omissions occurred; or

2. A failure to comply with a provision of s. 908.204(1)(c) resulting in such alien's having access to the person injured or killed when the tortious acts or omissions occurred.

(2) A cause of action brought pursuant to subsection (1) may not be brought against a person who holds public office or who has official duties as a representative, agent, or employee of a state entity, local governmental entity, or law enforcement agency, including a sanctuary policymaker.

(3) Trial by jury is a matter of right in an action brought under this section.

(4) A final judgment entered in favor of a plaintiff in a cause of action brought pursuant to this section must include written findings of fact that describe with specificity the existence and nature of the sanctuary policy in violation of s. 908.201 and that identify each sanctuary policymaker who voted

for, allowed to be implemented, or voted against repeal or prohibition of the sanctuary policy. The court shall provide a copy of the final judgment containing the written findings required by this subsection to the Governor within 30 days after the date of rendition. A sanctuary policymaker identified in a final judgment may be suspended or removed from office pursuant to general law and s. 7, Art. IV of the State Constitution.

(5) Except as provided in this section, this chapter does not create a private cause of action against a state entity, local governmental entity, or law enforcement agency that complies with this chapter.

908.304 Ineligibility for state grant funding.—

(1) Notwithstanding any other provision of law, a state entity, local governmental entity, or law enforcement agency shall be ineligible to receive funding from non-federal grant programs administered by state agencies that receive funding from the General Appropriations Act for a period of 5 years from the date of adjudication that such state entity, local governmental entity, or law enforcement agency had in effect a sanctuary policy in violation of this chapter.

(2) The Chief Financial Officer shall be notified by the state attorney of an adjudicated violation of this chapter by a state entity, local governmental entity, or law enforcement agency and be provided with a copy of the final court injunction, order, or judgment. Upon receiving such notice, the

Chief Financial Officer shall timely inform all state agencies that administer non-federal grant funding of the adjudicated violation by the state entity, local governmental entity, or law enforcement agency and direct such agencies to cancel all pending grant applications and enforce the ineligibility of such entity for the prescribed period.

(3) This subsection does not apply to:

(a) Funding that is received as a result of an appropriation to a specifically named state entity, local governmental entity, or law enforcement agency in the General Appropriations Act or other law.

(b) Grants awarded prior to the date of adjudication that such state entity, local governmental entity, or law enforcement agency had in effect a sanctuary policy in violation of this chapter.

PART IV

MISCELLANEOUS

908.401 Education records.—This chapter does not apply to the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. s. 1232g.

908.402 Discrimination prohibited.—A state entity, a local governmental entity, or a law enforcement agency, or a person employed by or otherwise under the direction or control of such

an entity, may not base its actions under this chapter on the gender, race, religion, national origin, or physical disability of a person except to the extent permitted by the United States Constitution or the state constitution.

Section 3. A sanctuary policy, as defined in s. 908.102, Florida Statutes, as created by this act, that is in effect on the effective date of this act must be repealed within 90 days after that date.

Section 4. Sections 908.302 and 908.303, Florida Statutes, as created by this act, shall take effect October 1, 2017, and, except as otherwise expressly provided in this act, this act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 699 Internet Identifiers
SPONSOR(S): Criminal Justice Subcommittee, Mariano
TIED BILLS: CS/HB 701 **IDEN./SIM. BILLS:** CS/SB 684

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Merlin	White
2) Justice Appropriations Subcommittee	12 Y, 0 N	Welty	Gusky
3) Judiciary Committee		Merlin	Cameron

SUMMARY ANALYSIS

Florida law currently requires sexual offenders and sexual predators to register their names, addresses, and other personal information, such as electronic mail addresses and Internet identifiers with the Florida Department of Law Enforcement ("FDLE"), through the local sheriff's office.

The 2016 Legislature passed HB 1333/SB 1662, which included an expanded definition of Internet identifiers in s. 775.21, F.S., and also required the collection of Internet identifiers associated with website or URL or software applications. The amended definition of "Internet identifier" had an effective date of October 1, 2016. However, before the amended definition took effect, a group of plaintiffs in Florida filed a lawsuit against the Commissioner of FDLE in federal court. The court determined:

- The 2016 language regarding Internet identifiers was overbroad and vague and required an individual to either forego protected speech or run the risk of criminal prosecution.
- The injunction did not preclude enforcement of the prior definition of Internet identifier.

The bill amends s. 775.21, F.S., revising the definition of "Internet identifier" and creating a definition for "social Internet communication." The bill requires sexual predators and sexual offenders to register each Internet identifier's corresponding website homepage or application software name with FDLE. The bill also requires sexual predators and sexual offenders to update any changes to the Internet identifier's corresponding website homepage or application software name within 48 hours of using the Internet identifier.

The Criminal Justice Impact Conference considered the bill on March 2, 2017, and determined the bill would increase the prison population by an indeterminate amount. An "indeterminate amount" means an unquantifiable increase in the need for prison beds.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sexual Predators, Sexual Offenders, Social Networking, and the Internet

Currently, there are more than 3 billion people worldwide that have access to the Internet.[1] As of 2015, nearly two thirds of American adults use social networking sites ("SNS") such as Facebook and similar sites to exchange information or communicate.[2] "Roughly eight-in-ten online Americans (79%) now use Facebook, a 7-percentage-point increase from a survey conducted at a similar point in 2015."[3]

In the past several years, reports have indicated that sexual offenders and sexual predators use SNS to gain information about victims and make contact with them.[4] In one study published in 2010 by the University of New Hampshire, researchers noted that there had been 503 arrests involving victims and the use of SNS by offenders. Of that number, an estimated 360 arrests (or 72%) involved the use of SNS to communicate with the victim.[5] Further, an estimated 346 arrests (or 69%) were made in cases where offenders were using the victim's SNS to access information about them.[6]

Registration of Sexual Predators and Sexual Offenders: General Information

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sexual offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender. The registration laws, which also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders, span several different chapters and numerous statutes,[7] and are implemented through the combined efforts of the Florida Department of Law Enforcement ("FDLE"), all Florida sheriffs, the Department of Corrections ("DOC"), the Department of Juvenile Justice ("DJJ"), the Department of Highway Safety and Motor Vehicles ("DHSMV"), and the Department of Children and Families ("DCF").

A person is designated as a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.[8]

A person is classified as a sexual offender if the person:

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[1] Jacob Davidson, *Here's How Many Internet Users There Are*, TIME MAGAZINE, May 26, 2015, *available at* http://time.com/money/3896219/internet-users-worldwide/ (last viewed Mar. 3, 2017).

[2] Andrew Perrin, *Social Media Usage: 2005-2015, 65% of Adults Now Use Social Networking Sites – A Nearly Tenfold Jump in the Past Decade,* Pew Research Center, Oct. 8, 2015, *available at* http://www.pewinternet.org/2015/10/08/social-networking-usage-2005-2015/ (last viewed Mar. 3, 2017).

[3] Shannon Greenwood, Andrew Perrin, and Maeve Duggan, *Social Media Update 2016, Facebook Usage and Engagement is on the Rise, While Adoption of Other Platforms Holds Steady*, Pew Research Center, Nov. 11, 2016, *available at* http://www.pewinternet.org/2016/11/11/social-media-update-2016/ (last viewed Mar. 3, 2016).

[4] Byron Acohido, *Sex Predators Target Children Using Social Media*, USA TODAY, Mar. 1, 2011, *available at* http://usatoday30.usatoday.com/tech/news/2011-02-28-online-pedophiles_N.htm (last viewed Mar. 4, 2017).

[5] Kimberly J. Mitchell, Ph.D., David Finkelhor, Ph.D., Lisa M. Jones, Ph.D., and Janis Wolak, J.D., *Use of Social Networking Sites in Online Sex Crimes Against Minors: An Examination of National Incidence and Means of Utilization*, Journal of Adolescent Health, Jan. 2010, at 3, *available at* http://www.unh.edu/ccrc/pdf/CV174.pdf (last viewed Mar. 4, 2017).

[6] *Id.*

[7] ss. 775.21–775.25, 943.043–943.0437, 944.606–944.607, and 985.481–985.4815, F.S.

[8] s. 775.21, F.S. ("The Florida Sexual Predators Act").

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997 (the date the modern registry became effective) from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.[9, 10]

Requirements for in-person registration and reregistration are similar for sexual predators and sexual offenders, but the frequency of reregistration depends on the qualifying offense. Registration requirements may also differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under DOC or DJJ supervision, or in residential commitment under the DJJ. The DOC and DJJ are required to report certain information on sexual predators and sexual offenders to the FDLE and other persons or entities.

FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders.[11] Further, local law enforcement agencies provide access to this information, typically through a link to the state public registry webpage.[12]

Florida's registry laws meet minimum federal requirements. The federal Sex Offender Registration and Notification Act ("SORNA"), which is Title I of the Adam Walsh Protection and Safety Act of 2006 ("AWA"),[13] attempts to make all states' laws uniform with respect to requirements (or minimum standards) that Congress has judged to be necessary to be included in states' registry laws. The United States Department of Justice ("DOJ") maintains the Dru Sjodin National Sex Offender Public Website.[14] States are free to choose not to substantially implement SORNA. However, the AWA penalizes noncompliance by partially reducing Byrne Justice Assistance Grant funding.[15] The DOJ has determined that Florida has substantially implemented SORNA.[16] Florida was the third state to do so.[17]

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[9] ss. 943.0435 and 985.4815, F.S.

[10] Sections 944.606 and 944.607, F.S., which contain provisions relating to sexual offenders in the custody of or under the supervision of the Department of Corrections ("DOC"), also contain definitions of the term "sexual offender" along with qualifying offenses.

[11] FDLE is the central repository for registration information. It also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriff's handle in-person registration and reregistration. *See* Florida Department of Law Enforcement, *About Us*, Updated Oct. 1, 2016, *available at* http://offender.fdle.state.fl.us/offender/About.jsp (last viewed Feb. 20, 2017). FDLE maintains a database which allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at a institute of higher education. Members of the public may also check whether an electronic mail address or Internet identifier belongs to a registered sexual offender or sexual predator. *See* FDLE Website at http://offender.fdle.state.fl.us/offender/Search.jsp (last viewed on Mar. 2, 2017).

[12] Link to FDLE's Public Offender Homepage, *available at* http://offender.fdle.state.fl.us/offender/homepage.do;jsessionid=Te-Tt1GRPwWA5HTSbLUQVw__ (last visited on Feb. 20, 2017).

[13] Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248, 42 U.S.C. § 16911 et seq.

[14] United States Department of Justice, Dru Sjodin National Sex Offender Public Website, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking ("SMART"), *available at* http://www.nsopw.gov/Core/Portal.aspx (last visited on Feb. 20, 2017).

[15] *Edward Byrne Justice Assistance Grant (JAG) Program Fact Sheet*, Bureau of Justice Assistance ("JAG Program Sheet"), United States Department of Justice, *available at* http://www.asca.net/system/assets/attachments/4390/JAG_Fact_Sheet.pdf (last viewed Feb. 20, 2017).

[16] This standard is satisfied if a jurisdiction carries out SORNA requirements (as interpreted and explained by DOJ guidelines). Substantial implementation does not necessarily mean full implementation. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, United States Department of Justice, *Jurisdictions that have substantially implemented SORNA*, *available at* http://www.ojp.usdoj.gov/smart/newsroom_jurisdictions_sorna.htm (last visited on Feb. 20, 2017); *see also* Office of Justice Programs, United States Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking ("SMART"), *SORNA Implementation Status*, *available at* https://ojp.gov/smart/sorna-map.htm (last viewed Feb. 20, 2017).

Specified Information at Time of Registration, Electronic Mail Addresses, and Internet Identifiers
Reporting requirements and time periods for reporting differ depending upon whether the registrant (sexual predator or sexual offender) is in or out of custody or supervision. Generally, the registrant must initially report in person to the local sheriff's office within 48 hours after:

- Establishing a residence in Florida (sexual predators and sexual offenders);
- Being designated by the court as a sexual predator;
- Being released from custody or supervision (sexual offenders); or
- Being convicted, if the registrant is not under the control, custody, or supervision of the DOC or the custody of a private correctional facility (sexual offenders).[18]

Sections 775.21 and 943.0435, F.S., require sexual predators and sexual offenders to provide specified information at the time of initial registration. This includes:

- Name;
- Social security number;
- Age;
- Race;
- Sex;
- Date of birth;
- Height;
- Weight;
- Tattoos or other identifying marks;
- Hair and eye color;
- Photograph;
- Address of legal residences, including current, known, temporary, transient, or future;
- Electronic mail addresses and all Internet identifiers;
- Home and cellular telephone numbers;
- Employment information and other additional information;
- Vehicle information - make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned;
- Dates and places of conviction and related information such as fingerprints; palm prints; and a brief description of the crime or crimes committed by the offender;
- Information regarding alien immigration status;
- Information regarding whether the offender is enrolled or employed by an institution of higher education; and
- Changes of status (change of address, change of employment, etc.)[19]

Among these requirements, s. 775.21(6)(g)5.a., F.S., provides: "A sexual predator shall register all electronic mail addresses and Internet identifiers with the department through the department's online system or in person at the sheriff's office before using such electronic mail addresses and Internet identifiers." Similarly, s. 943.0435(4)(e), F.S., provides: "A sexual offender shall register all electronic mail addresses and Internet identifiers with the department through the department's online system or in person at the sheriff's office before using such electronic mail addresses and Internet identifiers."

Section 943.0437(2), F.S., in turn, indicates, "the department may provide information relating to electronic mail addresses and Internet identifiers, maintained as part of the sexual offender registry to commercial social networking websites or third parties designated by commercial social networking websites. The commercial social networking website may use this information for the purpose of

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[17] Elysa Batista, *Florida Becomes Third State to Comply with Sex Offender Tracking Law*, NAPLES DAILY NEWS, June 19, 2010, *available at* http://archive.naplesnews.com/news/state/florida-becomes-third-state-to-comply-with-sex-offender-tracking-law-ep-394657717-343306372.html (last viewed Feb. 20, 2017).
[18] ss. 775.21(6)(e) and 943.0435(2)(a), F.S.
[19] ss. 775.21(6)(a) and (6)(g)(5), and 943.0435(2)(a), (2)(b), and (4)(e), F.S.

comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and Internet identifiers provided by the department."

Section 943.0437(1), F.S., defines the term commercial social networking website as a "commercially operated Internet website that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger."

Section 775.21(6)(i), F.S., requires a sexual predator who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than Florida to report in person to the local sheriff's office within 48 hours before the date he or she intends to leave the state, or at least 21 days if the intended residence of 5 days or more is outside of the United States, along with other travel details.

Section 775.21(6)(k)2., F.S., provides that the sexual predator registration list compiled by FDLE is a public record.[20] FDLE may disseminate this public information by any means deemed appropriate, including operating a toll-free telephone number for this purpose.[21]

The requirement to register electronic mail addresses and instant messaging names has been in place since 2007.[22] The requirement to register Internet identifiers was added in 2014.[23] In 2016, the Florida Legislature amended the definition of "Internet identifier." The prior definition provides: "'Internet identifier' means all electronic mail, chat, instant messenger, social networking, application software, or similar names used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN)."[24, 25]

The 2016 Legislature passed HB 1333/SB 1662, which included an expanded definition of Internet identifiers and also required the collection of Internet identifiers associated with website or URL[26] or software applications. The amended definition of "Internet identifier," which had an effective date of October 1, 2016, provides:

- "Internet identifier" includes, but is not limited to, all website uniform resource locators (URLs) and application software, whether mobile or nonmobile, used for Internet communication, including anonymous communication, through electronic mail, chat, instant messages, social networking, social gaming, or other similar programs and all corresponding usernames, logins, screen names, and screen identifiers associated with each URL or application software. Internet identifier does not include a date of birth, Social Security number, personal identification number (PIN), URL, or application software used for utility, banking, retail, or medical purposes.[27]

Shortly before the amended definition of "Internet identifier" took effect, a group of plaintiffs in Florida, who had been convicted as sexual offenders, filed a lawsuit against the Commissioner of FDLE in federal court.[28] The plaintiffs argued that the requirement to register all Internet identifiers violated the First Amendment. The plaintiffs also argued that the definition of an Internet identifier was

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[20] s. 775.21(6)(k)2., F.S.
[21] *Id.*
[22] Ch. 2007-143, Laws of Fla.
[23] Ch. 2014-5, Laws of Fla.
[24] s. 775.21(2)(i), F.S. (2015).
[25] Section 943.0435(1)(e), F.S., provides that "'Internet identifier" has the same meaning as provided in s. 775.21."
[26] "URL stands for Uniform Resource Locator, and is used to specify addresses on the World Wide Web. A URL is the fundamental network identification for any resource connected to the web (e.g., hypertext pages, images, and sound files)." *See* Indiana University Information Technology Knowledge Base Repository, *available at* https://kb.iu.edu/d/adnz (last viewed Feb. 17, 2017).
[27] Ch. 2016-104, Laws of Fla. (amending s. 775.21(2)(i), F.S. and renumbering it s. 775.21(2)(j), F.S.).
[28] The current Commissioner of FDLE is Richard "Rick" L. Swearingen, and the lawsuit was filed against the Commissioner acting in his official capacity, in the United States District Court for the Northern District of Florida, Tallahassee Division. The style of the case was *Doe v. Swearingen*, Case No. 4:16-cv-00501-RH-CAS (N.D. Fla. Aug. 9, 2016), but was later changed to "*Delgado et al. v. Swearingen.*"

unconstitutionally vague and sought a preliminary injunction. On September 27, 2016, the federal court issued a preliminary injunction regarding the definition of Internet identifiers. The court determined that the language regarding Internet identifiers was overbroad and vague and required an individual to either forego protected speech or run the risk of criminal prosecution.[29] However, the court noted that the injunction did not preclude enforcement of the prior definition of Internet identifier.[30]

Effect of the Bill

The bill amends s. 775.21(2)(j), F.S., providing a new definition of "Internet identifier." Under the bill:

> "Internet Identifier" means any designation, moniker, screen name, username, or other name used for self-identification to send or receive social Internet communication. Internet identifier does not include a date of birth, social security number, personal identification number (PIN), or password. A sexual offender's or sexual predator's use of an Internet identifier that discloses his or her date of birth, social security number, PIN, password, or other information that would reveal the identity of the sexual offender or sexual predator waives the disclosure exemption in this paragraph for such personal information.

The bill also amends s. 775.21(2)(m), F.S., redesignating other subsections and paragraphs to create a definition for "Social Internet communication." Under the bill:

> "Social Internet communication" means any communication through a commercial social networking website, as defined in s. 943.0437, or application software. The term "social Internet communication" does not include any of the following: communication for which the primary purpose is the facilitation of commercial transactions involving goods or services; communication on an Internet website for which the primary purpose of the website is the dissemination of news; or communication with a governmental entity. For purposes of this paragraph, the term "application software" means any computer program designed to run on mobile devices such as smartphones and tablet computers which allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users through a forum, a chatroom, electronic mail, or an instant messenger.

The bill amends ss. 775.21 and 943.0435, F.S., to conform these provisions to changes made by the act. The bill also requires sexual predators and sexual offenders to update any changes to the Internet identifier's corresponding website homepage or application software name within 48 hours of using the Internet identifier.

The bill amends s. 775.21(6)(k)2., F.S., clarifying that FDLE's sexual predator registration is a public record unless otherwise made exempt or confidential and exempt from s. 119.07(1), F.S., and s. 24(a) of Art. I of the State Constitution.

Finally, the bill reenacts sections of law to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

B. SECTION DIRECTORY:

Section 1. Amends s. 775.21, F.S., relating to The Florida Sexual Predators Act.

Section 2. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

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[29] Order Granting Preliminary Injunction, issued in *Doe v. Swearingen*, Case No. 4:16-cv-00501-RH-CAS, at 6-11 (N.D. Fla. Sept. 27, 2016). The Order noted, in part, that the amended definition of Internet identifier "trenches on First Amendment rights and is unconstitutionally vague." *Id.* at 11.

[30] *Id.* at 12.

Section 3. Reenacts s. 943.0437, F.S., relating to commercial social networking sites.

Section 4. Reenacts s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 5. Reenacts s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 6. Reenacts s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.

Section 7. Reenacts s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sex offenders.

Section 8. Reenacts s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 9. Reenacts s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 10. Reenacts s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.

Section 11. Reenacts s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sex offenders.

Section 12. Reenacts s. 794.056, F.S., relating to Rape Crisis Program Trust Fund.

Section 13. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 14. Reenacts s. 938.085, F.S., relating to additional cost to fund rape crisis centers.

Section 15. Provides that the bill takes effect on becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: This bill does not appear to have an impact on state government revenues.
2. Expenditures: The Criminal Justice Impact Conference considered the bill on March 2, 2017, and determined the bill would increase the prison population by an indeterminate amount. An "indeterminate amount" means an unquantifiable increase in the need for prison beds.[31]

   According to the Department of Corrections, in FY 15-16, there were 1,001 adjudicated offenders sentenced for registration/false information offenses related to sexual offenders and sexual predators. Of those adjudicated, 503 offenders received a sentence to prison with a mean sentence length of 40.2 months. It is unknown how many additional prison beds would be necessary for offenders violating the changes made in this bill.

[31] 2017 Criminal Justice Impact Conference, Conference Results, HB 699, *available at* http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB699.pdf (last visited April 22, 2017).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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

2. Expenditures: This bill does not appear to have an 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: None.

2. Other: None.

B. RULE-MAKING AUTHORITY: This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 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:

- Revised the definition of "social Internet communication" to incorporate an existing statutory reference and include the term "application software" for clarification and consistency.
- Made technical changes to conform to other parts of the act.

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

A bill to be entitled

An act relating to Internet identifiers; amending s. 775.21, F.S.; revising the definition of the term "Internet identifier"; defining the term "social Internet communication"; requiring a sexual predator to register each Internet identifier's corresponding website homepage or application software name with the Department of Law Enforcement through the sheriff's office; requiring a sexual predator to report any change to certain information after initial in-person registration in a specified manner; providing that the department's sexual predator registration list is a public record, unless otherwise made exempt or confidential and exempt; providing penalties; making technical changes; amending s. 943.0435, F.S.; requiring a sexual offender, upon initial registration, to report in person at the sheriff's office; requiring the sexual offender to report any change to each Internet identifier's corresponding website homepage or application software name in person at the sheriff's office in a specified manner; requiring a sexual offender to report any change to certain information after initial in-person registration in a specified manner; making technical changes; reenacting ss. 943.0437(2), 944.606(1)(c),

944.607(1)(e), 985.481(1)(c), and 985.4815(1)(e), F.S., relating to the definition of the term "Internet identifier," to incorporate the amendment made to s. 775.21, F.S., in references thereto; reenacting ss. 944.606(3)(a), 944.607(4)(a), (9), and (13)(c), 985.481(3)(a), and 985.4815(4)(a), (9), and (13)(b), F.S., relating to sexual offenders, notification to the Department of Law Enforcement of information on sexual offenders, notification to the department upon release of sexual offenders adjudicated delinquent, and notification to the department of information on juvenile sexual offenders, respectively, to incorporate the amendment made to s. 943.0435, F.S., in references thereto; reenacting ss. 794.056(1), 921.0022(3)(g), and 938.085, F.S., relating to the Rape Crisis Program Trust Fund, the Criminal Punishment Code offense severity ranking chart, and additional costs to fund rape crisis centers, respectively, to incorporate the amendments made to ss. 775.21 and 943.0435, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraphs (m), (n), and (o) of subsection (2)

of section 775.21, Florida Statutes, are redesignated as paragraphs (n), (o), and (p), respectively, a new paragraph (m) is added to that subsection, and paragraph (j) of that subsection is amended, paragraphs (a) and (d) of subsection (4) are republished, paragraph (d) of subsection (5) is republished, paragraphs (a), (e), (g), and (k) of subsection (6) are amended and paragraph (i) of that subsection is republished, paragraph (a) of subsection (8) is amended, paragraph (a) of subsection (10) of that section is amended, and paragraph (e) of that subsection is republished, to read:

775.21 The Florida Sexual Predators Act.—

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

(j) "Internet identifier" means any designation, moniker, screen name, username, or other name used for self-identification to send or receive social Internet communication ~~includes, but is not limited to, all website uniform resource locators (URLs) and application software, whether mobile or nonmobile, used for Internet communication, including anonymous communication, through electronic mail, chat, instant messages, social networking, social gaming, or other similar programs and all corresponding usernames, logins, screen names, and screen identifiers associated with each URL or application software~~. Internet identifier does not include a date of birth, social security ~~Social Security~~ number, personal identification number (PIN), or password. A sexual offender's or sexual predator's use

of an Internet identifier that discloses his or her date of birth, social security number, personal identification number (PIN), password, or other information that would reveal the identity of the sexual offender or sexual predator ~~URL, or application software used for utility, banking, retail, or medical purposes. Voluntary disclosure by a sexual predator or sexual offender of his or her date of birth, Social Security number, or PIN as an Internet identifier~~ waives the disclosure exemption in this paragraph and in s. 119.071(5)(l) for such personal information.

(m) "Social Internet communication" means any communication through a commercial social networking website as defined in s. 943.0437, or application software. The term does not include any of the following:

1. Communication for which the primary purpose is the facilitation of commercial transactions involving goods or services;

2. Communication on an Internet website for which the primary purpose of the website is the dissemination of news; or

3. Communication with a governmental entity.

For purposes of this paragraph, the term "application software" means any computer program designed to run on a mobile device such as a smartphone or tablet computer, that allows users to create web pages or profiles that provide information about

themselves and are available publicly or to other users, and that offers a mechanism for communication with other users through a forum, a chatroom, electronic mail, or an instant messenger.

(4) SEXUAL PREDATOR CRITERIA.—

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a "sexual predator" under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

a. A capital, life, or first degree felony violation, or any attempt thereof, of s. 787.01 or s. 787.02, where the victim is a minor, or s. 794.011, s. 800.04, or s. 847.0145, or a violation of a similar law of another jurisdiction; or

b. Any felony violation, or any attempt thereof, of s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8)(b); s. 825.1025; s. 827.071; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-subparagraph or at least one offense listed in this sub-

subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-subparagraph or at least one offense listed in this sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or a violation of a similar law of another jurisdiction;

2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and

3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(d) An offender who has been determined to be a sexually violent predator pursuant to a civil commitment proceeding under chapter 394 shall be designated as a "sexual predator" under

subsection (5) and subject to registration under subsection (6) and community and public notification under subsection (7).

(5) SEXUAL PREDATOR DESIGNATION.—An offender is designated as a sexual predator as follows:

(d) A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender, shall register in the manner provided in s. 943.0435 or s. 944.607 and shall be subject to community and public notification as provided in s. 943.0435 or s. 944.607. A person who meets the criteria of this section is subject to the requirements and penalty provisions of s. 943.0435 or s. 944.607 until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by

operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(6) REGISTRATION.—

(a) A sexual predator shall register with the department through the sheriff's office by providing the following information to the department:

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; photograph; address of legal residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; ~~all~~ electronic mail addresses; ~~and all~~ Internet identifiers and each Internet identifier's corresponding website homepage or application software name ~~required to be provided pursuant to subparagraph (g)5.~~; ~~all~~ home telephone numbers and cellular telephone numbers ~~required to be provided pursuant to subparagraph (g)5.~~; employment information ~~required to be provided pursuant to subparagraph (g)5.~~; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; date and place of each

conviction; fingerprints; palm prints; and a brief description of the crime or crimes committed by the offender. A post office box may not be provided in lieu of a physical residential address. The sexual predator shall produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual predator shall also provide information about any professional licenses he or she has.

a. Any change that occurs after the sexual predator registers in person at the sheriff's office as provided in subparagraph 1. in any of the following information related to the sexual predator must be reported as provided in paragraphs (g), (i), and (j): permanent, temporary, or transient residence; name; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home and cellular telephone numbers; employment information; and status at an institution of higher education.

b.~~a.~~ If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the department written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle,

trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

c.~~b.~~ If the sexual predator is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual predator shall also provide to the department ~~pursuant to subparagraph (g)5.~~ the name, address, and county of each institution, including each campus attended, and the sexual predator's enrollment, volunteer, or employment status. The sheriff, the Department of Corrections, or the Department of Juvenile Justice shall promptly notify each institution of higher education of the sexual predator's presence and any change in the sexual predator's enrollment, volunteer, or employment status.

d.~~c.~~ A sexual predator shall report in person to the sheriff's office within 48 hours after any change in vehicles owned to report those vehicle information changes.

2. Any other information determined necessary by the department, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary

genetic markers when available.

(e)1. If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections or is not in the custody of a private correctional facility, the sexual predator shall register in person:

a. At the sheriff's office in the county where he or she establishes or maintains a residence within 48 hours after establishing or maintaining a residence in this state; and

b. At the sheriff's office in the county where he or she was designated a sexual predator by the court within 48 hours after such finding is made.

2. Any change that occurs after the sexual predator registers in person at the sheriff's office as provided in subparagraph 1. in any of the following information related to ~~in~~ the sexual predator must be reported as provided in paragraphs (g), (i), and (j): ~~predator's~~ permanent, temporary, or transient residence; name; vehicles owned; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home ~~telephone numbers~~ and cellular telephone numbers; ~~and~~ employment information; and ~~any~~ change in status at an institution of higher education~~, required to be provided pursuant to subparagraph (g)5., after the sexual predator registers in person at the sheriff's office as provided in subparagraph 1. must be accomplished in the manner provided in~~

~~paragraphs (g), (i), and (j)~~. When a sexual predator registers with the sheriff's office, the sheriff shall take a photograph, a set of fingerprints, and palm prints of the predator and forward the photographs, palm prints, and fingerprints to the department, along with the information that the predator is required to provide pursuant to this section.

(g)1. Each time a sexual predator's driver license or identification card is subject to renewal, and, without regard to the status of the predator's driver license or identification card, within 48 hours after any change of the predator's residence or change in the predator's name by reason of marriage or other legal process, the predator shall report in person to a driver license office and is subject to the requirements specified in paragraph (f). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles may release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual predators as provided in this section. A sexual predator who is unable to secure or update a driver license or an identification card with the Department of Highway Safety and Motor Vehicles as provided in paragraph (f) and this paragraph shall also report any change

of the predator's residence or change in the predator's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the predator resides or is located and provide confirmation that he or she reported such information to the Department of Highway Safety and Motor Vehicles. The reporting requirements under this subparagraph do not negate the requirement for a sexual predator to obtain a Florida driver license or identification card as required by this section.

2.a. A sexual predator who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall, within 48 hours after vacating the permanent, temporary, or transient residence, report in person to the sheriff's office of the county in which he or she is located. The sexual predator shall specify the date upon which he or she intends to or did vacate such residence. The sexual predator shall provide or update all of the registration information required under paragraph (a). The sexual predator shall provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

b. A sexual predator shall report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and

thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The sexual predator must provide the addresses and locations where he or she maintains a transient residence. Each sheriff's office shall establish procedures for reporting transient residence information and provide notice to transient registrants to report transient residence information as required in this sub-subparagraph. Reporting to the sheriff's office as required by this sub-subparagraph does not exempt registrants from any reregistration requirement. The sheriff may coordinate and enter into agreements with police departments and other governmental entities to facilitate additional reporting sites for transient residence registration required in this sub-subparagraph. The sheriff's office shall, within 2 business days, electronically submit and update all information provided by the sexual predator to the department.

3. A sexual predator who remains at a permanent, temporary, or transient residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the predator indicated he or she would or did vacate such residence, report in person to the sheriff's office to which he or she reported pursuant to subparagraph 2. for the purpose of reporting his or her address at such residence. When the sheriff receives the report, the sheriff shall promptly

convey the information to the department. An offender who makes a report as required under subparagraph 2. but fails to make a report as required under this subparagraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. The failure of a sexual predator who maintains a transient residence to report in person to the sheriff's office every 30 days as required by sub-subparagraph 2.b. is punishable as provided in subsection (10).

5.a. A sexual predator shall register all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, with the department through the department's online system or in person at the sheriff's office within 48 hours after ~~before~~ using such electronic mail addresses and Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Corrections before using such electronic mail addresses or Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Juvenile Justice, he or she must report all electronic mail addresses and Internet identifiers, and each

Internet identifier's corresponding website homepage or application software name, to the Department of Juvenile Justice before using such electronic mail addresses or Internet identifiers.

b. A sexual predator shall register all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's online system; in person at the sheriff's office; in person at the Department of Corrections if the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections; or in person at the Department of Juvenile Justice if the sexual predator is in the custody or control, or under the supervision, of the Department of Juvenile Justice. All changes required to be reported in this sub-subparagraph shall be reported within 48 hours after the change.

c. The department shall establish an online system through which sexual predators may securely access, submit, and update all electronic mail addresses; ~~address and~~ Internet identifiers and each Internet identifier's corresponding website homepage or application software name; ~~identifier information,~~ home telephone numbers and cellular telephone numbers;~~,~~ employment information;~~,~~ and institution of higher education information.

(i) A sexual predator who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual predator 21 days before the departure date must be reported to the sheriff's office as soon as possible before departure. The sexual predator shall provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual predator shall also provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel. The sheriff shall promptly provide to the department the information received from the sexual predator. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the sexual predator's intended residence. The failure of a sexual predator to provide his or her intended place of residence is punishable as provided in subsection (10).

(k)1. The department is responsible for the online

maintenance of current information regarding each registered sexual predator. The department shall maintain hotline access for state, local, and federal law enforcement agencies to obtain instantaneous locator file and offender characteristics information on all released registered sexual predators for purposes of monitoring, tracking, and prosecution. The photograph, palm prints, and fingerprints do not have to be stored in a computerized format.

2. The department's sexual predator registration list, containing the information described in subparagraph (a)1., is a public record, unless otherwise made exempt or confidential and exempt from s. 119.07(1) and s. 24(a) of Art. I of the State Constitution. The department may disseminate this public information by any means deemed appropriate, including operating a toll-free telephone number for this purpose. When the department provides information regarding a registered sexual predator to the public, department personnel shall advise the person making the inquiry that positive identification of a person believed to be a sexual predator cannot be established unless a fingerprint comparison is made, and that it is illegal to use public information regarding a registered sexual predator to facilitate the commission of a crime.

3. The department shall adopt guidelines as necessary regarding the registration of sexual predators and the dissemination of information regarding sexual predators as

required by this section.

(8) VERIFICATION.—The department and the Department of Corrections shall implement a system for verifying the addresses of sexual predators. The system must be consistent with the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to such verification or required to be met as a condition for the receipt of federal funds by the state. The Department of Corrections shall verify the addresses of sexual predators who are not incarcerated but who reside in the community under the supervision of the Department of Corrections and shall report to the department any failure by a sexual predator to comply with registration requirements. County and local law enforcement agencies, in conjunction with the department, shall verify the addresses of sexual predators who are not under the care, custody, control, or supervision of the Department of Corrections, and may verify the addresses of sexual predators who are under the care, custody, control, or supervision of the Department of Corrections. Local law enforcement agencies shall report to the department any failure by a sexual predator to comply with registration requirements.

(a) A sexual predator shall report in person each year during the month of the sexual predator's birthday and during every third month thereafter to the sheriff's office in the county in which he or she resides or is otherwise located to

reregister. The sheriff's office may determine the appropriate times and days for reporting by the sexual predator, which must be consistent with the reporting requirements of this paragraph. Reregistration must include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state including the~~,~~ address, location or description of the transient residences, and dates of any current or known future temporary residence within the state or out of state; all electronic mail addresses; all ~~or~~ Internet identifiers and each Internet identifier's corresponding website homepage or application software name ~~required to be provided pursuant to subparagraph (6)(g)5.~~; all home telephone numbers and cellular telephone numbers ~~required to be provided pursuant to subparagraph (6)(g)5.~~; date and place of any employment ~~required to be provided pursuant to subparagraph (6)(g)5.~~; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; fingerprints; palm prints; and photograph. A post office box may not be provided in lieu of a physical residential address. The sexual predator shall also

produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual predator shall also provide information about any professional licenses he or she has.

2. If the sexual predator is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual predator shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual predator's enrollment, volunteer, or employment status.

3. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

(10) PENALTIES.—

(a) Except as otherwise specifically provided, a sexual predator who fails to register; who fails, after registration, to maintain, acquire, or renew a driver license or an identification card; who fails to provide required location information; who fails to provide~~,~~ electronic mail addresses ~~address information before use~~, Internet identifiers, and each Internet identifier's corresponding website homepage or application software name; who fails to provide ~~identifier information before use,~~ all home telephone numbers and cellular telephone numbers, employment information, change in status at an institution of higher education, or change-of-name information; who fails to make a required report in connection with vacating a permanent residence; who fails to reregister as required; who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence; who knowingly provides false registration information by act or omission; or who otherwise fails, by act or omission, to comply with the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) An arrest on charges of failure to register, the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register when the predator has been provided and advised of his or her

statutory obligation to register under subsection (6). A sexual predator's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual predator charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual predator who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

Section 2. Paragraph (e) of subsection (1) of section 943.0435, Florida Statutes, is republished, and subsection (2), paragraph (e) of subsection (4), and paragraph (c) of subsection (14) of that section, are amended, to read:

943.0435 Sexual offenders required to register with the department; penalty.—

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

(e) "Internet identifier" has the same meaning as provided in s. 775.21.

(2) Upon initial registration, a sexual offender shall:

(a) Report in person at the sheriff's office:

1. In the county in which the offender establishes or maintains a permanent, temporary, or transient residence within 48 hours after:

a. Establishing permanent, temporary, or transient residence in this state; or

b. Being released from the custody, control, or supervision of the Department of Corrections or from the custody of a private correctional facility; or

2. In the county where he or she was convicted within 48 hours after being convicted for a qualifying offense for registration under this section if the offender is not in the custody or control of, or under the supervision of, the Department of Corrections, or is not in the custody of a private correctional facility.

Any change in the information required to be provided pursuant to paragraph (b), including, but not limited to, any change in the sexual offender's permanent, temporary, or transient residence; name; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home telephone numbers and cellular telephone numbers; ~~and~~ employment information; and any change in status at an institution of higher education~~, required to be provided pursuant to paragraph (4)(c),~~ after the sexual offender reports in person at the sheriff's office must be reported ~~accomplished~~ in the manner provided in subsections (4), (7), and (8).

(b) Provide his or her name; date of birth; social

security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; fingerprints; palm prints; photograph; employment information ~~required to be provided pursuant to paragraph (4)(c)~~; address of permanent or legal residence or address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state, address, location or description, and dates of any current or known future temporary residence within the state or out of state; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; ~~all~~ home telephone numbers and cellular telephone numbers ~~required to be provided pursuant to paragraph (4)(c)~~; ~~all~~ electronic mail addresses; ~~and all~~ Internet identifiers and each Internet identifier's corresponding website homepage or application software name ~~required to be provided pursuant to paragraph (4)(c)~~; date and place of each conviction; and a brief description of the crime or crimes committed by the offender. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has.

1. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide to the department through the sheriff's office written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. If the sexual offender is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual offender shall also provide to the department ~~pursuant to paragraph (4)(c)~~ the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status. The sheriff, the Department of Corrections, or the Department of Juvenile Justice shall promptly notify each institution of higher education of the sexual offender's presence and any change in the sexual offender's enrollment, volunteer, or employment status.

3. A sexual offender shall report in person to the sheriff's office within 48 hours after any change in vehicles owned to report those vehicle information changes.

(c) Provide any other information determined necessary by the department, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers, when available.

When a sexual offender reports at the sheriff's office, the sheriff shall take a photograph, a set of fingerprints, and palm prints of the offender and forward the photographs, palm prints, and fingerprints to the department, along with the information provided by the sexual offender. The sheriff shall promptly provide to the department the information received from the sexual offender.

(4)

(e)1. A sexual offender shall register all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, with the department through the department's online system or in person at the sheriff's office within 48 hours after ~~before~~ using such electronic mail addresses and Internet identifiers. If the sexual offender is in the custody or control, or under the supervision, of the Department of Corrections, he or she must report all electronic mail addresses

and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Corrections before using such electronic mail addresses or Internet identifiers. If the sexual offender is in the custody or control, or under the supervision, of the Department of Juvenile Justice, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Juvenile Justice before using such electronic mail addresses or Internet identifiers.

2. A sexual offender shall register all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's online system; in person at the sheriff's office; in person at the Department of Corrections if the sexual offender is in the custody or control, or under the supervision, of the Department of Corrections; or in person at the Department of Juvenile Justice if the sexual offender is in the custody or control, or under the supervision, of the Department of Juvenile Justice. All changes required to be reported under this subparagraph must be reported within 48 hours after the change.

3. The department shall establish an online system through which sexual offenders may securely access, submit, and update all changes in status to electronic mail addresses; ~~address and~~ Internet identifiers and each Internet identifier's corresponding website homepage or application software name; ~~identifier information,~~ home telephone numbers and cellular telephone numbers;~~,~~ employment information;~~,~~ and institution of higher education information.

(14)

(c) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which must be consistent with the reporting requirements of this subsection. Reregistration must include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; all electronic mail addresses or Internet identifiers and each Internet identifier's corresponding website homepage or application software name ~~required to be provided~~

~~pursuant to paragraph (4)(c)~~; all home telephone numbers and cellular telephone numbers ~~required to be provided pursuant to paragraph (4)(c)~~; employment information ~~required to be provided pursuant to paragraph (4)(c)~~; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; fingerprints; palm prints; and photograph. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has.

2. If the sexual offender is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status.

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured

home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

4. Any sexual offender who fails to report in person as required at the sheriff's office, who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence, who fails to report all electronic mail addresses and all Internet identifiers, and each Internet identifier's corresponding website homepage or application software name ~~before use~~, or who knowingly provides false registration information by act or omission commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, subsection (2) of section 943.0437, Florida Statutes, is reenacted to read:

943.0437 Commercial social networking websites.—

(2) The department may provide information relating to electronic mail addresses and Internet identifiers, as defined in s. 775.21, maintained as part of the sexual offender registry

to commercial social networking websites or third parties designated by commercial social networking websites. The commercial social networking website may use this information for the purpose of comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and Internet identifiers provided by the department.

Section 4. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (c) of subsection (1) of section 944.606, Florida Statutes, is reenacted to read:

944.606 Sexual offenders; notification upon release.—

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

(c) "Internet identifier" has the same meaning as provided in s. 775.21.

Section 5. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 944.607, Florida Statutes, is reenacted to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.—

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

(e) "Internet identifier" has the same meaning as provided in s. 775.21.

Section 6. For the purpose of incorporating the amendment

made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (c) of subsection (1) of section 985.481, Florida Statutes, is reenacted to read:

985.481 Sexual offenders adjudicated delinquent; notification upon release.—

(1) As used in this section:

(c) "Internet identifier" has the same meaning as provided in s. 775.21.

Section 7. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 985.4815, Florida Statutes, is reenacted to read:

985.4815 Notification to Department of Law Enforcement of information on juvenile sexual offenders.—

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

(e) "Internet identifier" has the same meaning as provided in s. 775.21.

Section 8. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, paragraph (a) of subsection (3) of section 944.606, Florida Statutes, is reenacted to read:

944.606 Sexual offenders; notification upon release.—

(3)(a) The department shall provide information regarding any sexual offender who is being released after serving a period of incarceration for any offense, as follows:

1. The department shall provide: the sexual offender's name, any change in the offender's name by reason of marriage or other legal process, and any alias, if known; the correctional facility from which the sexual offender is released; the sexual offender's social security number, race, sex, date of birth, height, weight, and hair and eye color; tattoos or other identifying marks; address of any planned permanent residence or temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any known future temporary residence within the state or out of state; date and county of sentence and each crime for which the offender was sentenced; a copy of the offender's fingerprints, palm prints, and a digitized photograph taken within 60 days before release; the date of release of the sexual offender; all electronic mail addresses and all Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); employment information, if known, provided pursuant to s. 943.0435(4)(e); all home telephone numbers and cellular telephone numbers required to be provided pursuant to s. 943.0435(4)(e); information about any professional licenses the offender has, if known; and passport information, if he or she has a passport, and, if he or she is an alien, information about documents establishing his or her immigration status. The department shall notify the Department

of Law Enforcement if the sexual offender escapes, absconds, or dies. If the sexual offender is in the custody of a private correctional facility, the facility shall take the digitized photograph of the sexual offender within 60 days before the sexual offender's release and provide this photograph to the Department of Corrections and also place it in the sexual offender's file. If the sexual offender is in the custody of a local jail, the custodian of the local jail shall register the offender within 3 business days after intake of the offender for any reason and upon release, and shall notify the Department of Law Enforcement of the sexual offender's release and provide to the Department of Law Enforcement the information specified in this paragraph and any information specified in subparagraph 2. that the Department of Law Enforcement requests.

2. The department may provide any other information deemed necessary, including criminal and corrections records, nonprivileged personnel and treatment records, when available.

Section 9. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in references thereto, paragraph (a) of subsection (4), subsection (9), and paragraph (c) of subsection (13) of section 944.607, Florida Statutes, are reenacted to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.—

(4) A sexual offender, as described in this section, who

is under the supervision of the Department of Corrections but is not incarcerated shall register with the Department of Corrections within 3 business days after sentencing for a registrable offense and otherwise provide information as required by this subsection.

(a) The sexual offender shall provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; all electronic mail addresses and Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); employment information required to be provided pursuant to s. 943.0435(4)(e); all home telephone numbers and cellular telephone numbers required to be provided pursuant to s. 943.0435(4)(e); the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; permanent or legal residence and address of temporary residence within the state or out of state while the sexual offender is under supervision in this state, including any rural route address or post office box; if no permanent or temporary address, any transient residence within the state; and address, location or description, and dates of any current or known future temporary residence within the state or out of state. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her

immigration status. The sexual offender shall also provide information about any professional licenses he or she has. The Department of Corrections shall verify the address of each sexual offender in the manner described in ss. 775.21 and 943.0435. The department shall report to the Department of Law Enforcement any failure by a sexual predator or sexual offender to comply with registration requirements.

(9) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but who is not incarcerated shall, in addition to the registration requirements provided in subsection (4), register and obtain a distinctive driver license or identification card in the manner provided in s. 943.0435(3), (4), and (5), unless the sexual offender is a sexual predator, in which case he or she shall register and obtain a distinctive driver license or identification card as required under s. 775.21. A sexual offender who fails to comply with the requirements of s. 943.0435 is subject to the penalties provided in s. 943.0435(9).

(13)

(c) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which must be consistent with the reporting requirements of this subsection. Reregistration must include any changes to the following information:

1. Name; social security number; age; race; sex; date of

birth; height; weight; tattoos or other identifying marks; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence; address, location or description, and dates of any current or known future temporary residence within the state or out of state; all electronic mail addresses and Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); all home telephone numbers and cellular telephone numbers required to be provided pursuant to s. 943.0435(4)(e); employment information required to be provided pursuant to s. 943.0435(4)(e); the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; fingerprints; palm prints; and photograph. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has.

2. If the sexual offender is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each

institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status.

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel or houseboat.

4. Any sexual offender who fails to report in person as required at the sheriff's office, who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence, who fails to report all electronic mail addresses or Internet identifiers before use, or who knowingly provides false registration information by act or omission commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a

reference thereto, paragraph (a) of subsection (3) of section 985.481, Florida Statutes, is reenacted to read:

985.481 Sexual offenders adjudicated delinquent; notification upon release.—

(3)(a) The department shall provide information regarding any sexual offender who is being released after serving a period of residential commitment under the department for any offense, as follows:

1. The department shall provide the sexual offender's name, any change in the offender's name by reason of marriage or other legal process, and any alias, if known; the correctional facility from which the sexual offender is released; the sexual offender's social security number, race, sex, date of birth, height, weight, and hair and eye color; tattoos or other identifying marks; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; address of any planned permanent residence or temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any known future temporary residence within the state or out of state; date and county of disposition and each crime for which there was a disposition; a copy of the offender's fingerprints, palm prints, and a digitized photograph taken within 60 days before release;

the date of release of the sexual offender; all home telephone numbers and cellular telephone numbers required to be provided pursuant to s. 943.0435(4)(e); all electronic mail addresses and Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); information about any professional licenses the offender has, if known; and passport information, if he or she has a passport, and, if he or she is an alien, information about documents establishing his or her immigration status. The department shall notify the Department of Law Enforcement if the sexual offender escapes, absconds, or dies. If the sexual offender is in the custody of a private correctional facility, the facility shall take the digitized photograph of the sexual offender within 60 days before the sexual offender's release and also place it in the sexual offender's file. If the sexual offender is in the custody of a local jail, the custodian of the local jail shall register the offender within 3 business days after intake of the offender for any reason and upon release, and shall notify the Department of Law Enforcement of the sexual offender's release and provide to the Department of Law Enforcement the information specified in this subparagraph and any information specified in subparagraph 2. which the Department of Law Enforcement requests.

2. The department may provide any other information considered necessary, including criminal and delinquency records, when available.

Section 11. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in references thereto, paragraph (a) of subsection (4), subsection (9), and paragraph (b) of subsection (13) of section 985.4815, Florida Statutes, are reenacted to read:

985.4815 Notification to Department of Law Enforcement of information on juvenile sexual offenders.—

(4) A sexual offender, as described in this section, who is under the supervision of the department but who is not committed shall register with the department within 3 business days after adjudication and disposition for a registrable offense and otherwise provide information as required by this subsection.

(a) The sexual offender shall provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; permanent or legal residence and address of temporary residence within the state or out of state while the sexual offender is in the care or custody or under the jurisdiction or supervision of the department in this state, including any rural route address or post office box; if no permanent or temporary address, any transient residence; address, location or description, and dates of any current or known future temporary residence within the state or

out of state; all home telephone numbers and cellular telephone numbers required to be provided pursuant to s. 943.0435(4)(e); all electronic mail addresses and Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); and the name and address of each school attended. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The offender shall also provide information about any professional licenses he or she has. The department shall verify the address of each sexual offender and shall report to the Department of Law Enforcement any failure by a sexual offender to comply with registration requirements.

(9) A sexual offender, as described in this section, who is under the care, jurisdiction, or supervision of the department but who is not incarcerated shall, in addition to the registration requirements provided in subsection (4), register in the manner provided in s. 943.0435(3), (4), and (5), unless the sexual offender is a sexual predator, in which case he or she shall register as required under s. 775.21. A sexual offender who fails to comply with the requirements of s. 943.0435 is subject to the penalties provided in s. 943.0435(9).

(13)

(b) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which must

be consistent with the reporting requirements of this subsection. Reregistration must include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; tattoos or other identifying marks; fingerprints; palm prints; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence; address, location or description, and dates of any current or known future temporary residence within the state or out of state; passport information, if he or she has a passport, and, if he or she is an alien, information about documents establishing his or her immigration status; all home telephone numbers and cellular telephone numbers required to be provided pursuant to s. 943.0435(4)(e); all electronic mail addresses and Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); name and address of each school attended; employment information required to be provided pursuant to s. 943.0435(4)(e); the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; and photograph. A post office box may not be provided in lieu of a physical residential address. The offender shall also provide information about any professional licenses he or she has.

2. If the sexual offender is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status.

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

4. Any sexual offender who fails to report in person as required at the sheriff's office, who fails to respond to any address verification correspondence from the department within 3 weeks after the date of the correspondence, or who knowingly provides false registration information by act or omission commits a felony of the third degree, punishable as provided in

ss. 775.082, 775.083, and 775.084.

Section 12. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, subsection (1) of section 794.056, Florida Statutes, is reenacted to read:

794.056 Rape Crisis Program Trust Fund.—

(1) The Rape Crisis Program Trust Fund is created within the Department of Health for the purpose of providing funds for rape crisis centers in this state. Trust fund moneys shall be used exclusively for the purpose of providing services for victims of sexual assault. Funds credited to the trust fund consist of those funds collected as an additional court assessment in each case in which a defendant pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense provided in s. 775.21(6) and (10)(a), (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s. 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and (14)(c); or s. 985.701(1). Funds credited to the trust

fund also shall include revenues provided by law, moneys appropriated by the Legislature, and grants from public or private entities.

Section 13. For the purpose of incorporating the amendment made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (g) of subsection (3) of section 921.0022, Florida Statutes, is reenacted to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety

			while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
1166			
	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
1167			
	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
1168			
	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
1169			
	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
1170			
	456.065(2)	3rd	Practicing a health care profession without a license.
1171			
	456.065(2)	2nd	Practicing a health care

			profession without a license which results in serious bodily injury.
1172			
	458.327(1)	3rd	Practicing medicine without a license.
1173			
	459.013(1)	3rd	Practicing osteopathic medicine without a license.
1174			
	460.411(1)	3rd	Practicing chiropractic medicine without a license.
1175			
	461.012(1)	3rd	Practicing podiatric medicine without a license.
1176			
	462.17	3rd	Practicing naturopathy without a license.
1177			
	463.015(1)	3rd	Practicing optometry without a license.
1178			
	464.016(1)	3rd	Practicing nursing without a license.
1179			

465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(7)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.

494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew

			driver license or identification card; other registration violations.
1192			
	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
1193			
	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
1194			
	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
1195			
	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
1196			
	782.071	2nd	Killing of a human being or unborn child by the operation

			of a motor vehicle in a reckless manner (vehicular homicide).
1197			
	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
1198			
	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
1199			
	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
1200			
	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
1201			
	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
1202			
	784.048(7)	3rd	Aggravated stalking; violation of court order.
1203			

784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
787.06(3)(e)2.	1st	Human trafficking using

			coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
1211			
	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
1212			
	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
1213			
	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
1214			
	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
1215			
	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
1216			

790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation;

			victim younger than 12 years of age; offender younger than 18 years of age.
1222			
	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
1223			
	800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
1224			
	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
1225			
	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
1226			
	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault

			or battery.
1227			
	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
1228			
	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
1229			
	812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
1230			
	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
1231			
	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
1232			

812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or

		participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
817.611(2)(b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.

825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $10,000 or more, but less than $50,000.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.

838.22	2nd	Bid tampering.
843.0855(2)	3rd	Impersonation of a public officer or employee.
843.0855(3)	3rd	Unlawful simulation of legal process.
843.0855(4)	3rd	Intimidation of a public officer or employee.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.

874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or

			a specified business site.
1263			
	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.
1264			
	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
1265			
	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
1266			
	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
1267			
	893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
1268			
	893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.

893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.

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

			less than $20,000.
1281			
	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
1282			
	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
1283			
	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
1284			
	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1285			
	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false

			registration information.
1286			
	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
1287			
	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
1288			
	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1289			
	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
1290			
	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
1291			

985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

Section 14. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, section 938.085, Florida Statutes, is reenacted to read:

938.085 Additional cost to fund rape crisis centers.—In addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of s. 775.21(6) and (10)(a), (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.

810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and (14)(c); or s. 985.701(1), the court shall impose a surcharge of $151. Payment of the surcharge shall be a condition of probation, community control, or any other court-ordered supervision. The sum of $150 of the surcharge shall be deposited into the Rape Crisis Program Trust Fund established within the Department of Health by chapter 2003-140, Laws of Florida. The clerk of the court shall retain $1 of each surcharge that the clerk of the court collects as a service charge of the clerk's office.

Section 15. This act shall take effect upon becoming a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Committee/Subcommittee hearing bill: Judiciary Committee

Representative Mariano offered the following:

Amendment

Remove line 84 and insert:

exemption in this paragraph for such

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/CS/HB 735 Covenants and Restrictions
SPONSOR(S): Judiciary Committee
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1046

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

SUMMARY ANALYSIS

The bill amends statutes related to real property. Specifically, the bill:

- Authorizes counties and municipalities to amend, release, or terminate a restriction or covenant affecting real property that they imposed or accepted during the approval of a development permit, provided that the county or municipality, when changing a covenant or restriction in this manner, treats the change as an ordinance for a zoning change;
- Prohibits a local government from adopting or promulgating any ordinance or regulation that purports to establish a common law customary use of property;
- Authorizes a lienholder in a real property mortgage foreclosure case to use any document filed under penalty of perjury in bankruptcy court as an admission by the defendant, which can create a rebuttable presumption that the defendant has waived any defense to the foreclosure;
- Replaces the term "homeowners' association" with "property owners' association," thus extending statutory provisions regarding preservation and revival of covenants and restrictions affecting real property to a broader range of associations, notably commercial property owners' associations;
- Authorizes real property parcel owners who were subject to covenants and restrictions but who do not have a homeowners' association to use the same mechanisms as a homeowners' association to revitalize extinguished covenants and restrictions;
- Simplifies the procedures for renewal of the covenants and restrictions of a homeowners association; and
- Requires a homeowners association to annually consider preservation of the covenants and restrictions and requires an association to file a summary preservation every five years.

The bill appears to have an indeterminate minimal positive impact on the clerks of circuit courts and an equal indeterminate negative impact on property owners' association related to recording fees to preserve covenants or restrictions.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Marketable Record Title Act - In General

The Marketable Record Title Act (MRTA) was enacted in 1963 to simplify and facilitate land transactions.[1] In general, MRTA provides that any person vested with any estate in land of record for 30 years or more has a marketable record title free and clear of most claims or encumbrances against the land. Current law includes 9 exceptions to the applicability of MRTA.[2]

MRTA and Local Government Restrictions

In a recent decision by the Third District Court of Appeal, the court held that government imposed encumbrances are not subject to extinguishment under MRTA.[3] In the case, the current owner of land sought to redevelop the land. A former owner had agreed with the county to a 99-year restrictive covenant as a condition of the building permit. A trial court judgment had held that the covenant was extinguished by operation of MRTA.

The court of appeal reversed, ruling that a restrictive zoning covenant evidences the County's intent to regulate the property.[4] The Third District had previously determined that a Zoning Appeals Board resolution, with a restrictive covenant, constitutes a governmental regulation with the force of law.[5] The court concluded that as a governmental regulation, and not an estate, interest, claim, or charge affecting the property, the restrictive covenant was not subject to extinguishment pursuant to MRTA.[6]

The bill amends ss. 125.022 and 166.033, F.S., to provide that a county or municipality may amend, release, or terminate a restriction or covenant that it imposed or accepted at the approval or issuance of the development permit. The county or municipality may accomplish this through its police powers, which may not be delegated to a third party.

Any amendment, release, or termination of the restriction or covenant by a county or municipality must follow the procedural requirements found in ss. 125.66(4) and 166.041(3)(c), F.S., respectively. Current law on such procedural requirements (which are not changed by this bill) requires that, for changes involving less than 10 contiguous acres, the governing body of the county or municipality must mail notice to each real property owner whose land the agency will redesignate.[7] The notice must state the substance of the proposed ordinance and set a time and place for one or more public hearings on the ordinance.[8] The notice must be given at least 30 days prior to the date set for public hearing.[9] When the changes involves 10 or more contiguous acres, the local governing body must hold two advertised public hearings on the proposed ordinance.[10] At least one of these hearings must be held after 5 p.m. on a weekday, unless the governing body elects by a majority plus one vote to hold it at another time.[11] The meetings must be advertised in a newspaper of general paid circulation in the county or municipality and must be at least 2 columns wide by 10 inches long and follow a standard form given in

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[1] *Blanton v. City of Pinellas Park*, 887 So.2d 1224, 1227 (Fla. 2004).
[2] s. 712.03, F.S.
[3] *Save Calusa Trust v. St. Andrews Holding, Ltd.*, 193 So. 3d 910, 916 (Fla. 3d DCA 2016).
[4] *Id.* at 915.
[5] *Id.* referencing *Metro Dade Cty. v. Fontainebleau Gas & Wash, Inc.*, 570 So. 2d 1006 (Fla. 3d DCA 1990).
[6] *Id.* at 916.
[7] ss. 125.66(4)(a) and 166.041(3)(c)1, F.S.
[8] *Id.*
[9] *Id.*
[10] ss. 125.66(4)(b)1 and 166.041(3)(c)2a, F.S.
[11] *Id.*

statute.[12] The first public hearing must be held at least 7 days after the first advertisement is published.[13] The second hearing must be held at least 10 days after the first hearing and must be advertised at least 5 days prior to the hearing.[14] In lieu of publishing, the local governing body may mail a notice to each person owning real property in the area covered by the ordinance.[15] This notice must explain the proposed ordinance and notify the person of the time, place, and location of any public hearing on the proposed ordinance.[16]

The bill also repeals an apparently unnecessary statement in ss. 125.022 and 166.033, F.S., that allows a county or city to provide information to an applicant on what other state or federal permits may apply to the development.

The bill also amends MRTA at s. 712.04, F.S., to add that a marketable record title is free and clear of all zoning requirements or building or development permits that occurred before the effective date of the root of title. This freedom from encumbrances does not alter or invalidate a zoning ordinance, land development regulation, building code, or other ordinance, rule, regulation or law if such operates independently of matters recorded in the official records. The bill provides that this provision is also intended to clarify existing law and is remedial in nature, applying to all covenants or restrictions imposed or accepted before, on, or after the effective date of the bill.

Customary Use of Real Property

Florida courts have recognized the public may acquire rights to the dry sand areas of privately owned portions of the beach through methods of prescription, dedication, and custom. In *City of Daytona Beach v. Tona-Rama*,[17] the Florida Supreme Court held

> If the recreational use of the sandy area adjacent to the mean high tide has been ancient, reasonable, without interruption and free from dispute, such use as a matter of custom, should not be interfered with by the owner. However, the owner may make any use of his property which is consistent with such public use and not calculated to interfere with the exercise of the right of the public to enjoy the dry sand area as a recreational adjunct of the wet sand or foreshore area.

Subsequently, in *Reynolds v. County of Volusia*,[18] the 5th DCA acknowledged the doctrine of customary use enunciated in *Tona-Rama*, but noted the doctrine requires the courts to ascertain in each case the degree of customary and ancient use the beach has been subjected to. In *Trepanier v. County of Volusia*,[19] the 5th DCA further held

> While some may find it preferable that proof of these elements of custom be established for the entire state by judicial fiat in order to protect the right of public access to Florida's beaches, it appears to us that the acquisition of a right to use private property by custom is intensely local and anything but theoretical. "Custom" is inherently a source of law that emanates from long-term, open, obvious, and widely-accepted and widely-exercised practice. It is accordingly impossible precisely to define the geographic area of the beach for which evidence of a specific customary use must be shown, because it will depend on the particular geography and the particular custom at issue.

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[12] ss. 125.66(4)(b)2 and 166.041(3)(c)2b, F.S.
[13] ss. 125.66(4)(b)1 and 166.041(3)(c)2a, F.S.
[14] *Id.*
[15] ss. 125.66(4)(b)3 and 166.041(3)(c)2c, F.S.
[16] *Id.*
[17] 294 So.2d 73 (Fla. 1974).
[18] 659 So.2d 1186 (Fla. 5th DCA 1995)
[19] 965 So.2d 276 (Fla. 5th DCA 2007)

The bill creates s. 163.035, F.S., relating to customary use ordinances. The bill prohibits a local government from adopting an ordinance or regulation that intends to establish a common law customary use of real property.

Real Property Mortgage Foreclosures

A mortgage foreclosure is an action by a lender against a debtor to force the sale of the real property that secures the loan as a means of enforcing the debt. Often, a debtor subject to foreclosure will file for bankruptcy as a means of obtaining an automatic stay of the foreclosure action plus a discharge of the mortgage debt. In some cases, debtors have stated an intention to surrender real property in bankruptcy proceedings buy then later have actively contested the completion of foreclosure proceedings in state court.

The bill creates s. 702.12, F.S., relating to mortgage foreclosures. The bill allows a lienholder in a foreclosure action to submit any document the defendant filed under penalty of perjury in a bankruptcy case as an admission by the defendant.

The bill creates a rebuttable presumption in favor of the lienholder that the defendant has waived any defenses to the foreclosure. The presumption is achieved by submitting a document that evidences the defendant's intention to surrender to the lienholder the property that is the subject of the foreclosure and a final order entered in the bankruptcy case that discharged the defendant's debt or confirms the defendant's repayment plan. The bill also allows the lienholder to request that the court in the foreclosure action take judicial notice of any final order entered in a bankruptcy case.

The bill does not preclude the defendant from raising a defense based on actions taken by the lienholder after the filing of the document filed in the bankruptcy case that evidenced the defendant's intention to surrender the property to the lienholder.

This section applies to any foreclosure action filed on or after July 1, 2017.

MRTA and Property Owners Associations

One effect of MRTA is that homeowner association covenants can lose effect after 30 years. In order to protect such covenants, MRTA has long provided for renewal of such covenants. Renewal starts the 30 time period over again. However, many associations fail to timely file a renewal of their covenants, primarily due to neglect rather than intent. Formerly, MRTA would apply in such cases and accordingly the covenants and restrictions expired and were unenforceable. In 2004, Part III of ch. 720, F.S., was enacted to provide a means by which covenants and restrictions of a mandatory homeowners' association may be revived.[20] In 2007, nonmandatory homeowners' associations became eligible for revitalization.[21] Revitalization requires the creation of an organizing committee, notice to all affected property owners, approval by a majority of the homeowners, approval by the Department of Economic Opportunity, and the recording of notice in the public records.[22]

There are two categories of property owners who enact and enforce covenants and restrictions regarding their property and that of their neighbors who are impacted by MRTA, but have not been included in the laws regarding renewal or revival of their covenants and restrictions. These property owners are commercial landowners in office parks, industrial parks, and other commercial districts; and neighborhoods with enforceable covenants but no formal homeowners' association.

[20] ch. 2004-345, L.O.F.
[21] ch. 2007-173, L.O.F.
[22] part III of ch. 720, F.S.

Preservation and Revitalization of Covenants by a Commercial Property Owners' Association

The bill provides a definition for the term community covenant or restriction and substitutes the term property owners' association for homeowners' association. A property owners' association includes a homeowners' association as defined in s. 720.301, F.S., a corporation or entity responsible for the operation of real property in which the voting membership is made up of the owners of the real property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, as well as an association of parcel owners authorized to enforce a community covenant or restriction. The bill also makes changes in s. 712.01, F.S., to conform to these new terms.

The bill replaces all instances of the term "homeowners' association" found in ch. 712, F.S., with the term "property owners' association." The effect is to expand MRTA laws on preservation and revitalization of covenants or restrictions to these associations, that is, to expand the law to cover commercial associations.

The bill provides that Part III of ch. 720, F.S., comprised of ss. 720.403-.407, F.S., is intended to provide mechanisms for revitalization of covenants or restrictions by all types of communities and property associations, not just residential communities.

Revitalization of Residential Covenants Not Related to a Homeowners' Association

There are residential communities in which there were recorded covenants and restrictions similar to those found in a homeowners association, but no association was ever created. Under current law, individual owners can file notice of preservation of covenants before they expire, see ss. 712.05 and 712.06, F.S., but there are no means of revitalizing such covenants and restrictions.

The bill creates s. 712.12, F.S., relating to covenant or restriction revitalization by real property owners not subject to a homeowners' association. The bill provides that the real property owners may use the process available to a homeowners' association in ss. 720.403-.407, F.S., to revive covenants or restrictions that have lapsed under MRTA. The real property owners are excepted from needing to provide articles of incorporation or bylaws to revive the covenants or restrictions and only need the required approval in writing. The organizing committee of the community may execute the revived covenants in the name of the community and the community name can be indexed as the grantee of the covenants with the parcel owners listed as grantors. A real property owner who has ceased to be subject to covenants or restrictions as of July 1, 2017, may commence an action by July 1, 2018, to determine if revitalization would unconstitutionally deprive the parcel owner of right or property. Revived covenants or restrictions do not affect the rights of a real property owner which are recognized by a court order in an action commenced by July 1, 2018, and may not be subsequently altered without the consent of the affected parcel owner.

Amended Procedures for Preservation of Existing Covenants

Sections 712.05 and 712.06, F.S., provide that a homeowners' association wishing to timely renew its covenants may only do so under the following conditions:

- The board must give written notice to every parcel owner of the impending preservation of the covenants;[23]
- The board must give written notice to every parcel owner of a meeting of the board of directors where the directors will decide whether to renew the covenants;[24]
- The board of directors of the association must approve the renewal by a two-thirds vote;[25] and
- Notice of the renewal must be recorded in the Official Records of the county.[26]

[23] s. 712.06(1)(b), F.S.
[24] s. 712.05(1), F.S.
[25] *Id.*

The bill changes this procedure to:

- Provide that compliance by a homeowners association with newly created s. 720.3032, F.S. (see discussion herein) may substitute for the requirements of ss. 712.05 and 712.06, F.S.;
- Repeal the requirement that the board achieve a two-thirds vote; and
- Repeal the requirement that affected property owners be furnished notice of the board meeting to vote on preservation.

Additional Requirements of the Board of Directors of a Homeowners' Association

While it is probably good practice for a homeowners association to regularly consider the need for preservation of the covenants and restrictions of the real property in their neighborhood, there is no statutory requirement that a board of directors of a homeowners association do so.

The bill amends s. 720.303(2), F.S., to require that the board of directors for a homeowners' association must consider whether to file a notice to preserve the covenants and restrictions affecting the community from extinguishment pursuant to MRTA. This must be considered at the first board meeting after the annual meeting of the members.

The bill creates s. 720.3032, F.S., to require that, at least once every five years, a homeowners' association must file in the official records of the county in which it is located a notice detailing:

- The legal name of the association;
- The mailing and physical addresses of the association;
- The names of the affected subdivision plats and condominiums, or the common name of the community;
- The name, address, and telephone number for the current community association management company or manager, if any;
- An indication as to whether the association desires to preserve the covenants or restrictions affecting the community from extinguishment pursuant to MRTA;
- The name and recording information of those covenants or restrictions affecting the community which the association wishes to preserve;
- A legal description of the community affected by the covenants or restrictions; and
- The signature of a duly authorized officer of the association.

A homeowners' association is not required to file this notice if it does not wish to preserve its restrictions and covenants.

The bill creates a statutory form for such information. The bill further provides that the filing of the completed form is considered a substitute for the notice required for preservation of the covenants pursuant to ss. 712.05 and 712.06, F.S. As such, every 5-year filing of the form will have the effect of starting the MRTA 30-year period anew.

The failure to file this notice does not affect the validity or enforceability of any covenant or restriction on real property. A copy of this notice must be included as a part of the next notice of meeting or other mailing sent to all members of the association. The original signed notice must be recorded in the official records of the clerk of the circuit court or other recorder for the county.

[26] s. 712.06(2), F.S.

Other Changes Made by the Bill

The bill also:

- Provides a short title of the "Marketable Record Title Act" for ch. 712, F.S.;
- Makes changes to conform various statutory and definitional cross references.

B. SECTION DIRECTORY:

Section 1 amends s. 125.022, F.S., relating to county development permits.

Section 2 creates s. 163.035, F.S., relating to ordinances relating to customary use of real property.

Section 3 amends s. 166.033, F.S., relating to municipality development permits.

Section 4 creates s. 702.12, F.S., relating to actions in foreclosure.

Section 5 creates s. 712.001, F.S., creating a short title.

Section 6 amends s. 712.01, F.S., relating to definitions applicable to the Marketable Record Title Act.

Section 7 amends s. 712.04, F.S., relating to interests extinguished by marketable record title.

Section 8 amends s. 712.05, F.S., relating to the effect of filing notice to preserve a covenant or restriction.

Section 9 amends s. 712.06, F.S., relating to the contents of a notice to preserve a covenant or restriction and the recording and indexing of the notice.

Section 10 amends s. 712.11, F.S., relating to covenant revitalization.

Section 11 creates s. 712.12, F.S., relating to covenant or restriction revitalization by parcel owners not subject to a homeowners' association.

Section 12 amends s. 720.303(2), F.S., relating to board meetings of a homeowners' association.

Section 13 creates s. 720.3032, F.S., relating to notice of association information and preservation of covenants or restrictions from the Marketable Record Title Act.

Section 14 amends s. 702.09, F.S., relating to definitions applicable to foreclosure of mortgages and statutory liens.

Section 15 amends s. 702.10, F.S., relating to an order to show cause in a mortgage foreclosure.

Section 16 amends s. 712.095, F.S., to conform a cross reference.

Section 17 amends s. 720.403, F.S., relating to preservation of communities and revival of a declaration of covenants.

Section 18 amends s. 720.404, F.S., relating to eligible communities and requirements for revival of a declaration of covenants.

Section 19 amends s. 720.405, F.S., relating to the organizing committee and parcel owner approval for revival of a declaration of covenants.

Section 20 amends s. 720.407, F.S., relating to recording of a declaration of covenants.

Section 21 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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill requires the recording of documents in the public records of the county. Recording is subject to a fee of $10.00 for the first page and $8.50 for every subsequent page, payable to the recording department (in most counties, the clerk of the court).[27] The net revenues to county recorders, after deductions for incremental costs of recording and indexing documents, are unknown.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 13 of the bill requires associations to prepare and record a notice every 5 years. The recording fee is nominal ($10 for the first page, $8.50 for additional pages). Because the form is in statute, associations may be able to complete the task without assistance, or a community association manager can assist an association with preparation and filing without reference to a licensed attorney.

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:

   Impairment of Contracts

   To the extent that a court may find that a covenant or restriction may be considered a contract between the parties, the changes made by this bill may affect such current contract rights and

[27] s. 28.24(12), F.S.

obligations. Article I, s. 10 of the United States Constitution, and art. I, s. 10 of the state constitution both prohibit the Legislature from enacting any law impairing the obligation of contracts. Although written in terms of an absolute prohibition, the courts have long interpreted the provisions to prohibit enactment of any unreasonable impairment of contractual rights existing at the time that the law is enacted. The Florida Supreme Court in *Pomponio v. Claridge of Pompano Condominium, Inc.*[28] set forth the following test:

- Was the law enacted to deal with a broad, generalized economic or social problem?
- Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by the state?
- Does the law effect a temporary alteration of the contractual relationships of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships irrevocably and retroactively?

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

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

A bill to be entitled

An act relating to real property; amending ss. 125.022 and 166.033, F.S.; deleting provisions specifying that a county or municipality is not prohibited from providing information to an applicant regarding other state or federal permits that may apply under certain circumstances; specifying that the imposition of certain restrictions or covenants against real property does not preclude a county or municipality from exercising its police power to later amend, release, or terminate such restrictions or covenants; prohibiting a county or municipality from delegating its police power to a third party by restriction, covenant, or otherwise; creating s. 163.035, F.S.; prohibiting local governments from adopting or promulgating an ordinance or regulation that purports to establish a common law customary use of property; providing exceptions; creating s. 702.12, F.S.; authorizing certain lienholders to use certain documents as an admission in an action to foreclose a mortgage against real property; providing that submission of certain documents in a foreclosure action creates certain presumptions; authorizing a lienholder to make a request for judicial notice; providing construction; providing applicability;

creating s. 712.001, F.S.; providing a short title; amending s. 712.01, F.S.; defining and redefining terms; amending s. 712.04, F.S.; providing that a marketable title to real property is free and clear of all covenants or restrictions, the existence of which depends upon any act, title transaction, event, zoning requirement, building or development permit, or omission that occurred before the effective date of the root of title; providing for construction; providing applicability; amending s. 712.05, F.S.; revising the notice filing requirements for a person claiming an interest in real property and other rights; authorizing a property owners' association to preserve and protect certain covenants or restrictions from extinguishment, subject to specified requirements; providing that a failure in indexing does not affect the validity of the notice; extending the length of time certain covenants or restrictions affecting real property are preserved; deleting a provision requiring a two-thirds vote by members of an incorporated homeowners' association to file certain notices; conforming provisions to changes made by the act; amending s. 712.06, F.S.; exempting a specified summary notice regarding real property from certain notice content requirements; revising the contents

required to be specified by certain notices; conforming provisions to changes made by the act; amending s. 712.11, F.S.; conforming provisions to changes made by the act; creating s. 712.12, F.S.; defining terms; authorizing the parcel owners of a community not subject to a homeowners' association to use specified procedures to revive certain covenants or restrictions, subject to certain exceptions and requirements; authorizing a parcel owner to commence an action by a specified date under certain circumstances for a judicial determination that the covenants or restrictions did not govern that parcel as of a specified date and that any revitalization of such covenants or restrictions as to that parcel would unconstitutionally deprive the parcel owner of rights or property; providing applicability; amending s. 720.303, F.S.; requiring a homeowners association board to take up certain provisions relating to notice filings at the first board meeting; creating s. 720.3032, F.S.; providing recording requirements for an association; providing a document form for recording by an association to preserve certain covenants or restrictions affecting real property; providing that failure to file one or more notices does not affect the validity or enforceability of a

covenant or restriction or alter the time before extinguishment under certain circumstances; requiring a copy of the filed notice to be sent to all members; requiring the original signed notice to be recorded with the clerk of the circuit court or other recorder; amending ss. 702.09 and 702.10, F.S.; conforming provisions to changes made by the act; amending s. 712.095, F.S.; conforming a cross-reference; amending ss. 720.403, 720.404, 720.405, and 720.407, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (6) of section 125.022, Florida Statutes, is amended to read:

125.022 Development permits.—

(6) A county may not delegate its police power to a third party by restriction, covenant, or otherwise. The imposition by a county of a recorded or unrecorded restriction or covenant as a condition of a county's approval or issuance of a development permit does not preclude the county from exercising its police power to later amend, release, or terminate the restriction or covenant. Any such amendment, release, or termination of the restriction or covenant must follow the procedural requirements

in s. 125.66(4). ~~This section does not prohibit a county from providing information to an applicant regarding what other state or federal permits may apply.~~

Section 2. Section 163.035, Florida Statutes, is created to read:

163.035 Ordinances or regulations relating to customary use of real property.--A local government shall not adopt or promulgate any ordinance or regulation that purports to establish a common law customary use of property.

Section 3. Subsection (6) of section 166.033, Florida Statutes, is amended to read:

166.033 Development permits.—

(6) A municipality may not delegate its police power to a third party by restriction, covenant, or otherwise. The imposition by a municipality of a recorded or unrecorded restriction or covenant as a condition of a municipality's approval or issuance of a development permit does not preclude a municipality from exercising its police power to later amend, release, or terminate the restriction or covenant. Any such amendment, release, or termination of the restriction or covenant must follow the procedural requirements in s. 166.041(3)(c). ~~This section does not prohibit a municipality from providing information to an applicant regarding what other state or federal permits may apply.~~

Section 4. Section 702.12, Florida Statutes, is created to

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read:

702.12 Actions in foreclosure.—

(1)(a) A lienholder, in an action to foreclose a mortgage encumbering an interest in real property, may submit any document the defendant filed in the defendant's bankruptcy case under penalty of perjury for use as an admission by the defendant.

(b) The lienholder's submission of a document the defendant filed in the defendant's bankruptcy case that evidences intention to surrender to the lienholder the property that is the subject of the foreclosure, which document has not been withdrawn by the defendant, together with the submission of a final order entered in the bankruptcy case that discharges the defendant's debts or confirms the defendant's repayment plan which intention is contained therein, creates a rebuttable presumption that the defendant has waived any defenses to the foreclosure.

(2) In addition to a request set forth in s. 90.203, the lienholder may request that the court take judicial notice of any final order entered in a bankruptcy case.

(3) This section does not preclude the defendant in a foreclosure action from raising a defense based upon the lienholder's conduct subsequent to the filing of the document filed in the bankruptcy case that evidenced the defendant's intention to surrender the mortgaged property to the lienholder.

(4) This section applies to any foreclosure action filed on or after July 1, 2017.

Section 5. Section 712.001, Florida Statutes, is created to read:

712.001 Short title.—This chapter may be cited as the "Marketable Record Title Act."

Section 6. Section 712.01, Florida Statutes, is reordered and amended to read:

712.01 Definitions.—As used in this chapter, the term ~~law~~:

(1) "Community covenant or restriction" means any agreement or limitation contained in a document recorded in the public records of the county in which a parcel is located which:

(a) Subjects the parcel to any use restriction that may be enforced by a property owners' association; or

(b) Authorizes a property owners' association to impose a charge or assessment against the parcel or the parcel owner.

(2)~~(6)~~ ~~The term~~ "Covenant or restriction" means any agreement or limitation contained in a document recorded in the public records of the county in which a parcel is located which subjects the parcel to any use or other restriction or obligation ~~which may be enforced by a homeowners' association or which authorizes a homeowners' association to impose a charge or assessment against the parcel or the owner of the parcel or which may be enforced by the Florida Department of Environmental Protection pursuant to chapter 376 or chapter 403~~.

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(3) ~~(5)~~ ~~The term~~ "Parcel" means real property that ~~which~~ is used for residential purposes and that is subject to exclusive ownership and ~~which is subject~~ to any covenant or restriction of a property owners' ~~homeowners'~~ association.

(4) ~~(1)~~ ~~The term~~ "Person" includes the ~~as used herein denotes~~ singular or plural, natural or corporate, private or governmental, including the state and any political subdivision or agency thereof as the context for the use thereof requires or denotes and including any property owners' ~~homeowners'~~ association.

(5) ~~(4)~~ "Property owners' association" ~~The term "homeowners' association"~~ means a homeowners' association as defined in s. 720.301, a corporation or other entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, or an association of parcel owners which is authorized to enforce a community covenant or restriction ~~use restrictions~~ that is ~~are~~ imposed on the parcels.

(6) ~~(2)~~ "Root of title" means any title transaction purporting to create or transfer the estate claimed by any person ~~and~~ which is the last title transaction to have been recorded at least 30 years before ~~prior to~~ the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded.

(7) ~~(3)~~ "Title transaction" means any recorded instrument or court proceeding that ~~which~~ affects title to any estate or interest in land and that ~~which~~ describes the land sufficiently to identify its location and boundaries.

Section 7. Section 712.04, Florida Statutes, is amended to read:

712.04 Interests extinguished by marketable record title.—

(1) Subject to s. 712.03, a marketable record title is free and clear of all estates, interests, claims, covenants, restrictions, or charges, the existence of which depends upon any act, title transaction, event, zoning requirement, building or development permit, or omission that occurred before the effective date of the root of title. Except as provided in s. 712.03, all such estates, interests, claims, covenants, restrictions, or charges, however denominated, whether they are or appear to be held or asserted by a person sui juris or under a disability, whether such person is within or without the state, natural or corporate, or private or governmental, are declared to be null and void. However, this chapter does not affect any right, title, or interest of the United States, Florida, or any of its officers, boards, commissions, or other agencies reserved in the patent or deed by which the United States, Florida, or any of its agencies parted with title.

(2) This section may not be construed to alter or invalidate a zoning ordinance, land development regulation,

building code, or other ordinance, rule, regulation, or law if such ordinance, rule, regulation, or law operates independently of matters recorded in the official records.

(3) This section is intended to clarify existing law, is remedial in nature, and applies to all restrictions and covenants whether imposed or accepted before, on, or after July 1, 2017.

Section 8. Section 712.05, Florida Statutes, is amended to read:

712.05 Effect of filing notice.—

(1) A person claiming an interest in land or other right subject to extinguishment under this chapter ~~a homeowners' association desiring to preserve a covenant or restriction~~ may preserve and protect such interest or right ~~the same~~ from extinguishment by the operation of this chapter ~~act~~ by filing for record, at any time during the 30-year period immediately following the effective date of the root of title, a written notice in accordance with s. 712.06 ~~this chapter~~.

(2) A property owners' association may preserve and protect a community covenant or restriction from extinguishment by the operation of this chapter by filing for record, at any time during the 30-year period immediately following the effective date of the root of title:

(a) A written notice in accordance with s. 712.06; or

(b) A summary notice in substantial form and content as

required under s. 720.3032(2). Failure of a summary notice to be indexed to the current owners of the affected property does not affect the validity of the notice or vitiate the effect of the filing of such notice.

(3) A ~~Such~~ notice under subsection (1) or subsection (2) preserves an interest in land or other ~~such claim of~~ right subject to extinguishment under this chapter, or a ~~such~~ covenant or restriction or portion of such covenant or restriction, for not less than ~~up to~~ 30 years after filing the notice unless the notice is filed again as required in this chapter. A person's disability or lack of knowledge of any kind may not delay the commencement of or suspend the running of the 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of a claimant who is:

(a) Under a disability;

(b) Unable to assert a claim on his or her behalf; or

(c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

~~Such notice may be filed by a homeowners' association only if the preservation of such covenant or restriction or portion of such covenant or restriction is approved by at least two-thirds of the members of the board of directors of an incorporated homeowners' association at a meeting for which a notice, stating~~

~~the meeting's time and place and containing the statement of marketable title action described in s. 712.06(1)(b), was mailed or hand delivered to members of the homeowners' association at least 7 days before such meeting.~~ The property owners' ~~homeowners'~~ association or clerk of the circuit court is not required to provide additional notice pursuant to s. 712.06(3). The preceding sentence is intended to clarify existing law.

(4) ~~(2)~~ It is ~~shall~~ not ~~be~~ necessary for the owner of the marketable record title, as described in s. 712.02 ~~herein defined~~, to file a notice to protect his or her marketable record title.

Section 9. Subsections (1) and (3) of section 712.06, Florida Statutes, are amended to read:

712.06 Contents of notice; recording and indexing.—

(1) To be effective, the notice referred to in s. 712.05, other than the summary notice referred to in s. 712.05(2)(b), must ~~shall~~ contain:

(a) The name or description and mailing address of the claimant or the property owners' ~~homeowners'~~ association desiring to preserve any covenant or restriction ~~and the name and particular post office address of the person filing the claim or the homeowners' association~~.

(b) The name and mailing ~~post office~~ address of an owner, or the name and mailing ~~post office~~ address of the person in whose name the ~~said~~ property is assessed on the last completed

tax assessment roll of the county at the time of filing, who, for purpose of such notice, shall be deemed to be an owner; ~~provided,~~ however, if a property owners' ~~homeowners'~~ association is filing the notice, ~~then~~ the requirements of this paragraph may be satisfied by attaching to and recording with the notice an affidavit executed by the appropriate member of the board of directors of the property owners' ~~homeowners'~~ association affirming that the board of directors of the property owners' ~~homeowners'~~ association caused a statement in substantially the following form to be mailed or hand delivered to the members of that property owners' ~~homeowners'~~ association:

STATEMENT OF MARKETABLE TITLE ACTION

The [name of property owners' ~~homeowners'~~ association] (the "Association") has taken action to ensure that the [name of declaration, covenant, or restriction], recorded in Official Records Book ...., Page ...., of the public records of .... County, Florida, as may be amended from time to time, currently burdening the property of each and every member of the Association, retains its status ~~as the source of marketable title~~ with regard to the affected real property ~~the transfer of a member's residence~~. To this end, the Association shall cause the notice required by chapter 712, Florida Statutes, to be recorded in the public records of .... County, Florida. Copies

of this notice and its attachments are available through the Association pursuant to the Association's governing documents regarding official records of the Association.

(c) A full and complete description of all land affected by such notice, which description shall be set forth in particular terms and not by general reference, but if said claim is founded upon a recorded instrument or a covenant or a restriction, ~~then~~ the description in such notice may be the same as that contained in such recorded instrument or covenant or restriction, provided the same shall be sufficient to identify the property.

(d) A statement of the claim showing the nature, description, and extent of such claim or other right subject to extinguishment under this chapter or, in the case of a covenant or restriction, a copy of the covenant or restriction, except that it is ~~shall~~ not ~~be~~ necessary to show the amount of any claim for money or the terms of payment.

(e) If such claim or other right subject to extinguishment under this chapter is based upon an instrument of record or a recorded covenant or restriction, such instrument of record or recorded covenant or restriction shall be deemed sufficiently described to identify the same if the notice includes a reference to the book and page in which the same is recorded.

(f) Such notice shall be acknowledged in the same manner

as deeds are acknowledged for record.

(3) The person providing the notice referred to in s. 712.05, other than a notice for preservation of a community covenant or restriction, shall:

(a) Cause the clerk of the circuit court to mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the claimant shall pay to the clerk the service charge as prescribed in s. 28.24(8) and the necessary costs of mailing, in addition to the recording charges as prescribed in s. 28.24(12). If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

I hereby certify that I did on this ...., mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:

...(Clerk of the circuit court)...
of .... County, Florida,

By...(Deputy clerk)...

The clerk of the circuit court is not required to mail to the purported owner of such property any such notice that pertains solely to the preserving of any covenant or restriction or any portion of a covenant or restriction; or

(b) Publish once a week, for 2 consecutive weeks, the notice referred to in s. 712.05, with the official record book and page number in which such notice was recorded, in a newspaper as defined in chapter 50 in the county in which the property is located.

Section 10. Section 712.11, Florida Statutes, is amended to read:

712.11 Covenant revitalization.—A property owners' ~~homeowners'~~ association not otherwise subject to chapter 720 may use the procedures set forth in ss. 720.403-720.407 to revive covenants that have lapsed under the terms of this chapter.

Section 11. Section 712.12, Florida Statutes, is created to read:

712.12 Covenant or restriction revitalization by parcel owners not subject to a homeowners' association.—

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

(a) "Community" means a group of parcels near one another sharing a common interest due to their proximity to one another and sharing a neighborhood name or identity, which parcels are

or will be subject to covenants and restrictions which are recorded in the county where the property is located.

(b) "Covenant or restriction" means any agreement or limitation imposed by a private party and not required by a governmental agency as a condition of a development permit, as defined in s. 163.3164, which is contained in a document recorded in the public records of the county in which a parcel is located and which subjects the parcel to any use restriction that may be enforced by a parcel owner.

(c) "Parcel" means real property that is used for residential purposes and which is subject to exclusive ownership and any covenant or restriction that may be enforced by a parcel owner.

(d) "Parcel owner" means the record owner of legal title to a parcel.

(2) The parcel owners of a community not subject to a homeowners' association may use the procedures set forth in ss. 720.403-720.407 to revive covenants or restrictions that have lapsed under the terms of this chapter, except:

(a) A reference to a homeowners' association or articles of incorporation or bylaws of a homeowners' association under ss. 720.403-720.407 is not required to revive the covenants or restrictions.

(b) The approval required under s. 720.405(6) must be in writing, and not at a meeting.

(c) The requirements under s. 720.407(2) may be satisfied by having the organizing committee execute the revived covenants or restrictions in the name of the community.

(d) The indexing requirements under s. 720.407(3) may be satisfied by indexing the community name in the covenants or restrictions as the grantee and the parcel owners as the grantors.

(3) With respect to any parcel that has ceased to be governed by covenants or restrictions as of July 1, 2017, the parcel owner may commence an action by July 1, 2018, for a judicial determination that the covenants or restrictions did not govern that parcel as of July 1, 2017, and that any revitalization of such covenants or restrictions as to that parcel would unconstitutionally deprive the parcel owner of rights or property.

(4) Revived covenants or restrictions that are implemented pursuant to this section do not apply to or affect the rights of the parcel owner which are recognized by any court order or judgment in any action commenced by July 1, 2018, and any such rights so recognized may not be subsequently altered by revived covenants or restrictions implemented under this section without the consent of the affected parcel owner.

Section 12. Paragraph (e) is added to subsection (2) of section 720.303, Florida Statutes, to read:

720.303 Association powers and duties; meetings of board;

official records; budgets; financial reporting; association funds; recalls.—

(2) BOARD MEETINGS.—

(e) At the first board meeting, excluding the organizational meeting, which follows the annual meeting of the members, the board shall consider the desirability of filing notices to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, chapter 712, and to authorize and direct the appropriate officer to file notice in accordance with s. 720.3032.

Section 13. Section 720.3032, Florida Statutes, is created to read:

720.3032 Notice of association information; preservation from Marketable Record Title Act.—

(1) Not less than once every 5 years, if an association wishes to preserve its covenants and restrictions, the association must record in the official records of each county in which the community is located a notice specifying:

(a) The legal name of the association.

(b) The mailing and physical addresses of the association.

(c) The names of the affected subdivision plats and condominiums or, if not applicable, the common name of the community.

(d) The name, address, and telephone number for the

current community association management company or community association manager, if any.

(e) Indication as to whether the association desires to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, chapter 712.

(f) A listing by name and recording information of those covenants or restrictions affecting the community which the association desires to be preserved from extinguishment.

(g) The legal description of the community affected by the covenants or restrictions, which may be satisfied by a reference to a recorded plat.

(h) The signature of a duly authorized officer of the association, acknowledged in the same manner as deeds are acknowledged for record.

(2) Recording a document in substantially the following form satisfies the notice obligation and constitutes a summary notice as specified in s. 712.05(2)(b) sufficient to preserve and protect the referenced covenants and restrictions from extinguishment under the Marketable Record Title Act, chapter 712.

Notice of ...(name of association)... under s. 720.3032, Florida Statutes, and notice to preserve and protect covenants and restrictions from extinguishment under the Marketable Record

Title Act, chapter 712, Florida Statutes.

Instructions to recorder: Please index both the legal name of the association and the names shown in item 3.

1. Legal name of association: ....

2. Mailing and physical addresses of association: ....

3. Names of the subdivision plats, or, if none, common name of community: ....

4. Name, address, and telephone number for management company, if any: .....

5. This notice does .... does not .... constitute a notice to preserve and protect covenants or restrictions from extinguishment under the Marketable Record Title Act.

6. The following covenants or restrictions affecting the community which the association desires to be preserved from extinguishment:

...(Name of instrument)...

...(Official Records Book where recorded & page)...

...(List of instruments)...

...(List of recording information)...

7. The legal description of the community affected by the listed covenants or restrictions is: ...(Legal description, which may be satisfied by reference to a recorded plat)...

This notice is filed on behalf of ...(Name of

association)... as of ...(Date)....

...(Name of association)...

By: ....

...(Name of individual officer)...

...(Title of officer)...

...(Notary acknowledgment)...

(3) The failure to file one or more notices does not affect the validity or enforceability of any covenant or restriction nor in any way alter the remaining time before extinguishment by the Marketable Record Title Act, chapter 712.

(4) A copy of the notice, as filed, must be included as part of the next notice of meeting or other mailing sent to all members.

(5) The original signed notice must be recorded in the official records of the clerk of the circuit court or other recorder for the county.

Section 14. Section 702.09, Florida Statutes, is amended to read:

702.09 Definitions.—For the purposes of ss. 702.07 and 702.08, the words "decree of foreclosure" shall include a judgment or order rendered or passed in the foreclosure proceedings in which the decree of foreclosure shall be rescinded, vacated, and set aside; the word "mortgage" shall

mean any written instrument securing the payment of money or advances and includes liens to secure payment of assessments arising under chapters 718 and 719 and liens created pursuant to the recorded covenants of a property owners' ~~homeowners'~~ association as defined in s. 712.01; the word "debt" shall include promissory notes, bonds, and all other written obligations given for the payment of money; the words "foreclosure proceedings" shall embrace every action in the circuit or county courts of this state wherein it is sought to foreclose a mortgage and sell the property covered by the same; and the word "property" shall mean and include both real and personal property.

Section 15. Subsection (1) of section 702.10, Florida Statutes, is amended to read:

702.10 Order to show cause; entry of final judgment of foreclosure; payment during foreclosure.—

(1) A lienholder may request an order to show cause for the entry of final judgment in a foreclosure action. For purposes of this section, the term "lienholder" includes the plaintiff and a defendant to the action who holds a lien encumbering the property or a defendant who, by virtue of its status as a condominium association, cooperative association, or property owners' ~~homeowners'~~ association, may file a lien against the real property subject to foreclosure. Upon filing, the court shall immediately review the request and the court

file in chambers and without a hearing. If, upon examination of the court file, the court finds that the complaint is verified, complies with s. 702.015, and alleges a cause of action to foreclose on real property, the court shall promptly issue an order directed to the other parties named in the action to show cause why a final judgment of foreclosure should not be entered.

(a) The order shall:

1. Set the date and time for a hearing to show cause. The date for the hearing may not occur sooner than the later of 20 days after service of the order to show cause or 45 days after service of the initial complaint. When service is obtained by publication, the date for the hearing may not be set sooner than 30 days after the first publication.

2. Direct the time within which service of the order to show cause and the complaint must be made upon the defendant.

3. State that the filing of defenses by a motion, a responsive pleading, an affidavit, or other papers before the hearing to show cause that raise a genuine issue of material fact which would preclude the entry of summary judgment or otherwise constitute a legal defense to foreclosure shall constitute cause for the court not to enter final judgment.

4. State that a defendant has the right to file affidavits or other papers before the time of the hearing to show cause and may appear personally or by way of an attorney at the hearing.

5. State that, if a defendant files defenses by a motion,

a verified or sworn answer, affidavits, or other papers or appears personally or by way of an attorney at the time of the hearing, the hearing time will be used to hear and consider whether the defendant's motion, answer, affidavits, other papers, and other evidence and argument as may be presented by the defendant or the defendant's attorney raise a genuine issue of material fact which would preclude the entry of summary judgment or otherwise constitute a legal defense to foreclosure. The order shall also state that the court may enter an order of final judgment of foreclosure at the hearing and order the clerk of the court to conduct a foreclosure sale.

6. State that, if a defendant fails to appear at the hearing to show cause or fails to file defenses by a motion or by a verified or sworn answer or files an answer not contesting the foreclosure, such defendant may be considered to have waived the right to a hearing, and in such case, the court may enter a default against such defendant and, if appropriate, a final judgment of foreclosure ordering the clerk of the court to conduct a foreclosure sale.

7. State that if the mortgage provides for reasonable attorney fees and the requested attorney fees do not exceed 3 percent of the principal amount owed at the time of filing the complaint, it is unnecessary for the court to hold a hearing or adjudge the requested attorney fees to be reasonable.

8. Attach the form of the proposed final judgment of

foreclosure which the movant requests the court to enter at the hearing on the order to show cause.

9. Require the party seeking final judgment to serve a copy of the order to show cause on the other parties in the following manner:

a. If a party has been served pursuant to chapter 48 with the complaint and original process, or the other party is the plaintiff in the action, service of the order to show cause on that party may be made in the manner provided in the Florida Rules of Civil Procedure.

b. If a defendant has not been served pursuant to chapter 48 with the complaint and original process, the order to show cause, together with the summons and a copy of the complaint, shall be served on the party in the same manner as provided by law for original process.

Any final judgment of foreclosure entered under this subsection is for in rem relief only. This subsection does not preclude the entry of a deficiency judgment where otherwise allowed by law. The Legislature intends that this alternative procedure may run simultaneously with other court procedures.

(b) The right to be heard at the hearing to show cause is waived if a defendant, after being served as provided by law with an order to show cause, engages in conduct that clearly shows that the defendant has relinquished the right to be heard

on that order. The defendant's failure to file defenses by a motion or by a sworn or verified answer, affidavits, or other papers or to appear personally or by way of an attorney at the hearing duly scheduled on the order to show cause presumptively constitutes conduct that clearly shows that the defendant has relinquished the right to be heard. If a defendant files defenses by a motion, a verified answer, affidavits, or other papers or presents evidence at or before the hearing which raise a genuine issue of material fact which would preclude entry of summary judgment or otherwise constitute a legal defense to foreclosure, such action constitutes cause and precludes the entry of a final judgment at the hearing to show cause.

(c) In a mortgage foreclosure proceeding, when a final judgment of foreclosure has been entered against the mortgagor and the note or mortgage provides for the award of reasonable attorney fees, it is unnecessary for the court to hold a hearing or adjudge the requested attorney fees to be reasonable if the fees do not exceed 3 percent of the principal amount owed on the note or mortgage at the time of filing, even if the note or mortgage does not specify the percentage of the original amount that would be paid as liquidated damages.

(d) If the court finds that all defendants have waived the right to be heard as provided in paragraph (b), the court shall promptly enter a final judgment of foreclosure without the need for further hearing if the plaintiff has shown entitlement to a

final judgment and upon the filing with the court of the original note, satisfaction of the conditions for establishment of a lost note, or upon a showing to the court that the obligation to be foreclosed is not evidenced by a promissory note or other negotiable instrument. If the court finds that a defendant has not waived the right to be heard on the order to show cause, the court shall determine whether there is cause not to enter a final judgment of foreclosure. If the court finds that the defendant has not shown cause, the court shall promptly enter a judgment of foreclosure. If the time allotted for the hearing is insufficient, the court may announce at the hearing a date and time for the continued hearing. Only the parties who appear, individually or through an attorney, at the initial hearing must be notified of the date and time of the continued hearing.

Section 16. Section 712.095, Florida Statutes, is amended to read:

712.095 Notice required by July 1, 1983.—Any person whose interest in land is derived from an instrument or court proceeding recorded subsequent to the root of title, which instrument or proceeding did not contain a description of the land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose interest had not been extinguished prior to July 1, 1981, shall have until July 1, 1983, to file a notice in accordance with s. 712.06 to preserve the interest.

Section 17. Section 720.403, Florida Statutes, is amended to read:

720.403 Preservation of ~~residential~~ communities; revival of declaration of covenants.—

(1) Consistent with required and optional elements of local comprehensive plans and other applicable provisions of the Community Planning Act, property owners ~~homeowners~~ are encouraged to preserve existing residential and other communities, promote available and affordable housing, protect structural and aesthetic elements of their ~~residential~~ community, and, as applicable, maintain roads and streets, easements, water and sewer systems, utilities, drainage improvements, conservation and open areas, recreational amenities, and other infrastructure and common areas that serve and support the ~~residential~~ community by the revival of a previous declaration of covenants and other governing documents that may have ceased to govern some or all parcels in the community.

(2) In order to preserve a ~~residential~~ community and the associated infrastructure and common areas for the purposes described in this section, the parcel owners in a community that was previously subject to a declaration of covenants that has ceased to govern one or more parcels in the community may revive the declaration and the ~~homeowners'~~ association for the community upon approval by the parcel owners to be governed

thereby as provided in this act, and upon approval of the declaration and the other governing documents for the association by the Department of Economic Opportunity in a manner consistent with this act.

(3) Part III of this chapter is intended to provide mechanisms for the revitalization of covenants or restrictions for all types of communities and property associations and is not limited to residential communities.

Section 18. Section 720.404, Florida Statutes, is amended to read:

720.404 Eligible ~~residential~~ communities; requirements for revival of declaration.—Parcel owners in a community are eligible to seek approval from the Department of Economic Opportunity to revive a declaration of covenants under this act if all of the following requirements are met:

(1) All parcels to be governed by the revived declaration must have been once governed by a previous declaration that has ceased to govern some or all of the parcels in the community;

(2) The revived declaration must be approved in the manner provided in s. 720.405(6); and

(3) The revived declaration may not contain covenants that are more restrictive on the parcel owners than the covenants contained in the previous declaration, except that the declaration may:

(a) Have an effective term of longer duration than the

term of the previous declaration;

(b) Omit restrictions contained in the previous declaration;

(c) Govern fewer than all of the parcels governed by the previous declaration;

(d) Provide for amendments to the declaration and other governing documents; and

(e) Contain provisions required by this chapter for new declarations that were not contained in the previous declaration.

Section 19. Subsections (1), (3), (5), and (6) of section 720.405, Florida Statutes, are amended to read:

720.405 Organizing committee; parcel owner approval.—

(1) The proposal to revive a declaration of covenants and an ~~a homeowners'~~ association for a community under the terms of this act shall be initiated by an organizing committee consisting of not less than three parcel owners located in the community that is proposed to be governed by the revived declaration. The name, address, and telephone number of each member of the organizing committee must be included in any notice or other document provided by the committee to parcel owners to be affected by the proposed revived declaration.

(3) The organizing committee shall prepare the full text of the proposed articles of incorporation and bylaws of the revived ~~homeowners'~~ association to be submitted to the parcel

owners for approval, unless the association is then an existing corporation, in which case the organizing committee shall prepare the existing articles of incorporation and bylaws to be submitted to the parcel owners.

(5) A copy of the complete text of the proposed revised declaration of covenants, the proposed new or existing articles of incorporation and bylaws of the ~~homeowners'~~ association, and a graphic depiction of the property to be governed by the revived declaration shall be presented to all of the affected parcel owners by mail or hand delivery not less than 14 days before the time that the consent of the affected parcel owners to the proposed governing documents is sought by the organizing committee.

(6) A majority of the affected parcel owners must agree in writing to the revived declaration of covenants and governing documents of the ~~homeowners'~~ association or approve the revived declaration and governing documents by a vote at a meeting of the affected parcel owners noticed and conducted in the manner prescribed by s. 720.306. Proof of notice of the meeting to all affected owners of the meeting and the minutes of the meeting recording the votes of the property owners shall be certified by a court reporter or an attorney licensed to practice in the state.

Section 20. Subsection (3) of section 720.407, Florida Statutes, is amended to read:

720.407 Recording; notice of recording; applicability and effective date.—

(3) The recorded documents shall include the full text of the approved declaration of covenants, the articles of incorporation and bylaws of the ~~homeowners'~~ association, the letter of approval by the department, and the legal description of each affected parcel of property. For purposes of chapter 712, the association is deemed to be and shall be indexed as the grantee in a title transaction and the parcel owners named in the revived declaration are deemed to be and shall be indexed as the grantors in the title transaction.

Section 21. This act shall take effect July 1, 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 Edwards offered the following:

Amendment

Remove lines 107-108 and insert:

use of real property.--A local government shall not promulgate, adopt, or enforce any ordinance or regulation that purports to

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 953 Legislative Redistricting and Congressional Reapportionment
SPONSOR(S): Public Integrity & Ethics Committee and Ahern
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 352

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Public Integrity & Ethics Committee	14 Y, 3 N, As CS	Poreda	Rubottom
2) Judiciary Committee		Aziz PA	Camechis
3) Rules & Policy Committee			

SUMMARY ANALYSIS

Legislative and congressional districts are redrawn after each decennial census to accommodate population growth and shifts. This process of drawing new congressional and state legislative district boundaries is referred to as "redistricting" or "reapportionment." Following the 2012 redistricting, litigation and incongruent opinions by the courts caused confusion for both candidates and citizens.

CS/HB 953 provides clarity regarding which legislative and congressional maps must be used when redistricting challenges are unresolved and upcoming elections are imminent.

The bill prohibits legislative district challenges after the Florida Supreme Court validates the legislative plan under Art. III, s. 16 of the Florida Constitution, and also prohibits congressional district challenges 60 days after the legislature enacts or alters districts. The bill suspends litigation challenging a redistricting map between the qualifying dates and the general election of any particular election cycle. (If qualifying is more than 105 days before the Primary Election, the suspension begins on the 105th day.) The bill also addresses any need to reopen the qualifying dates in circumstances where qualifying occurs prior to the issuance of an enforceable order implementing a remedial map, which could be the case in Congressional qualifying which is more than 105 days prior to the Primary under current law. Any remedial map ordered after the qualifying date, takes affect during the following election cycle.

The bill also requires that any drafter of a remedial redistricting plan is subject to examination as to prohibited intent on the same grounds as a state legislator as stated in Art. III, sec. 20 and 21 of the Florida Constitution. Drafter includes:

- A party who recommends a redistricting plan to a court;
- An expert who testifies with regard to a redistricting plan;
- A special master who recommends a redistricting plan; or
- A judge or justice who orders a redistricting plan not adopted by the legislature.

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

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The terms "redistricting" and "reapportionment" are often used interchangeably to describe the process of drawing new congressional and state legislative district boundaries. Legislative and congressional districts are redrawn after each decennial census to accommodate population growth and shifts. Redistricting also ensures that each district contains nearly equal populations.

Congressional Reapportionment

The United States (U.S.) Constitution requires the reapportionment of the U.S. House of Representatives every ten years to distribute each of the U.S. House of Representatives' 435 seats between the states and to equalize population between districts within each state.[1] The 435 seats in the U.S. House of Representatives are redistributed after the decennial census among the 50 states based upon their relative population changes as determined by the decennial census.[2]

Article 1, s. 4 of the U.S. Constitution grants to each state legislature the exclusive authority to apportion seats designated to that state by providing the legislative bodies with the authority to determine the times, place and manner of holding elections for senators and representatives. Consistent therewith, Florida has adopted its congressional apportionment plans by legislation subject to gubernatorial approval. Florida congressional apportionment plans are not subject to automatic review by the Florida Supreme Court.

State Legislative Redistricting

Article III, s. 16 of the Florida Constitution requires the Legislature, by joint resolution at its regular session in the second year after the Census is conducted, to apportion the state into senatorial districts and representative districts. Unlike congressional reapportionment, state legislative redistricting plans are subject to automatic review by the Florida Supreme Court.[3]

Article III, ss. 20 & 21 of the Florida Constitution establish standards for both legislative and congressional redistricting. These standards are set forth in two tiers. The first tier, subparagraph (a), contains provisions regarding political favoritism, racial and language minorities, and contiguity. The second tier, subparagraph (b), contains provisions regarding equal population, compactness and use of political and geographical boundaries.

Election Dates and Qualifying Periods for Nomination and Election to Office

A general election is conducted in November of each even-numbered year.[4] A primary election, held for nominating a party candidate to run in the general election, is conducted 10 weeks before the general election.[5]

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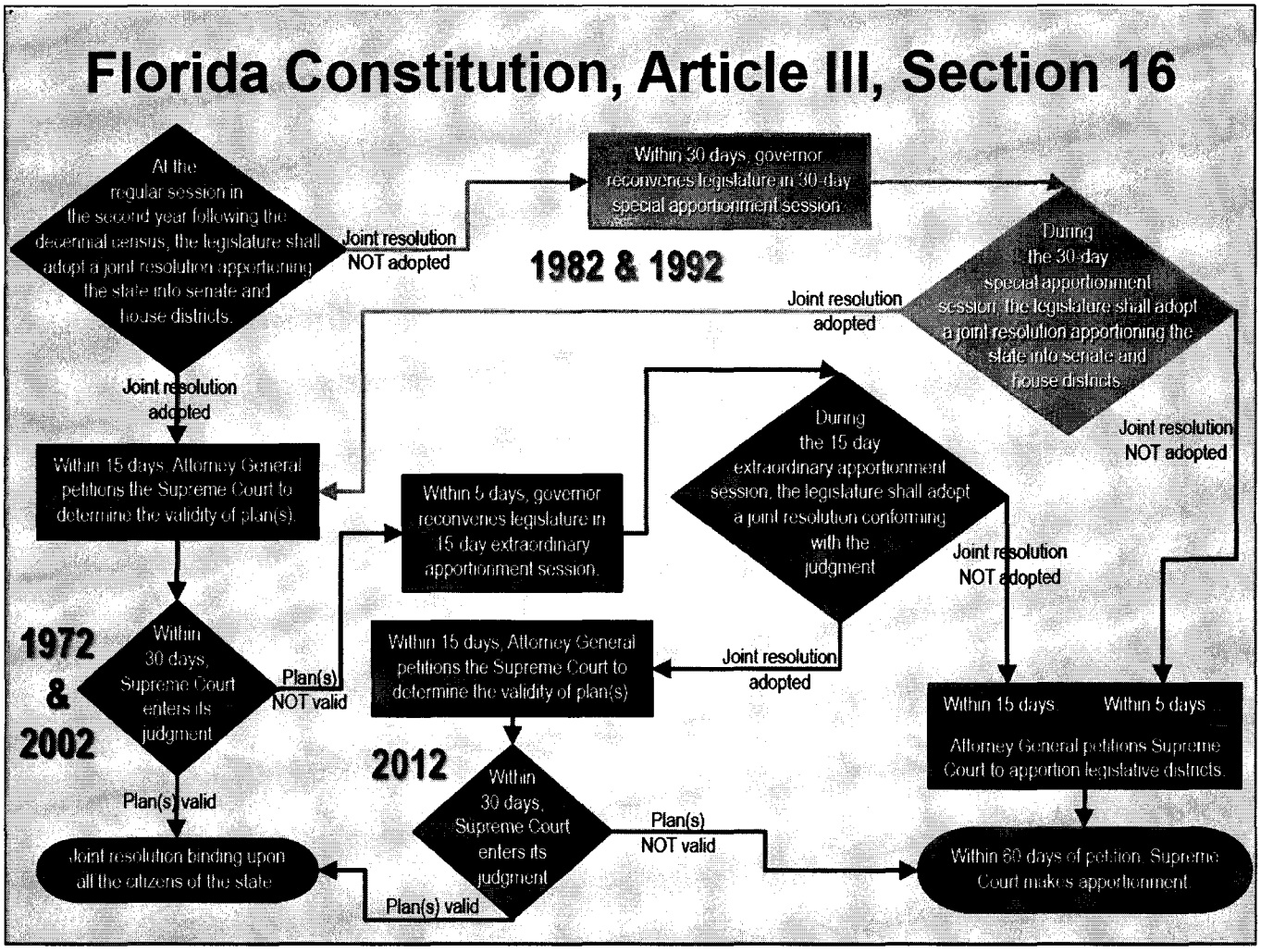
[1] U.S. CONST. art. 1, s. 2. However, the U.S. Constitution does not specifically state there will be 435 representatives. It was not until 1911 that Congress enacted a statute settling on 435 representatives for the U.S. House of Representatives. 62 P.L. 5, 37 Stat. 13, 62 Cong. Ch. 5; 2 U.S.C. s. 2 (1911)(superseded by the Apportionment Act of 1941, 2 U.S.C. s. 2b (1941)).
[2] 2 U.S.C. s. 2a.
[3] FLA. CONST. art. III, s. 16(c).
[4] FLA. CONST. art. VI, s. 5(a). & Section 100.031, F.S.
[5] s. 100.061, F.S.

The Florida Election Code prescribes the qualifying dates for candidates seeking office.[6] Qualifying periods for federal office differ depending upon whether it is an apportionment or non-apportionment year. In non-apportionment years, candidates seeking a congressional office must qualify between noon on the 120th day and noon on the 116th day before the primary election.[7]

In years when the Legislature apportions the state, the qualifying period occurs 7 weeks later in the calendar year, between noon on the 71st day and no later than noon of the 67th day before the primary election.[8] This later qualifying period is done as an accommodation to the possibility that a protracted reapportionment session or multiple sessions might be required to sort out a final redistricting plan before it is time to qualify.

The qualifying dates for state senator and state representative begin at noon on the 71st day before the primary election and end no later than noon of the 67th day before the primary election.[9] The election laws do not prescribe any different qualifying dates in a year in which the Legislature apportions state Senate or State House offices.

The Process of Redistricting in Florida



[6] The Florida Election Code is contained in chapter 97-106, F.S.
[7] s. 99.061(1), F.S.
[8] s. 99.061(9), F.S.
[9] s. 99.061(1), F.S. For 2018, the primary will be held on August 28, 2018. The candidate qualifying period is June 18 (the 71st day before the primary election) through June 22 (the 67th day before the primary election). Florida Division of Elections, *Election Dates,* http://dos.myflorida.com/elections/for-voters/election-dates/ (last visited April 17, 2017).

During the regular session of the Legislature in the second year following the decennial census, the Legislature is required to adopt a joint resolution that apportions the state into Senate and House districts. The Legislature is directed to apportion the state into no fewer than 30, nor more than 40 senate districts, and into no fewer than 80, nor more than 120 representative districts. Because the Legislature adopts a joint resolution, rather than passing a general bill, the measure does not require the Governor's approval, nor is it subject to a veto.[10]

The state constitution prescribes a mandated review process for state legislative redistricting plans by the Florida Supreme Court.[11] During constitutionally mandated review, the Florida Supreme Court determines if the newly created districts are valid. When the Florida Supreme Court enters a judgment that the plan is valid, the plan becomes binding upon all citizens of the state.[12]

In contrast, the process for enacting Congressional districts differs in two ways. The districts are not established in a joint resolution, but in a general bill that is subject to a Governor's veto. Additionally, the maps do not require mandatory review by the Florida Supreme Court. The Apportionment Act of 1941 specifies the apportionment method, establishes the House membership at 435 representatives, mandates an apportionment every 10 years, and designates the administrative procedures that will be used for apportionment.[13] Florida is entitled to 27 U.S. Representatives in Congress based upon the 2010 Census.[14]

Judicial Review of Legislative Districts

Within 15 days after the Legislature passes a joint resolution of apportionment, the Attorney General must petition the Florida Supreme Court for a declaratory judgment that determines the validity of the apportionment.[15] The Florida Supreme Court is required to permit adversary interests to present their views challenging the validity of the apportionment.[16] The Florida Supreme Court must enter its judgment within 30 days after the filing of the Attorney General's petition. If it is determined that the apportionment made by the Legislature is not valid, the Governor is required to reconvene the Legislature, by proclamation, within 5 days, in an extraordinary apportionment session that may not exceed 15 days.[17] The Legislature is required to then adopt a joint resolution of apportionment that conforms to the Florida Supreme Court's judgment.[18]

Within 15 days after the Legislature adjourns the extraordinary apportionment session, the Attorney General is required to petition the Florida Supreme Court and provide the apportionment resolution where they will then consider the validity of the resolution as though it were adopted at a regular or special apportionment session.[19] The Florida Supreme Court will permit adversary interests to present

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[10] FLA. CONST. art. III, s. 16(a).
[11] *Id.* at (c).
[12] *Id.* at (d).
[13] Congressional Research Service, The U.S. House of Representatives Apportionment Formula in Theory and Practice, p. 2 (Aug. 2, 2013), available at https://www.everycrsreport.com/reports/R41357.html (last accessed April 7, 2017). *See also* 2 U.S.C. s. 2a-2c.
[14] Directory of Representatives, United States House of Representatives, available at http://www.house.gov/representatives/#state_fl. (last accessed April 7, 2017). The single-member districts for the U.S. House of Representatives are described in s. 8.002, F.S. However, the districts described there represent the last legislation passed by the Legislature and do not contain the revisions required by the Florida Supreme Court in The League of Women Voters of Florida v. Detzner, Case No. SC14-1905 (2015).
[15] FLA. CONST. art. III, s. 16(c).
[16] *Id.*
[17] *Id.* at (d).
[18] *Id.*
[19] *Id.* at (e).

their views and, within 30 days of the Attorney General's petition, render a judgment.[20] If no resolution was adopted, the Attorney General must so inform the Florida Supreme Court.[21]

If the Legislature does not adopt an apportionment resolution during the extraordinary apportionment session, or the Florida Supreme Court declares it invalid, they must, within 60 days after receiving the Attorney General's petition, file an order with the custodian of state records making an apportionment.[22]

If the Legislature adjourns without adopting a joint resolution apportioning the state into the necessary legislative districts, the Governor shall, within 30 days, issue a proclamation reconvening the Legislature in a special apportionment session.[23] That session may not exceed 30 consecutive days. It is the Legislature's mandatory duty to adopt a joint resolution of apportionment during that session and no other business may be transacted.[24] If the Legislature adjourns without adopting the joint resolution of apportionment, the Attorney General must, within 5 days, petition the Florida Supreme Court to make the apportionment.[25] The Florida Supreme Court has 60 days after the Attorney General's petition is filed to file its order with the custodian of state records making the apportionment.[26]

The Fair Districts Amendments to the State Constitution

The State Constitution was amended in November 2010 to incorporate standards for establishing congressional[27] and legislative districts.[28] These amendments are commonly known as the Fair District Amendments.[29] They are set forth in two tiers. In general terms, the new standards require that an apportionment plan or individual district:

Tier 1

- Not be drawn with the intent to favor or disfavor a political party or incumbent;
- Not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and
- Consist of contiguous territory

Tier 2

- Shall be as nearly equal in population as is practicable;
- Shall be compact;
- Shall, where feasible, utilize existing political and geographical boundaries.

2012 Redistricting and Subsequent Litigation

Congressional Map

On February 9, 2012, the Florida Legislature passed SB 1174, redistricting the population of Florida into 27 congressional districts, as required by state and federal law.[30] Shortly thereafter, two legal challenges to the plan were filed in the Circuit Court for the Second Judicial Circuit in Leon County.

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[20] *Id.*
[21] Id. at (f).
[22] *Id.*
[23] *Id.* at (a).
[24] *Id.*
[25] *Id.* at (b).
[26] *Id.*
[27] FLA. CONST. art. III, s. 20.
[28] FLA. CONST. art. III, s. 21.
[29] *League of Women Voters of Fla. v. Fla. House of Representatives*, 132 So. 3d 135, 139 (Fla. 2013).
[30] Ch. 2012-2, Laws of Fla.

Those challenges were eventually combined into one case.[31] On July 10, 2014, after a 12-day trial, the Circuit Court entered a final judgment rejecting challenges to eight districts[32] but finding Districts 5 and 10 invalid. On August 11, 2014, the Legislature passed SB 2A[33] to remedy the invalidated districts, and those districts were upheld by the Circuit Court on August 22, 2014. In addition, Circuit Judge Terry Lewis ordered that the 2014 elections proceed under the map originally passed in 2012 under the circumstances of the election timeline. On August 29, 2014, the plaintiffs appealed that decision, and the Florida Supreme Court heard oral arguments on the case on March 3, 2015.

On July 9, 2015, the Florida Supreme Court found Districts 5, 13, 14, 21, 22, 25, 26 and 27 invalid and provided the Legislature with specific guidance as to how to remedy these deficiencies.[34] In its invalidation of those districts, the Florida Supreme Court relinquished jurisdiction to the Circuit Court for 100 days to enter an order recommending approval or disapproval of the remedial plan.[35]

Following a Special Session in August 2015 where the legislature failed to adopt a remedial plan, the Circuit Court held hearings the week of September 28, 2015 to accept remedial plans from all parties involved in the case and on October 9, 2015, Judge Terry Lewis recommended the adoption of a map presented by the plaintiffs to the Florida Supreme Court. On December 2, 2015, the Florida Supreme Court, in a 5-2 opinion, approved the map that was recommended by Judge Terry Lewis.[36] In his dissenting opinion, Justice Polston highlighted the fact that the plaintiff's maps, unlike the legislative drawn maps, were not held to the requirements of the Fair Districting Amendments.[37]

State Senate Map

On February 9, 2012, the Florida Legislature passed SJR 1176, reapportioning the 120 state House districts and 40 state Senate districts. On March 9, the Florida Supreme Court issued a 191-page majority opinion, unanimously finding the State House map valid.[38] However, by a 5-to-2 vote, the Florida Supreme Court found the state Senate map invalid.[39] The Legislature then met in an Extraordinary Session and on March 27, passed SJR 2B, reapportioning the 40 state Senate districts. On April 27, by a 5-to-2 vote, the Florida Supreme Court found the new state Senate map valid.[40]

Shortly thereafter, the State Senate map was challenged in the Circuit Court of the Second Judicial Circuit in Leon County by the League of Women Voters of Florida and other groups ("Plaintiffs').[41]

On July 28, 2015, shortly before the case was to go to trial, the Senate entered into a stipulation and consent judgment with the Plaintiffs and agreed the enacted state Senate map would be revised prior to the 2016 primary and general elections. Because the Plaintiffs and the Senate had entered into a stipulation that required the Senate Plan to be redrawn, the House did not object to the entry of the consent judgment and agreed to be bound by its terms.

Following a Special Session that concluded on November 5, 2015, the Legislature failed to adopt a remedial plan and the Circuit Court ordered that all parties involved submit proposed plans for judicial adoption by November 18, 2015. After a subsequent trial, where each party presented their proposal,

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[31] Rene Romo, et al, v. Ken Detzner and Pam Bondi, Case No. 2012-CA-412 & The League of Women Voters of Florida, et al, v. Ken Detzner, Case No. 2012-CA-490.
[32] The eight congressional districts the trial court found valid were districts 13, 14, 15, 21, 22, 25, 26 and 27.
[33] Ch. 2014-255, Laws of Fla.
[34] *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 378 (Fla. 2015)
[35] *Id.* at 417.
[36] *League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258 (Fla. 2015).
[37] *Id.* at 305-08. "The map the trial court recommended and the majority adopts was drawn by a Democratic consulting firm. . .[and] is an unconstitutional violation of the Fair Districts Amendment and the separation of powers." *Id.* at 305.
[38] *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 644-654 (Fla. 2012).
[39] *Id.* at 654-83.
[40] *In re Senate Joint Resolution of Legislative Apportionment 2-B*, 89 So. 3d 872 (Fla. 2012).
[41] The League of Women Voters of Florida v. Kenneth Detzner, Case No. 2012-CA-2842.

Circuit Judge George Reynolds ordered the adoption of a map presented by the Plaintiffs. In accordance with Circuit Judge Reynolds' final judgment, the Senate districts were renumbered on January 8, 2016 and adopted by the court.

Effect of Proposed Changes

The bill prohibits legislative district challenges after the Florida Supreme Court validates the legislative plan under Art. III, s. 16 of the Florida Constitution[42], and also prohibits congressional district challenges 60 days after legislature enacts or alters districts. Any additional challenges to state legislative districts filed in other courts are to be consolidated with the Florida Supreme Court mandated review.[43] If the claims are not consolidated by the court or the plaintiffs, the bill directs the Attorney General, the Secretary of State, or any other state officer defending the case to file an appropriate pleading in the Florida Supreme Court to advise the Florida Supreme Court of the claims and the requirement of finality in art. III, s. 16(c), of the Florida Constitution.

The bill also establishes a deadline for resolving both legislative and congressional challenges. Pending challenges would be suspended on the later of qualifying date for that election cycle or 105 days before primary. The deadline of 105 days allows a 30 day appeal period followed by time to qualify between 71st and 67th day before a primary election which is the current qualifying period for state office.

The bill states that if a binding order is issued in a congressional district challenge after federal candidate qualifying but before the 71st day before the primary election, the Governor must reopen qualifying for the 71st through 67th day before the Primary.

The bill establishes that any judgment ordering a remedial map after the qualifying date of an election cycle takes affect during the subsequent election cycle (or the 105th day if that date applies).

The bill also requires that any drafter of a redistricting plan is subject to examination as to prohibited intent on the same grounds as a state legislator under Art III, ss. 20 and 21 of the Florida Constitution.[44] Drafter includes:

- A party who recommends a redistricting plan to a court;
- An expert who testifies with regard to a redistricting plan;
- A special master who recommends a redistricting plan; or
- A judge or justice who orders a redistricting plan not adopted by the legislature.

B. SECTION DIRECTORY:

Section 1. creates s. 97.029, F.S., relating to challenges to state legislative or congressional districts.

Section 2. provides that the effective date is upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[42] Article III, s. 16(d), of the Florida Constitution provides "A judgment...determining the apportionment to be valid shall be binding upon all citizens of the state."
[43] Article III, s. 16(c) of the Florida Constitution provides the Florida Supreme Court "shall permit adversary interests to present their views."

2. Expenditures:

It is unknown if and under what circumstances a redistricting challenge will be brought so its impact on the Florida Legislature, Division of Elections and other state agencies cannot be determined. Judicial proceedings that disrupt elections already underway necessarily impose some costs on the election process.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

It is unknown if and under what circumstances a redistricting challenge will be brought so its impact on the county supervisor of elections, county courts and other local governments cannot be determined. Judicial proceedings that disrupt elections already underway necessarily impose some costs on the election process.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

Article II, s. 3 of the Florida Constitution prohibits the members of one branch of government from exercising "any powers appertaining to either of the other branches." Additionally, art. V, s. 2(a) of the Florida Constitution states the Florida Supreme Court has the exclusive authority to adopt rules for the practice and procedure in all courts, including the time for seeking appellate review. "Generally, the Legislature has the power to enact substantive law, while the Court has the power to enact procedural law."[45] The bill may be challenged as a violation of separation of powers to the extent the bill limits how and when a court can order a remedial redistricting plan or other constitutional challenge.

Nothing in the bill hinders a court from deciding a case within the time constraints allowed. However, the circumstance by which a challenge is brought and argued is unclear and will depend on the specifics of each case. Current law prohibits challenges to ballot language 30 days after filing with the Secretary of State and also requires expeditious resolution of such challenges.[46] Current law also

[45] *Allen v. Butterworth*, 756 So. 2d 52, 59 (Fla. 2000)("Procedure encompass[es] the course form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion.").
[46] s. 101.161(3)(c), F.S.

requires the continuance of any judicial proceeding involving a legislator as party, witness or attorney if proceedings conflict with a legislative session or committee meetings.[47]

The requirement that elections be regulated by general law necessitates the regulation of challenges to and judicial or executive interference with election processes once under way. Requiring orderly litigation at non-disruptive times is a reasonable regulation to ensure that elections are administered pursuant to law rather than decree. The constitutional right to vote is inviolable. The bill does not limit the scope of a court's judgment in any reapportionment challenge, but only restrains disruptive timing of such orders. Legislative powers including appropriations, statutes of limitations, legal privileges and immunities can have impacts on the timing and application of judicial actions without unconstitutionally infringing on the power of a court to decide a case in an appropriate time with available resources.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

There were two strike-all amendments adopted in the Public Integrity and Ethics Committee meeting on March 29, 2017. The result of those two adopted strike all amendments were:

- Legislative district challenges prohibited after Supreme Court validates legislative plan under art. III, s. 16.
- Congressional district challenges prohibited 60 days after legislature enacts or alters districts.
- Pending challenges must be stayed on the later of candidate qualifying date or 105 days before primary in any election cycle.
- Any order or judgment entered after the date for stay governs beginning the subsequent election cycle.
- If a binding order or judgment is entered after federal candidate qualifying, the Governor must reopen qualifying for any congressional districts impacted for the 71st through 67th day before the Primary.
- Any drafter of a plan is subject to examination as to prohibited intent on the same grounds a state legislator.
- State legislative apportionment claims are barred after the Florida Supreme Court's judgment validating plan and any other challenges to state legislative districts filed in other courts are to be consolidated with Supreme Court review.
- Legislative intent to bind all to the procedures in art. III, s. 16.

This analysis is drafted to the committee substitute as passed by the Public Integrity and Ethics Committee.

[47] s. 11.111, F.S.

A bill to be entitled

An act relating to legislative and congressional apportionment; amending s. 97.021, F.S.; defining year of apportionment; amending s. 99.061, F.S.; conforming provision to changes made by act; providing an effective date.

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

Section 1. Subsection (46) is added to section 97.021, Florida Statutes, to read:

97.021 Definitions.—For the purposes of this code, except where the context clearly indicates otherwise, the term:

(46) "Year of apportionment" means:

(a) The second year following each decennial census, as specified in s. 16, Art. III of the State Constitution; and

(b) Any other even-numbered year in which the validity of legislative or congressional district boundaries is subject to an active challenge, pending in any court, that has not been concluded by the rendering of or entry of a final order or judgment and by the exhaustion or waiver of all available direct appeals. This paragraph shall only apply to and have effect with respect to the senatorial, representative, or congressional offices for which the district boundaries are subject to an active challenge.

Section 2. Subsection (9) of section 99.061, Florida Statutes, is amended to read:

99.061 Method of qualifying for nomination or election to federal, state, county, or district office.—

(9) Notwithstanding the qualifying period prescribed by this section, in a year of apportionment ~~each year in which the Legislature apportions the state~~, the qualifying period for persons seeking to qualify for nomination or election to federal office shall be between noon of the 71st day prior to the primary election, but not later than noon of the 67th day prior to the primary election.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1091 Arrest Warrants for State Prisoners
SPONSOR(S): Criminal Justice Subcommittee and Plakon
TIED BILLS: **IDEN./SIM. BILLS:** SB 894

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Merlin	White
2) Justice Appropriations Subcommittee	13 Y, 0 N	Smith	Gusky
3) Judiciary Committee		Merlin	Camechis

SUMMARY ANALYSIS

CS/HB 1091 creates procedures to enable state prisoners to serve out sentences for violations of probation or community control while in prison for other crimes.[1] If a prisoner has an unserved warrant for arrest issued by another county for a violation of probation, the bill allows the prisoner to petition for a status hearing. At that hearing, a state attorney informs the circuit court if the prisoner does in fact have an unserved warrant for a violation of probation.

If the prisoner has an unserved warrant, the bill provides that the court must order the state attorney to submit an order to send the prisoner to the issuing county's jail. The court must send the order to the local county sheriff to execute the prisoner's transport to the county that issued the arrest warrant.

The Criminal Justice Impact Conference ("CJIC") met on March 29, 2017, and determined the bill would have a negative indeterminate impact on the prison population.

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

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

[1] "Probation" should be read to mean "probation and/or community control" for the remainder of this analysis, as the two mechanisms are treated the same by existing Florida Statutes, caselaw, and the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Unserved Arrest Warrants

In some circumstances, a defendant who is sentenced to probation[2] or community control[3] in one county ("County A") may violate the terms of their supervision and flee the county. The defendant may later commit an unrelated crime in a different county ("County B"), which results in a conviction and sentence for the new offense. The court in County B may order that the defendant's sentence run concurrently[4] to any sentence imposed for violating probation ("VOP") or community control ("VCC") in County A.

The sheriff in County A may file a detainer with the correctional institution where the defendant is incarcerated, requesting that the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent.[5] However, the sheriff in County A is not required to serve or execute an arrest warrant[6] while the defendant is held on the detainer.

A detainer is not the equivalent of an arrest and does not trigger a probationer's right to go before the court that placed them on probation or community control for a VOP or VCC hearing.[7] As a result, sentencing of the defendant for the VOP or VCC in County A may not occur until after he or she has served the prison sentence for the offense committed in County B.

In *Chapman v. State*,[8] the Fifth District Court of Appeal addressed a similar situation. In that case, the defendant was sentenced in Brevard County in 1996 as a youthful offender to two years in prison, followed by four years of probation.[9] In 1998, the defendant violated probation and was sentenced to two years of community control, followed by 18 months of probation.[10] The defendant subsequently violated his community control and fled the county. In 1999, he was arrested on new charges in Bay County for burglary to a structure and principal to a burglary of a conveyance.[11] The defendant entered pleas to the Bay County charges. He was sentenced to consecutive five-year terms for the two burglary cases, but concurrent with any sentence imposed for violating community control ("VCC") in Brevard County.[12]

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[2] Section 948.001(9), F.S., defines "probation" as "a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03." *See also Coulson v. State*, 342 So. 2d 1042, 1042 (Fla. 4th DCA 1977) (noting that the purpose of probation is to rehabilitate an offender); *see Crossin v. State*, 244 So. 2d 142, 145 (Fla. 4th DCA 1971) (explaining, "[t]he underlying purpose of probation is to give [an] individual a second chance to live within the rules of society and the law of the land during which time he can prove that he will thereafter do so and become a useful member of society.").

[3] Section 948.001(3), F.S., defines "community control" as "a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced."

[4] "The word 'concurrent' means 'operating or occurring at the same time.'" *Jones v. State*, 966 So. 2d 319, 326 (Fla. 2007) (citing *Merriam Webster's Collegiate Dictionary* 239 (10th ed. 2001)).

[5] *Gethers v. State*, 838 So. 2d 504, 507 (Fla. 2003).

[6] *Id.* (explaining that "[a] warrant is a 'writ directing or authorizing someone to do an act, esp. one directing a law enforcer to make an arrest, a search, or a seizure.'") (citing Black's Law Dictionary 1579 (7th ed. 1999)).

[6] s. 948.06(1)(b)-(1)(c), F.S.

[7] *Diaz v. State*, 737 So. 2d 1203, 1204 (Fla. 5th DCA 1999).

[8] *Chapman v. State*, 910 So. 2d 940 (Fla. 5th DCA 2005).

[9] *Id.* at 941.

[10] *Id.*

[11] *Id.*

[12] *Id.*

The defendant sought to have the Brevard County cases resolved by plea or trial, but "Brevard County only placed a detainer; they did not seek to have him arrested and returned for trial."[13] The defendant filed a petition in the trial court seeking to compel the Brevard County Sheriff's Office to arrest him by serving the arrest warrant.[14] The trial court denied the petition, ruling that the defendant "was not entitled to mandamus relief while serving a sentence on a separate charge in a different county for an offense committed while he was on Brevard County community control."[15]

On appeal, the Fifth District explained that there was no mechanism by which the defendant could compel Brevard County to arrest him.[16] The defendant had no personal right to have the arrest warrant executed; rather, the state or governmental entity seeking prosecution is the entity that has a right to the service of the arrest warrant.[17] The Fifth District also noted that a trial court has no ministerial duty to conduct a hearing on an affidavit alleging a VOP. A probationer is only entitled to be heard on a VOP after his arrest and return to the court that granted the probation.[18]

Based on the above, there is currently no provision in Florida law for a prisoner to compel an unserved warrant while in prison. The Florida Department of Corrections ("FDC") estimates that at any given time, there are approximately 20 inmates that have unserved VOP or VCC warrants.[19]

Effect of the Bill

The bill creates s. 948.33, F.S., to address unserved arrest warrants for state prisoners. Under the bill:

- A state prisoner who has an unserved VOP or VCC warrant for his or her arrest may file a state prisoner's notice of unserved warrant in the circuit court of the judicial circuit where the unserved warrant was issued;
- The prisoner must also serve notice on the state attorney of that circuit;
- The circuit court must schedule the notice for a status hearing within 90 days after receipt of the notice; and
- The state prisoner may not be transported to the status hearing.

At the status hearing, the state attorney must inform the court as to whether there is an unserved VOP or VCC warrant for the arrest of the state prisoner. If there is an outstanding warrant, the court must enter an order within 30 days after the status hearing to transport the state prisoner to the county jail of the county that issued the warrant. The court must send the order to the county sheriff for execution.

The FDC states that prisoners who are able to address their warrants for VOPs or VCCs while imprisoned on other charges are likely to receive a concurrent sentence; thereby, reducing the need for prison beds. Additionally, being able to dispose of such warrants before release from prison, may allow the prisoner to participate in transitional and reintegration programs that would otherwise be unavailable when an outstanding warrant exists.[20]

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

B. SECTION DIRECTORY:

Section 1. Creates s. 948.33, F.S., relating to prosecution for VOP and VCC arrest warrants of state prisoners.

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[13] *Id.*
[14] *Id.* at 940-41.
[15] *Id.* at 941.
[16] *Id.* at 942.
[17] *Id.* at 941-42.
[18] *Id.* at 942.
[19] *2017 Agency Legislative Bill Analysis for HB 1091, Department of Corrections*, at 2, dated Mar. 9, 2017 (on file with the House Criminal Justice Subcommittee).
[20] *Id.*

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 revenue.

2. Expenditures: The Criminal Justice Impact Conference met on March 29, 2017, and determined the bill would have a negative indeterminate impact on the prison population.[21]

   The bill would prevent the need for state custody detainers upon release of inmates from prison, likely reducing the number of prison days for those offenders whose violations are currently disposed of after their prison terms end. The Department of Corrections expects the applicable inmates will more than likely serve a concurrent prison sentence if the unserved violations are handled while in custody. Per FDC, there are approximately 20 inmates with unserved violation of probation or community control warrants at any given time. However, it is unknown how many inmates would initiate the notice to state attorneys in order to begin this process, or the time it would take to deal with these violations.[22]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other: None.

B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

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[21] "Negative Indeterminate" means a reduction in the average daily prison population by an unquantifiable amount.

[22] Department of Economic and Demographic Research, *PCS for HB 1091 – Arrest Warrants for State Prisoners*, "Criminal Justice Impact Conference,", March 29, 2017, *available at* http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/PCSforHB1091.pdf (last viewed April 21, 2017).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 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:

- Requires the circuit court to schedule a status hearing to determine whether a prisoner has an unserved VOP or VCC within 90 days after receiving notice; and
- Clarifies that if a warrant for either a VOP or VCC exists, the circuit court must enter an order within 30 days after the status hearing for transport of the prisoner to the county jail of the county that issued the warrant for prosecution of the violation.

This analysis is drafted to the bill as amended by the Criminal Justice Subcommittee.

A bill to be entitled

An act relating to arrest warrants for state prisoners; creating s. 948.33, F.S.; authorizing a prisoner in a state prison who has an unserved violation of probation or an unserved violation of community control warrant to file a notice of unserved warrant in the circuit court where the warrant was issued; requiring the prisoner to serve notice on the state attorney; requiring the circuit court to schedule a status hearing within a certain time after receiving notice; specifying procedures and requirements for the status hearing; providing for prosecution of the violation; requiring the court to send the order to the county sheriff; providing an effective date.

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

Section 1. Section 948.33, Florida Statutes, is created to read:

948.33 Prosecution for violation of probation and community control arrest warrants of state prisoners.—A prisoner in a state prison in this state who has an unserved violation of probation or an unserved violation of community control warrant for his or her arrest may file a state prisoner's notice of

unserved warrant in the circuit court of the judicial circuit in which the unserved warrant was issued. The prisoner must also serve notice on the state attorney of that circuit. The circuit court shall schedule the notice for a status hearing within 90 days after receipt of the notice. The state prisoner may not be transported to the status hearing. At the status hearing, the state attorney shall inform the court as to whether there is an unserved violation of probation warrant or an unserved violation of community control warrant for the arrest of the state prisoner. If a warrant for either violation exists, the court must enter an order within 30 days after the status hearing for the transport of the state prisoner to the county jail of the county that issued the warrant for prosecution of the violation and the court shall send the order to the county sheriff for execution.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1337 Child Support and Parenting Time Plans
SPONSOR(S): Government Operations & Technology Appropriations Subcommittee; Civil Justice & Claims Subcommittee; Diaz, J.
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 590

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	11 Y, 3 N, As CS	MacNamara	Bond
2) Government Operations & Technology Appropriations Subcommittee	11 Y, 1 N, As CS	Keith	Topp
3) Judiciary Committee		MacNamara	Camechis

SUMMARY ANALYSIS

Title IV-D of the Social Security Act provides federal grants to states that implement certain laws and procedures regarding child support awards and enforcement. Florida complies with Title IV-D through the child support program administered by the Department of Revenue (department or DOR). The program assists with setting and enforcing child support. The program cannot assist with setting or enforcement of timesharing issues, which must be referred to the judicial system.

The amount of child support that one parent owes to the other is based on a formula. The formula uses the relative incomes of the parties, certain childcare expenses, and the timesharing agreement between the parties to arrive at an appropriate child support award.

The bill authorizes the DOR to establish parenting time plans agreed to by both parents in Title IV-D child support actions. The bill requires the department to provide parents with a Title IV-D Parenting Time Plan with a proposed administrative support order. The bill also creates a standard Title IV-D Parenting Time Plan that may be used by parents. In the event the parents cannot agree on a parenting time plan, they will be referred to the circuit court for the establishment of a plan.

The bill requires that on or before October 1, 2018, the Department of Revenue must submit an implementation timeline and all identifiable costs of administering the parenting time plans prescribed in the act to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill has no fiscal impact on state government. The bill does not appear to have a fiscal impact on local governments.

Except as otherwise expressly provided in the act, the bill has an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background: Child Support

Child support is a parent's legal obligation to contribute to the economic maintenance and education of his or her child until the age of majority, the child's emancipation before reaching majority, or the child's completion of secondary education.[1] This obligation arises since each parent has a duty to support[2] his or her minor or legally dependent child.[3] Child support can be entered into voluntarily, by court order, or by an administrative agency. Child support is an important source of income for millions of children in the United States. Child support payments represent on average 40 percent of income for poor custodial families who receive them; such payments lifted one million people above poverty in 2008.[4]

Establishment of Child Support Obligation

When parents live apart because they never married or are divorced or separated, the court may order a parent who owes a duty of support to a child to pay support to the other parent, or in the case of both parents, to a third party who has custody, in accordance with the guidelines schedule in s. 61.30, F.S.[5] Section 61.30, F.S., sets forth guidelines to determine the appropriate amount of child support according to a formula that is based on a parents' income and the amount of time that the child spends with each parent. The judicial officer is permitted to deviate from the guideline amount plus or minus 5 percent after considering all relevant factors, including the needs of the child or children, age, station in life, standard of living, and the financial status and ability of each parent.[6] The judicial officer may also deviate from the guideline amount more than plus or minus 5 percent, but he or she must include a written finding in the support order explaining why the guideline amount is unjust or inappropriate.[7] Establishment of a child support award, or enforcement of one, may be through the judicial system or the state child support program.

Department of Revenue Child Support Program

As required by Title IV-D of the Social Security Act,[8] the federal Department of Health and Human Services (HHS) coordinates with child support enforcement programs administered in each state, which perform collection and enforcement services.[9] Each state's child support enforcement agency operates under an approved state plan based on the program standards and policy set by the federal government.[10] In Florida, the Department of Revenue (department or DOR) administers the child support program.[11] [12]

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[1] Black's Law Dictionary 100 (3rd pocket ed. 2006).
[2] s. 61.046(22), F.S., defines "support" as child support when the Department of Revenue is not enforcing the support obligation and it includes spousal support or alimony for the person with whom the child is living when the Department of Revenue is enforcing the support obligation. The definition applies to the use of the term throughout ch. 61, F.S.
[3] s. 61.29, F.S. See generally ss. 744.301 and 744.361, F.S.
[4] National Conference of State Legislatures, *Child Support Overview*, March 15, 2016, available at http://www.ncsl.org/research/human-services/child-support-homepage.aspx (last viewed April 19, 2017).
[5] s. 61.13(1)(a), F.S.
[6] s. 61.30(1)(a), F.S.
[7] *Id.*
[8] *See* 42 U.S.C. ss. 651 et seq.
[9] National Conference of State Legislatures, *Child Support 101: State Administration*, April 2013, available at http://www.ncsl.org/research/human-services/child-support-adminstration.aspx (last viewed April 19, 2017).
[10] *Id.*
[11] s. 409.2557(1), F.S.
[12] Department of Revenue, *About the Child Support Program*, 2016, available at http://floridarevenue.com/dor/childsupport/about_us.html (last viewed April 19, 2017).

Current child support program structures vary widely from state to state, but at a minimum, services offered in all child support programs include:

- Locating noncustodial parents;
- Establishing paternity;
- Establishing and modifying support orders;
- Collecting support payments and enforcing child support orders; and
- Referring noncustodial parents to employment services.[13]

Any parent or person with custody of a child who needs help to establish a child support order or to collect support payments may apply for services. Individuals receiving public assistance from the state are required to participate in the state child support program.[14] IV-D cases are cases in which a state provides child support services through the state or tribal IV-D program to a custodial parent. The program is funded under Title IV-D of the Social Security Act. There are three subtypes of state IV-D cases:

- Public or Current Assistance Cases: Parents who receive public assistance under the state's Temporary Assistance for Needy Families (TANF) program are required to assign their rights to child support payments to the state. The state automatically refers these cases to the Child Support Enforcement program within the Department of Revenue in order to attempt to collect child support directly from the noncustodial parent.
- Non-Public Assistance Cases: Non-public assistance cases are those in which the family is not currently or is no longer receiving cash assistance or Medicaid but the state child support agency is providing collection services.
- Foster Care and Adoption Assistance (IV-E Cases): Cases where the state currently provides benefits or services for foster care maintenance to a child that meets IV-E eligibility guidelines. In these cases, someone other than a parent is caring for a child or children—this could include a relative caregiver or the foster care system. These cases are also automatically referred to the child support agency in order to attempt to recoup costs from the noncustodial parent(s).

Judges issuing an administrative order for child support may include provisions for monetary support, retroactive support, health care, and other elements of support set forth under state law.[15] Procedures set forth by statute include:

- The drafting and service by the DOR of a notice of proceeding to establish an administrative support order;
- The execution and service of financial affidavits by the child's parents;
- The drafting and service of a proposed administrative support order;
- Parental request for a hearing before the Division of Administrative Hearings (DOAH);
- Judicial review of an administrative support order; and
- Enforcement of an administrative support order.[16]

An administrative child support order has the same force and effect as a court order until and unless it is modified by the department, vacated on appeal, or superseded by a subsequent court order.[17] Thus, an administrative order may be enforced in the same manner as a court order, except that an administrative order may not be enforced through contempt.[18] Neither the DOR nor the DOAH have jurisdiction to authorize a timesharing schedule, but they will recognize an informal agreement and incorporate it into the formula if agreed to by the parties. Such an informal agreement is not

[13] *See* footnote 9.; *see also* s. 409.2557(2), F.S.
[14] s. 409.2572(3), F.S.
[15] *See* s. 409.2563(1)(a), F.S.
[16] *See* s. 409.2563, F.S.
[17] s. 409.2563(12), F.S.
[18] ss. 409.2563(9)(d), 409.2563(10)(d), F.S.

enforceable should one party violate the agreement. To obtain an enforceable timesharing order, or to determine timesharing where the parties do not agree, either parent at any time may file a civil action in a circuit having jurisdiction and proper venue for the filing of such an action.[19]

Non IV-D cases are cases where child support is established and maintained privately, most often following a divorce where support orders are determined as part of the divorce proceedings. Any family is eligible for support enforcement services from the state. Some private cases become state IV-D cases when they are referred to help collect unpaid child support.

During the 2015 federal fiscal year, approximately $32.4 billion in child support was collected on behalf of the 15.9 million children served by child support enforcement programs across the country.[20] Also during that fiscal year, Florida had a total caseload of 650,421 cases and collected approximately $1.4 billion in child support. However, the total amount of arrearages was approximately $5.7 billion.[21] In fiscal year 2015-2016, the department's IV-D child support enforcement hearing officers held 131,474 hearings and signed 139,817 orders for child support establishment, modification, and enforcement.[22]

Establishing Non-Judicial Timesharing in Other States

Some states or jurisdictions (Michigan; Texas; Orange County, California; Hennepin County, Minnesota) have child support initiatives that incorporate parenting time agreements into initial child support orders, many focusing on parenting agreements where the parents already agree on the division of time.[23] The Texas Family Code requires that a final order that stems from a suit affecting a parent-child relationship must include a parenting plan.[24] Unlike other states, Texas provides a statutory "standard possession order" that is presumed to provide a noncustodial parent with reasonable minimum time with his or her child and to be in the best interest of the child.[25]

In 1989, the Texas legislature moved forward with not only the required child support guidelines as required by the federal government, but also with statutory presumptive visitation guidelines in the form of a standard order.[26] If there is a history of domestic violence or sexual abuse, the standard possession order may be inapplicable. The court must consider the commission of family violence or sexual abuse in determining whether to deny, restrict, or limit the possession of a child by a noncustodial parent.[27]

In the initial creation of the Title IV-D program, Congress provided financial subsidies for the operation of state Title IV-D programs through financial incentives based on support collections. Because the activities that are eligible for federal funding are limited to those required to establish paternity, establish and enforce child support obligations, collect and distribute payment, and locate absent parents, most states have taken the position that child support orders obtained or issued by IV-D

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[19] s. 409.2563(2)(e), F.S.
[20] National Conference of State Legislatures, *2015 State by State Data on Child Support Collections*, April 25, 2016, available at http://www.ncsl.org/research/human-services/2015-state-by-state-data-on-child-support-collections.aspx#5 (last viewed April 19, 2017).
[21] *Id.*
[22] Florida Courts, *Uniform Data Reporting, Child Support FY2015-16*, 2017, available at http://www.flcourts.org/publications-reports-stats/statistics/uniform-data-reporting.stml#Support (last viewed April 19, 2017).
[23] U.S. Department of Health and Human Services, Administration for Children & Families, *Promoting Child Well-Being & Family Self-Sufficiency, Child Support and Parenting Time: Improving Coordination to Benefit Children*, Child Support Fact Sheet Series, Number 13. https://www.acf.hhs.gov/sites/default/files/programs/css/13_child_support_and_parenting_time_final.pdf (Last visited April 4, 2017).
[24] Alicia G. Key, *Parenting Time in Texas Child Support Cases*, Family Court Review. Vol 53 No. 2, April 2015 258-266, on file with the Senate Committee on Children, Families & Elder Affairs.
[25] *See* Tex. Fam. Code s. 153.252 (West 2013).
[26] Key, *supra* note 4, at 111.
[27] Key, *supra* at 261.

programs not include provisions regarding parenting time, at the risk of jeopardizing federal funding for their programs.[28]

Texas's program includes parenting plans in its support order for the last 30 years by maintaining that the cost of establishing a visitation order, coinciding with the establishment of paternity and/or a support obligation, is a reasonable and minimal expense that must be incurred as part of the support order establishment process. Texas has stated that its success is based on:

- the existence in Texas law of the standard possession order;
- simple child support guidelines;
- agency policies and practices with dealing with cases where any dispute regarding parenting time; and
- the agency's successful public educational and outreach activities.[29]

The Texas Office of Attorney General (the Title IV-D agency in Texas) has adopted policies and practices to make the visitation order establishment process highly efficient. The agency is not involved in the resolution of any disputed possession issue between the parties. Disputed cases are referred to the appropriate trial court for a final resolution of visitation disputes.[30] However, the parties do not need to file additional pleadings or incur additional expense at the second hearing for a decision on the visitation issues that may be in dispute.[31]

Effect of the Bill

In short, the bill authorizes the Department of Revenue (department or DOR) to establish parenting time plans agreed to by both parents in Title IV-D child support actions.

Statement of Public Policy

The bill amends s. 409.2551, F.S., to provide that it is the public policy of the state to encourage frequent contact between a child and each parent. Additionally, there is no presumption for or against the father or mother, or for or against any specific time-sharing schedule when a parenting time plan is created.

Authority to Establish Parenting Plan

The bill amends s. 409.2557, F.S., to provide the department the authority, in addition to the establishment of paternity or support obligations, to establish Title IV-D Standard Parenting Time Plans or any other parenting time plan agreed to by the parents.

Definitions

The bill amends s. 409.2554, F.S., to provide definitions for "State Case Registry", "State Disbursement Unit" and "Title IV-D Standard Parenting Time Plans" as:

- "State Case Registry" means the automated registry maintained by the Title IV-D agency, containing records of each Title IV-D case and of each support order established or modified in the state on or after October 1, 1988. Such records must consist of data elements as required by the United States Secretary of Health and Human Services.

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[28] *See* 45 C.F.R., Section 304.20(b) (1982).
[29] Key, *supra* at 263.
[30] See Tex. Fam. Code Section 201.007(b)
[31] Key, *supra* at 263.

- "State Disbursement Unit" means the unit established and operated by the Title IV-D agency to provide one central address for collection and disbursement of child support payments made in cases enforced by the department pursuant to Title IV-D of the Social Security Act and in cases not being enforced by the department in which the support order was initially issued in this state on or after January 1, 1994, and in which the obligor's child support obligation is being paid through income deduction order.

- "Title IV-D Standard Parenting Time Plans" means a document which may be agreed to by the parents to govern the relationship between the parents and to provide the parent who owes support a reasonable minimum amount of time with his or her child. The plans set forth in s. 409.25633, F.S., include timetables that specify the time, including overnights and holidays, that a minor child 3 years of age or older may spend with each parent.

Notification to the Parties Regarding Standard Plan

The bill creates s. 409.25633, F.S., to provide that a Title IV-D Standard Parenting Time Plan must be included in any administrative action to establish child support taken by the department if the parents agree to the plan. If there is no agreement as to a parenting time plan, then the department must enter an administrative order for child support and refer the parents to a court of appropriate jurisdiction to establish a parenting time plan. The department must also provide information to the parents on the process to establish such plan.

Any notifications by the department to parents will not include a Title IV-D Standard Parenting Time Plan if Florida is not the child's home state, if one parent does not reside in Florida, if either parent has requested nondisclosure for fear of harm from the other parent, or where the parent who owes child support is incarcerated.

When the department provides notice of proceeding to establish an administrative support order it must include a copy of the Title IV-D Standard Parenting Time Plans. Copies of proposed administrative support orders provided to parents will include a copy of the Title IV-D Standard Parenting Time Plan, along with other required documents. If a hearing is held, an administrative support order will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents.

The bill amends s. 409.2563, F.S., to allow the DOR to establish parenting time plans only if the parents are in agreement. This section also provides that if the parents do not have a parenting time plan and do not agree to a Title IV-D Standard Parenting Time Plan one will not be included in the initial administrative order setting child support. A statement explaining the absence of the parenting time plan will be included with the initial administrative order setting child support.

The Standard Plans

Section 409.25633, F.S., created by the bill, also creates two different Title IV-D Standard Parenting Time Plans:

Where the parents live within 100 miles of each other and the child is 3 years of age or older, the parent paying child support shall have the following time with the child:

- Every other weekend.—The second and fourth full weekend of the month from 6 p.m. on Friday through 6 p.m. on Sunday. The weekends may begin upon the child's release from school on Friday and end on Sunday at 6 p.m. or when the child returns to school on Monday morning. The weekend time may be extended by holidays that fall on Friday or Monday;
- One evening per week.—One weekday beginning at 6 p.m. and ending at 8 p.m. or if both parents agree, from when the child is released from school until 8 p.m.;
- Thanksgiving break.—In even-numbered years, the Thanksgiving break from 6 p.m. on the Wednesday before Thanksgiving, until 6 p.m. on the Sunday following Thanksgiving. If both

parents agree, the Thanksgiving break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday;
- Winter break.—In odd-numbered years, the first half of winter break, from the day school is released, beginning at 6 p.m. or, if both parents agree, upon the child's release from school, until noon on December 26. In even-numbered years, the second half of winter break from noon on December 26 until 6 p.m. on the day before school resumes, or, if both parents agree, upon the child's return to school;
- Spring break.—In even-numbered years, the week of spring break from 6 p.m. the day that school is released until 6 p.m. the night before school resumes. If both parents agree, the spring break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday; and
- Summer break.—Two weeks in the summer beginning at 6 p.m. the first Sunday following the last day of school.

Where the parents live more than 100 miles from each other and the child is 3 years of age or older, the parties may agree on the schedule above or this recommended plan:

- One weekend per month.—The second or fourth full weekend of the month throughout the year beginning Friday at 6 p.m. through Sunday at 6 p.m. The parent who owes child support can choose the one weekend per month within 90 days after the parents begin to live more than 100 miles apart; and
- Summer break.—Forty-two days of parenting time during the summer months. The parent who is owed child support will have parenting time one weekend beginning on Friday at 6 p.m. through Sunday at 6 p.m. during any one extended period during the summer.

Where the child is under 3 the parents may agree upon a parenting time plan that includes more frequent visitation with shorter timeframes, gradually leading into overnight visits and either a parenting time plan agreed to by both parents or into the appropriate Title IV-D Standard Parenting Time Plan.

The Title IV-D Standard Parenting Time Plans are not intended for use by parents and families with domestic or family violence concerns. Additionally, if after incorporation of the parenting plan into an administrative support order a parent becomes concerned about the safety of the child, a modification of the parenting plan can be sought through the proper court.

The department is also directed to create and provide a form for a court petition to establish a parenting time plan for parents who have not agreed to a parenting schedule at the time of the child support hearing. The department will provide the form to the parents but will not file the petition or represent either parent at a hearing to establish parenting time.

Incorporation Into Administrative Order

The bill provides that if both parents have agreed to a parenting time plan before the administrative support order is established, the plan will be incorporated into the administrative support order. However, the department does not have the jurisdiction to enforce any parenting time plan that is incorporated into an administrative support order.

Lastly, the bill amends s. 409.2564, F.S., to provide that when the department institutes an action to secure the payment of current support or any arrearage that may have accrued under an existing order of support, and a parenting time plan was not incorporated into the existing order of support and is appropriate, the department will include either an agreed-upon parenting time plan or Title IV-D Standard Parenting Time Plan.

Department of Revenue Parenting Time Plan Implementation Timeline

Effective July 1, 2017, the bill requires that the Department of Revenue, on or before October 1, 2018, to submit a report on the implementation timeline and all identifiable costs of administering the parenting time plans prescribed in the act to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Except as otherwise expressly provided in the act, the effective date of the bill is July 1, 2019.

B. SECTION DIRECTORY:

Section 1: Amends s. 409.2551, F.S., relating to legislative intent.

Section 2: Amends s. 409.2554, F.S., relating to definitions.

Section 3: Amends s. 409.2557, F.S., relating to the state agency for administering the child support enforcement program.

Section 4: Amends s. 409.2563, F.S., relating to the administrative establishment of child support obligations.

Section 5: Creates s. 409.25633, F.S., relating to a Title IV-D standard parenting time plan.

Section 6: Amends s. 409.2564, F.S., relating to actions for support.

Section 7: Amends s. 409.256, F.S., relating to orders to appear for genetic testing in an administrative proceeding to establish paternity or paternity and child support.

Section 8: Amends s. 409.2572, F.S., relating to cooperation.

Section 9: Requires the Department of Revenue to submit a report that includes a timeline for implementation and administrative costs of the parenting time plans by October 1, 2018 to the Governor and Legislature.

Section 10: Provides that except as otherwise expressly provided in the act, the bill shall take effect July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

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 may lower costs to parents regarding the setting of a timesharing agreement.

D. FISCAL COMMENTS:

Impacts on the Department of Revenue

It is anticipated that the department will have to modify the Child Support Automated Management (CAMS) System to conform to the new requirements provided in the bill. Additionally, the department will need to develop new forms, procedures, and training. Additional resources will be required to allow time for team members to confer with parents and incorporate agreed upon parenting time plans into support orders. It is also estimated by the department that hearing times may be increased by approximately 15 minutes due to the inclusion of parenting time plans in support orders.

The bill requires that on or before October 1, 2018, the Department of Revenue must submit an implementation timeline and all identifiable costs of administering the parenting time plans prescribed in the act to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

After submission of the implementation timeline and the associated costs of implementation, the department will have the opportunity, through its Fiscal Year 2018-2019 Legislative Budget Request, to request the proper funding and resources necessary to administer the provisions of the act.

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 March 28, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added:

- The Title IV-D Standard Parenting Time Plans are not intended for use by parents and families with domestic or family violence concerns; and
- If after the incorporation of an agreed-upon parenting time plan into an administrative support order, a parent becomes concerned about the safety of the child during the child's time with the other parent, a modification of the parenting time plan may be sought through a court of appropriate jurisdiction.

On April 17, 2017, the Government Operations and Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes all fiscal impacts from the bill;
- Requires the Department of Revenue to submit an implementation timeline and all identifiable costs of administering the parenting time plans prescribed in the act to the Governor, the President of the Senate, and the Speaker of the House of Representatives; and,
- Provides that except as otherwise expressly provided in the act, the effective date of the bill is July 1, 2019.

This analysis is drafted to the committee substitute as passed by the Government Operations and Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to child support and parenting time plans; amending s. 409.2551, F.S.; stating legislative intent to encourage frequent contact between a child and each parent; amending s. 409.2554, F.S.; defining terms; amending s. 409.2557, F.S.; authorizing the Department of Revenue to establish parenting time plans agreed to by both parents in Title IV-D child support actions; amending s. 409.2563, F.S.; requiring the department to mail Title IV-D Standard Parenting Time Plans with proposed administrative support orders; providing requirements for including parenting time plans in certain administrative orders; creating s. 409.25633, F.S.; providing the purpose of and requirements for Title IV-D Standard Parenting Time Plans; requiring the department to refer parents who do not agree on a parenting time plan to a circuit court; authorizing modification of a parenting time plan based on safety concerns; requiring the department to create and provide a form for a petition to establish a parenting time plan under certain circumstances; authorizing the department to adopt rules; amending s. 409.2564, F.S.; authorizing the department to incorporate either an agreed-upon parenting time plan or a Title IV-D Standard Parenting

Time Plan in a child support order; amending ss. 409.256 and 409.2572, F.S.; conforming cross-references; requiring the department to submit a report that includes a timeline for implementation and costs of administering the parenting time plans by a specific date to the Governor and the Legislature; providing effective dates.

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

Section 1. Section 409.2551, Florida Statutes, is amended to read:

409.2551 Legislative intent.—Common-law and statutory procedures governing the remedies for enforcement of support for financially dependent children by persons responsible for their support have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the Attorney General has resulted in a growing burden on the financial resources of the state, which is constrained to provide public assistance for basic maintenance requirements when parents fail to meet their primary obligations. The state, therefore, exercising its police and sovereign powers, declares that the common-law and statutory remedies pertaining to family desertion and nonsupport of dependent children shall be

augmented by additional remedies directed to the resources of the responsible parents. In order to render resources more immediately available to meet the needs of dependent children, it is the legislative intent that the remedies provided herein are in addition to, and not in lieu of, existing remedies. It is declared to be the public policy of this state that this act be construed and administered to the end that children shall be maintained from the resources of their parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs. It is also the public policy of this state to encourage frequent contact between a child and each parent to optimize the development of a close and continuing relationship between each parent and the child. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when a parenting time plan is created.

Section 2. Section 409.2554, Florida Statutes, is reordered and amended to read:

409.2554 Definitions; ss. 409.2551-409.2598.—As used in ss. 409.2551-409.2598, the term:

(5) ~~(1)~~ "Department" means the Department of Revenue.

(6) ~~(2)~~ "Dependent child" means any unemancipated person under the age of 18, any person under the age of 21 and still in school, or any person who is mentally or physically incapacitated when such incapacity began before ~~prior to~~ such

person reached ~~reaching~~ the age of 18. This definition may ~~shall~~ not be construed to impose an obligation for child support beyond the child's attainment of majority except as imposed in s. 409.2561.

(3) "Court" means the circuit court.

(4) "Court order" means any judgment or order of any court of appropriate jurisdiction of the state, or an order of a court of competent jurisdiction of another state, ordering payment of a set or determinable amount of support money.

(7)~~(5)~~ "Health insurance" means coverage under a fee-for-service arrangement, health maintenance organization, or preferred provider organization, and other types of coverage available to either parent, under which medical services could be provided to a dependent child.

(8)~~(6)~~ "Obligee" means the person to whom support payments are made pursuant to an alimony or child support order.

(9)~~(7)~~ "Obligor" means a person who is responsible for making support payments pursuant to an alimony or child support order.

(12)~~(8)~~ "Public assistance" means money assistance paid on the basis of Title IV-E and Title XIX of the Social Security Act, temporary cash assistance, or food assistance benefits received on behalf of a child under 18 years of age who has an absent parent.

(10)~~(9)~~ "Program attorney" means an attorney employed by

the department, under contract with the department, or employed by a contractor of the department, to provide legal representation for the department in a proceeding related to the determination of paternity or the establishment, modification, or enforcement of support brought pursuant to law.

(11)~~(10)~~ "Prosecuting attorney" means any private attorney, county attorney, city attorney, state attorney, program attorney, or an attorney employed by an entity of a local political subdivision who engages in legal action related to the determination of paternity or the establishment, modification, or enforcement of support brought pursuant to this act.

(13) "State Case Registry" means the automated registry maintained by the Title IV-D agency, containing records of each Title IV-D case and of each support order established or modified in the state on or after October 1, 1998. Such records must consist of data elements as required by the United States Secretary of Health and Human Services.

(14) "State Disbursement Unit" means the unit established and operated by the Title IV-D agency to provide one central address for collection and disbursement of child support payments made in cases enforced by the department pursuant to Title IV-D of the Social Security Act and in cases not being enforced by the department in which the support order was initially issued in this state on or after January 1, 1994, and

in which the obligor's child support obligation is being paid through income deduction order.

(16) "Title IV-D Standard Parenting Time Plan" means a document which may be agreed to by the parents to govern the relationship between the parents and to provide the parent who owes support a reasonable minimum amount of time with his or her child. The plans set forth in s. 409.25633 include timetables that specify the time, including overnights and holidays, that a minor child 3 years of age or older may spend with each parent.

(15)~~(11)~~ "Support," unless otherwise specified, means:

(a) Child support, and, when the child support obligation is being enforced by the Department of Revenue, spousal support or alimony for the spouse or former spouse of the obligor with whom the child is living.

(b) Child support only in cases not being enforced by the Department of Revenue.

(1)~~(12)~~ "Administrative costs" means any costs, including attorney ~~attorney's~~ fees, clerk's filing fees, recording fees and other expenses incurred by the clerk of the circuit court, service of process fees, or mediation costs, incurred by the Title IV-D agency in its effort to administer the Title IV-D program. The administrative costs that ~~which~~ must be collected by the department shall be assessed on a case-by-case basis based upon a method for determining costs approved by the Federal Government. The administrative costs shall be assessed

periodically by the department. The methodology for determining administrative costs shall be made available to the judge or any party who requests it. Only those amounts ordered independent of current support, arrears, or past public assistance obligation shall be considered and applied toward administrative costs.

(2)~~(13)~~ "Child support services" includes any civil, criminal, or administrative action taken by the Title IV-D program to determine paternity or to~~,~~ establish, modify, enforce, or collect support.

(17)~~(14)~~ "Undistributable collection" means a support payment received by the department which the department determines cannot be distributed to the final intended recipient.

(18)~~(15)~~ "Unidentifiable collection" means a payment received by the department for which a parent, depository or circuit civil numbers, or source of the payment cannot be identified.

Section 3. Subsection (2) of section 409.2557, Florida Statutes, is amended to read:

409.2557 State agency for administering child support enforcement program.—

(2) The department in its capacity as the state Title IV-D agency has ~~shall have~~ the authority to take actions necessary to carry out the public policy of ensuring that children are maintained from the resources of their parents to the extent

possible. The department's authority includes ~~shall include~~, but is not ~~be~~ limited to, the establishment of paternity or support obligations, the establishment of a Title IV-D Standard Parenting Time Plan or any other parenting time plan agreed to by the parents, and ~~as well as~~ the modification, enforcement, and collection of support obligations.

Section 4. Subsections (2), (4), (5), and (7) of section 409.2563, Florida Statutes, are amended to read:

409.2563 Administrative establishment of child support obligations.—

(2) PURPOSE AND SCOPE.—

(a) It is not the Legislature's intent to limit the jurisdiction of the circuit courts to hear and determine issues regarding child support or parenting time. This section is intended to provide the department with an alternative procedure for establishing child support obligations and establishing a parenting time plan only if the parents are in agreement, in Title IV-D cases in a fair and expeditious manner when there is no court order of support. The procedures in this section are effective throughout the state and shall be implemented statewide.

(b) If the parents do not have an existing time-sharing schedule or parenting time plan and do not agree to a parenting time plan, a parenting time plan will not be included in the initial administrative order, only a statement explaining its

absence.

(c) If the parents have a judicially established parenting time plan, the plan will not be included in the administrative or initial judicial order.

(d) Any notification provided by the department will not include Title IV-D Standard Parenting Time Plans if Florida is not the child's home state, when one parent does not reside in Florida, if either parent has requested nondisclosure for fear of harm from the other parent, or when the parent who owes support is incarcerated.

(e)~~(b)~~ The administrative procedure set forth in this section concerns only the establishment of child support obligations and, if agreed to by both parents, a parenting time plan or Title IV-D Standard Parenting Time Plan. This section does not grant jurisdiction to the department or the Division of Administrative Hearings to hear or determine issues of dissolution of marriage, separation, alimony or spousal support, termination of parental rights, dependency, disputed paternity, except for a determination of paternity as provided in s. 409.256, ~~or award of~~ or change of time-sharing. If both parents have agreed to a parenting time plan before the establishment of the administrative support order, the department or the Division of Administrative Hearings will incorporate the agreed-upon parenting time plan into the administrative support order. This paragraph notwithstanding, the department and the Division of

Administrative Hearings may make findings of fact that are necessary for a proper determination of a parent's support obligation as authorized by this section.

(f) ~~(e)~~ If there is no support order for a child in a Title IV-D case whose paternity has been established or is presumed by law, or whose paternity is the subject of a proceeding under s. 409.256, the department may establish a parent's child support obligation pursuant to this section, s. 61.30, and other relevant provisions of state law. The administrative support order will include a parenting time plan or Title IV-D Standard Parenting Time Plan as agreed to by both parents. The parent's obligation determined by the department may include any obligation to pay retroactive support and any obligation to provide for health care for a child, whether through insurance coverage, reimbursement of expenses, or both. The department may proceed on behalf of:

1. An applicant or recipient of public assistance, as provided by ss. 409.2561 and 409.2567;

2. A former recipient of public assistance, as provided by s. 409.2569;

3. An individual who has applied for services as provided by s. 409.2567;

4. Itself or the child, as provided by s. 409.2561; or

5. A state or local government of another state, as provided by chapter 88.

(g) ~~(d)~~ Either parent, or a caregiver if applicable, may at any time file a civil action in a circuit court having jurisdiction and proper venue to determine parental support obligations, if any. A support order issued by a circuit court prospectively supersedes an administrative support order rendered by the department.

(h) ~~(e)~~ Pursuant to paragraph (e) ~~(b)~~, neither the department nor the Division of Administrative Hearings has jurisdiction to ~~award or~~ change child custody or rights of parental contact. The department or the Division of Administrative Hearings will incorporate a parenting time plan or Title IV-D Standard Parenting Time Plan as agreed to by both parents into the administrative support order. Either parent may at any time file a civil action in a circuit having jurisdiction and proper venue for a determination of child custody and rights of parental contact.

(i) ~~(f)~~ The department shall terminate the administrative proceeding and file an action in circuit court to determine support if within 20 days after receipt of the initial notice the parent from whom support is being sought requests in writing that the department proceed in circuit court or states in writing his or her intention to address issues concerning time-sharing or rights to parental contact in court and if within 10 days after receipt of the department's petition and waiver of service the parent from whom support is being sought signs and

returns the waiver of service form to the department.

(j) ~~(g)~~ The notices and orders issued by the department under this section shall be written clearly and plainly.

(4) NOTICE OF PROCEEDING TO ESTABLISH ADMINISTRATIVE SUPPORT ORDER.—To commence a proceeding under this section, the department shall provide to the parent from whom support is not being sought and serve the parent from whom support is being sought with a notice of proceeding to establish administrative support order, a copy of the Title IV-D Standard Parenting Time Plans, and a blank financial affidavit form. The notice must state:

(a) The names of both parents, the name of the caregiver, if any, and the name and date of birth of the child or children.~~;~~

(b) That the department intends to establish an administrative support order as defined in this section.~~;~~

(c) That the department will incorporate a parenting time plan or Title IV-D Standard Parenting Time Plan, as agreed to by both parents, into the administrative support order.

(d) ~~(c)~~ That both parents must submit a completed financial affidavit to the department within 20 days after receiving the notice, as provided by paragraph (13)(a).~~;~~

(e) ~~(d)~~ That both parents, or parent and caregiver if applicable, are required to furnish to the department information regarding their identities and locations, as

provided by paragraph (13)(b).~~+~~

(f)~~(e)~~ That both parents, or parent and caregiver if applicable, are required to promptly notify the department of any change in their mailing addresses to ensure receipt of all subsequent pleadings, notices, and orders, as provided by paragraph (13)(c).~~+~~

(g)~~(f)~~ That the department will calculate support obligations based on the child support guidelines schedule in s. 61.30 and using all available information, as provided by paragraph (5)(a), and will incorporate such obligations into a proposed administrative support order.~~+~~

(h)~~(g)~~ That the department will send by regular mail to both parents, or parent and caregiver if applicable, a copy of the proposed administrative support order, the department's child support worksheet, and any financial affidavits submitted by a parent or prepared by the department.~~+~~

(i)~~(h)~~ That the parent from whom support is being sought may file a request for a hearing in writing within 20 days after the date of mailing or other service of the proposed administrative support order or will be deemed to have waived the right to request a hearing,~~+~~

(j)~~(i)~~ That if the parent from whom support is being sought does not file a timely request for hearing after service of the proposed administrative support order, the department will issue an administrative support order that incorporates the

findings of the proposed administrative support order~~,~~ and any agreed-upon parenting time plan. The department will send by regular mail a copy of the administrative support order and any incorporated parenting time plan to both parents~~,~~ or to the parent and the caregiver, if applicable.~~;~~

(k)~~(j)~~ That after an administrative support order is rendered incorporating any agreed-upon parenting time plan, the department will file a copy of the order with the clerk of the circuit court.~~;~~

(l)~~(k)~~ That after an administrative support order is rendered, the department may enforce the administrative support order by any lawful means. The department does not have jurisdiction to enforce any parenting time plan that is incorporated into an administrative support order.~~;~~

(m)~~(l)~~ That either parent, or caregiver if applicable, may file at any time a civil action in a circuit court having jurisdiction and proper venue to determine parental support obligations, if any, and that a support order issued by a circuit court supersedes an administrative support order rendered by the department.~~;~~

(n)~~(m)~~ That neither the department nor the Division of Administrative Hearings has jurisdiction to ~~award or~~ change child custody or rights of parental contact or time-sharing, and these issues may be addressed only in circuit court. The department or the Division of Administrative Hearings may

incorporate, if agreed to by both parents, a parenting time plan or Title IV-D Standard Parenting Time Plan when the administrative support order is established.

1. The parent from whom support is being sought may request in writing that the department proceed in circuit court to determine his or her support obligations.

2. The parent from whom support is being sought may state in writing to the department his or her intention to address issues concerning custody or rights to parental contact in circuit court.

3. If the parent from whom support is being sought submits the request authorized in subparagraph 1., or the statement authorized in subparagraph 2. to the department within 20 days after the receipt of the initial notice, the department shall file a petition in circuit court for the determination of the parent's child support obligations, and shall send to the parent from whom support is being sought a copy of its petition, a notice of commencement of action, and a request for waiver of service of process as provided in the Florida Rules of Civil Procedure.

4. If, within 10 days after receipt of the department's petition and waiver of service, the parent from whom support is being sought signs and returns the waiver of service form to the department, the department shall terminate the administrative proceeding without prejudice and proceed in circuit court.

5. In any circuit court action filed by the department pursuant to this paragraph or filed by a parent from whom support is being sought or other person pursuant to paragraph (m) ~~(l)~~ or paragraph (o) ~~(n)~~, the department shall be a party only with respect to those issues of support allowed and reimbursable under Title IV-D of the Social Security Act. It is the responsibility of the parent from whom support is being sought or other person to take the necessary steps to present other issues for the court to consider.

(o) ~~(n)~~ That if the parent from whom support is being sought files an action in circuit court and serves the department with a copy of the petition within 20 days after being served notice under this subsection, the administrative process ends without prejudice and the action must proceed in circuit court. ~~;~~

(p) ~~(o)~~ Information provided by the Office of State Courts Administrator concerning the availability and location of self-help programs for those who wish to file an action in circuit court but who cannot afford an attorney.

The department may serve the notice of proceeding to establish an administrative support order and Title IV-D Standard Parenting Time Plans by certified mail, restricted delivery, return receipt requested. Alternatively, the department may serve the notice by any means permitted for service of process

in a civil action. For purposes of this section, an authorized employee of the department may serve the notice and execute an affidavit of service. Service by certified mail is completed when the certified mail is received or refused by the addressee or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally. The department shall provide the parent from whom support is not being sought or the caregiver with a copy of the notice by regular mail to the last known address of the parent from whom support is not being sought or caregiver.

(5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.—

(a) After serving notice upon a parent in accordance with subsection (4), the department shall calculate that parent's child support obligation under the child support guidelines schedule as provided by s. 61.30, based on any timely financial affidavits received and other information available to the department. If either parent fails to comply with the

requirement to furnish a financial affidavit, the department may proceed on the basis of information available from any source, if such information is sufficiently reliable and detailed to allow calculation of guideline schedule amounts under s. 61.30. If a parent receives public assistance and fails to submit a financial affidavit, the department may submit a financial affidavit or written declaration for that parent pursuant to s. 61.30(15). If there is a lack of sufficient reliable information concerning a parent's actual earnings for a current or past period, it shall be presumed for the purpose of establishing a support obligation that the parent had an earning capacity equal to the federal minimum wage during the applicable period.

(b) The department shall send by regular mail to both parents, or to a parent and caregiver if applicable, copies of the proposed administrative support order, a copy of the Title IV-D Standard Parenting Time Plans, its completed child support worksheet, and any financial affidavits submitted by a parent or prepared by the department. The proposed administrative support order must contain the same elements as required for an administrative support order under paragraph (7)(e).

(c) The department shall provide a notice of rights with the proposed administrative support order, which notice must inform the parent from whom support is being sought that:

1. The parent from whom support is being sought may, within 20 days after the date of mailing or other service of the

proposed administrative support order, request a hearing by filing a written request for hearing in a form and manner specified by the department;

2. If the parent from whom support is being sought files a timely request for a hearing, the case shall be transferred to the Division of Administrative Hearings, which shall conduct further proceedings and may enter an administrative support order;

3. A parent from whom support is being sought who fails to file a timely request for a hearing shall be deemed to have waived the right to a hearing, and the department may render an administrative support order pursuant to paragraph (7)(b);

4. The parent from whom support is being sought may consent in writing to entry of an administrative support order without a hearing;

5. The parent from whom support is being sought may, within 10 days after the date of mailing or other service of the proposed administrative support order, contact a department representative, at the address or telephone number specified in the notice, to informally discuss the proposed administrative support order and, if informal discussions are requested timely, the time for requesting a hearing will be extended until 10 days after the department notifies the parent that the informal discussions have been concluded; and

6. If an administrative support order that establishes a

parent's support obligation and incorporates either a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents is rendered, whether after a hearing or without a hearing, the department may enforce the administrative support order by any lawful means. The department does not have the jurisdiction or authority to enforce a parenting time plan.

(d) If, after serving the proposed administrative support order but before a final administrative support order is rendered, the department receives additional information that makes it necessary to amend the proposed administrative support order, it shall prepare an amended proposed administrative support order, with accompanying amended child support worksheets and other material necessary to explain the changes, and follow the same procedures set forth in paragraphs (b) and (c).

(7) ADMINISTRATIVE SUPPORT ORDER.—

(a) If a hearing is held, the administrative law judge of the Division of Administrative Hearings shall issue an administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents, or a final order denying an administrative support order, which constitutes final agency action by the department. The Division of Administrative Hearings shall transmit any such order to the department for filing and rendering.

(b) If the parent from whom support is being sought does

not file a timely request for a hearing, the parent will be deemed to have waived the right to request a hearing.

(c) If the parent from whom support is being sought waives the right to a hearing, or consents in writing to the entry of an order without a hearing, the department may render an administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents.

(d) The department shall send by regular mail a copy of the administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents, or the final order denying an administrative support order, to both parents, or a parent and caregiver if applicable. The parent from whom support is being sought shall be notified of the right to seek judicial review of the administrative support order in accordance with s. 120.68.

(e) An administrative support order must comply with ss. 61.13(1) and 61.30. The department shall develop a standard form or forms for administrative support orders. An administrative support order must provide and state findings, if applicable, concerning:

1. The full name and date of birth of the child or children;

2. The name of the parent from whom support is being sought and the other parent or caregiver;

3. The parent's duty and ability to provide support;

4. The amount of the parent's monthly support obligation;

5. Any obligation to pay retroactive support;

6. The parent's obligation to provide for the health care needs of each child, whether through health insurance, contribution toward the cost of health insurance, payment or reimbursement of health care expenses for the child, or any combination thereof;

7. The beginning date of any required monthly payments and health insurance;

8. That all support payments ordered must be paid to the ~~Florida~~ State Disbursement Unit as provided by s. 61.1824;

9. That the parents, or caregiver if applicable, must file with the department when the administrative support order is rendered, if they have not already done so, and update as appropriate the information required pursuant to paragraph (13)(b);

10. That both parents, or parent and caregiver if applicable, are required to promptly notify the department of any change in their mailing addresses pursuant to paragraph (13)(c); and

11. That if the parent ordered to pay support receives reemployment assistance or unemployment compensation benefits, the payor shall withhold, and transmit to the department, 40 percent of the benefits for payment of support, not to exceed

the amount owed.

An income deduction order as provided by s. 61.1301 must be incorporated into the administrative support order or, if not incorporated into the administrative support order, the department or the Division of Administrative Hearings shall render a separate income deduction order.

Section 5. Section 409.25633, Florida Statutes, is created to read:

409.25633 Title IV-D Standard Parenting Time Plans.—

(1) The Title IV-D Standard Parenting Time Plans are intended for use by parents and families with no domestic or family violence concerns. A Title IV-D Standard Parenting Time Plan must be included in any administrative action to establish child support taken by the Title IV-D program to determine paternity or to establish or modify support if the parents agree upon it. If the parents do not agree to a Title IV-D Standard Parenting Time Plan or if an agreed-upon parenting time plan is not included, the Department of Revenue must enter an administrative support order and refer the parents to the court of appropriate jurisdiction to establish a parenting time plan. The department must note on the referral that an administrative support order has been entered. If a parenting time plan is not included in the administrative support order entered under s. 409.2563, the department must provide information to the parents

on the process to establish such plan.

(2) If the parents live within 100 miles of each other and the child is 3 years of age or older, the parent who owes support shall have parenting time with the child:

(a) *Every other weekend.*—The second and fourth full weekend of the month from 6 p.m. on Friday through 6 p.m. on Sunday. The weekends may begin upon the child's release from school on Friday and end on Sunday at 6 p.m. or when the child returns to school on Monday morning. The weekend time may be extended by holidays that fall on Friday or Monday;

(b) *One evening per week.*—One weekday beginning at 6 p.m. and ending at 8 p.m. or if both parents agree, from when the child is released from school until 8 p.m.;

(c) *Thanksgiving break.*—In even-numbered years, the Thanksgiving break from 6 p.m. on the Wednesday before Thanksgiving, until 6 p.m. on the Sunday following Thanksgiving. If both parents agree, the Thanksgiving break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday;

(d) *Winter break.*—In odd-numbered years, the first half of winter break, from the day school is released, beginning at 6 p.m. or, if both parents agree, upon the child's release from school, until noon on December 26. In even-numbered years, the second half of winter break from noon on December 26 until 6 p.m. on the day before school resumes, or, if both parents

agree, upon the child's return to school;

(e) *Spring break.*—In even-numbered years, the week of spring break from 6 p.m. the day that school is released until 6 p.m. the night before school resumes. If both parents agree, the spring break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday; and

(f) *Summer break.*—Two weeks in the summer beginning at 6 p.m. the first Sunday following the last day of school.

(3) If the parents live more than 100 miles from each other and the child is 3 years of age or older, the parties may agree to follow the schedule set forth in subsection (2), or else the parent who owes child support has parenting time with the child:

(a) *One weekend per month.*—The second or fourth full weekend of the month throughout the year beginning Friday at 6 p.m. through Sunday at 6 p.m. The parent who owes child support can choose the one weekend per month within 90 days after the parents begin to live more than 100 miles apart; and

(b) *Summer break.*—Forty-two days of parenting time during the summer months. The parent who is owed child support will have parenting time one weekend beginning on Friday at 6 p.m. through Sunday at 6 p.m. during any one extended period during the summer.

(4) If the child is under 3 years of age, the parents may

agree on a parenting time plan that includes more frequent visitation with shorter timeframes, gradually leading into overnight visits and either a parenting time plan agreed to by both parents or the Title IV-D Standard Parenting Time Plan set out in this section.

(5) In the event the parents have not agreed on a parenting schedule at the time of the child support hearing, the department shall enter an administrative support order and refer the parents to a court of appropriate jurisdiction for the establishment of a parenting plan.

(6) The Title IV-D Standard Parenting Time Plans are not intended for use by parents and families with domestic or family violence concerns.

(7) If, after the incorporation of an agreed-upon parenting time plan into an administrative support order, a parent becomes concerned about the safety of the child during the child's time with the other parent, a modification of the parenting time plan may be sought through a court of appropriate jurisdiction.

(8) The department shall create and provide a form for a petition to establish a parenting time plan for parents who have not agreed on a parenting schedule at the time of the child support hearing. The department shall provide the form to the parents but may not file the petition or represent either parent at the hearing.

(9) The department may adopt rules to implement and administer this section.

Section 6. Subsections (1) and (2) of section 409.2564, Florida Statutes, are amended to read:

409.2564 Actions for support.—

(1) In each case in which regular support payments are not being made as provided herein, the department shall institute, within 30 days after determination of the obligor's reasonable ability to pay, action as is necessary to secure the obligor's payment of current support and any arrearage that ~~which~~ may have accrued under an existing order of support, and, if a parenting time plan was not incorporated into the existing order of support and is appropriate, include either an agreed-upon parenting time plan or Title IV-D Standard Parenting Time Plan. The department shall notify the program attorney in the judicial circuit in which the recipient resides setting forth the facts in the case, including the obligor's address, if known, and the public assistance case number. Whenever applicable, the procedures established under ~~the provisions of~~ chapter 88, Uniform Interstate Family Support Act, chapter 61, Dissolution of Marriage; Support; Time-sharing, chapter 39, Proceedings Relating to Children, chapter 984, Children and Families in Need of Services, and chapter 985, Delinquency; Interstate Compact on Juveniles, may govern actions instituted under ~~the provisions of~~ this act, except that actions for support under chapter 39,

chapter 984, or chapter 985 brought pursuant to this act shall not require any additional investigation or supervision by the department.

(2) The order for support entered pursuant to an action instituted by the department under ~~the provisions of~~ subsection (1) shall require that the support payments be made periodically to the department through the depository. An order for support entered under the provisions of subsection (1) must include either an agreed-upon parenting time plan or Title IV-D Standard Parenting Time Plan, if appropriate. Upon receipt of a payment made by the obligor pursuant to any order of the court, the depository shall transmit the payment to the department within 2 working days, except those payments made by personal check which shall be disbursed in accordance with s. 61.181. Upon request, the depository shall furnish to the department a certified statement of all payments made by the obligor. Such statement shall be provided by the depository at no cost to the department.

Section 7. Paragraph (g) of subsection (2) and paragraph (a) of subsection (4) of section 409.256, Florida Statutes, are amended to read:

409.256 Administrative proceeding to establish paternity or paternity and child support; order to appear for genetic testing.—

(2) JURISDICTION; LOCATION OF HEARINGS; RIGHT OF ACCESS TO

THE COURTS.—

(g) Section 409.2563(2)(h), (i), and (j) ~~409.2563(2)(e), (f), and (g)~~ apply to a proceeding under this section.

(4) NOTICE OF PROCEEDING TO ESTABLISH PATERNITY OR PATERNITY AND CHILD SUPPORT; ORDER TO APPEAR FOR GENETIC TESTING; MANNER OF SERVICE; CONTENTS.—The Department of Revenue shall commence a proceeding to determine paternity, or a proceeding to determine both paternity and child support, by serving the respondent with a notice as provided in this section. An order to appear for genetic testing may be served at the same time as a notice of the proceeding or may be served separately. A copy of the affidavit or written declaration upon which the proceeding is based shall be provided to the respondent when notice is served. A notice or order to appear for genetic testing shall be served by certified mail, restricted delivery, return receipt requested, or in accordance with the requirements for service of process in a civil action. Service by certified mail is completed when the certified mail is received or refused by the addressee or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does

not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally. For purposes of this section, an employee or an authorized agent of the department may serve the notice or order to appear for genetic testing and execute an affidavit of service. The department may serve an order to appear for genetic testing on a caregiver. The department shall provide a copy of the notice or order to appear by regular mail to the mother and caregiver, if they are not respondents.

(a) A notice of proceeding to establish paternity must state:

1. That the department has commenced an administrative proceeding to establish whether the putative father is the biological father of the child named in the notice.

2. The name and date of birth of the child and the name of the child's mother.

3. That the putative father has been named in an affidavit or written declaration that states the putative father is or may be the child's biological father.

4. That the respondent is required to submit to genetic testing.

5. That genetic testing will establish either a high degree of probability that the putative father is the biological father of the child or that the putative father cannot be the

biological father of the child.

6. That if the results of the genetic test do not indicate a statistical probability of paternity that equals or exceeds 99 percent, the paternity proceeding in connection with that child shall cease unless a second or subsequent test is required.

7. That if the results of the genetic test indicate a statistical probability of paternity that equals or exceeds 99 percent, the department may:

a. Issue a proposed order of paternity that the respondent may consent to or contest at an administrative hearing; or

b. Commence a proceeding, as provided in s. 409.2563, to establish an administrative support order for the child. Notice of the proceeding shall be provided to the respondent by regular mail.

8. That, if the genetic test results indicate a statistical probability of paternity that equals or exceeds 99 percent and a proceeding to establish an administrative support order is commenced, the department shall issue a proposed order that addresses paternity and child support. The respondent may consent to or contest the proposed order at an administrative hearing.

9. That if a proposed order of paternity or proposed order of both paternity and child support is not contested, the department shall adopt the proposed order and render a final order that establishes paternity and, if appropriate, an

administrative support order for the child.

10. That, until the proceeding is ended, the respondent shall notify the department in writing of any change in the respondent's mailing address and that the respondent shall be deemed to have received any subsequent order, notice, or other paper mailed to the most recent address provided or, if a more recent address is not provided, to the address at which the respondent was served, and that this requirement continues if the department renders a final order that establishes paternity and a support order for the child.

11. That the respondent may file an action in circuit court for a determination of paternity, child support obligations, or both.

12. That if the respondent files an action in circuit court and serves the department with a copy of the petition or complaint within 20 days after being served notice under this subsection, the administrative process ends without prejudice and the action must proceed in circuit court.

13. That, if paternity is established, the putative father may file a petition in circuit court for a determination of matters relating to custody and rights of parental contact.

A notice under this paragraph must also notify the respondent of the provisions in s. 409.2563(4)(n) and (p). ~~s. 409.2563(4)(m) and (o)~~.

Section 8. Subsection (5) of section 409.2572, Florida Statutes, is amended to read:

409.2572 Cooperation.—

(5) As used in this section only, the term "applicant for or recipient of public assistance for a dependent child" refers to such applicants and recipients of public assistance as defined in s. 409.2554(12) ~~s. 409.2554(8)~~, with the exception of applicants for or recipients of Medicaid solely for the benefit of a dependent child.

Section 9. Parenting time plan implementation timeline.—

(1) On or before October 1, 2018, the Department of Revenue shall submit a report that includes a timeline for implementation and all identifiable costs of administering the parenting time plans prescribed in this act to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(2) This section shall take effect July 1, 2017, and expires July 1, 2019.

Section 10. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2019.

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 Diaz, J. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 409.2551, Florida Statutes, is amended to read:

409.2551 Legislative intent.—Common-law and statutory procedures governing the remedies for enforcement of support for financially dependent children by persons responsible for their support have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the Attorney General has resulted in a growing burden on the financial resources of the state, which is constrained to provide public assistance for basic maintenance requirements

when parents fail to meet their primary obligations. The state, therefore, exercising its police and sovereign powers, declares that the common-law and statutory remedies pertaining to family desertion and nonsupport of dependent children shall be augmented by additional remedies directed to the resources of the responsible parents. In order to render resources more immediately available to meet the needs of dependent children, it is the legislative intent that the remedies provided herein are in addition to, and not in lieu of, existing remedies. It is declared to be the public policy of this state that this act be construed and administered to the end that children shall be maintained from the resources of their parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs. It is also the public policy of this state to encourage frequent contact between a child and each parent to optimize the development of a close and continuing relationship between each parent and the child.

Section 2. Section 409.2554, Florida Statutes, is reordered and amended to read:

409.2554 Definitions; ss. 409.2551-409.2598.—As used in ss. 409.2551-409.2598, the term:

(5) ~~(1)~~ "Department" means the Department of Revenue.

(6) ~~(2)~~ "Dependent child" means any unemancipated person under the age of 18, any person under the age of 21 and still in

school, or any person who is mentally or physically incapacitated when such incapacity began before ~~prior to~~ such person reaching the age of 18. This definition may ~~shall~~ not be construed to impose an obligation for child support beyond the child's attainment of majority except as imposed in s. 409.2561.

(3) "Court" means the circuit court.

(4) "Court order" means any judgment or order of any court of appropriate jurisdiction of the state, or an order of a court of competent jurisdiction of another state, ordering payment of a set or determinable amount of support money.

(7) ~~(5)~~ "Health insurance" means coverage under a fee-for-service arrangement, health maintenance organization, or preferred provider organization, and other types of coverage available to either parent, under which medical services could be provided to a dependent child.

(8) ~~(6)~~ "Obligee" means the person to whom support payments are made pursuant to an alimony or child support order.

(9) ~~(7)~~ "Obligor" means a person who is responsible for making support payments pursuant to an alimony or child support order.

(12) ~~(8)~~ "Public assistance" means money assistance paid on the basis of Title IV-E and Title XIX of the Social Security Act, temporary cash assistance, or food assistance benefits received on behalf of a child under 18 years of age who has an absent parent.

(10) ~~(9)~~ "Program attorney" means an attorney employed by the department, under contract with the department, or employed by a contractor of the department, to provide legal representation for the department in a proceeding related to the determination of paternity or the establishment, modification, or enforcement of support brought pursuant to law.

(11) ~~(10)~~ "Prosecuting attorney" means any private attorney, county attorney, city attorney, state attorney, program attorney, or an attorney employed by an entity of a local political subdivision who engages in legal action related to the determination of paternity or the establishment, modification, or enforcement of support brought pursuant to this act.

(13) "State Case Registry" means the automated registry maintained by the Title IV-D agency, containing records of each Title IV-D case and of each support order established or modified in the state on or after October 1, 1998. Such records must consist of data elements as required by the United States Secretary of Health and Human Services.

(14) "State Disbursement Unit" means the unit established and operated by the Title IV-D agency to provide one central address for collection and disbursement of child support payments made in cases enforced by the department pursuant to Title IV-D of the Social Security Act and in cases not being enforced by the department in which the support order was

initially issued in this state on or after January 1, 1994, and in which the obligor's child support obligation is being paid through income deduction order.

(16) "Title IV-D Standard Parenting Time Plan" means a document that may be agreed to by the parents to govern the relationship between the parents and to provide the parent who owes support a reasonable minimum amount of time with his or her child. The plan set forth in s. 409.25633 includes timetables that specify the time, including overnights and holidays, that a child may spend with each parent.

(15) ~~(11)~~ "Support," unless otherwise specified, means:

(a) Child support, and, when the child support obligation is being enforced by the Department of Revenue, spousal support or alimony for the spouse or former spouse of the obligor with whom the child is living.

(b) Child support only in cases not being enforced by the Department of Revenue.

(1) ~~(12)~~ "Administrative costs" means any costs, including attorney ~~attorney's~~ fees, clerk's filing fees, recording fees and other expenses incurred by the clerk of the circuit court, service of process fees, or mediation costs, incurred by the Title IV-D agency in its effort to administer the Title IV-D program. The administrative costs that ~~which~~ must be collected by the department shall be assessed on a case-by-case basis based upon a method for determining costs approved by the

Federal Government. The administrative costs shall be assessed periodically by the department. The methodology for determining administrative costs shall be made available to the judge or any party who requests it. Only those amounts ordered independent of current support, arrears, or past public assistance obligation shall be considered and applied toward administrative costs.

(2) ~~(13)~~ "Child support services" includes any civil, criminal, or administrative action taken by the Title IV-D program to determine paternity, establish, modify, enforce, or collect support.

(17) ~~(14)~~ "Undistributable collection" means a support payment received by the department which the department determines cannot be distributed to the final intended recipient.

(18) ~~(15)~~ "Unidentifiable collection" means a payment received by the department for which a parent, depository or circuit civil numbers, or source of the payment cannot be identified.

Section 3. Subsection (2) of section 409.2557, Florida Statutes, is amended to read:

409.2557 State agency for administering child support enforcement program.—

(2) The department in its capacity as the state Title IV-D agency has ~~shall have~~ the authority to take actions necessary to carry out the public policy of ensuring that children are

maintained from the resources of their parents to the extent possible. The department's authority includes ~~shall include~~, but is not ~~be~~ limited to, the establishment of paternity or support obligations, the establishment of a Title IV-D Standard Parenting Time Plan or any other parenting time plan agreed to and signed by the parents, and ~~as well as~~ the modification, enforcement, and collection of support obligations.

Section 4. Subsections (2), (4), (5), and (7) of section 409.2563, Florida Statutes, are amended to read:

409.2563 Administrative establishment of child support obligations.—

(2) PURPOSE AND SCOPE.—

(a) It is not the Legislature's intent to limit the jurisdiction of the circuit courts to hear and determine issues regarding child support or parenting time. This section is intended to provide the department with an alternative procedure for establishing child support obligations and establishing a parenting time plan only if the parents are in agreement, in Title IV-D cases in a fair and expeditious manner when there is no court order of support. The procedures in this section are effective throughout the state and shall be implemented statewide.

(b) If the parents do not have an existing time-sharing schedule or parenting time plan and do not agree to a parenting time plan, a plan may not be included in the initial

administrative order and the order must include a statement explaining its absence.

(c) If the parents have a judicially established parenting time plan, the plan may not be included in the administrative or initial judicial order.

(d) Any notification provided by the department may not include a Title IV-D Standard Parenting Time Plan if Florida is not the child's home state, when one parent does not reside in Florida, if either parent has requested nondisclosure for fear of harm from the other parent, or when the parent who owes support is incarcerated.

(e) ~~(b)~~ The administrative procedure set forth in this section concerns only the establishment of child support obligations and, if agreed to and signed by both parents, a parenting time plan or Title IV-D Standard Parenting Time Plan. This section does not grant jurisdiction to the department or the Division of Administrative Hearings to hear or determine issues of dissolution of marriage, separation, alimony or spousal support, termination of parental rights, dependency, disputed paternity, except for a determination of paternity as provided in s. 409.256, ~~or award of~~ or change of time-sharing. If both parents have agreed to and signed a parenting time plan before the establishment of the administrative support order, the department or the Division of Administrative Hearings shall incorporate the agreed-upon parenting time plan into the

192 administrative support order. This paragraph notwithstanding,
193 the department and the Division of Administrative Hearings may
194 make findings of fact that are necessary for a proper
195 determination of a parent's support obligation as authorized by
196 this section.
197 (f) ~~(e)~~ If there is no support order for a child in a Title
198 IV-D case whose paternity has been established or is presumed by
199 law, or whose paternity is the subject of a proceeding under s.
200 409.256, the department may establish a parent's child support
201 obligation pursuant to this section, s. 61.30, and other
202 relevant provisions of state law. The administrative support
203 order must include a parenting time plan or Title IV-D Standard
204 Parenting Time Plan as agreed to and signed by both parents. The
205 parent's obligation determined by the department may include any
206 obligation to pay retroactive support and any obligation to
207 provide for health care for a child, whether through insurance
208 coverage, reimbursement of expenses, or both. The department may
209 proceed on behalf of:
210 1. An applicant or recipient of public assistance, as
211 provided by ss. 409.2561 and 409.2567;
212 2. A former recipient of public assistance, as provided by
213 s. 409.2569;
214 3. An individual who has applied for services as provided
215 by s. 409.2567;
216 4. Itself or the child, as provided by s. 409.2561; or

5. A state or local government of another state, as provided by chapter 88.

(g) ~~(d)~~ Either parent, or a caregiver if applicable, may at any time file a civil action in a circuit court having jurisdiction and proper venue to determine parental support obligations, if any. A support order issued by a circuit court prospectively supersedes an administrative support order rendered by the department.

(h) ~~(e)~~ Pursuant to paragraph (e) ~~(b)~~, neither the department nor the Division of Administrative Hearings has jurisdiction to ~~award or~~ change child custody or rights of parental contact. The department or the Division of Administrative Hearings shall incorporate a parenting time plan or Title IV-D Standard Parenting Time Plan as agreed to and signed by both parents into the administrative support order. Either parent may at any time file a civil action in a circuit having jurisdiction and proper venue for a determination of child custody and rights of parental contact.

(i) ~~(f)~~ The department shall terminate the administrative proceeding and file an action in circuit court to determine support if within 20 days after receipt of the initial notice the parent from whom support is being sought requests in writing that the department proceed in circuit court or states in writing his or her intention to address issues concerning time-sharing or rights to parental contact in court and if within 10

days after receipt of the department's petition and waiver of service the parent from whom support is being sought signs and returns the waiver of service form to the department.

(j) ~~(g)~~ The notices and orders issued by the department under this section shall be written clearly and plainly.

(4) NOTICE OF PROCEEDING TO ESTABLISH ADMINISTRATIVE SUPPORT ORDER.—To commence a proceeding under this section, the department shall provide to the parent from whom support is not being sought and serve the parent from whom support is being sought with a notice of proceeding to establish administrative support order, a copy of the Title IV-D Standard Parenting Time Plan, and a blank financial affidavit form. The notice must state:

(a) The names of both parents, the name of the caregiver, if any, and the name and date of birth of the child or children;

(b) That the department intends to establish an administrative support order as defined in this section;

(c) That the department will incorporate a parenting time plan or Title IV-D Standard Parenting Time Plan, as agreed to and signed by both parents, into the administrative support order;

(d) ~~(e)~~ That both parents must submit a completed financial affidavit to the department within 20 days after receiving the notice, as provided by paragraph (13)(a);

(e) ~~(d)~~ That both parents, or parent and caregiver if

applicable, are required to furnish to the department information regarding their identities and locations, as provided by paragraph (13)(b);

(f) ~~(e)~~ That both parents, or parent and caregiver if applicable, are required to promptly notify the department of any change in their mailing addresses to ensure receipt of all subsequent pleadings, notices, and orders, as provided by paragraph (13)(c);

(g) ~~(f)~~ That the department will calculate support obligations based on the child support guidelines schedule in s. 61.30 and using all available information, as provided by paragraph (5)(a), and will incorporate such obligations into a proposed administrative support order;

(h) ~~(g)~~ That the department will send by regular mail to both parents, or parent and caregiver if applicable, a copy of the proposed administrative support order, the department's child support worksheet, and any financial affidavits submitted by a parent or prepared by the department;

(i) ~~(h)~~ That the parent from whom support is being sought may file a request for a hearing in writing within 20 days after the date of mailing or other service of the proposed administrative support order or will be deemed to have waived the right to request a hearing;

(j) ~~(i)~~ That if the parent from whom support is being sought does not file a timely request for hearing after service

of the proposed administrative support order, the department will issue an administrative support order that incorporates the findings of the proposed administrative support order, and any agreed-upon parenting time plan. The department will send by regular mail a copy of the administrative support order and any incorporated parenting time plan to both parents, or parent and caregiver if applicable;

(k) ~~(j)~~ That after an administrative support order is rendered incorporating any agreed-upon parenting time plan, the department will file a copy of the order with the clerk of the circuit court;

(l) ~~(k)~~ That after an administrative support order is rendered, the department may enforce the administrative support order by any lawful means. The department does not have jurisdiction to enforce any parenting time plan that is incorporated into an administrative support order;

(m) ~~(l)~~ That either parent, or caregiver if applicable, may file at any time a civil action in a circuit court having jurisdiction and proper venue to determine parental support obligations, if any, and that a support order issued by a circuit court supersedes an administrative support order rendered by the department;

(n) ~~(m)~~ That neither the department nor the Division of Administrative Hearings has jurisdiction to ~~award or~~ change child custody or rights of parental contact or time-sharing, and

these issues may be addressed only in circuit court. The department or the Division of Administrative Hearings may incorporate, if agreed to and signed by both parents, a parenting time plan or Title IV-D Standard Parenting Time Plan when the administrative support order is established.

1. The parent from whom support is being sought may request in writing that the department proceed in circuit court to determine his or her support obligations.

2. The parent from whom support is being sought may state in writing to the department his or her intention to address issues concerning custody or rights to parental contact in circuit court.

3. If the parent from whom support is being sought submits the request authorized in subparagraph 1., or the statement authorized in subparagraph 2. to the department within 20 days after the receipt of the initial notice, the department shall file a petition in circuit court for the determination of the parent's child support obligations, and shall send to the parent from whom support is being sought a copy of its petition, a notice of commencement of action, and a request for waiver of service of process as provided in the Florida Rules of Civil Procedure.

4. If, within 10 days after receipt of the department's petition and waiver of service, the parent from whom support is being sought signs and returns the waiver of service form to the

department, the department shall terminate the administrative proceeding without prejudice and proceed in circuit court.

5. In any circuit court action filed by the department pursuant to this paragraph or filed by a parent from whom support is being sought or other person pursuant to paragraph (m) ~~(l)~~ or paragraph (o) ~~(n)~~, the department shall be a party only with respect to those issues of support allowed and reimbursable under Title IV-D of the Social Security Act. It is the responsibility of the parent from whom support is being sought or other person to take the necessary steps to present other issues for the court to consider; ~~.~~

(o) ~~(n)~~ That if the parent from whom support is being sought files an action in circuit court and serves the department with a copy of the petition within 20 days after being served notice under this subsection, the administrative process ends without prejudice and the action must proceed in circuit court; and

(p) ~~(o)~~ Information provided by the Office of State Courts Administrator concerning the availability and location of self-help programs for those who wish to file an action in circuit court but who cannot afford an attorney.

The department may serve the notice of proceeding to establish an administrative support order and agreed-upon parenting time plan or Title IV-D Standard Parenting Time Plan by certified

mail, restricted delivery, return receipt requested. Alternatively, the department may serve the notice by any means permitted for service of process in a civil action. For purposes of this section, an authorized employee of the department may serve the notice and execute an affidavit of service. Service by certified mail is completed when the certified mail is received or refused by the addressee or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally. The department shall provide the parent from whom support is not being sought or the caregiver with a copy of the notice by regular mail to the last known address of the parent from whom support is not being sought or caregiver.

(5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.—

(a) After serving notice upon a parent in accordance with subsection (4), the department shall calculate that parent's child support obligation under the child support guidelines schedule as provided by s. 61.30, based on any timely financial

affidavits received and other information available to the department. If either parent fails to comply with the requirement to furnish a financial affidavit, the department may proceed on the basis of information available from any source, if such information is sufficiently reliable and detailed to allow calculation of guideline schedule amounts under s. 61.30. If a parent receives public assistance and fails to submit a financial affidavit, the department may submit a financial affidavit or written declaration for that parent pursuant to s. 61.30(15). If there is a lack of sufficient reliable information concerning a parent's actual earnings for a current or past period, it shall be presumed for the purpose of establishing a support obligation that the parent had an earning capacity equal to the federal minimum wage during the applicable period.

(b) The department shall send by regular mail to both parents, or to a parent and caregiver if applicable, copies of the proposed administrative support order, a copy of the Title IV-D Standard Parenting Time Plan, its completed child support worksheet, and any financial affidavits submitted by a parent or prepared by the department. The proposed administrative support order must contain the same elements as required for an administrative support order under paragraph (7)(e).

(c) The department shall provide a notice of rights with the proposed administrative support order, which notice must inform the parent from whom support is being sought that:

1. The parent from whom support is being sought may, within 20 days after the date of mailing or other service of the proposed administrative support order, request a hearing by filing a written request for hearing in a form and manner specified by the department;

2. If the parent from whom support is being sought files a timely request for a hearing, the case shall be transferred to the Division of Administrative Hearings, which shall conduct further proceedings and may enter an administrative support order;

3. A parent from whom support is being sought who fails to file a timely request for a hearing shall be deemed to have waived the right to a hearing, and the department may render an administrative support order pursuant to paragraph (7)(b);

4. The parent from whom support is being sought may consent in writing to entry of an administrative support order without a hearing;

5. The parent from whom support is being sought may, within 10 days after the date of mailing or other service of the proposed administrative support order, contact a department representative, at the address or telephone number specified in the notice, to informally discuss the proposed administrative support order and, if informal discussions are requested timely, the time for requesting a hearing will be extended until 10 days after the department notifies the parent that the informal

discussions have been concluded; and

6. If an administrative support order that establishes a parent's support obligation and incorporates either a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to and signed by both parents is rendered, whether after a hearing or without a hearing, the department may enforce the administrative support order by any lawful means. The department does not have the jurisdiction or authority to enforce a parenting time plan.

(d) If, after serving the proposed administrative support order but before a final administrative support order is rendered, the department receives additional information that makes it necessary to amend the proposed administrative support order, it shall prepare an amended proposed administrative support order, with accompanying amended child support worksheets and other material necessary to explain the changes, and follow the same procedures set forth in paragraphs (b) and (c).

(7) ADMINISTRATIVE SUPPORT ORDER.—

(a) If a hearing is held, the administrative law judge of the Division of Administrative Hearings shall issue an administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to and signed by both parents, or a final order denying an administrative support order, which constitutes final agency

action by the department. The Division of Administrative Hearings shall transmit any such order to the department for filing and rendering.

(b) If the parent from whom support is being sought does not file a timely request for a hearing, the parent will be deemed to have waived the right to request a hearing.

(c) If the parent from whom support is being sought waives the right to a hearing, or consents in writing to the entry of an order without a hearing, the department may render an administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to and signed by both parents.

(d) The department shall send by regular mail a copy of the administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to and signed by both parents, or the final order denying an administrative support order, to both parents, or a parent and caregiver if applicable. The parent from whom support is being sought shall be notified of the right to seek judicial review of the administrative support order in accordance with s. 120.68.

(e) An administrative support order must comply with ss. 61.13(1) and 61.30. The department shall develop a standard form or forms for administrative support orders. An administrative support order must provide and state findings, if applicable, concerning:

1. The full name and date of birth of the child or children;

2. The name of the parent from whom support is being sought and the other parent or caregiver;

3. The parent's duty and ability to provide support;

4. The amount of the parent's monthly support obligation;

5. Any obligation to pay retroactive support;

6. The parent's obligation to provide for the health care needs of each child, whether through health insurance, contribution toward the cost of health insurance, payment or reimbursement of health care expenses for the child, or any combination thereof;

7. The beginning date of any required monthly payments and health insurance;

8. That all support payments ordered must be paid to the ~~Florida~~ State Disbursement Unit as provided by s. 61.1824;

9. That the parents, or caregiver if applicable, must file with the department when the administrative support order is rendered, if they have not already done so, and update as appropriate the information required pursuant to paragraph (13)(b);

10. That both parents, or parent and caregiver if applicable, are required to promptly notify the department of any change in their mailing addresses pursuant to paragraph (13)(c); and

11. That if the parent ordered to pay support receives reemployment assistance or unemployment compensation benefits, the payor shall withhold, and transmit to the department, 40 percent of the benefits for payment of support, not to exceed the amount owed.

An income deduction order as provided by s. 61.1301 must be incorporated into the administrative support order or, if not incorporated into the administrative support order, the department or the Division of Administrative Hearings shall render a separate income deduction order.

Section 5. Section 409.25633, Florida Statutes, is created to read:

409.25633 Title IV-D Standard Parenting Time Plans.—The best interest of the child is the primary consideration of the parenting plan and special consideration should be given to the age and needs of each child. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when a parenting time plan is created.

(1) A Title IV-D Standard Parenting Time Plan shall be presented to the parents in any administrative action taken by the Title IV-D program to establish or modify child support or to determine paternity. If the parents agree to the Title IV-D Standard Parenting Time Plan or to another parenting time plan,

the plan must be signed by the parents and incorporated into the administrative order. If the parents do not agree to a Title IV-D Standard Parenting Time Plan or if an agreed-upon parenting time plan is not included, the Department of Revenue must enter an administrative support order and refer the parents to the court of appropriate jurisdiction to establish a parenting time plan. The department must note on the referral that an administrative support order has been entered. If a parenting time plan is not included in the administrative support order entered pursuant to s. 409.2563, the department must provide information to the parents on the process to establish such a plan.

(2) The parent who owes support is entitled to parenting time with the child. If the parents do not have a signed, agreed-upon parenting time plan, the following Title IV-D Standard Parenting Time Plan must be incorporated into an administrative support order if agreed to and signed by the parents:

(a) Every other weekend.—The second and fourth full weekend of the month from 6 p.m. on Friday through 6 p.m. on Sunday. The weekends may begin upon the child's release from school on Friday and end on Sunday at 6 p.m. or when the child returns to school on Monday morning. The weekend time may be extended by holidays that fall on Friday or Monday;

(b) One evening per week.—One weekday beginning at 6 p.m.

and ending at 8 p.m. or, if both parents agree, from when the child is released from school until 8 p.m.;

(c) Thanksgiving break.—In even-numbered years, the Thanksgiving break from 6 p.m. on the Wednesday before Thanksgiving until 6 p.m. on the Sunday following Thanksgiving. If both parents agree, the Thanksgiving break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday;

(d) Winter break.—In odd-numbered years, the first half of winter break, from the child's release from school, beginning at 6 p.m. or, if both parents agree, upon the child's release from school, until noon on December 26. In even-numbered years, the second half of winter break from noon on December 26 until 6 p.m. on the day before school resumes or, if both parents agree, upon the child's return to school;

(e) Spring break.—In even-numbered years, the week of spring break from 6 p.m. the day the child is released from school until 6 p.m. the night before school resumes. If both parents agree, the spring break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday; and

(f) Summer break.—For 2 weeks in the summer beginning at 6 p.m. the first Sunday following the last day of school.

(3) In the event the parents have not agreed on a parenting schedule at the time of the child support hearing, the

department shall enter an administrative support order and refer the parents to a court of appropriate jurisdiction for the establishment of a parenting time plan.

(4) The Title IV-D Standard Parenting Time Plan is not intended for the use by, and may not be provided to, parents and families with domestic or family violence concerns.

(5) After the incorporation of an agreed-upon parenting time plan into an administrative support order, a modification of the parenting time plan may be sought through a court of appropriate jurisdiction.

(6) The department shall create and provide a form for a petition to establish a parenting time plan for parents who have not agreed on a parenting schedule at the time of the child support hearing. The department shall provide the form to the parents, but may not file the petition or represent either parent at the hearing.

(7) The parents may not be required to pay a fee to file the petition to establish a parenting plan.

(8) The department may adopt rules to implement and administer this section.

Section 6. Subsections (1) and (2) of section 409.2564, Florida Statutes, are amended to read:

409.2564 Actions for support.—

(1) In each case in which regular support payments are not being made as provided herein, the department shall institute,

within 30 days after determination of the obligor's reasonable ability to pay, action as is necessary to secure the obligor's payment of current support, ~~and~~ any arrearage that ~~which~~ may have accrued under an existing order of support, and, if a parenting time plan was not incorporated into the existing order of support, include either a signed, agreed-upon parenting time plan or a signed Title IV-D Standard Parenting Time Plan, if appropriate. The department shall notify the program attorney in the judicial circuit in which the recipient resides setting forth the facts in the case, including the obligor's address, if known, and the public assistance case number. Whenever applicable, the procedures established under ~~the provisions of~~ chapter 88, Uniform Interstate Family Support Act, chapter 61, Dissolution of Marriage; Support; Time-sharing, chapter 39, Proceedings Relating to Children, chapter 984, Children and Families in Need of Services, and chapter 985, Delinquency; Interstate Compact on Juveniles, may govern actions instituted under ~~the provisions of~~ this act, except that actions for support under chapter 39, chapter 984, or chapter 985 brought pursuant to this act shall not require any additional investigation or supervision by the department.

(2) The order for support entered pursuant to an action instituted by the department under ~~the provisions of~~ subsection (1) shall require that the support payments be made periodically to the department through the depository. An order for support

entered under subsection (1) must include either a signed, agreed-upon parenting time plan or a signed Title IV-D Standard Parenting Time Plan, if appropriate. Upon receipt of a payment made by the obligor pursuant to any order of the court, the depository shall transmit the payment to the department within 2 working days, except those payments made by personal check which shall be disbursed in accordance with s. 61.181. Upon request, the depository shall furnish to the department a certified statement of all payments made by the obligor. Such statement shall be provided by the depository at no cost to the department.

Section 7. Paragraph (g) of subsection (2) and paragraph (a) of subsection (4) of section 409.256, Florida Statutes, are amended to read:

409.256 Administrative proceeding to establish paternity or paternity and child support; order to appear for genetic testing.—

(2) JURISDICTION; LOCATION OF HEARINGS; RIGHT OF ACCESS TO THE COURTS.—

(g) Section 409.2563(2)(h), (i), and (j) ~~409.2563(2)(e), (f), and (g)~~ apply to a proceeding under this section.

(4) NOTICE OF PROCEEDING TO ESTABLISH PATERNITY OR PATERNITY AND CHILD SUPPORT; ORDER TO APPEAR FOR GENETIC TESTING; MANNER OF SERVICE; CONTENTS.—The Department of Revenue shall commence a proceeding to determine paternity, or a

proceeding to determine both paternity and child support, by serving the respondent with a notice as provided in this section. An order to appear for genetic testing may be served at the same time as a notice of the proceeding or may be served separately. A copy of the affidavit or written declaration upon which the proceeding is based shall be provided to the respondent when notice is served. A notice or order to appear for genetic testing shall be served by certified mail, restricted delivery, return receipt requested, or in accordance with the requirements for service of process in a civil action. Service by certified mail is completed when the certified mail is received or refused by the addressee or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally. For purposes of this section, an employee or an authorized agent of the department may serve the notice or order to appear for genetic testing and execute an affidavit of service. The department may serve an order to

appear for genetic testing on a caregiver. The department shall provide a copy of the notice or order to appear by regular mail to the mother and caregiver, if they are not respondents.

(a) A notice of proceeding to establish paternity must state:

1. That the department has commenced an administrative proceeding to establish whether the putative father is the biological father of the child named in the notice.

2. The name and date of birth of the child and the name of the child's mother.

3. That the putative father has been named in an affidavit or written declaration that states the putative father is or may be the child's biological father.

4. That the respondent is required to submit to genetic testing.

5. That genetic testing will establish either a high degree of probability that the putative father is the biological father of the child or that the putative father cannot be the biological father of the child.

6. That if the results of the genetic test do not indicate a statistical probability of paternity that equals or exceeds 99 percent, the paternity proceeding in connection with that child shall cease unless a second or subsequent test is required.

7. That if the results of the genetic test indicate a statistical probability of paternity that equals or exceeds 99

percent, the department may:

a. Issue a proposed order of paternity that the respondent may consent to or contest at an administrative hearing; or

b. Commence a proceeding, as provided in s. 409.2563, to establish an administrative support order for the child. Notice of the proceeding shall be provided to the respondent by regular mail.

8. That, if the genetic test results indicate a statistical probability of paternity that equals or exceeds 99 percent and a proceeding to establish an administrative support order is commenced, the department shall issue a proposed order that addresses paternity and child support. The respondent may consent to or contest the proposed order at an administrative hearing.

9. That if a proposed order of paternity or proposed order of both paternity and child support is not contested, the department shall adopt the proposed order and render a final order that establishes paternity and, if appropriate, an administrative support order for the child.

10. That, until the proceeding is ended, the respondent shall notify the department in writing of any change in the respondent's mailing address and that the respondent shall be deemed to have received any subsequent order, notice, or other paper mailed to the most recent address provided or, if a more recent address is not provided, to the address at which the

742 respondent was served, and that this requirement continues if
743 the department renders a final order that establishes paternity
744 and a support order for the child.
745 11. That the respondent may file an action in circuit
746 court for a determination of paternity, child support
747 obligations, or both.
748 12. That if the respondent files an action in circuit
749 court and serves the department with a copy of the petition or
750 complaint within 20 days after being served notice under this
751 subsection, the administrative process ends without prejudice
752 and the action must proceed in circuit court.
753 13. That, if paternity is established, the putative father
754 may file a petition in circuit court for a determination of
755 matters relating to custody and rights of parental contact.
756
757 A notice under this paragraph must also notify the respondent of
758 the provisions in s. 409.2563(4)(n) and (p) ~~s. 409.2563(4)(m)~~
759 ~~and (o)~~.
760 Section 8. Subsection (5) of section 409.2572, Florida
761 Statutes, is amended to read:
762 409.2572 Cooperation.—
763 (5) As used in this section only, the term "applicant for
764 or recipient of public assistance for a dependent child" refers
765 to such applicants and recipients of public assistance as
766 defined in s. 409.2554(12) ~~s. 409.2554(8)~~, with the exception of

applicants for or recipients of Medicaid solely for the benefit of a dependent child.

Section 9. The Department of Revenue shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2018, on the status of the implementation of this act, including the number of parenting plans entered with administrative support orders and the number of parents referred to the circuit court to determine a parenting plan. The report must include recommendations to facilitate further implementation of this act.

Section 10. For the 2017-2018 fiscal year, the sums of $350,476 in recurring funds and $690,650 in nonrecurring funds are appropriated from the General Revenue Fund to the Department of Revenue for the purpose of implementing this act.

Section 11. This act shall take effect January 1, 2018.

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

Remove everything before the enacting clause and insert: An act relating to child support and parenting time plans; amending s. 409.2551, F.S.; providing legislative intent to encourage frequent contact between a child and each parent; amending s. 409.2554, F.S.; defining terms; amending s. 409.2557, F.S.; authorizing the Department of Revenue to establish parenting time plans agreed to by both parents in

Title IV-D child support actions; amending s. 409.2563, F.S.; requiring the department to mail a Title IV-D Standard Parenting Time Plan with proposed administrative support orders; providing requirements for including parenting time plans in certain administrative orders; creating s. 409.25633, F.S.; providing the purpose and requirements for a Title IV-D Standard Parenting Time Plan; requiring the department to refer parents who do not agree on a parenting time plan to a circuit court; requiring the department to create and provide a form for a petition to establish a parenting time plan under certain circumstances; specifying that the parents are not required to pay a fee to file the petition; authorizing the department to adopt rules; amending s. 409.2564, F.S.; authorizing the department to incorporate either a signed, agreed-upon parenting time plan or a signed Title IV-D Standard Parenting Time Plan in a child support order; amending ss. 409.256 and 409.2572, F.S.; conforming cross-references; requiring the department to submit a report to the Governor and Legislature by a specified date; specifying requirements for the report; providing an appropriation; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1379 Department of Legal Affairs
SPONSOR(S): Civil Justice & Claims Subcommittee; Diaz, J.
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1626

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	13 Y, 1 N, As CS	MacNamara	Bond
2) Appropriations Committee	25 Y, 0 N	Welty	Leznoff
3) Judiciary Committee		MacNamara	Camechis

SUMMARY ANALYSIS

The bill amends current law with respect to the duties and responsibilities of the Attorney General and the Department of Legal Affairs. The bill:

- Gives the Statewide Council on Human Trafficking the authority to apply for and accept funds, grants, gifts, and services from the state, the federal government, and other sources to defray the cost of the council's annual statewide policy summit;
- Provides that the Attorney General may request the assignment of one or more Florida Highway Patrol officers to the Office of the Attorney General for security services;
- Amends dates to keep Florida's Deceptive and Unfair Trade Practices Act current with applicable federal law and rules;
- Provides a definition of "virtual currency" and amends the term "monetary instruments" to include "virtual currency" in the Florida Money Laundering Act;
- Amends the Florida Trust Code related to charitable trusts to allow the Attorney General to take over for the 20 state attorneys in matters involving oversight of charitable trusts, to require delivery of notice, and to give legal standing to the Attorney General under circumstances where a trustee of a charitable trust seeks to modify the status of the trust or its beneficiaries; and
- Provide compensation awards to surviving family members of an emergency responder who, as a result of a crime, is killed answering a call for service in the line of duty.

To the extent the Statewide Council on Human Trafficking is successful in securing additional funds, there may be an increase in revenues to the Department of Legal Affairs.

The bill has an indeterminate, but likely insignificant, fiscal impact on the Department of Legal Affairs and the Department of Highway Safety and Motor Vehicles, which will be absorbed by the agencies.

Surviving family members of an emergency responder who dies in the line of duty while answering a call for service may be entitled to claims under the Crimes Compensation Act.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Attorney General is charged with all powers and duties pertaining to the office except insofar as they have been expressly restricted or modified by statute or the state constitution. The Attorney General is recognized as the chief law officer of the State and, absent express legislative restriction, may exercise such power and authority as the public interest may require. The Attorney General is a member of the Executive Branch's Cabinet. As chief legal officer of the State, the Attorney General must be noticed in certain proceedings under Florida law and may bring actions on behalf citizens of the state as provided for by law.[1]

The Attorney General is also the head of the Department of Legal Affairs. The Department of Legal Affairs (department) is responsible for providing all legal services required by any executive department unless otherwise provided by law. The Attorney General, however, may authorize other counsel where emergency circumstances exist and must authorize other counsel when professional a conflict of interest exists.

Current law provides for the creation of various councils, groups, and trust funds that are under the control of the department. Moreover, the department is tasked with oversight duties for certain industries of the state as part of their duty to provide legal services on behalf of the state.

Current Law and Effect of Bill

Statewide Council on Human Trafficking

The Statewide Council on Human Trafficking enhances the development and coordination of state and local law enforcement and social services responses to address commercial sexual exploitation as a form of human trafficking and to support victims.[2] The department provides the council with staff to perform its duties.

The membership of the Council is provided for by statute, with each member serving 4-year terms. The duties of the Council include holding an annual statewide policy summit on topics relating to human trafficking.

The bill authorizes the Council to apply for and accept funds, grants, gifts, and services from the state, the Federal Government or any of its agencies, or any other public or private source for the purpose of defraying costs associated with the annual statewide policy summit.

Assigning Highway Patrol Officers to the Office of the Attorney General

Current law requires the Department of Highway Safety and Motor Vehicles (DHSMV) to assign one Florida Highway Patrol officer to the office of the Governor at the discretion of the Lieutenant Governor. The Governor selects the officer and current law provides the minimum rank and salary requirements for the officer.[3]

For the 2015-16 and 2016-17 fiscal years, the Department of Highway Safety and Motor Vehicles is allowed to assign a patrol officer to the Lieutenant Governor, at his or her discretion, and to a Cabinet

[1] *See e.g.*, s. 736.0110, F.S., relating to charitable trusts.
[2] *See* s. 16.617, F.S.
[3] s. 321.04(3), F.S.

member if the Department deems such assignment appropriate or in response to a threat, if requested in writing by such Cabinet member.[4]

The bill requires, upon the request of the Attorney General, the Department of Highway Safety and Motor Vehicles to assign one or more patrol officers to the Office of the Attorney General for security services.

Florida Deceptive and Unfair Trade Practices

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA or Act) broadly declares unlawful any unfair or deceptive acts or practices committed in the conduct of any trade or commerce.[5] The Act is a separate cause of action intended to be an additional remedy, and it is aimed toward making consumers whole for losses caused by fraudulent consumer practices. The Act protects consumers from deceptive acts that mislead consumers, and protects the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

The Act applies to any act or practice occurring in the conduct of any trade or commerce, even as between purely commercial interests. It applies to private causes of action arising from single unfair or deceptive acts in the conduct of any trade or commerce, even if it involves only a single party, a single transaction, or a single contract. Section 501.203(3), F.S. provides:

> "Violation of this part" means any violation of this act or the rules adopted under this act and may be based upon any of the following as of July 1, 2015.

Similarly, with respect to unlawful acts and practices under s. 501.204(2), F.S., the Act provides that:

> It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2015.

The bill removes the year 2015 from the above provisions in the Act and replaces it with the year 2017 to keep the FDUTPA current with applicable federal law and rules.

Florida Money Laundering Act

Section 896.101, F.S., provides for the requirements and enforcement of the Florida Money Laundering Act. Florida law defines money laundering as a financial transaction or series of transactions used to conceal, disguise, hide, or process money and other proceeds generated through criminal activity. The proceeds may be gained through any felony prohibited by state or federal laws.

Many types of financial transactions can qualify as money laundering under Florida money laundering laws. Activities such as purchases, sales, monetary gifts, loans, bank deposits, wire transfers, currency exchanges, and investments might all qualify as financial transactions for the purpose of money laundering. Transfers of title to real property, cars, and other types of vehicles can also qualify as money laundering if used to hide the proceeds from unlawful activities.

Under the Act, "monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in

[4] s. 321.04(4), F.S.
[5] ss. 501.201-213, F.S.

bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.[6]

On July 22, 2016, a judge in Miami dismissed a money laundering case where the defendant sold $1,500 of Bitcoins to undercover detectives who told him they wanted to use the money to buy stolen credit-card numbers.[7] For the purpose of the money laundering charge, the judge concluded Bitcoin was not money and therefore, could not fall within the definition of money laundering.

The bill adds to the definition of monetary instruments to include virtual currency. The bill further provides a definition of virtual currency as "a medium of exchange in electronic or digital format that is not a coin or currency of the United States or other country." The effect of these changes is that money laundering using virtual currency is illegal.

Notice for Charitable Trusts

Chapter 736, F.S., is the Florida Trust Code (code). Under s. 736.0110(3), F.S., the Attorney General may assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in Florida. Section 736.0103(16), F.S., defines a "qualified beneficiary" as a living beneficiary who, on the date of the beneficiary's qualification is determined:

> (a) Is a distributee or permissible distributee of trust income or principal;
> (b) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributes described in paragraph (a) terminated on that date without causing the trust to terminate; or
> (c) Would be a distribute or permissible distribute of trust income or principal if the trust terminated in accordance with its terms on that date.

A "charitable trust" for purposes of s. 736.0110, F.S., means a trust, or portion of a trust, created for a charitable purpose as described in s. 736.0405(1), F.S. Charitable purposes include, but are not limited to, "the relief of poverty; the advancement of arts, sciences, education, or religion; and the promotion of health, governmental, or municipal purposes."[8] Part XII of ch. 736, F.S., governs all charitable trusts. Specifically, and in relevant part:

- Section 736.1205, F.S., requires that the trustee of a charitable trust notify the state attorney for the judicial circuit of the principal place of administration of the trust if the power to make distributions are more restrictive than s. 736.1204(2), F.S., or if the trustee's powers are inconsistent with s. 736.1204(3), F.S.
- Section 736.1206(2), F.S., provides that the trustee of a charitable trust may amend the governing instrument with consent of the state attorney to comply with the requirements of a private foundation trust as provided in s. 736.1204(2), F.S.
- Section 736.1207, F.S., specifies that Part XII of the code does not affect the power of a court to relieve a trustee from restrictions on that trustee's powers and duties for cause shown and upon complaint of the state attorney, among others.
- Section 736.1208(4)(b), F.S., requires that a trustee who has released a power to select charitable donees accomplished by reducing the class of permissible charitable organizations must deliver a copy of the release to the state attorney.

[6] s. 896.101(2)(e), F.S.
[7] Bitcoin not money, Miami judge rules in dismissing laundering charges. Miami Herald. http://www.miamiherald.com/news/local/crime/article91682102.html (last accessed April 18, 2017).
[8] s. 736.0405(1), F.S.

- Section 736.1209, F.S., allows the trustee to file an election with the state attorney to bring the trust under s. 736.1208(5), F.S., relating to public charitable organization(s) as the exclusive beneficiary of a trust.

As such, there is some disconnect between s. 736.0110(3), F.S., and Part XII of the code; they can be read to require that notice be given to the Attorney General for certain charitable trusts and to the state attorney of the proper judicial circuit for the same or other trusts.

The bill grants these powers and responsibilities solely to the Attorney General. The bill also amends s. 736.0110(3), F.S., to provide the Attorney General with standing to assert the rights of a qualified beneficiary in any judicial proceeding and amends the provisions in Part XII of the code concerning the state attorney's office.

The changes provide that the Attorney General, rather than the state attorney, would receive notifications, releases, and elections for charitable trusts under ss. 736.1205, 736.1207, 736.1208, and 736.1209, F.S., and the Attorney General, rather than the state attorney, would consent to a charitable trust amendment effectuated under s. 736.1206, F.S.

Lastly, the bill defines how the Attorney General is to be given notifications, releases, and elections in s. 736.1201(2), F.S., and removes the state attorney from the definitions section of Part XII of the code.

Emergency Responder Death Benefits

Sections 960.01-960.28, F.S., relate to the Florida Crimes Compensation Act (Act). The Act was created recognizing that many innocent people suffer personal injury or death as a direct result of adult and juvenile criminal acts or in their efforts to prevent crime or apprehend persons committing or attempting to commit adult and juvenile crimes. As a result, their dependents may thereby suffer disabilities, incur financial hardships, or become dependent upon public assistance. [9]

Consequently, it is the intent of the Act that aid, care, and support be provided by the state, as a matter of moral responsibility, for such victims of adult and juvenile crime. The Act further provides that all state departments and agencies should cooperate with the department in carrying out the provisions of the Act.[10]

A Crimes Compensation Trust Fund was established under the Act pursuant to s. 960.21, F.S. The fund was established for the purpose of providing for the payment of all necessary and proper expenses incurred by the operation of the department and the payment of claims. The department is tasked with administering the Crimes Compensation Trust Fund. The moneys placed in the fund consist of all moneys appropriated by the Legislature for the purpose of compensating the victims of crime and other claimants under the Act, and of moneys recovered on behalf of the department by subrogation or other action, recovered through restitution, received from the Federal Government, received from additional court costs, received from fines, or received from any other public or private source.[11]

The Act provides a definition of "crime" for purposes of enforcement of claims under the Act, under s. 960.03(3), F.S., as well as a definition of victim under s. 960.03(14), F.S. Section 960.16, F.S., further provides that awards paid pursuant to the Act subrogate[12] to the state for causes of action that claim compensation under an insurance policy when the claim seeks to recover losses directly or indirectly resulting from the crime with respect to which the award is made.

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[9] s. 960.02, F.S.
[10] *Id.*
[11] s. 960.21(1)-(2), F.S.
[12] Subrogation rights place a party in the legal position of one who has been paid money because of the acts of a third party. *See Allstate Ins. Co. v. Metropolitan Dade County*, 436 So.2d 976 (Fla. 3d DCA 1983).

The bill creates s. 960.194, F.S., to provide death benefits for surviving family members of emergency responders. The bill defines "emergency responder" as a law enforcement officer, a firefighter, an emergency medical technician, or a paramedic.

In addition to providing definitions for purposes of the section, the bill provides that the department may award up to a maximum of $50,000 to the surviving family members of an emergency responder who, as a result of a crime, is killed answering a call for service in the line of duty. The $50,000 award is for each instance and must be apportioned between multiple claimants at the discretion of the department.

The benefits provided for in the bill may be reduced to the extent the emergency responder contributed to his or her death, and may be reduced to the extent the claimant has already received an award under the Act for the same incident.

The bill also adds to the definitions of "crime and "victim." A crime under the bill includes a felony or misdemeanor that results in the death of an emergency responder while answering the call for service in the line of duty. A victim includes an emergency responder who is killed answering a call for service in the line of duty. Moreover, unlike other claims against the Crimes Compensation Trust Fund, an award to an emergency responder does not require a showing of need.

Lastly, the bill limits the application of the provision providing for subrogation to the state, to not include awards under the newly created s. 960.194, F.S. As such, claimants seeking emergency responder death benefits will not have their awards subrogated to the state in the event they received compensation pursuant to an insurance policy for the same incident.

The department is authorized to adopt rules to implement these provisions.

B. SECTION DIRECTORY:

Section 1 amends s. 16.617, F.S., relating to the Statewide Council on Human Trafficking.

Section 2 amends s. 321.04, F.S., relating to personnel of the highway patrol.

Section 3 amends s. 501.203, F.S., relating to unfair trade practices definitions.

Section 4 amends s. 501.204, F.S., relating to unlawful acts and practices.

Section 5 amends s. 736.0110, F.S., relating to others treated as qualified beneficiaries.

Section 6 amends s. 736.1201, F.S., relating to definitions.

Section 7 amends s. 736.1205, F.S., relating to notice that this part does not apply.

Section 8 amends s. 736.1206, F.S., relating to power to amend trust instruments.

Section 9 amends s. 736.1207, F.S., relating to power of courts to permit deviation.

Section 10 amends s. 736.1208, F.S., relating to release.

Section 11 amends s. 736.1209, F.S., relating to elections under this part.

Section 12 amends s. 896.101, F.S., relating to the Florida Money Laundering Act.

Section 13 amends s. 960.03, F.S., relating to definitions.

Section 14 amends s. 960.16, F.S., relating to subrogation.

Section 15 creates s. 960.194, F.S., relating to emergency responder death benefits.

Section 16 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill gives the Statewide Council on Human Trafficking the authority to apply for and accept funds, grants, gifts, and services from the state, the federal government, and other sources to defray the cost of the council's annual statewide policy summit. To the extent the council is successful in securing additional funds, there may be an increase in revenues to the Department of Legal Affairs.

2. Expenditures:

   The provisions of the bill relating to charitable trusts may increase expenditures in the Attorney General's office. This workload is indeterminate, but likely insignificant, and absorbable within existing resources.

   The Department of Highway Safety and Motor Vehicles (DHSMV) has been providing a security detail to the Attorney General as authorized under Section 109 of HB 5003 (the implementing bill for the Fiscal Year 2016-2017 General Appropriations Act). The bill makes this authorization permanent and absorbed within existing resources of the DHSMV.

   The provisions of the bill relating to death benefits for emergency responders have an indeterminate fiscal impact. The number of emergency responders meeting the requirements for benefits under the bill is unknown. The Attorney General's Office reports that any impact can be absorbed within existing resources in the Crimes Compensation Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Surviving family members of an emergency responder who dies in the line of duty while answering a call for service may be entitled to claims under the Crimes Compensation Act.

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 Department of Legal Affairs (DLA) is authorized to adopt rules to implement the emergency responder death benefits in the Crimes Compensation Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2017, the Civil Justice & Claims Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by:

- Removing a section revising the definition of "monetary currency" under the state's money services businesses law;
- Removing a section that would have expanded the public records exemption related to address confidentiality in domestic violence actions; and
- Amending the portion related to money laundering to add virtual currency to the money laundering offense.

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 the Department of Legal Affairs; amending s. 16.617, F.S.; authorizing the Statewide Council on Human Trafficking to apply for and receive funding from additional sources to defray costs associated with the annual policy summit; amending s. 321.04, F.S.; requiring the Department of Highway Safety and Motor Vehicles to assign highway patrol officers to the Office of the Attorney General as requested; amending ss. 501.203 and 501.204, F.S.; updating references for purposes of the Florida Deceptive and Unfair Trade Practices Act; amending s. 736.0110, F.S.; providing that the Attorney General has standing to assert certain rights in certain proceedings; amending s. 736.1201, F.S.; defining the term "delivery of notice"; conforming a provision to changes made by the act; amending s. 736.1205, F.S.; requiring an authorized trustee to provide certain notice to the Attorney General rather than the state attorney; amending ss. 736.1206, 736.1207, 736.1208, and 736.1209, F.S.; conforming provisions; amending s. 896.101, F.S.; defining the term "virtual currency"; expanding the Florida Money Laundering Act to prohibit the laundering of virtual currency; amending s. 960.03, F.S.; revising definitions for purposes of

crime victim assistance; amending s. 960.16, F.S.; providing that awards of emergency responder death benefits under a specified provision are not subject to subrogation; creating s. 960.194, F.S.; providing definitions; providing for awards to the surviving family members of first responders who, as a result of a crime, are killed answering a call for service in the line of duty; specifying considerations in the determination of the amount of such an award; providing for apportionment of awards in certain circumstances; authorizing rulemaking for specified purposes; providing for denial of benefits under certain circumstances; providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (3) of section 16.617, Florida Statutes, to read:

16.617 Statewide Council on Human Trafficking; creation; membership; duties.—

(3) ORGANIZATION AND SUPPORT.—

(d) The council may apply for and accept funds, grants, gifts, and services from the state, the Federal Government or any of its agencies, or any other public or private source for the purpose of defraying costs associated with the annual

statewide policy summit.

Section 2. Subsection (4) of section 321.04, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section, to read:

321.04 Personnel of the highway patrol; rank classifications; probationary status of new patrol officers; subsistence; special assignments.—

(4) Upon request of the Attorney General, the Department of Highway Safety and Motor Vehicles shall assign one or more patrol officers to the Office of the Attorney General for security services.

Section 3. Subsection (3) of section 501.203, Florida Statutes, is amended to read:

501.203 Definitions.—As used in this chapter, unless the context otherwise requires, the term:

(3) "Violation of this part" means any violation of this act or the rules adopted under this act and may be based upon any of the following as of July 1, 2017 ~~2015~~:

(a) Any rules promulgated pursuant to the Federal Trade Commission Act, 15 U.S.C. ss. 41 et seq.;

(b) The standards of unfairness and deception set forth and interpreted by the Federal Trade Commission or the federal courts; or

(c) Any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive,

or unconscionable acts or practices.

Section 4. Section 501.204, Florida Statutes, is amended to read:

501.204 Unlawful acts and practices.—

(1) Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(2) It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2017 ~~2015~~.

Section 5. Subsection (3) of section 736.0110, Florida Statutes, is amended to read:

736.0110 Others treated as qualified beneficiaries.—

(3) The Attorney General may assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state. The Attorney General has standing to assert such rights in any judicial proceedings.

Section 6. Subsections (2), (3), and (4) of section 736.1201, Florida Statutes, are renumbered as subsections (3), (4), and (5), respectively, present subsection (5) of that section is amended, and a new subsection (2) is added to that

section, to read:

736.1201 Definitions.—As used in this part:

(2) "Delivery of notice" means delivery of a written notice required under this part using any commercial delivery service requiring a signed receipt or by any form of mail requiring a signed receipt.

~~(5) "State attorney" means the state attorney for the judicial circuit of the principal place of administration of the trust pursuant to s. 736.0108.~~

Section 7. Section 736.1205, Florida Statutes, is amended to read:

736.1205 Notice that this part does not apply.—In the case of a power to make distributions, if the trustee determines that the governing instrument contains provisions that are more restrictive than s. 736.1204(2), or if the trust contains other powers, inconsistent with the provisions of s. 736.1204(3) that specifically direct acts by the trustee, the trustee shall notify the Attorney General by delivery of notice ~~state attorney~~ when the trust becomes subject to this part. Section 736.1204 does not apply to any trust for which notice has been given pursuant to this section unless the trust is amended to comply with the terms of this part.

Section 8. Subsection (2) of section 736.1206, Florida Statutes, is amended to read:

736.1206 Power to amend trust instrument.—

(2) In the case of a charitable trust that is not subject to ~~the provisions of~~ subsection (1), the trustee may amend the governing instrument to comply with ~~the provisions of~~ s. 736.1204(2) after delivery of notice to, and with the consent of, the ~~state~~ Attorney General.

Section 9. Section 736.1207, Florida Statutes, is amended to read:

736.1207 Power of court to permit deviation.—This part does not affect the power of a court to relieve a trustee from any restrictions on the powers and duties that are placed on the trustee by the governing instrument or applicable law for cause shown and on complaint of the trustee, the Attorney General ~~state attorney~~, or an affected beneficiary and notice to the affected parties.

Section 10. Paragraph (b) of subsection (4) of section 736.1208, Florida Statutes, is amended to read:

736.1208 Release; property and persons affected; manner of effecting.—

(4) Delivery of a release shall be accomplished as follows:

(b) If the release is accomplished by reducing the class of permissible charitable organizations, by delivery of notice ~~a copy~~ of the release to the Attorney General, including a copy of the release ~~state attorney~~.

Section 11. Section 736.1209, Florida Statutes, is amended

to read:

736.1209 Election to come under this part.—With the consent of that organization or organizations, a trustee of a trust for the benefit of a public charitable organization or organizations may come under s. 736.1208(5) by delivery of notice to ~~filing with~~ the ~~state~~ Attorney General of the ~~an~~ election, accompanied by the proof of required consent. Thereafter the trust shall be subject to s. 736.1208(5).

Section 12. Subsection (2) of section 896.101, Florida Statutes, is amended and reordered, to read:

896.101 Florida Money Laundering Act; definitions; penalties; injunctions; seizure warrants; immunity.—

(2) As used in this section, the term:

(a) ~~(b)~~ "Conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.

(b) ~~(f)~~ "Financial institution" means a financial institution as defined in 31 U.S.C. s. 5312 which institution is located in this state.

(c) ~~(d)~~ "Financial transaction" means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects commerce, or a transaction involving the transfer of title to any real property, vehicle, vessel, or aircraft, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, commerce in

any way or degree.

(d) ~~(h)~~ "Knowing" means that a person knew; or, with respect to any transaction or transportation involving more than $10,000 in U.S. currency or foreign equivalent, should have known after reasonable inquiry, unless the person has a duty to file a federal currency transaction report, IRS Form 8300, or a like report under state law and has complied with that reporting requirement in accordance with law.

(e) ~~(a)~~ "Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state or federal law, regardless of whether or not such activity is specified in paragraph (h) ~~(g)~~.

(f) ~~(e)~~ "Monetary instruments" means coin or currency of the United States or of any other country, virtual currency, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

(g) ~~(i)~~ "Petitioner" means any local, county, state, or federal law enforcement agency; the Attorney General; any state attorney; or the statewide prosecutor.

(h) ~~(g)~~ "Specified unlawful activity" means any "racketeering activity" as defined in s. 895.02.

(i) ~~(e)~~ "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safety deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(j) "Virtual currency" means a medium of exchange in electronic or digital format that is not a coin or currency of the United States or any other country.

Section 13. Paragraph (f) is added to subsection (3) of section 960.03, Florida Statutes, paragraphs (c) and (d) of subsection (14) of that section are amended, and paragraph (e) is added to that subsection, to read:

960.03 Definitions; ss. 960.01-960.28.—As used in ss. 960.01-960.28, unless the context otherwise requires, the term:

(3) "Crime" means:

(f) A felony or misdemeanor that results in the death of an emergency responder, as defined in and solely for the purposes of s. 960.194, while answering a call for service in the line of duty, notwithstanding paragraph (c).

(14) "Victim" means:

(c) A person younger than 18 years of age who was the victim of a felony or misdemeanor offense of child abuse that resulted in a mental injury as defined by s. 827.03 but who was not physically injured; ~~or~~

(d) A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death; or

(e) An emergency responder, as defined in and solely for the purposes of s. 960.194, who is killed answering a call for service in the line of duty.

Section 14. Section 960.16, Florida Statutes, is amended to read:

960.16 Subrogation.—Except for an award under s. 960.194, payment of an award pursuant to this chapter shall subrogate the state, to the extent of such payment, to any right of action accruing to the claimant or to the victim or intervenor to recover losses directly or indirectly resulting from the crime with respect to which the award is made. Causes of action which shall be subrogated under this section include, but are not limited to, any claim for compensation under any insurance provision, including an uninsured motorist provision, when such claim seeks to recover losses directly or indirectly resulting from the crime with respect to which the award is made.

Section 15. Section 960.194, Florida Statutes, is created

to read:

960.194 Emergency responder death benefits.—

(1) For the purposes of this section, the term:

(a) "Call for service" means actively performing official duties, including the identification, prevention, or enforcement of the penal, traffic, or highway laws of this state, traveling to the scene of an emergency situation, and performing those functions for which the emergency responder has been trained and certified to perform.

(b) "Emergency responder" means a law enforcement officer, a firefighter, an emergency medical technician, or paramedic.

(c) "Emergency medical technician" has the same meaning as provided in s. 401.23.

(d) "Firefighter" has the same meaning as provided in s. 633.102.

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

(f) "Paramedic" has the same meaning as provided in s. 401.23.

(g) "Surviving family members of an emergency responder" means the surviving spouse, children, parents or guardian, or siblings of a deceased emergency responder.

(2) Notwithstanding s. 960.065(1) and s. 960.13, the department may award for any one claim up to a maximum of $50,000, to the surviving family members of an emergency

responder who, as a result of a crime, is killed answering a call for service in the line of duty.

(3) In determining the amount of an award, the department shall determine whether, because of his or her conduct, the emergency responder contributed to his or her death, and the department shall reduce the amount of the award or reject the claim altogether, in accordance with such determination. However, the department may disregard the contribution of the emergency responder to his or her own death when the record shows that such contribution was attributed to efforts by the emergency responder acting as an intervenor as defined in s. 960.03.

(4) If there are two or more persons entitled to an award pursuant to this section for the same incident, the award shall be apportioned among the claimants at the discretion and direction of the department.

(5) The department may adopt rules that establish award limits below the amount set forth in subsection (2) and establish criteria governing awards pursuant to this section.

(6) An award pursuant to this section shall be reduced or denied if the department has previously approved or paid out a claim under s. 960.13 to the same claimant regarding the same incident. An award for victim compensation under s. 960.13 shall be denied if the department has previously approved or paid out an emergency responder death benefits claim under this section.

Section 16. This act shall take effect July 1, 2017.