



Justice Appropriations Subcommittee

**Monday, March 27, 2017
12:30 PM – 3:30 PM**

Meeting Packet

**Richard Corcoran
Speaker**

**Bill Hager
Chair**



The Florida House of Representatives

Appropriations Committee

Justice Appropriations Subcommittee

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Meeting Agenda

Monday, March 27, 2017

Morris Hall (17 HOB)

12:30 PM – 3:30 PM

- I. Call to Order / Roll Call**
- II. Opening Remarks**
- III. Consideration of the following bill(s):**
 - CS/HB 83 - Offenses by Aliens Unlawfully Present in the United States by Criminal Justice Subcommittee, Eagle**
 - HB 457 - Terrorism and Terrorist Activities by Gonzalez**
 - CS/HB 575 - Threats to Kill or Do Bodily Injury by Criminal Justice Subcommittee, Daniels, Plasencia**
 - CS/HB 643 - Eyewitness Identification by Criminal Justice Subcommittee, Harrell**
 - HB 7051 - Clerks of the Circuit Court by Civil Justice & Claims Subcommittee, Byrd**
 - Chair's Budget Proposal for FY 2017-18**
- IV. Closing Remarks / Meeting Adjourned**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 83 Offenses by Illegal Immigrants
SPONSOR(S): Criminal Justice Subcommittee, Eagle and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 5 N, As CS	Hall	White
2) Justice Appropriations Subcommittee		Smith <i>AS</i>	Gusky <i>KAG</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

For certain offenses, Florida law provides for reclassification of the crime to the next higher degree and increases the offense severity ranking by one level. Examples of current offenses that are subject to reclassification provisions are crimes motivated by prejudice under s. 775.085, F.S., and assault and battery offenses against a law enforcement officer engaged in the lawful performance of his or her duties under s. 784.07, F.S. Florida does not currently authorize reclassification for an offense committed by a person who is unlawfully present in the United States.

The bill creates s. 775.0864, F.S., to reclassify five violent crimes to the next higher degree when the crime is committed by an alien who is unlawfully present in the United States. The offenses qualifying for the enhanced penalty under the bill are:

- Sexual battery;
- Aggravated assault with a deadly weapon;
- Murder;
- Unlawful throwing, placing, or discharging a destructive device or bomb; and
- Armed burglary.

The bill provides that the degree of the offense is reclassified as follows:

- A first degree misdemeanor is reclassified to a third degree felony;
- A third degree felony is reclassified to a second degree felony;
- A second degree felony is reclassified to a first degree felony; and
- A first degree felony is reclassified to a life felony.

The bill also enhances the offense severity ranking of a reclassified crime to one level higher than the normal ranking.

The bill would increase the prison population by an indeterminate amount.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Alien Inmate Population in Florida

Federal law defines the term “alien” to mean any person who is not a citizen or national of the United States.¹ Additionally, federal immigration law classifies an alien as “unlawfully present” when the alien is in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.²

The Florida Department of Corrections (DOC) maintains data related to the number of aliens³ currently incarcerated in the state’s prison system. This data indicates that, as of June 30, 2016, there were a total of 4,754 confirmed alien inmates. Data regarding the number of alien inmates who are unlawfully present is not collected.⁴

Reclassification of Offenses

Florida’s statutes currently contain multiple offenses for which the degree of the offense is enhanced if specific circumstances are present. Such an enhancement results in the offense level of the crime increasing by one degree. For example, a third degree felony (typically punishable by a maximum of five years imprisonment and a \$5,000 fine⁵) is enhanced to a second degree felony (punishable by a maximum of 15 years imprisonment and a \$10,000 fine⁶).

For some statutes the enhancement is based upon the offender’s actions, while others base the enhancement on a certain classification of the victim. For example, s. 775.085, F.S., known as Florida’s “Hate Crimes” statute, reclassifies an offense to the next higher offense level if the commission of a crime “evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, or advanced age of the victim.” This enhancement is based on the offender’s action, while s. 784.07, F.S., reclassifies an offense based on the victim of the offense. Section 784.07, F.S., reclassifies assault and battery offenses against law enforcement officers and other specified officers or providers, who are engaged in the lawful performance of their duty at the time of the offense, to an offense level one degree higher.

Consideration of Immigration Status in Criminal Sentencing

While Florida allows reclassification based on certain offenses, no Florida court has ever considered the reclassification of a criminal offense based on a defendant’s immigration status.

In *State v. O.C.*,⁷ the Florida Supreme Court determined that a penalty enhancement statute was unconstitutional and a violation of substantive due process. The statute subjected a defendant to an enhanced penalty based only upon the defendant’s association with gang members. Because the statute punished gang membership without requiring a relationship or nexus between the criminal activity and gang membership, the statute, according to the Court, lacked a rational relationship to the legislative goal of reducing gang violence or activity. As a result, the Court determined that the statute failed to have a reasonable and substantial relation to a permissible legislative objective.⁸

¹ 8 U.S.C. § 1101(a)(3) (2015).

² 8 U.S.C. § 1182(a)(9)(B)(ii) (2015).

³ DOC considers an inmate who does not have U.S. citizenship to be an “alien inmate”. FLORIDA DEPARTMENT OF CORRECTIONS, *Inmate Population, 2015-2016 Statistics*, http://www.dc.state.fl.us/pub/annual/1516/stats/ip_alien.html (last visited March 12, 2017).

⁴ *Id.*

⁵ ss. 775.082 and 775.083, F.S.

⁶ ss. 775.082 and 775.083, F.S.

⁷ *State v. O.C.*, 748 So. 2d 945 (Fla. 1999).

⁸ *Id.* at 950.

In a 2001 case from the District of Columbia, *Yemson v. United States*,⁹ a defendant challenged the trial court's imposition of consecutive prison terms following a guilty plea to various fraud-related charges. The defendant, who was from Nigeria, had previously fled the country on separate occasions to avoid prosecution for other crimes. He had been rearrested and convicted of other charges in federal court, including illegal entry after deportation. The sentencing judge based his decision to impose sentence on the defendant's failure to appear for sentencing five years earlier; his lengthy record for many of the same charges; and his failure to accept responsibility for his actions.¹⁰ The District of Columbia Court of Appeals affirmed, noting that it would obviously be unconstitutional to treat a defendant more harshly than another defendant solely because of his or her nationality or alien status. But the court explained that its decision does not mean . . . that a sentencing court, in deciding what sentence to impose, must close its eyes to the defendant's status as an illegal alien and his history of violating the law, including any law related to immigration. Indeed, "the sentencing court . . . must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed."¹¹

In 2008, the Indiana Court of Appeals in *Sanchez v. State*,¹² citing *Yemson*, upheld a trial court's finding that a defendant's status as an illegal alien was a valid sentencing aggravator. The Court also upheld a related finding that the defendant's illegal alien status reflected a disregard for the law.¹³

Yemson and *Sanchez* involve the discretion of a judge to impose a particular sentence based on aggravating and mitigating circumstances, of which, illegal alien immigration status was held to be one such aggravator. Thus, while those cases approve of using a defendant's illegal alien status as a factor to be considered in sentencing, they do not involve an offense reclassification statute.

Criminal Punishment Code, Offense Severity Ranking Chart

In Florida, the Criminal Punishment Code uses a system that assigns point values to crimes based on the severity of the offense listed in the offense severity ranking chart.¹⁴ These point values are used in conjunction with a Criminal Punishment Code scoresheet to calculate a sentencing score for felony offenders. The offense severity ranking chart is separated into 10 levels, ranked from least severe which are level one offenses, to most severe which are level 10 offenses. Each felony offense is assigned a level according to the severity of the offense.¹⁵ If an offense is not specifically listed in the offense severity ranking chart, s. 921.0023, F.S., creates a default provision to assign a severity ranking based upon the degree of the felony. For example, a third degree felony not specifically ranked will be a level one offense for the purpose of computing the Criminal Punishment Code scoresheet.¹⁶ Florida law specifies that reclassification of the degree of a felony offense, to provide an enhanced penalty, will not result in the offense becoming unlisted to subject it to the default provisions of s. 921.0023, F.S.

Effect of the Bill

The bill reclassifies five violent crimes to the next higher degree when the crime is committed by an alien who is unlawfully present in the United States. The offenses qualifying for the enhanced penalty under the bill are:

- Sexual battery, pursuant to s. 794.011, F.S.;
- Aggravated assault with a deadly weapon, pursuant to s. 784.021(1)(a), F.S.;
- Murder, pursuant to s. 782.04, F.S.;

⁹ *Yemson v. United States*, 764 A.2d 816 (D.C. 2001).

¹⁰ *Id.* at 819

¹¹ *Id.* (citations omitted).

¹² *Sanchez v. State*, 891 N.E.2d 174 (Ind. Ct. App. 2008).

¹³ *Id.* at 176-77.

¹⁴ ss. 921.0022 and 921.0023, F.S.

¹⁵ s. 921.0022, F.S.

¹⁶ s. 921.0023, F.S.

- Unlawful throwing, placing, or discharging a destructive device or bomb, pursuant to s. 790.1615, F.S.; and
- Armed burglary, pursuant to s. 810.02(2)(b), F.S.

The bill provides that the degree of the offense is reclassified as follows:

- A first degree misdemeanor¹⁷ is reclassified to a third degree felony;¹⁸
- A third degree felony is reclassified to a second degree felony;¹⁹
- A second degree felony is reclassified to a first degree felony;²⁰ and
- A first degree felony is reclassified to a life felony²¹.

The bill provides that any offense reclassified is to be ranked one level above the ranking normally specified for the crime for the purpose of computing the Criminal Punishment Code scoresheet and determining incentive gain-time eligibility. For example, aggravated assault with a deadly weapon is ranked as a level six offense on the offense severity ranking chart. Thus, under the bill, if an unlawfully present alien offender commits the offense, it will be reclassified as a level seven offense for ranking purposes. The bill addresses only one misdemeanor offense, the unlawful throwing, placing, or discharging a destructive device or bomb, and specifies that the crime is reclassified to a third degree felony and ranked as a level two offense for sentencing purposes.

Additionally, s. 921.0022, relating to the offense severity ranking chart, is amended to include the newly created s. 775.0864, F.S., as one of the enumerated reclassification statutes that will not cause an offense to become unlisted so that it is subject to the default ranking provisions of s. 921.0023, F.S.

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

B. SECTION DIRECTORY:

Section 1: Creating s. 775.0864, F.S.; relating to offenses against persons by unlawfully present aliens; reclassification.

Section 2: Amending s. 921.0022, F.S.; relating to the Criminal Punishment Code; offense severity ranking chart.

Section 3: Providing 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 (CJIC) met on March 2, 2017 and considered a broader version of this bill that reclassified any offense involving the use or threat of physical force or violence against another person when committed by an alien unlawfully present in the United States. The CJIC determined the bill would have increased the prison population by an indeterminate amount.. Although this bill applies to a narrower class of offenses, it is still anticipated to increase the prison population by an indeterminate amount.

¹⁷ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

¹⁸ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

¹⁹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

²⁰ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

²¹ A life felony is generally punishable by life imprisonment or a term of years not to exceed life imprisonment and a fine of up to \$15,000. ss. 775.082 and 775.083, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill may reduce the need for jail beds because it reclassifies a misdemeanor of the first degree, which could result only in a sentence to jail for less than one year, to a third degree felony, which result in a prison sentence.

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: An issue that may arise is whether the bill is subject to preemption by federal law. In *De Canas v. Bica*,²² a 1976 decision, the U.S. Supreme Court held that federal immigration law does not inherently preempt state court jurisdiction over all matters involving immigration issues. The Court noted that it has never held that every state statute “which in any way deals with aliens is a regulation of immigration and thus per se pre-empted by this constitutional power....”²³ This decision was rendered 10 years before Congress passed the Immigration Reform and Control Act of 1986 and current federal law, which was enacted for “combating the employment of illegal aliens.”²⁴

In *Arizona v. United States*,²⁵ a 2012 U.S. Supreme Court decision rendered after the Immigration Reform and Control Act, the Court noted that the current federal law was substantially different than it was when *De Canas* was decided. The Court said that “federal governance of immigration and alien status is extensive and complex.”²⁶

The Arizona Court also expounded on the federal preemption doctrine as it involves immigration law. Under the federal preemption doctrine, states are precluded from regulating conduct that Congress has determined must be regulated by federal law. Additionally, state statutes are preempted when they are in conflict with federal law. It is clear that the broad scope of federal immigration law significantly limits the power of states to regulate immigration. However, because of the absence of case law that addresses issues sufficiently similar to the issues raised by the bill, it is unclear whether this bill is preempted by federal law.

The Court noted that, “As a general rule, it is not a crime for a removable alien to remain present in the United States”²⁷ and that removal proceedings are determined to be civil, not criminal, proceedings.²⁸ Unlike the Arizona statute under review, the bill does not seek to detain unlawfully present aliens based upon a suspicion of their removability. Under this bill, unlawfully present aliens have been arrested and are being prosecuted for a state criminal offense.

²² *De Canas v. Bica*, 424 U.S. 351 (1976).

²³ *Id.* 355.

²⁴ *Arizona v. United States*, 132 S. Ct. 2492, 2504 (2012).

²⁵ *Id.*

²⁶ *Id.* at 2499.

²⁷ *Id.* at 2505.

²⁸ *Id.* at 2499.

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

C. **DRAFTING ISSUES OR OTHER COMMENTS:** None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2016, 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 changes the qualifying offenses for which reclassification occurs if the offense is committed by an alien unlawfully present in the United States.

The bill originally applied to the following offenses: assault; aggravated assault; battery; felony battery; any offense listed in s. 775.084(1)(b)1., F.S.; or any offense that involves the use or threat of physical force or violence against another person.

The CS limits the application of reclassification to the following offenses: sexual battery; aggravated assault with a deadly weapon; murder; unlawful throwing, placing, or discharging of a destructive device or bomb; and armed burglary.

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

1 A bill to be entitled
 2 An act relating to offenses by aliens unlawfully
 3 present in the United States; creating s. 775.0864,
 4 F.S.; requiring specified offenses to be reclassified
 5 if committed by such aliens; specifying the
 6 reclassification of these offenses; specifying the
 7 enhancement of the level of the ranking for purposes
 8 of sentencing and gain-time eligibility; amending s.
 9 921.0022, F.S.; revising references to offense
 10 reclassification provisions to conform to changes made
 11 by the act; providing an effective date.

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

14
 15 Section 1. Section 775.0864, Florida Statutes, is created
 16 to read:

17 775.0864 Offenses against persons by unlawfully present
 18 aliens; reclassification.-

19 (1) A violation of any of the following provisions must be
 20 reclassified to the next higher degree, as provided in
 21 subsection (2), if the offense is committed against a person in
 22 this state by an alien, as defined in 8 U.S.C. s. 1101(a), who
 23 is unlawfully present in the United States:

24 (a) Section 794.011, relating to sexual battery.

25 (b) Section 784.021(1)(a), relating to aggravated assault

26 with a deadly weapon.

27 (c) Section 782.04, relating to murder.

28 (d) Section 790.1615, relating to unlawful throwing,
29 placing, or discharging of a destructive device or bomb.

30 (e) Section 810.02(2)(b), relating to armed burglary.

31 (2) In the case of an offense identified in subsection

32 (1):

33 (a) A misdemeanor of the first degree is reclassified to a
34 felony of the third degree. For purposes of sentencing under
35 chapter 921, such offense is ranked in level 2 of the offense
36 severity ranking chart.

37 (b) A felony of the third degree is reclassified to a
38 felony of the second degree.

39 (c) A felony of the second degree is reclassified to a
40 felony of the first degree.

41 (d) A felony of the first degree is reclassified to a life
42 felony.

43

44 For purposes of sentencing under chapter 921 and determining
45 incentive gain-time eligibility under chapter 944, a felony
46 offense that is reclassified under this subsection is ranked one
47 level above the ranking specified under s. 921.0022 or s.
48 921.0023 of the felony offense committed.

49 Section 2. Subsection (2) of section 921.0022, Florida
50 Statutes, is amended to read:

51 921.0022 Criminal Punishment Code; offense severity
 52 ranking chart.—

53 (2) The offense severity ranking chart has 10 offense
 54 levels, ranked from least severe, which are level 1 offenses, to
 55 most severe, which are level 10 offenses, and each felony
 56 offense is assigned to a level according to the severity of the
 57 offense. For purposes of determining which felony offenses are
 58 specifically listed in the offense severity ranking chart and
 59 which severity level has been assigned to each of these
 60 offenses, the numerical statutory references in the left column
 61 of the chart and the felony degree designations in the middle
 62 column of the chart are controlling; the language in the right
 63 column of the chart is provided solely for descriptive purposes.
 64 Reclassification of the degree of the felony through the
 65 application of s. 775.0845, s. 775.085, s. 775.0861, s.
 66 775.0862, s. 775.0863, s. 775.0864, s. 775.087, s. 775.0875, s.
 67 794.023, or any other law that provides an enhanced penalty for
 68 a felony offense, to any offense listed in the offense severity
 69 ranking chart in this section shall not cause the offense to
 70 become unlisted and is not subject to the provisions of s.
 71 921.0023.



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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 457 Terrorism and Terrorist Activities

SPONSOR(S): Gonzalez

TIED BILLS: IDEN./SIM. **BILLS:** SB 476

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 0 N	Merlin	White
2) Justice Appropriations Subcommittee		Smith 	Gusky 
3) Judiciary Committee			

SUMMARY ANALYSIS

In Florida, there are a limited number of terrorism-related statutes. Chapter 943, F.S., indicates that the Florida Department of Law Enforcement (FDLE) serves as the coordinating agency in statewide counterterrorism efforts and responses to terrorist events. Section 775.30, F.S., defines the term "terrorism," and is modeled after the language used in federal law regarding domestic and international terrorism. Section 775.31, F.S., utilizes this definition and provides for the enhancement or reclassification, to the next highest level, of a misdemeanor or felony that can be attributed to an act of terrorism, while Chapter 782, lists an "act of terrorism" as a predicate for establishing that a homicide crime, such as felony murder, has been committed.

The bill creates new criminal offenses for:

- An act of terrorism or terrorist activity, which is a first degree felony, or if it results in death or serious bodily injury, a life felony.
- The use of "military-type training" by a designated FTO to harm another person or destroy or disrupt critical infrastructure. A violation is:
 - A second degree felony, or
 - If there is death or serious bodily injury, a first degree felony.
- Individuals who provide material support or resourced for terrorism or to terrorist organizations. A violation is:
 - A first degree felony, or
 - If there is death or serious bodily injury, a life felony.
- The act of membership in a designated foreign terrorist organization with the intent to further the organization's illegal goals, a violation of which is a second degree felony.
- Agroterrorism, a violation of which is a second degree felony. If the agroterrorism results in death or serious bodily injury, then it is a life felony.

The Criminal Justice Impact Conference (CJIC) met on March 2, 2017 and determined the bill would increase the prison population by an indeterminate amount.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Federal Counterterrorism Laws

For many years, lawmakers in the United States have enacted legislation aimed at curbing the threat of terrorism. At the federal level, the definition of “terrorism” is referenced in several places. Title 22, Chapter 38 of the United States Code, regarding the Department of State, contains a definition of terrorism in its requirement that annual country reports on terrorism be submitted by the Secretary of State to Congress every year. Under that definition, “the term ‘terrorism’ means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.”¹ The Code of Federal Regulations (CFR), on the other hand, indicates that terrorism “includes the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.”² Other similar definitions are used by various federal agencies.³ Title 18, Chapter 113B of the United States Code, in turn, provides definitions of “international terrorism” and “domestic terrorism.”⁴

Congress has enacted counterterrorism laws to facilitate the prosecution and investigation of terrorism cases, including prohibited conduct and penalties. Such laws give the federal government broad power to conduct investigations and prosecutions in cases of national security and terrorism.⁵ Currently, federal law prohibits a person from providing any material support or resources (MSR) to a foreign terrorist organization (FTO) as designated by the Secretary of State.⁶ Under 8 U.S.C. § 1189, the Secretary of State may designate an organization as an FTO if the Secretary finds that:

- The organization is a foreign organization;
- The organization engages in terrorist activity; and
- The terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.

Federal law defines what it means to provide MSR to terrorist organizations, as well as “training,” “expert advice or assistance,” and “military-type training.”⁷ Specifically:

¹ 22 U.S.C. § 2656f(d).

² 28 C.F.R. § 0.85(l).

³ Agencies with related definitions of terrorism include the Department of Defense and the Federal Emergency Management Agency (FEMA). See *Department of Defense Dictionary of Military and Associated Terms*, at 241, Nov. 8, 2010 (as amended through Feb. 15, 2016), available at http://www.dtic.mil/doctrine/new_pubs/jpl_02.pdf (last viewed Mar. 15, 2017); FEMA Publication, *Terrorism*, July 26, 2013, available at <https://www.fema.gov/media-library-data/20130726-1549-20490-0802/terrorism.pdf> (last viewed Feb. 9, 2017); see also FEMA Guidebook, *Managing the Emergency Consequences of Terrorist Incidents*, at J-3, July 2002, available at <https://www.fema.gov/pdf/plan/managingemerconseq.pdf> (last viewed Mar. 15, 2017).

⁴ 18 U.S.C. § 2331(1) and (5).

⁵ Title II of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458, 118 Stat. 3638, outlines intelligence authorities of the Federal Bureau of Investigation (FBI), as does Exec. Order 12333; 50 U.S.C. 401 et seq., transferred to 50 U.S.C. § 3002; 50 U.S.C. 1801 et seq.

⁶ See 8 U.S.C. § 1189(a)(1)(A)-(C). Title 8 of the United States Code is one of 50 titles that deals with Aliens and Nationality under the Immigration and Nationality Act (INA). The process under which the Secretary of State designates an entity as an FTO is authorized in Section 219 of the INA. See Charles Doyle, *Terrorist Material Support: An Overview of 18 U.S.C. §2339A and §2339B*, CONGRESSIONAL RESEARCH SERVICE, at 17, Dec. 8, 2016, available at <https://fas.org/sgp/crs/natsec/R41333.pdf> (last viewed on Feb. 7, 2017); see also *United States v. Ahmed*, 94 F. Supp. 3d 394, 404-06 (E.D. N.Y. March. 24, 2015) (involving defendants who were charged with conspiring to provide, providing, and attempting to provide “material support or resources to” and “receiving military-type training from” al-Shabaab, a designated FTO, and listing statutory criteria under which an organization may be designated as an FTO under 8 U.S.C. § 1189). The website for the United States Department of State includes a list of those organizations that have been designated by the Secretary of State as FTOs and those organizations that have been delisted from that category. See Website for the Department of State, *Foreign Terrorist Organizations*, available at <https://www.state.gov/j/ct/rls/other/des/123085.htm> (last viewed Feb. 11, 2017).

⁷ 18 U.S.C. §§ 2339A, 2339B, and 2339D.

- “‘Material support or resources’ means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials.”⁸
- “‘Training’ means instruction or teaching designed to impart a specific skill, as opposed to general knowledge.”⁹
- “‘Expert advice or assistance’ means advice or assistance derived from scientific, technical or other specialized knowledge.”¹⁰
- “‘Military-type training’ includes training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including any weapon of mass destruction....”¹¹

Offense of Providing MSR to Terrorists

Title 18 U.S.C. § 2339A criminalizes providing MSR or the concealment or disguise of the nature, location, source, or ownership of MSR, knowing or intending that the support or sources are to be used in preparation for, or in carrying out the following violations:

- Destruction of aircraft or aircraft facilities;¹²
- Violence at international airports;¹³
- Arson within special maritime and territorial jurisdiction;¹⁴
- Prohibitions with respect to biological weapons;¹⁵
- Prohibited activities related to chemical weapons;¹⁶
- Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault;¹⁷
- Prohibited transactions involving nuclear weapons;¹⁸
- Unlawful acts related to plastic explosives;¹⁹
- Maliciously damaging or destroying, or attempting to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned or possessed by, or leased to, the United States, or any of its departments or agencies, or any institution or organization receiving Federal financial assistance;²⁰
- Maliciously damaging or destroying, or attempting to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce;²¹
- Possession of firearms and dangerous weapons in federal facilities, killing someone in federal facility while possessing a firearm or dangerous weapon, or attempting or conspiring to do so;²²
- Conspiracy to kill, maim, or injure persons or damage property in a foreign country;²³
- Genocide;²⁴

⁸ 18 U.S.C. §§ 2339A(b)(1) and 2339B(g)(4).

⁹ 18 U.S.C. §§ 2339A(b)(2).

¹⁰ 18 U.S.C. §§ 2339A(b)(3).

¹¹ 18 U.S.C. § 2339D(c)(1).

¹² 18 U.S.C. § 32.

¹³ 18 U.S.C. § 37.

¹⁴ 18 U.S.C. § 81.

¹⁵ 18 U.S.C. § 175.

¹⁶ 18 U.S.C. § 229.

¹⁷ 18 U.S.C. § 351.

¹⁸ 18 U.S.C. § 831.

¹⁹ 18 U.S.C. § 842(m) and (n).

²⁰ 18 U.S.C. § 844(f).

²¹ 18 U.S.C. § 844(i).

²² 18 U.S.C. § 930(c).

²³ 18 U.S.C. § 956.

²⁴ 18 U.S.C. § 1091.

- Killing or attempting to kill officers and employees of the United States while such officer or employee is engaged in official duties or any person assisting such officer or employee;²⁵
- Murder or manslaughter of foreign officials, official guests, or internationally protected persons;²⁶
- Hostage taking;²⁷
- Injuring, committing depredation, or damaging property of the United States;²⁸
- Injuring or damaging communication lines, stations, or systems;²⁹
- Injuring or damaging buildings or property within special maritime and territorial jurisdiction;³⁰
- Destruction of an energy facility;³¹
- Presidential and Presidential staff assassination, kidnapping, and assault;³²
- Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air;³³
- Destruction of national-defense materials, national-defense premises, or national defense utilities;³⁴
- Production of defective national-defense material, national-defense premises, or national-defense utilities;³⁵
- Violence against maritime navigation;³⁶
- Violence against maritime fixed platforms;³⁷
- Killing, or attempting to kill, or conspiring to kill, a national of the United States;³⁸
- Using, threatening, attempting, or conspiring to use weapons of mass destruction;³⁹
- Acts of terrorism transcending national boundaries;⁴⁰
- Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities;⁴¹
- Torture;⁴²
- Recruitment of child soldiers;⁴³
- Sabotage of nuclear facilities or fuel;⁴⁴
- Aircraft piracy;⁴⁵
- Committing acts against interstate gas pipeline facilities, interstate hazardous liquid pipeline facilities, or intrastate gas pipeline facilities or intrastate hazardous liquid pipeline facilities that are used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce, or attempting or conspiring to do such an act; failing to follow regulations, destroying signs, and not using the one-call notification system or not heeding location information or markings.⁴⁶

²⁵ 18 U.S.C. § 1114.

²⁶ 18 U.S.C. § 1116.

²⁷ 18 U.S.C. § 1203.

²⁸ 18 U.S.C. § 1361.

²⁹ 18 U.S.C. § 1362.

³⁰ 18 U.S.C. § 1363.

³¹ 18 U.S.C. § 1366.

³² 18 U.S.C. § 1751.

³³ 18 U.S.C. § 1992.

³⁴ 18 U.S.C. § 2155.

³⁵ 18 U.S.C. § 2156.

³⁶ 18 U.S.C. § 2280.

³⁷ 18 U.S.C. § 2281.

³⁸ 18 U.S.C. § 2332.

³⁹ 18 U.S.C. § 2332a.

⁴⁰ 18 U.S.C. § 2332b.

⁴¹ 18 U.S.C. § 2332f.

⁴² 18 U.S.C. § 2340A.

⁴³ 18 U.S.C. § 2442.

⁴⁴ 42 U.S.C. § 2284.

⁴⁵ 49 U.S.C. § 46502.

⁴⁶ 49 U.S.C. § 60123.

Additionally, it is a violation to conceal an escape from the commission of any of the above-described offenses, or to attempt or conspire to do so. A violation is punishable by a fine, imprisonment not more than 15 years, or both, and if the death of any person results, then imprisonment for any term of years or for life.⁴⁷

Offense of Providing MSR to Designated Terrorist Organizations

Title 18 U.S.C. § 2339B provides that whoever knowingly provides MSR to an FTO, or attempts or conspires to do so, shall be fined or "imprisoned not more than 20 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life."⁴⁸ To violate the statute, a person must have knowledge that the organization:

- Is a designated terrorist organization;
- Has engaged or engages in terrorist activity; or
- Has engaged or engages in terrorism.⁴⁹

Offense of Receiving Military-Type Training from an FTO

Title 18 U.S.C. § 2339D provides that whoever knowingly receives military-type training from or on behalf of any organization designated at the time of the training as an FTO shall be fined or imprisoned for 10 years, or both.⁵⁰ Like 18 U.S.C. § 2339B, a person must have knowledge that the organization:

- Is a designated terrorist organization;
- Has engaged or engages in terrorist activity; or
- Has engaged or engages in terrorism.⁵¹

State Counterterrorism Laws

According to the National Conference of State Legislatures (NCSL), forty-four states and the District of Columbia have passed some form of legislation addressing terrorism, while the remaining states may have other laws regarding conspiracy to commit terrorism, threatening the government or an officer of the government, or threats of arson.⁵²

In Florida, there are a limited number of terrorism and counterterrorism-related statutes. Chapter 943, F.S., indicates that the Florida Department of Law Enforcement (FDLE) serves as the lead or coordinating agency in statewide counterterrorism efforts and responses to terrorist events.⁵³ Section 775.30, F.S., defines the term "terrorism,"⁵⁴ and is modeled after the language used in Title 18 of the United States Code⁵⁵ regarding domestic and international terrorism. Section 775.31, F.S., utilizes this definition and provides for the enhancement or reclassification, to the next highest level, of a

⁴⁷ 18 U.S.C. § 2339A(a).

⁴⁸ 18 U.S.C. § 2339B(a)(1).

⁴⁹ *Id.*

⁵⁰ 18 U.S.C. § 2339D(a)(1).

⁵¹ 18 U.S.C. § 2339D(c)(1).

⁵² E-mail from Richard Williams, Criminal Justice Senior Policy Analyst, NCSL, Feb. 13, 2017, with attached NCSL Report on State Terrorism Statutes (E-mail Correspondence and Report on file with the Florida House of Representatives Subcommittee on Criminal Justice). An earlier version of the NCSL report from 2002 noted that in the weeks following the September 11, 2001, terrorist attacks, 33 states had passed anti-terrorism laws. See <http://www.ncsl.org/Portals/1/documents/cj/terrorismcrimes.pdf> (last viewed Mar. 21, 2017).

⁵³ s. 943.03(14), F.S.; see also ss. 943.0311-13, F.S.; s. 943.03101, F.S.; and s. 943.0321, F.S.

⁵⁴ s. 775.30, F.S. (which provides, "As used in the Florida Criminal Code, the term "terrorism" means an activity that:

(1)(a) Involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or

(b) Involves a violation of s. 815.06; and

(2) Is intended to:

(a) Intimidate, injure, or coerce a civilian population;

(b) Influence the policy of a government by intimidation or coercion; or

(c) Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.").

⁵⁵ 18 U.S.C. § 2331(1) and (5). The definition in s. 775.30(1) and (2), F.S., is substantially similar to the definition in its federal counterpart but excludes any language relating to the boundaries or territorial jurisdiction of the United States.

misdemeanor or felony that can be attributed to an act of terrorism,⁵⁶ while Chapter 782, lists an “act of terrorism” as a predicate for establishing that a homicide crime, such as felony murder, has been committed.⁵⁷

Thus, at present, Florida law defines “terrorism” and refers to terrorism for purposes of enhancement or reclassification and as a predicate offense for the commission of murder. Florida law, however, has not made terrorism a separate crime and has not specifically adopted the definitions or criminal offenses regarding material support or resources or training that are set forth in federal legislation.

Effect of the Bill

Offense of Terrorism

The bill amends s. 775.30, F.S., to criminalize an act of “terrorism.”⁵⁸ Under the bill, a person who commits a predicate offense when intending to influence or affect by intimidation or coercion, or to retaliate against, the conduct of government, commits the crime of terrorism, which is a first degree felony.⁵⁹ The predicate offenses are:

- Murder, premeditated;⁶⁰
- Murder, imminently dangerous act and depraved mind;⁶¹
- Murder; law enforcement officer, correctional officer, correctional probation officer;⁶²
- Manslaughter;⁶³
- Killing of unborn child by injury to mother;⁶⁴
- Aggravated battery;⁶⁵
- Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers;⁶⁶
- Kidnapping; kidnapping of child under 13, aggravating circumstances;⁶⁷
- False imprisonment; false imprisonment of child under 13, aggravating circumstances;⁶⁸
- Human smuggling;⁶⁹
- Possessing or discharging weapons or firearms at a school-sponsored event or on school property;⁷⁰
- Discharging firearm in public or on residential property;⁷¹
- Discharging machine guns;⁷²
- Making, possessing, throwing, projecting, placing, or discharging any destructive device;⁷³
- Unlawful throwing, projecting, placing, discharging of destructive device or bomb that results in injury to another;⁷⁴
- Planting of “hoax” bomb prohibited;⁷⁵

⁵⁶ s. 775.31, F.S. (providing felony or misdemeanor reclassification of offenses).

⁵⁷ s. 782.04(1)(a)(2)(r); s. 782.04(3)(r); s. 782.04(4)(s); *see also* s. 782.04(5)(a)-(b), F.S. (providing the same definition for terrorism set forth in s. 775.30, F.S.).

⁵⁸ The bill also adds that the term “terrorist activity” has the same meaning as “terrorism” in s. 775.30, F.S.

⁵⁹ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

⁶⁰ s. 782.04(1)(a)1., F.S.

⁶¹ s. 782.04(2), F.S.

⁶² s. 782.065, F.S.

⁶³ s. 782.07(1), F.S.

⁶⁴ s. 782.09, F.S.

⁶⁵ s. 784.045, F.S.

⁶⁶ s. 784.07, F.S.

⁶⁷ s. 787.01, F.S.

⁶⁸ s. 787.02, F.S.

⁶⁹ s. 787.07, F.S.

⁷⁰ s. 790.115, F.S.

⁷¹ s. 790.15, F.S.

⁷² s. 790.16, F.S.

⁷³ s. 790.161, F.S.

⁷⁴ s. 790.1615, F.S.

- Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction prohibited;⁷⁶
- Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied; vessels, aircraft, buses, railroad cars, streetcars, or other vehicles;⁷⁷
- Arson;⁷⁸
- Arson resulting in injury to another;⁷⁹
- Fire bombs;⁸⁰
- Offenses against users of computers, computer systems, networks, and devices;⁸¹
- Offenses against public utilities;⁸²
- Poisoning of food or water;⁸³ and
- Combination to usurp government.⁸⁴

The bill provides that a person who commits a predicate offense which results in death or serious bodily injury⁸⁵ commits a life felony.⁸⁶

Offense of Use of Military-Type Training

The bill creates s. 775.32, F.S., to criminalize the use of, attempted use of, or conspiracy to use “military-type training” by a designated FTO⁸⁷ to harm another person or destroy, damage, or disrupt services to a critical infrastructure facility.⁸⁸ A violation is:

- A second degree felony; or
- A first degree felony, if the violation results in death or serious bodily injury to a person.

The bill provides that the definition of an FTO is the same as federal law under the Immigration and Nationality Act. The bill also creates a definition for “military-type training” that is modeled on current federal counterterrorism language.

Offense of Providing Material Support

The bill creates s. 775.33(2), F.S., to criminalize the provision of MSR or the concealment or disguise of the nature, location, source, or ownership of the MSR, knowing or intending that the support or resources are to be used in preparation for or in carrying out a violation of:

- The bill's newly created offenses in ss. 775.30, 775.32, 775.34, or 775.35, F.S.;
- Discharging machine guns;⁸⁹
- Making, possessing, throwing, projecting, placing, or discharging any destructive device or attempt so to do;⁹⁰

⁷⁵ s. 790.162, F.S.

⁷⁶ s. 790.166, F.S.

⁷⁷ s. 790.19, F.S.

⁷⁸ s. 806.01, F.S.

⁷⁹ s. 806.031, F.S.

⁸⁰ s. 806.111, F.S.

⁸¹ s. 815.06, F.S.

⁸² s. 815.061, F.S.

⁸³ s. 859.01, F.S.

⁸⁴ s. 876.34, F.S.

⁸⁵ The bill defines “serious bodily injury” as “an injury to a person which creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or an organ.” s. 775.30(3)

⁸⁶ The punishments for a life felony are set forth in s. 775.082, F.S. The fine for a life felony can go up to \$15,000. *See* s. 775.083, F.S.

⁸⁷ Like current federal legislation, the bill refers to “military-type training” from a designated FTO. This is distinguishable from those circumstances in which an American soldier with dual citizenship lawfully serves in another country’s military without voluntarily renouncing his or her citizenship or applying for foreign nationality. *See* Lauren Raab, *Q&A Why Would an American Join Israel’s Military? Answers to that and More*, LOS ANGELES TIMES, July 21, 2014, available at <http://www.latimes.com/nation/nationnow/la-fg-americans-israel-gaza-military-20140721-story.html> (last viewed Feb. 9, 2017).

⁸⁸ s. 493.631, F.S.

⁸⁹ s. 790.16, F.S.

⁹⁰ s. 790.161(2)-(4), F.S.

- Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction;⁹¹
- Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied; vessels, aircraft, buses, railroad cars, streetcars, or other vehicles;⁹²
- Offenses against users of computers, computer systems, computer networks, and electronic devices;⁹³
- Poisoning food or water;⁹⁴
- Crimes against railroad vehicles;⁹⁵
- Aircraft piracy;⁹⁶
- Treason;⁹⁷
- Combination to usurp government;⁹⁸
- Inciting insurrection.⁹⁹

Additionally, it is a violation to conceal an escape from the commission of any of the above-described offenses or to attempt or conspire to commit an above-described offense. A violation is:

- A first degree felony, or
- A life felony, if the violation results in death or serious bodily injury to a person.

The bill also creates s. 775.33, F.S., which provides that a person who attempts to, conspires to, or knowingly provides MSR to a designated FTO commits a first degree felony, or if the violation results in death or serious bodily injury to a person, a life felony. To violate that subsection, a person must have knowledge that the organization is a designated FTO or that the organization has engaged in or engages in terrorism or terrorist activity.

The bill creates definitions which are modeled after current federal counterterrorism laws, including MSR,¹⁰⁰ “training,”¹⁰¹ “expert advice or assistance,”¹⁰² and designated FTOs.¹⁰³ The bill excludes medicine or religious materials from the definition of MSR.

The bill provides that for purposes of prosecution, a person is deemed to provide MSR by providing personnel if the person knowingly provides, attempts to provide, or conspires to provide himself, herself, or another person:

- To a person engaged in, or intending to engage in, an act of terrorism to work under the direction and control of the person engaged in, or intending to engage in, an act of terrorism, or to organize, manage, supervise, or otherwise direct the operations of the person engaged in, or intending to engage in, an act of terrorism; or
- To work under the direction and control of a designated FTO, or to organize, manage, supervise, or otherwise direct the operation of that organization.

However, the bill excludes individuals working with, or authorized by, a state or federal governmental or law enforcement agency for a lawful purpose. Further, individuals who act entirely independently of the

⁹¹ s. 790.166, F.S.

⁹² s. 790.19, F.S.

⁹³ s. 815.06, F.S.

⁹⁴ s. 859.01, F.S.

⁹⁵ s. 860.121, F.S.

⁹⁶ s. 860.16, F.S.

⁹⁷ s. 876.32, F.S.

⁹⁸ s. 876.34, F.S.

⁹⁹ s. 876.36, F.S.

¹⁰⁰ 18 U.S.C. § 2339A(b)(1) (providing a definition for “material support or resources”).

¹⁰¹ 18 U.S.C. § 2339A(b)(2) (defining “training” as “instruction or teaching designed to impart a specific skill, as opposed to general knowledge[.]”).

¹⁰² 18 U.S.C. § 2339A(b)(3) (defining “expert advice or assistance” as “advice or assistance derived from scientific, technical or other specialized knowledge.”).

¹⁰³ 8 U.S.C. § 1189.

FTO to advance its goals or objectives would not be considered to be working under the FTO's direction and control. The bill also provides, "It is the intent of the Legislature that subsections (2) and (3) be interpreted in a manner consistent with federal case law interpreting 18 U.S.C. ss. 2339A and 2339B, respectively." The bill provides that FDLE and the Office of Attorney General shall create guidelines for law enforcement investigations to ensure the protection of privacy rights, civil rights, and civil liberties.

Membership in a Designated FTO

The bill creates s. 775.34, F.S., to criminalize the act of membership in a designated FTO with the intent to further the organization's illegal goals, a violation of which is a second degree felony. The bill also includes the definition of an FTO, as referenced in s. 775.32, F.S. and in federal legislation.

Agroterrorism

The bill creates s. 775.35, F.S., to criminalize acts of agroterrorism, where a person intentionally spreads any type of contagious, communicable, or infectious disease among crops, poultry, livestock or other animals. A violation is:

- A second degree felony, or
- A life felony, if the violation results in death or serious bodily injury to a person.

The bill provides an affirmative defense if the activity is consistent with medically recognized procedures or if it is done in the course of legitimate, professional scientific research. A person who commits a violation of this section resulting in serious bodily injury or death commits a life felony.

Miscellaneous

The bill amends s. 775.31, F.S., the statute which reclassifies a felony or misdemeanor that facilitated or furthered an act of terrorism, to:

- Eliminate a duplicative definition of "terrorism,"
- Provide that the section does not apply to the new terrorism or terrorism-related crimes created by the bill in s. 775.30, s. 775.32, s. 775.33, s. 775.34, or 775.35, F.S.

The bill makes conforming changes to s. 782.04, F.S., to cross-reference the new crimes created in ss. 775.30, 775.32, 775.33, 775.34, and 775.35, F.S.

The bill also 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. 775.30, F.S., relating to terrorism; defined; penalties.

Section 2. Amends s. 775.31, F.S., relating to facilitating or furthering terrorism; felony or misdemeanor reclassification.

Section 3. Creates s. 775.32, F.S., relating to use of military-type training provided by a designated foreign terrorist organization.

Section 4. Creates s. 775.33, F.S., relating to providing material support or resources for terrorism or to terrorist organizations.

Section 5. Creates s. 775.34, F.S., relating to membership in a designated foreign terrorist organization.

Section 6. Creates s. 775.35, F.S., relating to agroterrorism; penalties.

Section 7. Amends s. 782.04, F.S., relating to murder.

- Section 8. Reenacts s. 373.6055, F.S., relating to criminal history checks for certain water management district employees and others.
- Section 9. Reenacts s. 381.95, F.S., relating to medical facility information maintained for terrorism response purposes; confidentiality.
- Section 10. Reenacts s. 395.1056, F.S., relating to plan components addressing a hospital's response to terrorism; public records exemption; public meetings exemption.
- Section 11. Reenacts s. 874.03, F.S., relating to definitions.
- Section 12. Reenacts s. 907.041, F.S., relating to pretrial detention and release.
- Section 13. Reenacts s. 943.0312, F.S., relating to regional domestic security task forces.
- Section 14. Reenacts s. 943.0321, F.S., relating to the Florida Domestic Security and Counter-Terrorism Intelligence Center and the Florida Domestic Security and Counter-Terrorism Database.
- Section 15. Reenacts s. 27.401, F.S., relating to cross-circuit conflict representation pilot program.
- Section 16. Reenacts s. 39.806, F.S., relating to grounds for termination of parental rights.
- Section 17. Reenacts s. 63.089, F.S., relating to proceedings to terminate parental rights pending adoption; hearings; grounds; dismissal of petition; judgment.
- Section 18. Reenacts s. 95.11, F.S., relating to limitations other than for the recovery of real property.
- Section 19. Reenacts s. 435.04, F.S., relating to Level 2 screening standards.
- Section 20. Reenacts s. 435.07, F.S., relating to exemptions from disqualification.
- Section 21. Reenacts s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.
- Section 22. Reenacts s. 775.0823, F.S., relating to violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.
- Section 23. Reenacts s. 782.051, F.S., relating to attempted felony murder.
- Section 24. Reenacts s. 782.065, F.S., relating to murder; law enforcement officer, correctional officer, correctional probation officer.
- Section 25. Reenacts s. 903.133, F.S., relating to bail on appeal; prohibited for certain felony convictions.
- Section 26. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.
- Section 27. Reenacts s. 921.16, F.S., relating to when sentences to be concurrent and when consecutive.
- Section 28. Reenacts s. 947.146, F.S., relating to control release authority.
- Section 29. Reenacts s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 30. Reenacts s. 948.062, F.S., relating to reviewing and reporting serious offenses committed by offenders placed on probation or community control.

Section 31. Reenacts s. 985.265, F.S., relating to detention transfer and release; education; adult jails.

Section 32. Reenacts s. 1012.315, F.S., relating to disqualification from employment.

Section 33. Reenacts s. 1012.467, F.S., relating to noninstructional contractors who are permitted access to school grounds when students are present; background screening requirements.

Section 34. 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 Criminal Justice Impact Conference (CJIC) considered this bill on March 2, 2017 and determined it would increase the prison population by an indeterminate amount.

“Per DOC, in FY 15-16, there were 2,603 prison admissions for the offenses specified for those that could be considered terrorism, given intent described under the amended s. 775.30, F.S. The same number of admissions exist when the additional offenses are included under s. 775.33, F.S. It is not known how many of these offenses included the intent defined in this bill.”¹⁰⁴

“Per FDLE, there were 12 arrests since 2011 under s. 775.31, F.S., for felonies facilitating or furthering terrorism. Few of these had a court record, but those that did were recorded as dismissed.”¹⁰⁵

“Per New America, there have been 27 Jihadist terror related arrests in Florida since 2002. There were 3 arrests in 2015 and 5 arrests in 2016. All were handled in the Federal courts. It is unknown how many additional non-jihadist terror related arrests there were in this time period.”¹⁰⁶

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: The Criminal Justice Impact Conference (CJIC) considered this bill on March 2, 2017. The CJIC determined that the bill will have a positive indeterminate impact, meaning that the bill will have a positive impact on the number of prison beds, but the exact number is unquantifiable.

¹⁰⁴ Department of Economic and Demographic Research, HB 457 – Terrorism and Terrorist Activities, “Criminal Justice Impact Conference”, March 2, 2017, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB457.pdf>

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

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:

Constitutionality of the MSR Statute:

Section 4. of the bill makes it a crime to provide MSR for terrorism or to terrorist organizations. The definition of MSR, and the prohibited conduct for MSR, is modeled after 18 U.S.C. §§ 2339A and 2339B. Section 4. of the bill provides, "It is the intent of the Legislature that subsections (2) and (3) be interpreted in a manner consistent with federal case law interpreting 18 U.S.C. ss. 2339A and 2339B, respectively."

In Holder v. Humanitarian Law Project, the United States Supreme Court upheld the necessary mental state for a violation of 18 U.S.C. § 2339B.¹⁰⁷ The Court also rejected arguments that the MSR statute was vague or overbroad or that the statute encroached on freedom of speech.¹⁰⁸ Likewise, the Court rejected arguments that the MSR statute infringed on protected advocacy, freedom of expression, and freedom of association.¹⁰⁹

In Holder, the plaintiffs (U.S. citizens and organizations) challenged the constitutionality of 18 U.S.C. § 2339B, which prohibits providing MSR to designated FTOs. The plaintiffs in that case argued that the Court should not reach any constitutional issues because they did not intend to further a "further a foreign terrorist organization's illegal activities."¹¹⁰ The plaintiffs relied on the decision in Scales v. United States,¹¹¹ where a defendant (who was a member of the Communist Party) challenged his conviction under the membership clause of the Smith Act, making it a felony to knowingly be a member in any organization that advocated the overthrow of the United States by force or violence.

The Holder Court noted that under the facts of that case, "[s]ection 2339B does not criminalize mere membership in a designated foreign terrorist organization. It instead prohibits providing 'material support' to such a group."¹¹² The Holder Court explained, "Nothing about Scales suggests the need for a specific intent requirement in such a case."¹¹³ As the decision in Holder was based on an analysis of the federal MSR statute, and as that statute was upheld by the Court, the same rationale should be applicable under the bill.

Membership in a Designated FTO:

Section 5. of the bill prohibits membership in a designated FTO with the intent to further the illegal acts of the organization. While there is no counterpart for this language in federal counterterrorism law, this section of the bill specifically appears to be based on the holding in Scales, which required knowledge of the group's illegal advocacy and a specific intent to bring about violent overthrow of the government.¹¹⁴ As the Court in Scales upheld a conviction under a statute criminalizing active membership and guilty knowledge and intent, the bill appears to meet these requirements.

¹⁰⁷ Holder v. Humanitarian Law Project, 561 U.S. 1, 16-17 (2010); see also 18 U.S.C. § 2339B(a)(1).

¹⁰⁸ *Id.* at 20-25.

¹⁰⁹ *Id.* at 25-40.

¹¹⁰ Holder, 561 U.S. at 16.

¹¹¹ Scales v. United States, 367 U.S. 203, 224-30 (1961) (affirming defendant Communist Party member's conviction under the membership clause of the Smith Act, and holding that it did not violate the right to freedom of association or the Due Process Clause).

¹¹² Holder, 561 U.S. at 18-19, 39-40.

¹¹³ *Id.* at 18 (citing Scales, 367 U.S. at 221-22).

¹¹⁴ Scales, 367 U.S. at 229-30.

- B. **RULE-MAKING AUTHORITY:** This bill does not appear to create the need for rulemaking or rulemaking authority.
- C. **DRAFTING ISSUES OR OTHER COMMENTS:** None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

1 A bill to be entitled
2 An act relating to terrorism and terrorist activities;
3 amending s. 775.30, F.S.; extending the applicability
4 of the definition of the term "terrorism" to other
5 sections of ch. 775, F.S.; defining the term
6 "terrorist activity"; providing that a violation of
7 specified criminal provisions with the intent to
8 influence or affect the conduct of government by
9 intimidation or coercion, or to retaliate against
10 government, is a crime of terrorism; providing
11 penalties; providing increased penalties if the action
12 results in death or serious bodily injury; defining
13 the term "serious bodily injury"; amending s. 775.31,
14 F.S.; redefining the term "terrorism"; providing
15 applicability; creating s. 775.32, F.S.; defining
16 terms; prohibiting a person from using, attempting to
17 use, or conspiring to use military-type training
18 received from a designated foreign terrorist
19 organization for certain purposes; providing
20 penalties; providing increased penalties if the
21 actions result in death or serious bodily injury;
22 creating s. 775.33, F.S.; defining terms; prohibiting
23 a person from providing material support or resources,
24 or engaging in other specified actions, to violate
25 specified criminal provisions; providing penalties;

26 prohibiting a person from attempting to provide,
 27 conspiring to provide, or knowingly providing material
 28 support or resources to a designated foreign terrorist
 29 organization; providing penalties; providing increased
 30 penalties if specified actions result in death or
 31 serious bodily injury; specifying the circumstances
 32 under which a person provides material support by
 33 providing personnel; prohibiting prosecution under
 34 certain circumstances; providing legislative intent;
 35 requiring the Department of Law Enforcement, in
 36 consultation with the Office of the Attorney General,
 37 to create specified guidelines; creating s. 775.34,
 38 F.S.; providing penalties for a person who willfully
 39 becomes a member of a designated foreign terrorist
 40 organization and serves under the direction or control
 41 of the organization with the intent to further the
 42 illegal acts of the organization; providing penalties;
 43 defining the term "designated foreign terrorist
 44 organization"; creating s. 775.35, F.S.; providing
 45 penalties for a person who intentionally disseminates
 46 or spreads any type of contagious, communicable, or
 47 infectious disease among crops, poultry, livestock, or
 48 other animals; providing an affirmative defense;
 49 providing increased penalties if specified actions
 50 result in death or serious bodily injury; defining the

51 term "serious bodily injury"; amending s. 782.04,
 52 F.S.; revising the provisions related to terrorism for
 53 murder in the first degree, murder in the second
 54 degree, and murder in the third degree to include the
 55 terrorism felonies created by this act; reenacting ss.
 56 373.6055(3)(c), 381.95(1), 395.1056(1)(a) and (2),
 57 874.03(7), 907.041(4)(a), 943.0312(2), and
 58 943.0321(2), F.S., relating to the definition of the
 59 term "terrorism," to incorporate the amendment made to
 60 s. 775.30, F.S., in references thereto; reenacting ss.
 61 27.401(2), 39.806(1)(d), 63.089(4)(b), 95.11(10),
 62 435.04(2)(e), 435.07(4)(c), 775.082(1)(b) and
 63 (3)(a), (b), and (c), 775.0823(1), (2), (4), (5), (6),
 64 and (7), 782.051, 782.065, 903.133, 921.0022(3)(h) and
 65 (i), 921.16(1), 947.146(3)(i), 948.06(8)(c),
 66 948.062(1), 985.265(3)(b), and 1012.315(1)(d), F.S.,
 67 relating to capital felonies, murder in the first
 68 degree, murder in the second degree, and murder in the
 69 third degree, to incorporate the amendment made to s.
 70 782.04, F.S., in references thereto; reenacting s.
 71 1012.467(2)(g), F.S., relating to terrorism and
 72 murder, to incorporate the amendments made to ss.
 73 775.30 and 782.04, F.S., in references thereto;
 74 providing an effective date.
 75

76 WHEREAS, the domestic security of the State of Florida and
77 terrorism prevention within the state's borders are of paramount
78 importance, and

79 WHEREAS, the threats to the domestic security of the State
80 of Florida are constantly evolving and expanding, and

81 WHEREAS, it is incumbent upon officials of the State of
82 Florida to prevent future acts of terrorism and to bring to
83 justice those who attempt, solicit, support, commit, or conspire
84 to commit acts of terrorism, and

85 WHEREAS, law enforcement officials in the State of Florida
86 require adequate and appropriate authority to investigate and
87 prevent potential acts of terrorism or acts of mass catastrophe
88 in the state, and

89 WHEREAS, the constitutional rights of the residents and
90 visitors of the State of Florida are also of great importance,
91 and those rights can be safeguarded through reasonable
92 protections in appropriate law enforcement actions, NOW,
93 THEREFORE,

94

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

96

97 Section 1. Section 775.30, Florida Statutes, is amended to
98 read:

99 775.30 Terrorism; defined; penalties.-

100 (1) As used in this chapter and the Florida Criminal Code,

101 the term "terrorism" or "terrorist activity" means an activity
 102 that:

103 ~~(1)~~(a) Involves a violent act or an act dangerous to human
 104 life which is a violation of the criminal laws of this state or
 105 of the United States; or

106 (b) Involves a violation of s. 815.06; and

107 (c)~~(2)~~ Is intended to:

108 1.~~(a)~~ Intimidate, injure, or coerce a civilian population;

109 2.~~(b)~~ Influence the policy of a government by intimidation
 110 or coercion; or

111 3.~~(e)~~ Affect the conduct of government through destruction
 112 of property, assassination, murder, kidnapping, or aircraft
 113 piracy.

114 (2) A person who violates s. 782.04(1)(a)1. or (2), s.
 115 782.065, s. 782.07(1), s. 782.09, s. 784.045, s. 784.07, s.
 116 787.01, s. 787.02, s. 787.07, s. 790.115, s. 790.15, s. 790.16,
 117 s. 790.161, s. 790.1615, s. 790.162, s. 790.166, s. 790.19, s.
 118 806.01, s. 806.031, s. 806.111, s. 815.06, s. 815.061, s.
 119 859.01, or s. 876.34, when intending to influence or affect by
 120 intimidation or coercion, or to retaliate against, the conduct
 121 of government, commits the crime of terrorism, a felony of the
 122 first degree, punishable as provided in s. 775.082, s. 775.083,
 123 or s. 775.084.

124 (3) A person who commits a violation listed in subsection
 125 (2) which results in death or serious bodily injury commits a

126 life felony, punishable as provided in s. 775.082, s. 775.083,
 127 or s. 775.084. As used in this subsection, the term "serious
 128 bodily injury" means an injury to a person which creates a
 129 substantial risk of death, serious personal disfigurement, or
 130 protracted loss or impairment of the function of a bodily member
 131 or an organ.

132 Section 2. Section 775.31, Florida Statutes, is amended to
 133 read:

134 775.31 Facilitating or furthering terrorism; felony or
 135 misdemeanor reclassification.—

136 (1) If a person is convicted of committing a felony or
 137 misdemeanor that facilitated or furthered any act of terrorism,
 138 the court shall reclassify the felony or misdemeanor to the next
 139 higher degree as provided in this section. The reclassification
 140 shall be made in the following manner:

141 (a) In the case of a misdemeanor of the second degree, the
 142 offense is reclassified as a misdemeanor of the first degree.

143 (b) In the case of a misdemeanor of the first degree, the
 144 offense is reclassified as a felony of the third degree.

145 (c) In the case of a felony of the third degree, the
 146 offense is reclassified as a felony of the second degree.

147 (d) In the case of a felony of the second degree, the
 148 offense is reclassified as a felony of the first degree.

149 (e) In the case of a felony of the first degree or a
 150 felony of the first degree punishable by a term of imprisonment

151 | not exceeding life, the offense is reclassified as a life
 152 | felony.

153 | (2) For purposes of sentencing under chapter 921, the
 154 | following offense severity ranking levels apply:

155 | (a) An offense that is a misdemeanor of the first degree
 156 | and that is reclassified under this section as a felony of the
 157 | third degree is ranked in level 2 of the offense severity
 158 | ranking chart.

159 | (b) A felony offense that is reclassified under this
 160 | section is ranked one level above the ranking specified in s.
 161 | 921.0022 or s. 921.0023 for the offense committed.

162 | (3) As used in this section, the term "terrorism" has the
 163 | same meaning as provided in s. 775.30(1) ~~means an activity that:~~

164 | ~~(a)1. Involves a violent act or an act dangerous to human~~
 165 | ~~life which is a violation of the criminal laws of this state or~~
 166 | ~~of the United States; or~~

167 | ~~2. Involves a violation of s. 815.06; and~~

168 | ~~(b) Is intended to:~~

169 | ~~1. Intimidate, injure, or coerce a civilian population;~~

170 | ~~2. Influence the policy of a government by intimidation or~~
 171 | ~~coercion; or~~

172 | ~~3. Affect the conduct of government through destruction of~~
 173 | ~~property, assassination, murder, kidnapping, or aircraft piracy.~~

174 | (4) The reclassification of offenses under this section
 175 | does not apply to s. 775.30, s. 775.32, s. 775.33, s. 775.34, or

176 | s. 775.35.

177 | Section 3. Section 775.32, Florida Statutes, is created to
178 | read:

179 | 775.32 Use of military-type training provided by a
180 | designated foreign terrorist organization.-

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

182 | (a) "Critical infrastructure facility" has the same
183 | meaning as provided in s. 493.631.

184 | (b) "Designated foreign terrorist organization" means an
185 | organization designated as a terrorist organization under s. 219
186 | of the Immigration and Nationality Act.

187 | (c) "Military-type training" means training in means or
188 | methods that can cause the death of, or serious bodily injury
189 | to, another person, destroy or damage property or critical
190 | infrastructure facilities, or disrupt services to critical
191 | infrastructure; or training on the use, storage, production, or
192 | assembly of an explosive, firearm, or other weapon, including a
193 | weapon of mass destruction.

194 | (d) "Serious bodily injury" has the same meaning as
195 | provided in s. 775.30(3).

196 | (e) "Weapon of mass destruction" has the same meaning as
197 | provided in s. 790.166.

198 | (2) A person who has received military-type training from
199 | a designated foreign terrorist organization may not use, attempt
200 | to use, or conspire to use such military-type training with the

201 intent to harm another person, destroy or damage a critical
 202 infrastructure facility, or disrupt services to a critical
 203 infrastructure.

204 (3) A person who commits a violation of subsection (2)
 205 commits a felony of the second degree, punishable as provided in
 206 s. 775.082, s. 775.083, or s. 775.084.

207 (4) A person who commits a violation of subsection (2)
 208 which results in the death of, or serious bodily injury to, a
 209 person commits a felony of the first degree, punishable as
 210 provided in s. 775.082, s. 775.083, or s. 775.084.

211 Section 4. Section 775.33, Florida Statutes, is created to
 212 read:

213 775.33 Providing material support or resources for
 214 terrorism or to terrorist organizations.-

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

216 (a) "Designated foreign terrorist organization" has the
 217 same meaning as provided in s. 775.32.

218 (b) "Expert advice or assistance" means advice or
 219 assistance derived from scientific, technical, or other
 220 specialized knowledge.

221 (c) "Material support or resources" means any property,
 222 tangible or intangible, or service, including currency or
 223 monetary instruments or financial securities, financial
 224 services, lodging, training, expert advice or assistance, safe
 225 houses, false documentation or identification, communications

226 equipment, facilities, weapons, lethal substances, explosives,
 227 personnel, or transportation. The term does not include medicine
 228 or religious materials.

229 (d) "Serious bodily injury" has the same meaning as
 230 provided in s. 775.30(3).

231 (e) "Training" means instruction or teaching designed to
 232 impart a specific skill rather than general knowledge.

233 (2) A person who provides material support or resources or
 234 conceals or disguises the nature, location, source, or ownership
 235 of the material support or resources, knowing or intending that
 236 the support or resources are to be used in preparation for or in
 237 carrying out a violation of s. 775.30, s. 775.32, s. 775.34, s.
 238 775.35, s. 790.16, s. 790.161(2), (3), or (4), s. 790.166, s.
 239 790.19, s. 815.06, s. 859.01, s. 860.121, s. 860.16, s. 876.32,
 240 s. 876.34, or s. 876.36; who conceals an escape from the
 241 commission of any such violation; or who attempts or conspires
 242 to carry out such violation commits a felony of the first
 243 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 244 775.084.

245 (3) A person who attempts to, conspires to, or knowingly
 246 provides material support or resources to a designated foreign
 247 terrorist organization commits a felony of the first degree,
 248 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 249 To violate this subsection, a person must have knowledge that
 250 the organization is a designated foreign terrorist organization

251 or that the organization has engaged in or engages in terrorism
 252 or terrorist activity.

253 (4) A person who commits a violation of subsection (2) or
 254 subsection (3) which results in death or serious bodily injury
 255 commits a life felony, punishable as provided in s. 775.082, s.
 256 775.083, or s. 775.084.

257 (5)(a) For purposes of prosecution under subsection (2) or
 258 subsection (3), a person is deemed to provide material support
 259 or resources by providing personnel if the person knowingly
 260 provides, attempts to provide, or conspires to provide himself
 261 or herself or another person:

262 1. To a person engaged in, or intending to engage in, an
 263 act of terrorism to work under the direction and control of the
 264 person engaged in, or intending to engage in, an act of
 265 terrorism, or to organize, manage, supervise, or otherwise
 266 direct the operations of the person engaged in, or intending to
 267 engage in, an act of terrorism; or

268 2. To work under the direction and control of a designated
 269 foreign terrorist organization, or to organize, manage,
 270 supervise, or otherwise direct the operation of that
 271 organization.

272 (b) An individual who acts entirely independently of the
 273 person engaged in, or intending to engage in, an act of
 274 terrorism or the designated foreign terrorist organization to
 275 advance the person's or organization's goals or objectives is

276 not working under the direction and control of the person
 277 engaged in, or intending to engage in, an act of terrorism or
 278 the designated foreign terrorist organization.

279 (6) A person may not be prosecuted under this section if
 280 his or her activity was authorized by a governmental or law
 281 enforcement agency of this state or of the United States in the
 282 agency's official capacity and pursuant to a lawful purpose.

283 (7) It is the intent of the Legislature that subsections
 284 (2) and (3) be interpreted in a manner consistent with federal
 285 case law interpreting 18 U.S.C. ss. 2339A and 2339B,
 286 respectively.

287 (8) The Department of Law Enforcement, in consultation
 288 with the Office of the Attorney General, shall create guidelines
 289 for law enforcement investigations conducted pursuant to this
 290 section to ensure the protection of privacy rights, civil
 291 rights, and civil liberties.

292 Section 5. Section 775.34, Florida Statutes, is created to
 293 read:

294 775.34 Membership in a designated foreign terrorist
 295 organization.—A person who willfully becomes a member of a
 296 designated foreign terrorist organization and serves under the
 297 direction or control of that organization with the intent to
 298 further the illegal acts of the organization commits a felony of
 299 the second degree, punishable as provided in s. 775.082, s.
 300 775.083, or s. 775.084. As used in this section, the term

301 "designated foreign terrorist organization" has the same meaning
 302 as provided in s. 775.32.

303 Section 6. Section 775.35, Florida Statutes, is created to
 304 read:

305 775.35 Agroterrorism; penalties.—

306 (1) A person who intentionally disseminates or spreads any
 307 type of contagious, communicable, or infectious disease among
 308 crops, poultry as defined in s. 583.01, livestock as defined in
 309 s. 588.13, or other animals commits a felony of the second
 310 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 311 775.084. It is an affirmative defense to a charge of violating
 312 this section that the activity is consistent with a medically
 313 recognized procedure or if the activity is done in the course of
 314 legitimate, professional scientific research.

315 (2) A person who commits a violation of subsection (1)
 316 which results in death or serious bodily injury to a person
 317 commits a life felony, punishable as provided in s. 775.082, s.
 318 775.083, or s. 775.084. As used in this subsection, the term
 319 "serious bodily injury" has the same meaning as provided in s.
 320 775.30(3).

321 Section 7. Paragraph (a) of subsection (1) and subsections
 322 (3) and (4) of section 782.04, Florida Statutes, are amended to
 323 read:

324 782.04 Murder.—

325 (1)(a) The unlawful killing of a human being:

- 326 1. When perpetrated from a premeditated design to effect
 327 the death of the person killed or any human being;
- 328 2. When committed by a person engaged in the perpetration
 329 of, or in the attempt to perpetrate, any:
- 330 a. Trafficking offense prohibited by s. 893.135(1),
 331 b. Arson,
 332 c. Sexual battery,
 333 d. Robbery,
 334 e. Burglary,
 335 f. Kidnapping,
 336 g. Escape,
 337 h. Aggravated child abuse,
 338 i. Aggravated abuse of an elderly person or disabled
 339 adult,
 340 j. Aircraft piracy,
 341 k. Unlawful throwing, placing, or discharging of a
 342 destructive device or bomb,
 343 l. Carjacking,
 344 m. Home-invasion robbery,
 345 n. Aggravated stalking,
 346 o. Murder of another human being,
 347 p. Resisting an officer with violence to his or her
 348 person,
 349 q. Aggravated fleeing or eluding with serious bodily
 350 injury or death,

351 r. Felony that is an act of terrorism or is in furtherance
 352 of an act of terrorism, including a felony under s. 775.30, s.
 353 775.32, s. 775.33, s. 775.34, or s. 775.35, or

354 s. Human trafficking; or

355 3. Which resulted from the unlawful distribution of any
 356 substance controlled under s. 893.03(1), cocaine as described in
 357 s. 893.03(2)(a)4., opium or any synthetic or natural salt,
 358 compound, derivative, or preparation of opium, or methadone by a
 359 person 18 years of age or older, when such drug is proven to be
 360 the proximate cause of the death of the user,

361
 362 is murder in the first degree and constitutes a capital felony,
 363 punishable as provided in s. 775.082.

364 (3) When a human being is killed during the perpetration
 365 of, or during the attempt to perpetrate, any:

- 366 (a) Trafficking offense prohibited by s. 893.135(1),
- 367 (b) Arson,
- 368 (c) Sexual battery,
- 369 (d) Robbery,
- 370 (e) Burglary,
- 371 (f) Kidnapping,
- 372 (g) Escape,
- 373 (h) Aggravated child abuse,
- 374 (i) Aggravated abuse of an elderly person or disabled
 375 adult,

376 (j) Aircraft piracy,
 377 (k) Unlawful throwing, placing, or discharging of a
 378 destructive device or bomb,
 379 (l) Carjacking,
 380 (m) Home-invasion robbery,
 381 (n) Aggravated stalking,
 382 (o) Murder of another human being,
 383 (p) Aggravated fleeing or eluding with serious bodily
 384 injury or death,
 385 (q) Resisting an officer with violence to his or her
 386 person, or
 387 (r) Felony that is an act of terrorism or is in
 388 furtherance of an act of terrorism, including a felony under s.
 389 775.30, s. 775.32, s. 775.33, s. 775.34, or s. 775.35,
 390
 391 by a person other than the person engaged in the perpetration of
 392 or in the attempt to perpetrate such felony, the person
 393 perpetrating or attempting to perpetrate such felony commits
 394 murder in the second degree, which constitutes a felony of the
 395 first degree, punishable by imprisonment for a term of years not
 396 exceeding life or as provided in s. 775.082, s. 775.083, or s.
 397 775.084.
 398 (4) The unlawful killing of a human being, when
 399 perpetrated without any design to effect death, by a person
 400 engaged in the perpetration of, or in the attempt to perpetrate,

401 any felony other than any:

402 (a) Trafficking offense prohibited by s. 893.135(1),

403 (b) Arson,

404 (c) Sexual battery,

405 (d) Robbery,

406 (e) Burglary,

407 (f) Kidnapping,

408 (g) Escape,

409 (h) Aggravated child abuse,

410 (i) Aggravated abuse of an elderly person or disabled

411 adult,

412 (j) Aircraft piracy,

413 (k) Unlawful throwing, placing, or discharging of a

414 destructive device or bomb,

415 (l) Unlawful distribution of any substance controlled

416 under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4.,

417 or opium or any synthetic or natural salt, compound, derivative,

418 or preparation of opium by a person 18 years of age or older,

419 when such drug is proven to be the proximate cause of the death

420 of the user,

421 (m) Carjacking,

422 (n) Home-invasion robbery,

423 (o) Aggravated stalking,

424 (p) Murder of another human being,

425 (q) Aggravated fleeing or eluding with serious bodily

426 injury or death,

427 (r) Resisting an officer with violence to his or her
428 person, or

429 (s) Felony that is an act of terrorism or is in
430 furtherance of an act of terrorism, including a felony under s.
431 775.30, s. 775.32, s. 775.33, s. 775.34, or s. 775.35,

432
433 is murder in the third degree and constitutes a felony of the
434 second degree, punishable as provided in s. 775.082, s. 775.083,
435 or s. 775.084.

436 Section 8. For the purpose of incorporating the amendment
437 made by this act to section 775.30, Florida Statutes, in a
438 reference thereto, paragraph (c) of subsection (3) of section
439 373.6055, Florida Statutes, is reenacted to read:

440 373.6055 Criminal history checks for certain water
441 management district employees and others.-

442 (3)

443 (c) In addition to other requirements for employment or
444 access established by any water management district pursuant to
445 its water management district's security plan for buildings,
446 facilities, and structures, each water management district's
447 security plan shall provide that:

448 1. Any person who has within the past 7 years been
449 convicted, regardless of whether adjudication was withheld, for
450 a forcible felony as defined in s. 776.08; an act of terrorism

451 as defined in s. 775.30; planting of a hoax bomb as provided in
 452 s. 790.165; any violation involving the manufacture, possession,
 453 sale, delivery, display, use, or attempted or threatened use of
 454 a weapon of mass destruction or hoax weapon of mass destruction
 455 as provided in s. 790.166; dealing in stolen property; any
 456 violation of s. 893.135; any violation involving the sale,
 457 manufacturing, delivery, or possession with intent to sell,
 458 manufacture, or deliver a controlled substance; burglary;
 459 robbery; any felony violation of s. 812.014; any violation of s.
 460 790.07; any crime an element of which includes use or possession
 461 of a firearm; any conviction for any similar offenses under the
 462 laws of another jurisdiction; or conviction for conspiracy to
 463 commit any of the listed offenses may not be qualified for
 464 initial employment within or authorized regular access to
 465 buildings, facilities, or structures defined in the water
 466 management district's security plan as restricted access areas.

467 2. Any person who has at any time been convicted of any of
 468 the offenses listed in subparagraph 1. may not be qualified for
 469 initial employment within or authorized regular access to
 470 buildings, facilities, or structures defined in the water
 471 management district's security plan as restricted access areas
 472 unless, after release from incarceration and any supervision
 473 imposed as a sentence, the person remained free from a
 474 subsequent conviction, regardless of whether adjudication was
 475 withheld, for any of the listed offenses for a period of at

476 | least 7 years prior to the employment or access date under
 477 | consideration.

478 | Section 9. For the purpose of incorporating the amendment
 479 | made by this act to section 775.30, Florida Statutes, in a
 480 | reference thereto, subsection (1) of section 381.95, Florida
 481 | Statutes, is reenacted to read:

482 | 381.95 Medical facility information maintained for
 483 | terrorism response purposes; confidentiality.—

484 | (1) Any information identifying or describing the name,
 485 | location, pharmaceutical cache, contents, capacity, equipment,
 486 | physical features, or capabilities of individual medical
 487 | facilities, storage facilities, or laboratories established,
 488 | maintained, or regulated by the Department of Health as part of
 489 | the state's plan to defend against an act of terrorism as
 490 | defined in s. 775.30 is exempt from s. 119.07(1) and s. 24(a),
 491 | Art. I of the State Constitution. This exemption is remedial in
 492 | nature, and it is the intent of the Legislature that this
 493 | exemption apply to information held by the Department of Health
 494 | before, on, or after the effective date of this section.

495 | Section 10. For the purpose of incorporating the amendment
 496 | made by this act to section 775.30, Florida Statutes, in
 497 | references thereto, paragraph (a) of subsection (1) and
 498 | subsection (2) of section 395.1056, Florida Statutes, are
 499 | reenacted to read:

500 | 395.1056 Plan components addressing a hospital's response

501 to terrorism; public records exemption; public meetings
 502 exemption.—

503 (1)(a) Those portions of a comprehensive emergency
 504 management plan that address the response of a public or private
 505 hospital to an act of terrorism as defined by s. 775.30 held by
 506 the agency, a state or local law enforcement agency, a county or
 507 municipal emergency management agency, the Executive Office of
 508 the Governor, the Department of Health, or the Division of
 509 Emergency Management are confidential and exempt from s.
 510 119.07(1) and s. 24(a), Art. I of the State Constitution.

511 (2) Those portions of a comprehensive emergency management
 512 plan that address the response of a public hospital to an act of
 513 terrorism as defined by s. 775.30 held by that public hospital
 514 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 515 Constitution. Portions of a comprehensive emergency management
 516 plan that address the response of a public hospital to an act of
 517 terrorism include those portions addressing:

- 518 (a) Security systems or plans;
- 519 (b) Vulnerability analyses;
- 520 (c) Emergency evacuation transportation;
- 521 (d) Sheltering arrangements;
- 522 (e) Postdisaster activities, including provisions for
 523 emergency power, communications, food, and water;
- 524 (f) Postdisaster transportation;
- 525 (g) Supplies, including drug caches;

- 526 (h) Staffing;
 527 (i) Emergency equipment; and
 528 (j) Individual identification of residents, transfer of
 529 records, and methods of responding to family inquiries.

530 Section 11. For the purpose of incorporating the amendment
 531 made by this act to section 775.30, Florida Statutes, in a
 532 reference thereto, subsection (7) of section 874.03, Florida
 533 Statutes, is reenacted to read:

534 874.03 Definitions.—As used in this chapter:

535 (7) "Terrorist organization" means any organized group
 536 engaged in or organized for the purpose of engaging in terrorism
 537 as defined in s. 775.30. This definition shall not be construed
 538 to prevent prosecution under this chapter of individuals acting
 539 alone.

540 Section 12. For the purpose of incorporating the amendment
 541 made by this act to section 775.30, Florida Statutes, in a
 542 reference thereto, paragraph (a) of subsection (4) of section
 543 907.041, Florida Statutes, is reenacted to read:

544 907.041 Pretrial detention and release.—

545 (4) PRETRIAL DETENTION.—

546 (a) As used in this subsection, "dangerous crime" means
 547 any of the following:

- 548 1. Arson;
 549 2. Aggravated assault;
 550 3. Aggravated battery;

- 551 4. Illegal use of explosives;
- 552 5. Child abuse or aggravated child abuse;
- 553 6. Abuse of an elderly person or disabled adult, or
- 554 aggravated abuse of an elderly person or disabled adult;
- 555 7. Aircraft piracy;
- 556 8. Kidnapping;
- 557 9. Homicide;
- 558 10. Manslaughter;
- 559 11. Sexual battery;
- 560 12. Robbery;
- 561 13. Carjacking;
- 562 14. Lewd, lascivious, or indecent assault or act upon or
- 563 in presence of a child under the age of 16 years;
- 564 15. Sexual activity with a child, who is 12 years of age
- 565 or older but less than 18 years of age, by or at solicitation of
- 566 person in familial or custodial authority;
- 567 16. Burglary of a dwelling;
- 568 17. Stalking and aggravated stalking;
- 569 18. Act of domestic violence as defined in s. 741.28;
- 570 19. Home invasion robbery;
- 571 20. Act of terrorism as defined in s. 775.30;
- 572 21. Manufacturing any substances in violation of chapter
- 573 893; and
- 574 22. Attempting or conspiring to commit any such crime.
- 575 Section 13. For the purpose of incorporating the amendment

576 made by this act to section 775.30, Florida Statutes, in
 577 references thereto, subsection (2) of section 943.0312, Florida
 578 Statutes, is reenacted to read:

579 943.0312 Regional domestic security task forces.—The
 580 Legislature finds that there is a need to develop and implement
 581 a statewide strategy to address prevention, preparation,
 582 protection, response, and recovery efforts by federal, state,
 583 and local law enforcement agencies, emergency management
 584 agencies, fire and rescue departments, first-responder personnel
 585 and others in dealing with potential or actual terrorist acts
 586 within or affecting this state.

587 (2) In accordance with the state's domestic security
 588 strategic goals and objectives, each task force shall coordinate
 589 efforts to counter terrorism, as defined by s. 775.30, among
 590 local, state, and federal resources to ensure that such efforts
 591 are not fragmented or unnecessarily duplicated; coordinate
 592 training for local and state personnel to counter terrorism as
 593 defined by s. 775.30; coordinate the collection and
 594 dissemination of investigative and intelligence information; and
 595 facilitate responses to terrorist incidents within or affecting
 596 each region. With the approval of the Chief of Domestic
 597 Security, the task forces may incorporate other objectives
 598 reasonably related to the goals of enhancing the state's
 599 domestic security and ability to detect, prevent, and respond to
 600 acts of terrorism within or affecting this state. Each task

601 force shall take into account the variety of conditions and
 602 resources present within its region.

603 Section 14. For the purpose of incorporating the amendment
 604 made by this act to section 775.30, Florida Statutes, in a
 605 reference thereto, subsection (2) of section 943.0321, Florida
 606 Statutes, is reenacted to read:

607 943.0321 The Florida Domestic Security and Counter-
 608 Terrorism Intelligence Center and the Florida Domestic Security
 609 and Counter-Terrorism Database.—

610 (2) The intelligence center shall:

611 (a) Gather, document, and analyze active criminal
 612 intelligence and criminal investigative information related to
 613 terrorism, as defined in s. 775.30, including information
 614 related to individuals or groups that plot, plan, or coordinate
 615 acts of terrorism, as defined in s. 775.30, and that operate
 616 within this state or otherwise commit acts affecting this state;

617 (b) Maintain and operate the domestic security and
 618 counter-terrorism database; and

619 (c) Provide support and assistance to federal, state, and
 620 local law enforcement agencies and prosecutors that investigate
 621 or prosecute terrorism, as defined in s. 775.30.

622 Section 15. For the purpose of incorporating the amendment
 623 made by this act to section 782.04, Florida Statutes, in a
 624 reference thereto, subsection (2) of section 27.401, Florida
 625 Statutes, is reenacted to read:

626 27.401 Cross-Circuit Conflict Representation Pilot
 627 Program.—

628 (2) Notwithstanding ss. 27.40 and 27.5305:

629 (a) If the public defender in the Tenth Judicial Circuit
 630 is unable to provide representation to an indigent defendant
 631 charged with a crime under s. 782.04(2), (3), or (4) due to a
 632 conflict of interest and the criminal conflict and civil
 633 regional counsel of the Second Region is also unable to provide
 634 representation for the case due to a conflict of interest, the
 635 public defender in the Thirteenth Judicial Circuit shall be
 636 appointed. If the public defender in the Thirteenth Judicial
 637 Circuit is unable to provide representation for the case due to
 638 a conflict of interest, the criminal conflict and civil regional
 639 counsel in the Fifth Region shall be appointed. If the criminal
 640 conflict and civil regional counsel in the Fifth Region is
 641 unable to provide representation due to a conflict of interest,
 642 private counsel shall be appointed.

643 (b) If the public defender in the Thirteenth Judicial
 644 Circuit is unable to provide representation to an indigent
 645 defendant charged with a crime under s. 782.04(2), (3), or (4)
 646 due to a conflict of interest and the criminal conflict and
 647 civil regional counsel of the Second Region is also unable to
 648 provide representation for the case due to a conflict of
 649 interest, the public defender in the Tenth Judicial Circuit
 650 shall be appointed. If the public defender in the Tenth Judicial

651 Circuit is unable to provide representation for the case due to
 652 a conflict of interest, the criminal conflict and civil regional
 653 counsel in the Fifth Region shall be appointed. If the criminal
 654 conflict and civil regional counsel in the Fifth Region is
 655 unable to provide representation due to a conflict of interest,
 656 private counsel shall be appointed.

657 Section 16. For the purpose of incorporating the amendment
 658 made by this act to section 782.04, Florida Statutes, in a
 659 reference thereto, paragraph (d) of subsection (1) of section
 660 39.806, Florida Statutes, is reenacted to read:

661 39.806 Grounds for termination of parental rights.—

662 (1) Grounds for the termination of parental rights may be
 663 established under any of the following circumstances:

664 (d) When the parent of a child is incarcerated and either:

665 1. The period of time for which the parent is expected to
 666 be incarcerated will constitute a significant portion of the
 667 child's minority. When determining whether the period of time is
 668 significant, the court shall consider the child's age and the
 669 child's need for a permanent and stable home. The period of time
 670 begins on the date that the parent enters into incarceration;

671 2. The incarcerated parent has been determined by the
 672 court to be a violent career criminal as defined in s. 775.084,
 673 a habitual violent felony offender as defined in s. 775.084, or
 674 a sexual predator as defined in s. 775.21; has been convicted of
 675 first degree or second degree murder in violation of s. 782.04

676 | or a sexual battery that constitutes a capital, life, or first
 677 | degree felony violation of s. 794.011; or has been convicted of
 678 | an offense in another jurisdiction which is substantially
 679 | similar to one of the offenses listed in this paragraph. As used
 680 | in this section, the term "substantially similar offense" means
 681 | any offense that is substantially similar in elements and
 682 | penalties to one of those listed in this subparagraph, and that
 683 | is in violation of a law of any other jurisdiction, whether that
 684 | of another state, the District of Columbia, the United States or
 685 | any possession or territory thereof, or any foreign
 686 | jurisdiction; or

687 | 3. The court determines by clear and convincing evidence
 688 | that continuing the parental relationship with the incarcerated
 689 | parent would be harmful to the child and, for this reason, that
 690 | termination of the parental rights of the incarcerated parent is
 691 | in the best interest of the child. When determining harm, the
 692 | court shall consider the following factors:

- 693 | a. The age of the child.
- 694 | b. The relationship between the child and the parent.
- 695 | c. The nature of the parent's current and past provision
 696 | for the child's developmental, cognitive, psychological, and
 697 | physical needs.
- 698 | d. The parent's history of criminal behavior, which may
 699 | include the frequency of incarceration and the unavailability of
 700 | the parent to the child due to incarceration.

701 e. Any other factor the court deems relevant.

702 Section 17. For the purpose of incorporating the amendment

703 made by this act to section 782.04, Florida Statutes, in

704 references thereto, paragraph (b) of subsection (4) of section

705 63.089, Florida Statutes, is reenacted to read:

706 63.089 Proceeding to terminate parental rights pending

707 adoption; hearing; grounds; dismissal of petition; judgment.--

708 (4) FINDING OF ABANDONMENT.—A finding of abandonment

709 resulting in a termination of parental rights must be based upon

710 clear and convincing evidence that a parent or person having

711 legal custody has abandoned the child in accordance with the

712 definition contained in s. 63.032. A finding of abandonment may

713 also be based upon emotional abuse or a refusal to provide

714 reasonable financial support, when able, to a birth mother

715 during her pregnancy or on whether the person alleged to have

716 abandoned the child, while being able, failed to establish

717 contact with the child or accept responsibility for the child's

718 welfare.

719 (b) The child has been abandoned when the parent of a

720 child is incarcerated on or after October 1, 2001, in a federal,

721 state, or county correctional institution and:

722 1. The period of time for which the parent has been or is

723 expected to be incarcerated will constitute a significant

724 portion of the child's minority. In determining whether the

725 period of time is significant, the court shall consider the

726 child's age and the child's need for a permanent and stable
 727 home. The period of time begins on the date that the parent
 728 enters into incarceration;

729 2. The incarcerated parent has been determined by a court
 730 of competent jurisdiction to be a violent career criminal as
 731 defined in s. 775.084, a habitual violent felony offender as
 732 defined in s. 775.084, convicted of child abuse as defined in s.
 733 827.03, or a sexual predator as defined in s. 775.21; has been
 734 convicted of first degree or second degree murder in violation
 735 of s. 782.04 or a sexual battery that constitutes a capital,
 736 life, or first degree felony violation of s. 794.011; or has
 737 been convicted of a substantially similar offense in another
 738 jurisdiction. As used in this section, the term "substantially
 739 similar offense" means any offense that is substantially similar
 740 in elements and penalties to one of those listed in this
 741 subparagraph, and that is in violation of a law of any other
 742 jurisdiction, whether that of another state, the District of
 743 Columbia, the United States or any possession or territory
 744 thereof, or any foreign jurisdiction; or

745 3. The court determines by clear and convincing evidence
 746 that continuing the parental relationship with the incarcerated
 747 parent would be harmful to the child and, for this reason,
 748 termination of the parental rights of the incarcerated parent is
 749 in the best interests of the child.

750 Section 18. For the purpose of incorporating the amendment

751 made by this act to section 782.04, Florida Statutes, in
 752 references thereto, subsection (10) of section 95.11, Florida
 753 Statutes, is reenacted to read:

754 95.11 Limitations other than for the recovery of real
 755 property.—Actions other than for recovery of real property shall
 756 be commenced as follows:

757 (10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS
 758 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph
 759 (4) (d), an action for wrongful death seeking damages authorized
 760 under s. 768.21 brought against a natural person for an
 761 intentional tort resulting in death from acts described in s.
 762 782.04 or s. 782.07 may be commenced at any time. This
 763 subsection shall not be construed to require an arrest, the
 764 filing of formal criminal charges, or a conviction for a
 765 violation of s. 782.04 or s. 782.07 as a condition for filing a
 766 civil action.

767 Section 19. For the purpose of incorporating the amendment
 768 made by this act to section 782.04, Florida Statutes, in a
 769 reference thereto, paragraph (e) of subsection (2) of section
 770 435.04, Florida Statutes, is reenacted to read:

771 435.04 Level 2 screening standards.—

772 (2) The security background investigations under this
 773 section must ensure that no persons subject to the provisions of
 774 this section have been arrested for and are awaiting final
 775 disposition of, have been found guilty of, regardless of

776 adjudication, or entered a plea of nolo contendere or guilty to,
 777 or have been adjudicated delinquent and the record has not been
 778 sealed or expunged for, any offense prohibited under any of the
 779 following provisions of state law or similar law of another
 780 jurisdiction:

781 (e) Section 782.04, relating to murder.

782 Section 20. For the purpose of incorporating the amendment
 783 made by this act to section 782.04, Florida Statutes, in a
 784 reference thereto, paragraph (c) of subsection (4) of section
 785 435.07, Florida Statutes, is reenacted to read:

786 435.07 Exemptions from disqualification.—Unless otherwise
 787 provided by law, the provisions of this section apply to
 788 exemptions from disqualification for disqualifying offenses
 789 revealed pursuant to background screenings required under this
 790 chapter, regardless of whether those disqualifying offenses are
 791 listed in this chapter or other laws.

792 (4)

793 (c) Disqualification from employment under this chapter
 794 may not be removed from, and an exemption may not be granted to,
 795 any current or prospective child care personnel, as defined in
 796 s. 402.302(3), and such a person is disqualified from employment
 797 as child care personnel, regardless of any previous exemptions
 798 from disqualification, if the person has been registered as a
 799 sex offender as described in 42 U.S.C. s. 9858f(c)(1)(C) or has
 800 been arrested for and is awaiting final disposition of, has been

801 convicted or found guilty of, or entered a plea of guilty or
 802 nolo contendere to, regardless of adjudication, or has been
 803 adjudicated delinquent and the record has not been sealed or
 804 expunged for, any offense prohibited under any of the following
 805 provisions of state law or a similar law of another
 806 jurisdiction:

807 1. A felony offense prohibited under any of the following
 808 statutes:

- 809 a. Chapter 741, relating to domestic violence.
- 810 b. Section 782.04, relating to murder.
- 811 c. Section 782.07, relating to manslaughter, aggravated
 812 manslaughter of an elderly person or disabled adult, aggravated
 813 manslaughter of a child, or aggravated manslaughter of an
 814 officer, a firefighter, an emergency medical technician, or a
 815 paramedic.
- 816 d. Section 784.021, relating to aggravated assault.
- 817 e. Section 784.045, relating to aggravated battery.
- 818 f. Section 787.01, relating to kidnapping.
- 819 g. Section 787.025, relating to luring or enticing a
 820 child.
- 821 h. Section 787.04(2), relating to leading, taking,
 822 enticing, or removing a minor beyond the state limits, or
 823 concealing the location of a minor, with criminal intent pending
 824 custody proceedings.
- 825 i. Section 787.04(3), relating to leading, taking,

826 enticing, or removing a minor beyond the state limits, or
 827 concealing the location of a minor, with criminal intent pending
 828 dependency proceedings or proceedings concerning alleged abuse
 829 or neglect of a minor.

830 j. Section 794.011, relating to sexual battery.

831 k. Former s. 794.041, relating to sexual activity with or
 832 solicitation of a child by a person in familial or custodial
 833 authority.

834 l. Section 794.05, relating to unlawful sexual activity
 835 with certain minors.

836 m. Section 794.08, relating to female genital mutilation.

837 n. Section 806.01, relating to arson.

838 o. Section 826.04, relating to incest.

839 p. Section 827.03, relating to child abuse, aggravated
 840 child abuse, or neglect of a child.

841 q. Section 827.04, relating to contributing to the
 842 delinquency or dependency of a child.

843 r. Section 827.071, relating to sexual performance by a
 844 child.

845 s. Chapter 847, relating to child pornography.

846 t. Section 985.701, relating to sexual misconduct in
 847 juvenile justice programs.

848 2. A misdemeanor offense prohibited under any of the
 849 following statutes:

850 a. Section 784.03, relating to battery, if the victim of

851 the offense was a minor.

852 b. Section 787.025, relating to luring or enticing a
853 child.

854 c. Chapter 847, relating to child pornography.

855 3. A criminal act committed in another state or under
856 federal law which, if committed in this state, constitutes an
857 offense prohibited under any statute listed in subparagraph 1.
858 or subparagraph 2.

859 Section 21. For the purpose of incorporating the amendment
860 made by this act to section 782.04, Florida Statutes, in
861 references thereto, paragraph (b) of subsection (1) and
862 paragraphs (a), (b), and (c) of subsection (3) of section
863 775.082, Florida Statutes, are reenacted to read:

864 775.082 Penalties; applicability of sentencing structures;
865 mandatory minimum sentences for certain reoffenders previously
866 released from prison.—

867 (1)

868 (b)1. A person who actually killed, intended to kill, or
869 attempted to kill the victim and who is convicted under s.
870 782.04 of a capital felony, or an offense that was reclassified
871 as a capital felony, which was committed before the person
872 attained 18 years of age shall be punished by a term of
873 imprisonment for life if, after a sentencing hearing conducted
874 by the court in accordance with s. 921.1401, the court finds
875 that life imprisonment is an appropriate sentence. If the court

876 finds that life imprisonment is not an appropriate sentence,
 877 such person shall be punished by a term of imprisonment of at
 878 least 40 years. A person sentenced pursuant to this subparagraph
 879 is entitled to a review of his or her sentence in accordance
 880 with s. 921.1402(2)(a).

881 2. A person who did not actually kill, intend to kill, or
 882 attempt to kill the victim and who is convicted under s. 782.04
 883 of a capital felony, or an offense that was reclassified as a
 884 capital felony, which was committed before the person attained
 885 18 years of age may be punished by a term of imprisonment for
 886 life or by a term of years equal to life if, after a sentencing
 887 hearing conducted by the court in accordance with s. 921.1401,
 888 the court finds that life imprisonment is an appropriate
 889 sentence. A person who is sentenced to a term of imprisonment of
 890 more than 15 years is entitled to a review of his or her
 891 sentence in accordance with s. 921.1402(2)(c).

892 3. The court shall make a written finding as to whether a
 893 person is eligible for a sentence review hearing under s.
 894 921.1402(2)(a) or (c). Such a finding shall be based upon
 895 whether the person actually killed, intended to kill, or
 896 attempted to kill the victim. The court may find that multiple
 897 defendants killed, intended to kill, or attempted to kill the
 898 victim.

899 (3) A person who has been convicted of any other
 900 designated felony may be punished as follows:

901 (a)1. For a life felony committed before October 1, 1983,
 902 by a term of imprisonment for life or for a term of at least 30
 903 years.

904 2. For a life felony committed on or after October 1,
 905 1983, by a term of imprisonment for life or by a term of
 906 imprisonment not exceeding 40 years.

907 3. Except as provided in subparagraph 4., for a life
 908 felony committed on or after July 1, 1995, by a term of
 909 imprisonment for life or by imprisonment for a term of years not
 910 exceeding life imprisonment.

911 4.a. Except as provided in sub-subparagraph b., for a life
 912 felony committed on or after September 1, 2005, which is a
 913 violation of s. 800.04(5)(b), by:

914 (I) A term of imprisonment for life; or

915 (II) A split sentence that is a term of at least 25 years'
 916 imprisonment and not exceeding life imprisonment, followed by
 917 probation or community control for the remainder of the person's
 918 natural life, as provided in s. 948.012(4).

919 b. For a life felony committed on or after July 1, 2008,
 920 which is a person's second or subsequent violation of s.
 921 800.04(5)(b), by a term of imprisonment for life.

922 5. Notwithstanding subparagraphs 1.-4., a person who is
 923 convicted under s. 782.04 of an offense that was reclassified as
 924 a life felony which was committed before the person attained 18
 925 years of age may be punished by a term of imprisonment for life

926 or by a term of years equal to life imprisonment if the judge
 927 conducts a sentencing hearing in accordance with s. 921.1401 and
 928 finds that life imprisonment or a term of years equal to life
 929 imprisonment is an appropriate sentence.

930 a. A person who actually killed, intended to kill, or
 931 attempted to kill the victim and is sentenced to a term of
 932 imprisonment of more than 25 years is entitled to a review of
 933 his or her sentence in accordance with s. 921.1402(2)(b).

934 b. A person who did not actually kill, intend to kill, or
 935 attempt to kill the victim and is sentenced to a term of
 936 imprisonment of more than 15 years is entitled to a review of
 937 his or her sentence in accordance with s. 921.1402(2)(c).

938 c. The court shall make a written finding as to whether a
 939 person is eligible for a sentence review hearing under s.
 940 921.1402(2)(b) or (c). Such a finding shall be based upon
 941 whether the person actually killed, intended to kill, or
 942 attempted to kill the victim. The court may find that multiple
 943 defendants killed, intended to kill, or attempted to kill the
 944 victim.

945 6. For a life felony committed on or after October 1,
 946 2014, which is a violation of s. 787.06(3)(g), by a term of
 947 imprisonment for life.

948 (b)1. For a felony of the first degree, by a term of
 949 imprisonment not exceeding 30 years or, when specifically
 950 provided by statute, by imprisonment for a term of years not

951 | exceeding life imprisonment.

952 | 2. Notwithstanding subparagraph 1., a person convicted
 953 | under s. 782.04 of a first degree felony punishable by a term of
 954 | years not exceeding life imprisonment, or an offense that was
 955 | reclassified as a first degree felony punishable by a term of
 956 | years not exceeding life, which was committed before the person
 957 | attained 18 years of age may be punished by a term of years
 958 | equal to life imprisonment if the judge conducts a sentencing
 959 | hearing in accordance with s. 921.1401 and finds that a term of
 960 | years equal to life imprisonment is an appropriate sentence.

961 | a. A person who actually killed, intended to kill, or
 962 | attempted to kill the victim and is sentenced to a term of
 963 | imprisonment of more than 25 years is entitled to a review of
 964 | his or her sentence in accordance with s. 921.1402(2)(b).

965 | b. A person who did not actually kill, intend to kill, or
 966 | attempt to kill the victim and is sentenced to a term of
 967 | imprisonment of more than 15 years is entitled to a review of
 968 | his or her sentence in accordance with s. 921.1402(2)(c).

969 | c. The court shall make a written finding as to whether a
 970 | person is eligible for a sentence review hearing under s.
 971 | 921.1402(2)(b) or (c). Such a finding shall be based upon
 972 | whether the person actually killed, intended to kill, or
 973 | attempted to kill the victim. The court may find that multiple
 974 | defendants killed, intended to kill, or attempted to kill the
 975 | victim.

976 (c) Notwithstanding paragraphs (a) and (b), a person
 977 convicted of an offense that is not included in s. 782.04 but
 978 that is an offense that is a life felony or is punishable by a
 979 term of imprisonment for life or by a term of years not
 980 exceeding life imprisonment, or an offense that was reclassified
 981 as a life felony or an offense punishable by a term of
 982 imprisonment for life or by a term of years not exceeding life
 983 imprisonment, which was committed before the person attained 18
 984 years of age may be punished by a term of imprisonment for life
 985 or a term of years equal to life imprisonment if the judge
 986 conducts a sentencing hearing in accordance with s. 921.1401 and
 987 finds that life imprisonment or a term of years equal to life
 988 imprisonment is an appropriate sentence. A person who is
 989 sentenced to a term of imprisonment of more than 20 years is
 990 entitled to a review of his or her sentence in accordance with
 991 s. 921.1402(2)(d).

992 Section 22. For the purpose of incorporating the amendment
 993 made by this act to section 782.04, Florida Statutes, in
 994 references thereto, subsections (1), (2), (4), (5), (6), and (7)
 995 of section 775.0823, Florida Statutes, are reenacted to read:

996 775.0823 Violent offenses committed against law
 997 enforcement officers, correctional officers, state attorneys,
 998 assistant state attorneys, justices, or judges.—The Legislature
 999 does hereby provide for an increase and certainty of penalty for
 1000 any person convicted of a violent offense against any law

1001 enforcement or correctional officer, as defined in s. 943.10(1),
 1002 (2), (3), (6), (7), (8), or (9); against any state attorney
 1003 elected pursuant to s. 27.01 or assistant state attorney
 1004 appointed under s. 27.181; or against any justice or judge of a
 1005 court described in Art. V of the State Constitution, which
 1006 offense arises out of or in the scope of the officer's duty as a
 1007 law enforcement or correctional officer, the state attorney's or
 1008 assistant state attorney's duty as a prosecutor or investigator,
 1009 or the justice's or judge's duty as a judicial officer, as
 1010 follows:

1011 (1) For murder in the first degree as described in s.
 1012 782.04(1), if the death sentence is not imposed, a sentence of
 1013 imprisonment for life without eligibility for release.

1014 (2) For attempted murder in the first degree as described
 1015 in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083,
 1016 or s. 775.084.

1017 (4) For murder in the second degree as described in s.
 1018 782.04(2) and (3), a sentence pursuant to s. 775.082, s.
 1019 775.083, or s. 775.084.

1020 (5) For attempted murder in the second degree as described
 1021 in s. 782.04(2) and (3), a sentence pursuant to s. 775.082, s.
 1022 775.083, or s. 775.084.

1023 (6) For murder in the third degree as described in s.
 1024 782.04(4), a sentence pursuant to s. 775.082, s. 775.083, or s.
 1025 775.084.

1026 (7) For attempted murder in the third degree as described
 1027 in s. 782.04(4), a sentence pursuant to s. 775.082, s. 775.083,
 1028 or s. 775.084.

1029
 1030 Notwithstanding the provisions of s. 948.01, with respect to any
 1031 person who is found to have violated this section, adjudication
 1032 of guilt or imposition of sentence shall not be suspended,
 1033 deferred, or withheld.

1034 Section 23. For the purpose of incorporating the amendment
 1035 made by this act to section 782.04, Florida Statutes, in
 1036 references thereto, section 782.051, Florida Statutes, is
 1037 reenacted to read:

1038 782.051 Attempted felony murder.—

1039 (1) Any person who perpetrates or attempts to perpetrate
 1040 any felony enumerated in s. 782.04(3) and who commits, aids, or
 1041 abets an intentional act that is not an essential element of the
 1042 felony and that could, but does not, cause the death of another
 1043 commits a felony of the first degree, punishable by imprisonment
 1044 for a term of years not exceeding life, or as provided in s.
 1045 775.082, s. 775.083, or s. 775.084, which is an offense ranked
 1046 in level 9 of the Criminal Punishment Code. Victim injury points
 1047 shall be scored under this subsection.

1048 (2) Any person who perpetrates or attempts to perpetrate
 1049 any felony other than a felony enumerated in s. 782.04(3) and
 1050 who commits, aids, or abets an intentional act that is not an

1051 essential element of the felony and that could, but does not,
 1052 cause the death of another commits a felony of the first degree,
 1053 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 1054 which is an offense ranked in level 8 of the Criminal Punishment
 1055 Code. Victim injury points shall be scored under this
 1056 subsection.

1057 (3) When a person is injured during the perpetration of or
 1058 the attempt to perpetrate any felony enumerated in s. 782.04(3)
 1059 by a person other than the person engaged in the perpetration of
 1060 or the attempt to perpetrate such felony, the person
 1061 perpetrating or attempting to perpetrate such felony commits a
 1062 felony of the second degree, punishable as provided in s.
 1063 775.082, s. 775.083, or s. 775.084, which is an offense ranked
 1064 in level 7 of the Criminal Punishment Code. Victim injury points
 1065 shall be scored under this subsection.

1066 Section 24. For the purpose of incorporating the amendment
 1067 made by this act to section 782.04, Florida Statutes, in
 1068 references thereto, section 782.065, Florida Statutes, is
 1069 reenacted to read:

1070 782.065 Murder; law enforcement officer, correctional
 1071 officer, correctional probation officer.—Notwithstanding ss.
 1072 775.082, 775.0823, 782.04, 782.051, and chapter 921, a defendant
 1073 shall be sentenced to life imprisonment without eligibility for
 1074 release upon findings by the trier of fact that, beyond a
 1075 reasonable doubt:

1076 (1) The defendant committed murder in the first degree in
 1077 violation of s. 782.04(1) and a death sentence was not imposed;
 1078 murder in the second or third degree in violation of s.
 1079 782.04(2), (3), or (4); attempted murder in the first or second
 1080 degree in violation of s. 782.04(1)(a)1. or (2); or attempted
 1081 felony murder in violation of s. 782.051; and

1082 (2) The victim of any offense described in subsection (1)
 1083 was a law enforcement officer, part-time law enforcement
 1084 officer, auxiliary law enforcement officer, correctional
 1085 officer, part-time correctional officer, auxiliary correctional
 1086 officer, correctional probation officer, part-time correctional
 1087 probation officer, or auxiliary correctional probation officer,
 1088 as those terms are defined in s. 943.10, engaged in the lawful
 1089 performance of a legal duty.

1090 Section 25. For the purpose of incorporating the amendment
 1091 made by this act to section 782.04, Florida Statutes, in a
 1092 reference thereto, section 903.133, Florida Statutes, is
 1093 reenacted to read:

1094 903.133 Bail on appeal; prohibited for certain felony
 1095 convictions.—Notwithstanding the provisions of s. 903.132, no
 1096 person adjudged guilty of a felony of the first degree for a
 1097 violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s.
 1098 806.01, s. 893.13, or s. 893.135, or adjudged guilty of a
 1099 violation of s. 794.011(2) or (3), shall be admitted to bail
 1100 pending review either by posttrial motion or appeal.

1101 Section 26. For the purpose of incorporating the amendment
 1102 made by this act to section 782.04, Florida Statutes, in
 1103 references thereto, paragraphs (h) and (i) of subsection (3) of
 1104 section 921.0022, Florida Statutes, are reenacted to read:

1105 921.0022 Criminal Punishment Code; offense severity
 1106 ranking chart.—

1107 (3) OFFENSE SEVERITY RANKING CHART

1108 (h) LEVEL 8

1109

Florida Statute	Felony Degree	Description
316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
499.0051 (7)	1st	Knowing trafficking in contraband prescription drugs.

1110

1111

1112

1113

1114	499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
1115	560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
1116	560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
1117	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.

1118	777.03(2)(a)	1st	Accessory after the fact, capital felony.
1119	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
1120	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
1121	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.

1122	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
1123	787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
1124	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
1125	787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
1126	787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.

1127

787.06(3)(f)2.

1st

Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.

1128

790.161(3)

1st

Discharging a destructive device which results in bodily harm or property damage.

1129

794.011(5)(a)

1st

Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.

1130

1131	794.011 (5) (b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.
1132	794.011 (5) (c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.
1132	794.011 (5) (d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior

conviction for
specified sex offense.

1133

794.08 (3)

2nd

Female genital mutilation,
removal of a victim younger
than 18 years of age from
this state.

1134

800.04 (4) (b)

2nd

Lewd or lascivious
battery.

1135

800.04 (4) (c)

1st

Lewd or lascivious
battery; offender 18
years of age or older;
prior conviction for
specified sex offense.

1136

806.01 (1)

1st

Maliciously damage dwelling
or structure by fire or
explosive, believing person
in structure.

1137

810.02 (2) (a)

1st, PBL

Burglary with
assault or
battery.

1138	810.02 (2) (b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
1139	810.02 (2) (c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
1140	812.014 (2) (a) 2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
1141	812.13 (2) (b)	1st	Robbery with a weapon.
1142	812.135 (2) (c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
1143			

1144	817.535 (2) (b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
1145	817.535 (3) (a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
1146	817.535 (4) (a) 1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
1147	817.535 (5) (a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
	817.568 (6)	2nd	Fraudulent use of personal identification information of

			an individual under the age of 18.
1148	817.611(2)(c)	1st	Traffic in or possess 50 or more counterfeit credit cards or related documents.
1149	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
1150	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
1151	825.103(3)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more.
1152	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital

felony.

1153

837.021(2)

2nd

Making contradictory statements in official proceedings relating to prosecution of a capital felony.

1154

860.121(2)(c)

1st

Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.

1155

860.16

1st

Aircraft piracy.

1156

893.13(1)(b)

1st

Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).

1157

893.13(2)(b)

1st

Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).

1158	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
1159	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
1160	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
1161	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
1162	893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
1163	893.135 (1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than

1164	893.135 (1) (d) 1.b.	1st	100 grams. Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
1165	893.135 (1) (e) 1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
1166	893.135 (1) (f) 1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
1167	893.135 (1) (g) 1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
1168	893.135 (1) (h) 1.b.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
1169	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4- Butanediol, 5 kilograms or

			more, less than 10 kilograms.
1170	893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
1171	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
1172	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
1173	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
1174	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
1175			

1176	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
1177			
1178	896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.
1179	(i) LEVEL 9		
1180	Florida Statute	Felony Degree	Description
1181	316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
	327.35 (3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give

			information.
1182	409.920 (2) (b) 1.c.	1st	Medicaid provider fraud; \$50,000 or more.
1183	499.0051 (8)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
1184	560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
1185	560.125 (5) (c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
1186	655.50 (10) (b) 3.	1st	Failure to report financial transactions totaling or exceeding

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 457

2017

1187			\$100,000 by financial institution.
	775.0844	1st	Aggravated white collar crime.
1188			
	782.04 (1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
1189			
	782.04 (3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
1190			
	782.051 (1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04 (3).

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 457

2017

1191	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
1192	787.01(1)(a)1.	1st, PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
1193	787.01(1)(a)2.	1st, PBL	Kidnapping with intent to commit or facilitate commission of any felony.
1194	787.01(1)(a)4.	1st, PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
1195	787.02(3)(a)	1st, PBL	False imprisonment; child under age 13; perpetrator also commits

			aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
1196	787.06(3)(c)1.	1st	Human trafficking for labor and services of an unauthorized alien child.
1197	787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.
1198	787.06(3)(f)1.	1st,PBL	Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.
1199	790.161	1st	Attempted capital destructive device offense.

HB 457

2017

1200	790.166 (2)	1st, PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
1201	794.011 (2)	1st	Attempted sexual battery; victim less than 12 years of age.
1202	794.011 (2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
1203	794.011 (4) (a)	1st, PBL	Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.
1204	794.011 (4) (b)	1st	Sexual battery, certain

1205	794.011(4)(c)	1st	circumstances; victim and offender 18 years of age or older.
1206	794.011(4)(d)	1st, PBL	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
1207	794.011(8)(b)	1st, PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.
1208	794.08(2)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
			Female genital mutilation;

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 457

2017

			victim younger than 18 years of age.
1209	800.04 (5) (b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
1210	812.13 (2) (a)	1st, PBL	Robbery with firearm or other deadly weapon.
1211	812.133 (2) (a)	1st, PBL	Carjacking; firearm or other deadly weapon.
1212	812.135 (2) (b)	1st	Home-invasion robbery with weapon.
1213	817.535 (3) (b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 457

2017

1214	817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
1215	817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
1216	817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
1217	827.03(2)(a)	1st	Aggravated child abuse.
1218	847.0145(1)	1st	Selling, or otherwise

1219			transferring custody or control, of a minor.
	847.0145 (2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
1220			
	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
1221			
	893.135	1st	Attempted capital trafficking offense.
1222			
	893.135 (1) (a) 3.	1st	Trafficking in cannabis, more than 10,000 lbs.
1223			
	893.135 (1) (b) 1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
1224			

1225	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
1226	893.135 (1)(c)2.d.	1st	Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms.
1227	893.135 (1)(c)3.d.	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.
1228	893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
1229	893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
1230	893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
1231	893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.

1232 893.135 1st Trafficking in 1,4-
 (1) (j) 1.c. Butanediol, 10 kilograms or
 more.

1233 893.135 1st Trafficking in Phenethylamines,
 (1) (k) 2.c. 400 grams or more.

1234 896.101 (5) (c) 1st Money laundering,
 financial instruments
 totaling or exceeding
 \$100,000.

1235 896.104 (4) (a) 3. 1st Structuring transactions
 to evade reporting or
 registration
 requirements, financial
 transactions totaling or
 exceeding \$100,000.

1236
 1237 Section 27. For the purpose of incorporating the amendment
 1238 made by this act to section 782.04, Florida Statutes, in a
 1239 reference thereto, subsection (1) of section 921.16, Florida
 1240 Statutes, is reenacted to read:

1241 921.16 When sentences to be concurrent and when

1242 consecutive.-

1243 (1) A defendant convicted of two or more offenses charged
 1244 in the same indictment, information, or affidavit or in
 1245 consolidated indictments, informations, or affidavits shall
 1246 serve the sentences of imprisonment concurrently unless the
 1247 court directs that two or more of the sentences be served
 1248 consecutively. Sentences of imprisonment for offenses not
 1249 charged in the same indictment, information, or affidavit shall
 1250 be served consecutively unless the court directs that two or
 1251 more of the sentences be served concurrently. Any sentence for
 1252 sexual battery as defined in chapter 794 or murder as defined in
 1253 s. 782.04 must be imposed consecutively to any other sentence
 1254 for sexual battery or murder which arose out of a separate
 1255 criminal episode or transaction.

1256 Section 28. For the purpose of incorporating the amendment
 1257 made by this act to section 782.04, Florida Statutes, in a
 1258 reference thereto, paragraph (i) of subsection (3) of section
 1259 947.146, Florida Statutes, is reenacted to read:

1260 947.146 Control Release Authority.-

1261 (3) Within 120 days prior to the date the state
 1262 correctional system is projected pursuant to s. 216.136 to
 1263 exceed 99 percent of total capacity, the authority shall
 1264 determine eligibility for and establish a control release date
 1265 for an appropriate number of parole ineligible inmates committed
 1266 to the department and incarcerated within the state who have

1267 | been determined by the authority to be eligible for
 1268 | discretionary early release pursuant to this section. In
 1269 | establishing control release dates, it is the intent of the
 1270 | Legislature that the authority prioritize consideration of
 1271 | eligible inmates closest to their tentative release date. The
 1272 | authority shall rely upon commitment data on the offender
 1273 | information system maintained by the department to initially
 1274 | identify inmates who are to be reviewed for control release
 1275 | consideration. The authority may use a method of objective risk
 1276 | assessment in determining if an eligible inmate should be
 1277 | released. Such assessment shall be a part of the department's
 1278 | management information system. However, the authority shall have
 1279 | sole responsibility for determining control release eligibility,
 1280 | establishing a control release date, and effectuating the
 1281 | release of a sufficient number of inmates to maintain the inmate
 1282 | population between 99 percent and 100 percent of total capacity.
 1283 | Inmates who are ineligible for control release are inmates who
 1284 | are parole eligible or inmates who:

- 1285 | (i) Are convicted, or have been previously convicted, of
- 1286 | committing or attempting to commit murder in the first, second,
- 1287 | or third degree under s. 782.04(1), (2), (3), or (4), or have
- 1288 | ever been convicted of any degree of murder or attempted murder
- 1289 | in another jurisdiction;

1290 |
 1291 | In making control release eligibility determinations under this

1292 subsection, the authority may rely on any document leading to or
 1293 generated during the course of the criminal proceedings,
 1294 including, but not limited to, any presentence or postsentence
 1295 investigation or any information contained in arrest reports
 1296 relating to circumstances of the offense.

1297 Section 29. For the purpose of incorporating the amendment
 1298 made by this act to section 782.04, Florida Statutes, in a
 1299 reference thereto, paragraph (c) of subsection (8) of section
 1300 948.06, Florida Statutes, is reenacted to read:

1301 948.06 Violation of probation or community control;
 1302 revocation; modification; continuance; failure to pay
 1303 restitution or cost of supervision.-

1304 (8)

1305 (c) For purposes of this section, the term "qualifying
 1306 offense" means any of the following:

1307 1. Kidnapping or attempted kidnapping under s. 787.01,
 1308 false imprisonment of a child under the age of 13 under s.
 1309 787.02(3), or luring or enticing a child under s. 787.025(2)(b)
 1310 or (c).

1311 2. Murder or attempted murder under s. 782.04, attempted
 1312 felony murder under s. 782.051, or manslaughter under s. 782.07.

1313 3. Aggravated battery or attempted aggravated battery
 1314 under s. 784.045.

1315 4. Sexual battery or attempted sexual battery under s.
 1316 794.011(2), (3), (4), or (8)(b) or (c).

1317 5. Lewd or lascivious battery or attempted lewd or
 1318 lascivious battery under s. 800.04(4), lewd or lascivious
 1319 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious
 1320 conduct under s. 800.04(6)(b), lewd or lascivious exhibition
 1321 under s. 800.04(7)(b), or lewd or lascivious exhibition on
 1322 computer under s. 847.0135(5)(b).

1323 6. Robbery or attempted robbery under s. 812.13,
 1324 carjacking or attempted carjacking under s. 812.133, or home
 1325 invasion robbery or attempted home invasion robbery under s.
 1326 812.135.

1327 7. Lewd or lascivious offense upon or in the presence of
 1328 an elderly or disabled person or attempted lewd or lascivious
 1329 offense upon or in the presence of an elderly or disabled person
 1330 under s. 825.1025.

1331 8. Sexual performance by a child or attempted sexual
 1332 performance by a child under s. 827.071.

1333 9. Computer pornography under s. 847.0135(2) or (3),
 1334 transmission of child pornography under s. 847.0137, or selling
 1335 or buying of minors under s. 847.0145.

1336 10. Poisoning food or water under s. 859.01.

1337 11. Abuse of a dead human body under s. 872.06.

1338 12. Any burglary offense or attempted burglary offense
 1339 that is either a first degree felony or second degree felony
 1340 under s. 810.02(2) or (3).

1341 13. Arson or attempted arson under s. 806.01(1).

- 1342 14. Aggravated assault under s. 784.021.
- 1343 15. Aggravated stalking under s. 784.048(3), (4), (5), or
- 1344 (7).
- 1345 16. Aircraft piracy under s. 860.16.
- 1346 17. Unlawful throwing, placing, or discharging of a
- 1347 destructive device or bomb under s. 790.161(2), (3), or (4).
- 1348 18. Treason under s. 876.32.
- 1349 19. Any offense committed in another jurisdiction which
- 1350 would be an offense listed in this paragraph if that offense had
- 1351 been committed in this state.
- 1352 Section 30. For the purpose of incorporating the amendment
- 1353 made by this act to section 782.04, Florida Statutes, in a
- 1354 reference thereto, subsection (1) of section 948.062, Florida
- 1355 Statutes, is reenacted to read:
- 1356 948.062 Reviewing and reporting serious offenses committed
- 1357 by offenders placed on probation or community control.—
- 1358 (1) The department shall review the circumstances related
- 1359 to an offender placed on probation or community control who has
- 1360 been arrested while on supervision for the following offenses:
- 1361 (a) Any murder as provided in s. 782.04;
- 1362 (b) Any sexual battery as provided in s. 794.011 or s.
- 1363 794.023;
- 1364 (c) Any sexual performance by a child as provided in s.
- 1365 827.071;
- 1366 (d) Any kidnapping, false imprisonment, or luring of a

1367 child as provided in s. 787.01, s. 787.02, or s. 787.025;
 1368 (e) Any lewd and lascivious battery or lewd and lascivious
 1369 molestation as provided in s. 800.04(4) or (5);
 1370 (f) Any aggravated child abuse as provided in s.
 1371 827.03(2)(a);
 1372 (g) Any robbery with a firearm or other deadly weapon,
 1373 home invasion robbery, or carjacking as provided in s.
 1374 812.13(2)(a), s. 812.135, or s. 812.133;
 1375 (h) Any aggravated stalking as provided in s. 784.048(3),
 1376 (4), or (5);
 1377 (i) Any forcible felony as provided in s. 776.08,
 1378 committed by a person on probation or community control who is
 1379 designated as a sexual predator; or
 1380 (j) Any DUI manslaughter as provided in s. 316.193(3)(c),
 1381 or vehicular or vessel homicide as provided in s. 782.071 or s.
 1382 782.072, committed by a person who is on probation or community
 1383 control for an offense involving death or injury resulting from
 1384 a driving incident.
 1385 Section 31. For the purpose of incorporating the amendment
 1386 made by this act to section 782.04, Florida Statutes, in a
 1387 reference thereto, paragraph (b) of subsection (3) of section
 1388 985.265, Florida Statutes, is reenacted to read:
 1389 985.265 Detention transfer and release; education; adult
 1390 jails.—
 1391 (3)

1392 (b) When a juvenile is released from secure detention or
 1393 transferred to nonsecure detention, detention staff shall
 1394 immediately notify the appropriate law enforcement agency,
 1395 school personnel, and victim if the juvenile is charged with
 1396 committing any of the following offenses or attempting to commit
 1397 any of the following offenses:

- 1398 1. Murder, under s. 782.04;
- 1399 2. Sexual battery, under chapter 794;
- 1400 3. Stalking, under s. 784.048; or
- 1401 4. Domestic violence, as defined in s. 741.28.

1402 Section 32. For the purpose of incorporating the amendment
 1403 made by this act to section 782.04, Florida Statutes, in a
 1404 reference thereto, paragraph (d) of subsection (1) of section
 1405 1012.315, Florida Statutes, is reenacted to read:

1406 1012.315 Disqualification from employment.—A person is
 1407 ineligible for educator certification, and instructional
 1408 personnel and school administrators, as defined in s. 1012.01,
 1409 are ineligible for employment in any position that requires
 1410 direct contact with students in a district school system,
 1411 charter school, or private school that accepts scholarship
 1412 students under s. 1002.39 or s. 1002.395, if the person,
 1413 instructional personnel, or school administrator has been
 1414 convicted of:



- 1415 (1) Any felony offense prohibited under any of the
 1416 following statutes:

1417 (d) Section 782.04, relating to murder.
 1418 Section 33. For the purpose of incorporating the
 1419 amendments made by this act to sections 775.30 and 782.04,
 1420 Florida Statutes, in a reference thereto, paragraph (g) of
 1421 subsection (2) of section 1012.467, Florida Statutes, is
 1422 reenacted to read:
 1423 1012.467 Noninstructional contractors who are permitted
 1424 access to school grounds when students are present; background
 1425 screening requirements.—
 1426 (2)
 1427 (g) A noninstructional contractor for whom a criminal
 1428 history check is required under this section may not have been
 1429 convicted of any of the following offenses designated in the
 1430 Florida Statutes, any similar offense in another jurisdiction,
 1431 or any similar offense committed in this state which has been
 1432 redesignated from a former provision of the Florida Statutes to
 1433 one of the following offenses:
 1434 1. Any offense listed in s. 943.0435(1)(h)1., relating to
 1435 the registration of an individual as a sexual offender.
 1436 2. Section 393.135, relating to sexual misconduct with
 1437 certain developmentally disabled clients and the reporting of
 1438 such sexual misconduct.
 1439 3. Section 394.4593, relating to sexual misconduct with
 1440 certain mental health patients and the reporting of such sexual
 1441 misconduct.

- 1442 | 4. Section 775.30, relating to terrorism.
- 1443 | 5. Section 782.04, relating to murder.
- 1444 | 6. Section 787.01, relating to kidnapping.
- 1445 | 7. Any offense under chapter 800, relating to lewdness and
- 1446 | indecent exposure.
- 1447 | 8. Section 826.04, relating to incest.
- 1448 | 9. Section 827.03, relating to child abuse, aggravated
- 1449 | child abuse, or neglect of a child.
- 1450 | Section 34. This act shall take effect October 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 575 Threats to Kill or Do Bodily Injury
SPONSOR(S): Criminal Justice subcommittee, Daniels and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 260

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

SUMMARY ANALYSIS

As the use of social media grows, the potential for such forms of communication to be used to make threats of violence also increases. In a recent study concerning online harassment, 25 percent of Internet users surveyed reported having seen someone physically threatened online, while eight percent reported having experienced being physically threatened online themselves. Additionally, a separate study found that approximately one-third of threats made to schools were delivered through social media and other forms of electronic communication.

Currently, s. 836.10, F.S., makes it a second degree felony to create and send certain written threats, including electronic communications, to kill or do bodily harm. To violate this section, a person must:

- Write or compose a threat to kill or do bodily injury; and
- Send, or procure the sending of, that communication to the person threatened or family member of the person threatened.

Recently, the Second District Court of Appeals issued an opinion highlighting the difficulty of applying s. 836.10, F.S., to threats issued and shared publicly on social media, as such threats may not be communicated directly to any specific person. In this case, a juvenile's conviction for violating s. 836.10, F.S., was overturned, although the juvenile had posted multiple threats of school violence on Twitter, because the threats were not directly sent to or received by any of the threatened students or school officials.

The bill amends s. 836.10, F.S., to prohibit a person from:

- Making a threat in a writing or other record, including an electronic record, to kill or do bodily injury to another person; and
- Posting or transmitting, or procuring the posting or transmission of, the threat to the person threatened or in a manner that would allow another person to view the threat.

The bill removes the requirement that the written threat be sent to the person threatened or a member of his or her family. Thus, under the bill, written threats to kill or do bodily injury to another person which are publicly posted online, even if not specifically sent to or received by the person who is the subject of the threat, will be prohibited.

The Criminal Justice Impact Conference (CJIC) considered this bill on March 2, 2017, and determined the bill would increase the prison population by an indeterminate amount.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

According to a recent study, approximately 89 percent of American adults are now Internet users.¹ In a survey focusing on online harassment, 25 percent of adults surveyed had seen someone being physically threatened online, while eight percent had experienced being personally physically threatened online.² In a separate study regarding violent threats to schools,³ researchers found 35 percent of threats made to schools were delivered by social media and other electronic forms of communication.⁴

In 2010, the Legislature amended s. 836.10, F.S., to add “electronic communication” to the types of written threats that are prohibited, but left intact the requirement that the written threat be sent to the person who is the subject of the threat or to a person whose family member is the subject of the threat. Section 836.10, F.S., currently makes it a second degree felony⁵ for a person to write or compose and send or procure the sending of any letter, inscribed communication, or electronic communication which contains a threat to kill or do bodily injury to the person threatened or family member of the person threatened.

Criminal defendants have challenged the statute alleging it is vague and overbroad. They have argued that the statute could criminalize innocent written speech because it does not require proof that the defendant had the specific intent to cause the harm threatened.⁶ Florida courts have held that s. 836.10, F.S., does not require the actual intent to do harm or the apparent ability to carry out the threat.⁷ Additionally, the courts have upheld the statute finding it is definite enough to give notice of the behavior it proscribes and, thus, not vague. Further, it is limited enough in its objective to target threats to injure persons,⁸ and, thus, not overbroad.⁹

In a 2016 decision, a juvenile’s disposition under s. 836.10, F.S., for posting written threats to kill or do bodily injury on Twitter¹⁰ was reversed.¹¹ The juvenile made a series of public posts on Twitter over the

¹ PEW RESEARCH CENTER, *Online Harassment*, (October 2014) at 2, available at <http://www.pewinternet.org/2014/10/22/online-harassment> (last visited February 14, 2017).

² *Id.*

³ The study was conducted by National School Safety and Security Services. It reviewed 315 documented school bomb threats, shooting threats, hoaxes and acts of violence in 43 states during the first six months of the school year from August 2013 through January 2014. Ken Trump, *Schools face new wave of violent threats sent by social media and other electronic means, study says*, <http://www.schoolsecurity.org/2014/02/schools-face-new-wave-violent-threats-sent-social-media-electronic-means-study-says/> (last visited March 1, 2017).

⁴ Such other forms of electronic communication included email and text messages. *Id.*

⁵ A violation of s. 836.10, F.S., is a second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

⁶ *Saidi v. State*, 845 So. 2d 1022, 1026 (Fla. 5th 2003).

⁷ *Id.* at 1027.

⁸ The First Amendment permits a State to ban a “true threat.” “‘True threats’ encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003).

⁹ *Reilly v. Department of Corrections*, 847 F. Supp. 951, 958 (M.D. Fla. 1994). See also *Smith v. State*, 532 So. 2d 50, 52 (Fla. 2d 1988).

¹⁰ “Twitter allows users to send ‘updates’ (or ‘tweets’: text based posts, up to 140 characters long) to [the] Twitter website via short message service (e.g. on a cell phone), instant messaging, from their computer at home or work, or through a third-party application.” GNOTED, *What Is Twitter and How Does It Work- Beginner’s Guide*, <http://gnoted.com/what-is-twitter-and-how-does-it-work-beginners-guide/> (last visited February 14, 2017).

¹¹ *J.A.W. v. State*, 2016 Fla. App. LEXIS 14467 (Fla. 2d 2016).

span of several days threatening to “shoot up” his school.¹² The tweets were discovered by an out-of-state watchdog group who reported the threats to local police. Local police later contacted the juvenile’s school officials informing them of the threats.

The Second District Court of Appeals found that because the juvenile publicly posted the tweets, rather than directly sending them to any student or school official, the receipt of the threats by school officials through local police was too far removed to support a conviction under s. 836.10, F.S. The court specifically highlighted the difficulty of applying the current statute to modern forms of social media communication, recognizing that many threats made on social media fall outside the narrow scope of the law which requires the communication to be sent directly to a specific person.¹³

Effect of the Bill

The bill amends s. 836.10, F.S., to prohibit a person from:

- Making a threat in a writing or other record, including an electronic record, to kill or do bodily injury to another person; and
- Posting or transmitting, or procuring the posting or transmission of, the threat to the person threatened or in a manner that would allow another person to view the threat.

The bill removes the requirement that the written threat be sent to the person threatened or a member of his or her family. Thus, under the bill, written threats to kill or do bodily injury to another person which are publicly posted online, even if not specifically sent to or received by the person who is the subject of the threat, will be prohibited.

The bill reenacts ss. 794.056(1), 938.085, and 921.0022(3)(f), F.S., relating to the Rape Crisis Trust Fund and Criminal Punishment Code offense severity ranking chart, respectively, to incorporate amendments made to s. 836.10, F.S.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 836.10, F.S., relating to written threats to kill or do bodily injury.

Section 2: Reenacts s. 794.056(1), F.S., relating to the Rape Crisis Trust Fund.

Section 3: Reenacts s. 921.0022(3)(f), F.S., the Criminal Punishment Code offense severity ranking chart.

Section 4: Reenacts s. 938.085, F.S., relating to the Rape Crisis Trust Fund.

Section 5: 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.

¹² The following tweets were posted: “can’t wait to shoot up my school”; “it’s time”; “My mom and dad think I’m serious about shooting up my school I’m dying”; “school getting shot up on a Tuesday”; “night f[***]king sucked can’t wait to shoot up my school soon”; and “I sincerely apologize to anyone who took me seriously. I love my high school and honestly own no weapons to want to harm anyone in any way.” *Id.*

¹³ *Id.*

2. Expenditures: The Criminal Justice Impact Conference (CJIC) considered this bill on March 2, 2017, and determined the bill would increase the prison population by an indeterminate amount.

According to the CJIC, "Per DOC, in FY 15-16, there were 66 offenders sentenced for written threats to kill or do bodily injury, and 26 of these offenders were sentenced to prison (mean sentence length=47.0 m.). It is not known how many additional offenders would fall under the more expanded definition."¹⁴

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

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed in that the bill prohibited a written threat to kill or do bodily harm that was transmitted in any manner, which may have potentially punished the transmission of a threat between the personal devices of one individual, even when there was no potential for another person to view the threat. The committee substitute narrows the prohibited conduct to prohibit a person from posting or transmitting, or procuring the posting or transmission of a written threat to kill or do bodily injury, to either the person threatened, or in a manner that would allow another person to view the threat. This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

¹⁴ Email from Matthew Hasbrouck, Office of Economic & Demographic Research, March 1, 2017 (on file with the House of Representatives Criminal Justice Subcommittee).

1 A bill to be entitled

2 An act relating to threats to kill or do bodily
 3 injury; amending s. 836.10, F.S.; prohibiting a person
 4 from making a threat to kill or do bodily injury in a
 5 writing or other record and posting or transmitting
 6 the threat in a specified manner; deleting
 7 requirements that a threat be sent to a specific
 8 recipient to be prohibited; providing a penalty;
 9 reenacting ss. 794.056(1), 921.0022(3)(f), and
 10 938.085, F.S., relating to the Rape Crisis Program
 11 Trust Fund, the offense severity ranking chart of the
 12 Criminal Punishment Code, and additional costs to fund
 13 rape crisis centers, respectively, to incorporate the
 14 amendments made by the act; providing an effective
 15 date.

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

18
 19 Section 1. Section 836.10, Florida Statutes, is amended to
 20 read:

21 836.10 Written threats to kill or do bodily injury;
 22 punishment. A Any person who writes or composes and also sends
 23 ~~or procures the sending of any letter, inscribed communication,~~
 24 ~~or electronic communication, whether such letter or~~
 25 ~~communication be signed or anonymous, to any person, containing~~

26 ~~a threat to kill or to do bodily injury to the person to whom~~
 27 ~~such letter or communication is sent, or a threat to kill or do~~
 28 ~~bodily injury to any member of the family of the person to whom~~
 29 ~~such letter or communication is sent~~ commits a felony of the
 30 second degree, punishable as provided in s. 775.082, s. 775.083,
 31 or s. 775.084, if the person:

32 (1) Makes a threat in a writing or other record, including
 33 an electronic record, as defined in s. 668.50, to kill or do
 34 bodily injury to another person; and

35 (2) Posts or transmits, or procures the posting or
 36 transmission of, the threat to the person threatened or in a
 37 manner that would allow another person to view the threat.

38 Section 2. For the purpose of incorporating the amendment
 39 made by this act to section 836.10, Florida Statutes, in a
 40 reference thereto, subsection (1) of section 794.056, Florida
 41 Statutes, is reenacted to read:

42 794.056 Rape Crisis Program Trust Fund.—

43 (1) The Rape Crisis Program Trust Fund is created within
 44 the Department of Health for the purpose of providing funds for
 45 rape crisis centers in this state. Trust fund moneys shall be
 46 used exclusively for the purpose of providing services for
 47 victims of sexual assault. Funds credited to the trust fund
 48 consist of those funds collected as an additional court
 49 assessment in each case in which a defendant pleads guilty or
 50 nolo contendere to, or is found guilty of, regardless of

51 adjudication, an offense provided in s. 775.21(6) and (10)(a),
 52 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.
 53 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.
 54 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.
 55 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;
 56 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.
 57 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s.
 58 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.
 59 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s.
 60 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a),
 61 (13), and (14)(c); or s. 985.701(1). Funds credited to the trust
 62 fund also shall include revenues provided by law, moneys
 63 appropriated by the Legislature, and grants from public or
 64 private entities.

65 Section 3. For the purpose of incorporating the amendment
 66 made by this act to section 836.10, Florida Statutes, in a
 67 reference thereto, paragraph (f) of subsection (3) of section
 68 921.0022, Florida Statutes, is reenacted to read:

69 921.0022 Criminal Punishment Code; offense severity
 70 ranking chart.—

71 (3) OFFENSE SEVERITY RANKING CHART

72 (f) LEVEL 6

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Florida	Felony	
Statute	Degree	Description

74	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
75	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
76	400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
77	499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
78	499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
79	499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
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81	775.0875 (1)	3rd	Taking firearm from law enforcement officer.
82	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
83	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
84	784.041	3rd	Felony battery; domestic battery by strangulation.
85	784.048 (3)	3rd	Aggravated stalking; credible threat.
86	784.048 (5)	3rd	Aggravated stalking of person under 16.
87	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
88	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.

89	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
90	784.081 (2)	2nd	Aggravated assault on specified official or employee.
91	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
92	784.083 (2)	2nd	Aggravated assault on code inspector.
93	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
94	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
95	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.

96	790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
97	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
98	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
99	794.05(1)	2nd	Unlawful sexual activity with specified minor.
100	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or

			older.
101	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
102	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
103	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
104	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
105	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
106	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
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108	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
109	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
110	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
111	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
112	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
113	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
114	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.

115	827.03(2)(c)	3rd	Abuse of a child.
116	827.03(2)(d)	3rd	Neglect of a child.
117	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
118	836.05	2nd	Threats; extortion.
119	836.10	2nd	Written threats to kill or do bodily injury.
120	843.12	3rd	Aids or assists person to escape.
121	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
122	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.

123	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
124	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
125	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
126	944.40	2nd	Escapes.
127	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
128	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
	951.22(1)	3rd	Intoxicating drug, firearm, or

weapon introduced into county facility.

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Section 4. For the purpose of incorporating the amendment made by this act to section 836.10, Florida Statutes, in a reference thereto, section 938.085, Florida Statutes, is reenacted to read:

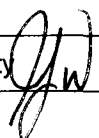

938.085 Additional cost to fund rape crisis centers.—In addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of s. 775.21(6) and (10)(a), (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045; 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

152 | Department of Health by chapter 2003-140, Laws of Florida. The
153 | clerk of the court shall retain \$1 of each surcharge that the
154 | clerk of the court collects as a service charge of the clerk's
155 | office.

156 | Section 5. This act shall take effect October 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 643 Eyewitness Identification
SPONSOR(S): Criminal Justice Subcommittee, Harrell
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Hall	White
2) Justice Appropriations Subcommittee		Weity 	Gusky 
3) Judiciary Committee			

SUMMARY ANALYSIS

Eyewitness misidentification has been identified as the single greatest cause of wrongful convictions, accounting for 75 percent of convictions that have been later overturned by DNA evidence nationwide. As a result, recent reform efforts have largely focused on eyewitness identification procedures, including the administration of photographic lineups and live lineups.

A photographic lineup is the process of showing photographs to an eyewitness for the purpose of identifying or eliminating a suspect. A live lineup involves the live presentation of individuals, before an eyewitness, for the purpose of identifying or eliminating suspects. Currently, there is no statute in Florida relating to photographic or live lineups.

This bill sets requirements for any lineup conducted in Florida by a state, county, municipal, or other law enforcement agency. The bill requires that a lineup comply with the following requirements:

- The lineup must be administered by an independent administrator, who is a person not participating in the investigation of the criminal offense and who is unaware of which person in the lineup is the suspect;
- If an independent administrator is not used, the lineup must be conducted using an alternative method that is designed to achieve neutral administration and prevent the lineup administrator from knowing which photograph is being presented to the eyewitness during the identification procedure;
- The witness must be given a set of instructions before being presented with the lineup; and
- The witness must acknowledge, in writing, having received the instructions or the lineup administrator must document the witness's refusal to do so.

The bill provides remedies for the failure to comply with its requirements by making consideration of such failure mandatory during a motion to suppress the eyewitness identification and admissible at trial in support of a claim of eyewitness misidentification. The bill requires the jury to be instructed that they may consider evidence of compliance or noncompliance with the requirements to determine the reliability of eyewitness identification if such evidence is introduced at trial.

The bill requires the Criminal Justice Standards and Training Commission to consult with Florida Department of Law Enforcement ("FDLE") to create educational materials and provide training programs on how to conduct lineups in compliance with the bill's requirements.

The bill has a fiscal impact of \$7,670, which can be absorbed within existing resources of the FDLE. Local governments could have a fiscal impact depending on how they decide to implement the bill.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

According to statistics compiled by the Innocence Project of Florida (IPF), eyewitness misidentification accounts for 75 percent of convictions that have been later overturned through DNA evidence nationwide.¹ Research indicates that different factors may lead to eyewitness misidentification, including estimator variables and systematic variables. Estimator variables are factors that may lead to misidentification, but are beyond the control of the criminal justice system and include variables such as where the crime took place, visibility, race of the victim and perpetrator, and whether a weapon was present.² Systematic variables are aspects of identification that can be controlled by the criminal justice system including variables such as the way lineups are conducted and how police interact with an identifying witness.³

Generally, law enforcement agencies utilize two different kinds of lineup procedures for the purpose of suspect identification: a photographic lineup or a live lineup. A photographic lineup is the process of showing photographs to an eyewitness for the purpose of identifying or eliminating a suspect.⁴ A live lineup involves the live presentation of individuals, before an eyewitness, for the purpose of identifying or eliminating suspects.⁵ Reforms have generally targeted these procedures as they are systematic variables that can be controlled by the criminal justice system. Suggested reforms relating to lineup procedures have included: the blind administration of lineups,⁶ instructing the witness that the perpetrator may not be included in the lineup, and recording lineup identification procedures when possible.⁷

Standards for Florida Law Enforcement in Eyewitness Identification

In 2011, in an effort to minimize the possibility of erroneous identification, multiple law enforcement agencies⁸ within the state collaborated in developing Standards for Florida State and Local Law Enforcement Agencies in Dealing with Photographic or Live Lineups in Eyewitness Identification (“Standards”). These Standards identify the key factors that the individual agencies should consider in developing an eyewitness identification policy with the goal of promoting consistency in how individual agency’s investigators deal with photographic or live lineups. The Standards recommend that each agency develop its own written policies and procedures in conjunction with the local state attorney’s office to conform to the Standards while meeting the needs of the specific agency.⁹

The Standards recommend that each agency should develop a policy that, at a minimum, addresses the following:

¹ INNOCENCE PROJECT OF FLORIDA, *Eyewitness Misidentification: The Most Unreliable Form of Evidence*, <http://floridainnocence.org/content/?p=7544> (last visited March 24, 2017).

² *Id.*

³ *Id.*

⁴ FLORIDA DEPARTMENT OF LAW ENFORCEMENT, *Commentary and Instructions, Instructional Suggestions*, <https://www.fdle.state.fl.us/cms/Guidelines/Documents/EyewitnessGuidelinesCommentary.aspx> (last visited March 24, 2017).

⁵ Live lineups are sometimes called “physical lineups”. *Id.*

⁶ The lineup is administered in such a way that the police officer administering the lineup is not aware which individual is actually the suspect. Research has shown blind administration sharply reduces the risk of misidentification. INNOCENCE PROJECT OF FLORIDA, *Eyewitness ID Reform*, http://floridainnocence.org/content/?page_id=68 (last visited March 24, 2017).

⁷ *Id.*

⁸ The Standards were developed and endorsed by the Florida Department of Law Enforcement, the Florida Sheriffs Association, and the Florida Police Chiefs Association in collaboration with the Florida Prosecuting Attorney’s Association. FLORIDA DEPARTMENT OF LAW ENFORCEMENT, *Standards for Florida State and Local Law Enforcement Agencies in Dealing With Photographic Or Live Lineups In Eyewitness Identification*, <https://www.fdle.state.fl.us/cms/Guidelines/Documents/Standards.aspx> (last visited March 24, 2017).

⁹ *Id.*

- 1) The creation, composition, and utilization of the photo array or lineup (It is recommended that a photographic lineup should consist of a minimum of six photos, containing one photo of the suspect and five filler photos of individuals reasonably similar in age, height, weight, and general appearance, in accord with the witness's description of the suspect. A live lineup should consist of six persons meeting the same criteria.);
- 2) Standard instructions to be given to the witness prior to a photographic or live lineup (Consideration should be given to having a form available for presentation to the witness which includes the standardized instruction and requires the witness to acknowledge that he or she has read those instructions.);¹⁰
- 3) Directions to the investigator conducting the lineup to avoid any conduct that might directly or indirectly influence the witness's decision;¹¹
- 4) How to discern the level of confidence in identification as expressed by the witness (Any comment made by the witness should be documented word-for-word and any non-verbal communication or action of the witness should be noted.);
- 5) How to document the procedure and outcome of the photographic or live lineup (The Standards do not recommend one method of documentation over another, but encourage each agency to develop its own method that includes documenting the photograph or person selected from the lineup and preserving any photos or forms used in the investigative file.);¹²
- 6) The method of presenting the lineup (An independent administrator may be used, but is not required considering it may impose additional demands on an agency's resources. If an independent administrator is not used, the agency may use a process for random administration of photos using folders.); and
- 7) Required training on the agency policy by any agency personnel who will be administering a photographic or live lineup (Agencies should conduct periodic review and refresher training on the policy with all investigators involved in eyewitness identification efforts and should file a copy of the current policy with the local State Attorney's Office.).

To accompany these Standards, the collaborating law enforcement agencies also published Commentary and Instructions, Instructional Suggestions ("Commentary"), which offers more detailed instructions for complying with the Standards as well as sample instructional scripts and forms for consideration or adaption for agency use.¹³ Standards one through five are encompassed by the mandatory standards required for state accreditation by the Florida Commission on Law Enforcement Accreditation, Inc. adopted on February 3, 2011.¹⁴

The Criminal Justice Standards and Training Commission

The Criminal Justice Standards and Training Commission ("CJSTC") is an independent policy making body established within the FDLE. Section 943.12, Florida Statutes, describes the powers, duties, and functions of the CJSTC, including the responsibility for creating entry-level criteria and certification testing for Florida law enforcement officers, establishing minimum standards for employment and certification, and revoking the certifications of officers who fail to comply with minimum standards of conduct.¹⁵ Currently, 157 law enforcement agencies in the state are accredited, requiring in relevant

¹⁰ These should include indications that the person of interest might or might not be in a photo array or lineup, that the witness is not required to make an identification, that it is as important to exclude innocent persons as it is to identify perpetrators, and that the investigation will continue regardless of whether there is an identification. *Id.*

¹¹ This would include an instruction to avoid comments or actions that suggest the witness did or did not identify the suspect. *Id.*

¹² Including noting the witness's response and exact words. *Id.*

¹³ See FLORIDA DEPARTMENT OF LAW ENFORCEMENT, *Commentary and Instructions, Instructional Suggestions*, <https://www.fdle.state.fl.us/cms/Guidelines/Documents/EyewitnessGuidelinesCommentary.aspx> (last visited March 24, 2017).

¹⁴ Additionally, the Florida Commission of Law Enforcement Accreditation Standards require the agency to conduct initial and periodic training on the policy for employees involved in eyewitness identification efforts, as well as file the agency's current eyewitness identification policy with the local State Attorney's Office. COMMISSION FOR FLORIDA LAW ENFORCEMENT ACCREDITATION, INC., *Standard Manual Edition 5.0*, www.flaccreditation.org/docs/standards/CFA%20Edition%205.0%20February%202016.pdf (last visited March 24, 2017).

¹⁵ FLORIDA DEPARTMENT OF LAW ENFORCEMENT, *Overview of the Professionalism Division*, <http://www.fdle.state.fl.us/cms/CJSTC/Overview.aspx> (last visited March 7, 2017).

part, that they maintain compliance with the associated standards related to eyewitness identification.¹⁶ Additionally, the current basic recruit training program for law enforcement includes a lesson on photographic arrays and photographic lineups that incorporates the Standards.¹⁷

Eyewitness Identification in Florida Courts

Florida statute does not currently address eyewitness identification procedures. If a claim of suggestiveness is made by a criminal defendant in a pretrial motion to suppress, courts employ a two-prong test which questions:

- 1) Whether the police employed an unnecessarily suggestive procedure in obtaining an out-of-court identification; and
- 2) If so, considering all the circumstances, did the suggestive procedure give rise to a substantial likelihood of irreparable misidentification.¹⁸

Additionally, Florida has a special jury instruction regarding eyewitness identification that is given to jurors if requested in a case in which eyewitness identification is disputed. Jurors are instructed to consider various factors relating to the eyewitness identification including: whether the identification was the product of the witness's own recollection or was the result of influence or suggestiveness; the circumstances under which the defendant was presented to the witness for identification; any inconsistent identifications made by the eyewitness; any instance in which the eyewitness did not make an identification when given the opportunity to do so; and five other factors.¹⁹

Effect of the Bill

The bill creates s. 92.70, F.S., to establish the "Eyewitness Identification Reform Act" ("the Act"). The Act provides definitions for relevant terms including: "eyewitness", "independent administrator", "lineup", "lineup administrator", "live lineup", and "photo lineup". The Act applies to any lineup conducted in this state by a state, county, municipal, or other law enforcement agency and sets requirements for eyewitness identification procedures.

The Act requires that any lineup must be conducted by an independent administrator, with certain exceptions. An independent administrator is defined as "a person who is not participating in the investigation of a criminal offense and is unaware of which person in the lineup is the suspect." The Act provides that if an agency does not use an independent administrator, it must conduct the procedure using an alternative method. An alternative method must be structured to achieve neutral administration of the lineup and prevent the lineup administrator from knowing which photograph is being displayed during the procedure and may include:

- An automated computer program that administers the photo lineup directly to the witness and prevents the lineup administrator from seeing which photograph the witness is viewing until after the completion of the procedure.
- A procedure in which photographs are placed into randomly numbered folders, shuffled, and then presented to the witness such that the lineup administrator cannot see or track which photograph is being presented to the witness until after the completion of the procedure.
- Any other procedure that achieves neutral administration and prevents the lineup administrator from knowing which photograph the witness is viewing until after the completion of the procedure.

Additionally, the Act requires the administration of mandatory instructions before a witness may view the lineup. The witness must be instructed that:

- The perpetrator might or might not be in the lineup;
- The lineup administrator does not know the suspect's identity,²⁰
- The eyewitness should not feel compelled to make an identification;

¹⁶ Florida Department of Law Enforcement, Agency Bill Analysis for HB 643 (2017) (on file with Justice Appropriation Subcommittee).

¹⁷ *Id.*

¹⁸ See *Grant v. State*, 390 So. 2d 341, 343 (Fla. 1980) (quoting *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972)).

¹⁹ See FL Standard Jury Instruction in Crim. Case 3.9(c).

²⁰ This instruction does not have to be given when an approved alternative method of neutral administration is used.

- It is as important to exclude innocent persons as it is to identify the perpetrator; and
- The investigation will continue with or without an identification.

The Act requires a witness to acknowledge in writing that he or she has received a copy of the lineup instructions. If a witness refuses to make a written acknowledgement, the lineup administrator is required to acknowledge the document.

Further, the Act provides remedies and consequences for compliance or noncompliance with any of its requirements. The failure to comply with any part of the Act results in the following:

- Mandatory consideration of such failure by the court adjudicating a motion to suppress eyewitness identification.
- Evidence of such a failure is admissible in support of a claim of eyewitness misidentification, as long as such evidence is otherwise admissible.

If such evidence is admitted at trial, the Act requires the jury to be instructed that they may consider the evidence to determine the reliability of eyewitness identifications.

Finally, the Act requires the CJSTC to consult with the Florida Department of Law Enforcement (“FDLE”) to create educational materials and provide training programs on how to conduct lineups in compliance with the requirements of the Act.

The Act encompasses the Standards already established for Florida law enforcement agencies related to the use of an independent administrator or alternative method and instructions to be given to an eyewitness. However, the Act requires all law enforcement agencies to adopt these procedures, while the Standards provide a suggested set of guidelines for agencies to reference in developing their own policies and procedures for eyewitness identifications.

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

B. SECTION DIRECTORY:

Section 1: Creating s. 92.70, F.S., relating to eyewitness identification.

Section 2: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to impact state government revenues.
2. Expenditures: The FDLE estimates a fiscal impact of \$7,670 for revision of the law enforcement basic recruit training curriculum and online training course and creation of additional training materials for local agencies to train officers, which can be absorbed within existing resources of the department.²¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to impact state government revenues.
2. Expenditures: If a local agency elects to use an independent administrator to comply with the bill, there could be additional costs for such administrator. The bill, however, also provides an agency

²¹ Florida Department of Law Enforcement, Agency Bill Analysis for HB 643(2017) (on file with the Justice Appropriation Subcommittee).

with the ability to use other procedures that achieve neutral administration which may not require additional expense.

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 Art. VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other: None.

B. RULE-MAKING AUTHORITY: The law does not appear to require rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2017, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute (CS). The CS removes the requirement for the Criminal Justice Standards and Training Commission to approve alternative methods for lineups. This analysis is drafted to the CS as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled

2 An act relating to eyewitness identification; creating
 3 s. 92.70, F.S.; providing a short title; defining
 4 terms; requiring state, county, municipal, or other
 5 law enforcement agencies that conduct lineups to
 6 follow specified procedures; requiring eyewitnesses to
 7 sign an acknowledgment that they have received the
 8 instructions about the lineup procedures from the law
 9 enforcement agency; requiring lineup administrators to
 10 document the refusal of an eyewitness to acknowledge
 11 such receipt; specifying remedies for failing to
 12 adhere to the eyewitness identification procedures;
 13 requiring the Criminal Justice Standards and Training
 14 Commission to create educational materials and provide
 15 training programs on how to conduct lineups; providing
 16 an effective date.

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

19
 20 Section 1. Section 92.70, Florida Statutes, is created to
 21 read:

22 92.70 Eyewitness identification.—

23 (1) SHORT TITLE.—This section may be cited as the
 24 "Eyewitness Identification Reform Act."

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

26 (a) "Eyewitness" means a person whose identification by
 27 sight of another person may be relevant in a criminal
 28 proceeding.

29 (b) "Independent administrator" means a person who is not
 30 participating in the investigation of a criminal offense and is
 31 unaware of which person in the lineup is the suspect.

32 (c) "Lineup" means a photo lineup or live lineup.

33 (d) "Lineup administrator" means the person who conducts a
 34 lineup.

35 (e) "Live lineup" means a procedure in which a group of
 36 people is displayed to an eyewitness for the purpose of
 37 determining if the eyewitness can identify the perpetrator of a
 38 crime.

39 (f) "Photo lineup" means a procedure in which an array of
 40 photographs is displayed to an eyewitness for the purpose of
 41 determining if the eyewitness can identify the perpetrator of a
 42 crime.

43 (3) EYEWITNESS IDENTIFICATION PROCEDURES.—A lineup
 44 conducted in this state by a state, county, municipal, or other
 45 law enforcement agency must meet all of the following
 46 requirements:

47 (a) The lineup must be conducted by an independent
 48 administrator. However, in lieu of using an independent
 49 administrator, a law enforcement agency may conduct a photo
 50 lineup eyewitness identification procedure using an alternative

51 method specified in subparagraph 1., subparagraph 2., or
 52 subparagraph 3. Any alternative method must be carefully
 53 structured to achieve neutral administration and to prevent the
 54 lineup administrator from knowing which photograph is being
 55 presented to the eyewitness during the identification procedure.
 56 Alternative methods may include any of the following:

57 1. An automated computer program that can automatically
 58 administer the photo lineup directly to an eyewitness and
 59 prevent the lineup administrator from seeing which photograph
 60 the eyewitness is viewing until after the procedure is
 61 completed.

62 2. A procedure in which photographs are placed in folders,
 63 randomly numbered, and shuffled and then presented to an
 64 eyewitness such that the lineup administrator cannot see or
 65 track which photograph is being presented to the eyewitness
 66 until after the procedure is completed.

67 3. Any other procedure that achieves neutral
 68 administration and prevents the lineup administrator from
 69 knowing which photograph is being presented to the eyewitness
 70 during the identification procedure.

71 (b) Before a lineup, the eyewitness must be instructed
 72 that:

73 1. The perpetrator might or might not be in the lineup;

74 2. The lineup administrator does not know the suspect's

75 identity, except that this instruction need not be given when a

76 specified and approved alternative method of neutral
 77 administration is used;

78 3. The eyewitness should not feel compelled to make an
 79 identification;

80 4. It is as important to exclude innocent persons as it is
 81 to identify the perpetrator; and

82 5. The investigation will continue with or without an
 83 identification.

84
 85 The eyewitness shall acknowledge, in writing, having received a
 86 copy of the lineup instructions. If the eyewitness refuses to
 87 sign a document acknowledging receipt of the instructions, the
 88 lineup administrator must document the refusal of the eyewitness
 89 to sign a document acknowledging receipt of the instructions,
 90 and the lineup administrator must sign the acknowledgment
 91 document himself or herself.

92 (4) REMEDIES.—All of the following remedies are available
 93 as consequences of compliance or noncompliance with any
 94 requirement of this section:

95 (a)1. A failure on the part of a person to comply with any
 96 requirement of this section shall be considered by the court
 97 when adjudicating motions to suppress eyewitness identification.

98 2. A failure on the part of a person to comply with any
 99 requirement of this section is admissible in support of a claim
 100 of eyewitness misidentification, as long as such evidence is

101 otherwise admissible.

102 (b) If evidence of compliance or noncompliance with any
103 requirement of this section is presented at trial, the jury
104 shall be instructed that the jury may consider credible evidence
105 of compliance or noncompliance to determine the reliability of
106 eyewitness identifications.

107 (5) EDUCATION AND TRAINING.—The Criminal Justice Standards
108 and Training Commission, in consultation with the Department of
109 Law Enforcement, shall create educational materials and provide
110 training programs on how to conduct lineups in compliance with
111 this section.

112 Section 2. This act shall take effect October 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7051 PCB CJC 17-01 Clerks of the Circuit Court
SPONSOR(S): Civil Justice & Claims Subcommittee, Byrd
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice & Claims Subcommittee	13 Y, 0 N	MacNamara	Bond
1) Justice Appropriations Subcommittee		Welby	Gusky <i>KPB</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

Following a 1998 amendment to the state's Constitution, the state was required to pay costs in the judicial system that had previously been the responsibility of the counties. The amendment also required that the 67 county clerks of court fund their activities using revenue from charges, fees, costs, and fines assessed in civil and criminal proceedings. The activities funded through these assessments only include activities that are considered court-related, as provided for by law.

In 2003, the Florida Clerks of Court Operations Corporation ("Corporation") was created to perform various functions as prescribed by law. Initially, the Corporation reviewed and certified proposed budgets from each clerk. In 2009, the Corporation's responsibilities changed and they were tasked with reviewing proposed budgets from each clerk before ultimately submitting a budget to the legislature to be approved as part of the General Appropriations Act.

The clerks of court's budgets are no longer included in the General Appropriations Act. Rather, the Corporation is currently responsible for preparing a combined budget for the clerk of courts and submitting it to the Legislative Budget Commission ("LBC") who has final authority with respect to reviewing, modifying, and approving the budget. Included in these budget requests, as "court-related" functions, are the cost of paying, processing, and providing meals and lodging for jurors and witnesses.

The bill removes the LBC's power of reviewing, modifying, and approving budgets for the clerk of courts and grants this power back to the Corporation. In addition, the bill provides reporting requirements for the Corporation and provides that the total combined budgets of the 67 clerks may not exceed the revenue estimates for the clerks established by the Revenue Estimating Conference. The Corporation will approve the individual budgets for the 67 clerks and may amend those budgets to ensure compliance.

The bill transfers the responsibility for the costs of juror payments, juror meals and lodging, and related personnel costs back to the state. The bill provides that each clerk of court and the Corporation will prepare quarterly estimates of the needed funds for the Justice Administrative Commission and, based on these estimates, state funding will be distributed to each clerk of court.

The budget implementing bill for Fiscal Year 2016-17, HB 5003, required the state, instead of the clerks of court, to pay the costs of juror payments, juror meals and lodging and juror related personnel expenditures for that fiscal year only. The Legislature included \$11.7 million of recurring general revenue for juror related costs in the FY 2016-17 General Appropriations Act (GAA). This bill codifies provisions included in HB 5003 requiring the state to continue to pay for juror costs.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

History of Clerk of Courts Funding

Article V of the Florida Constitution establishes the judicial branch of state government, including the trial and appellate courts. The constitution describes the responsibilities and functions of officials involved in the courts system, including judges, state attorneys, public defenders, and the clerks of the court. It also provides the source of funding for the state court system.

In 1998, Florida voters approved Revision 7 to Article V of the State Constitution, which required the state to pay certain costs in the judicial system that had previously been county responsibilities. These changes were effective July 1, 2004. To that end, the Legislature defined the elements of the state courts system and assigned funding responsibilities to the state and local governments. State government began paying additional operational costs such as due process and court appointed counsel. County governments continued paying for facilities, communications, and security for the court system entities. Article V, section 14(c) provides that:

No county or municipality, except as provided in this subsection, shall be required to provide any funding for.....the offices of clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, . . . the cost of construction or lease, . . . and security of facilities for the offices of the clerks of the circuit and county courts performing court-related functions.

The constitutional amendment also required the 67 county clerks of court to fund their offices using revenues derived from service charges, court costs, filing fees, and fines assessed in civil and criminal proceedings.¹ The Legislature set the amount of some service charges, court costs, and filing fees. In other cases, the Legislature set a cap on the amounts. All 67 clerks have set the maximum amounts allowed by law. To assist in collecting owed service charges, court costs, filing fees, and fines, the clerks of court are authorized to use collection agents if necessary.

Art. V, s. 14 of the Florida Constitution specifies the state and county responsibilities for funding the state courts system by providing that the Supreme Court and the District Courts of Appeal must be fully funded by the state, and the trial courts (the circuit and county courts) are jointly funded by the state and counties. Art. V, s. 14(b) provides that:

All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided . . . shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law.

Since the approval of Revision 7 the funding for the clerks of court and the process of proposing budgets and having budgets approved has undergone multiple changes.

¹ s. 28.2401, F.S., prescribes the service charges and filing fees for specific services. The section also provides for exceptions and additional service charges.

Clerk of Court Funding: 2004-2008

In 2004 legislation was passed to implement the changes to Art. V. From 2004-08, each county clerk was responsible for preparing a proposed budget which was then submitted to the Florida Clerks of Court Corporation (the "Corporation"), on or before August 15 of each fiscal year. The Legislature created the Corporation to provide accountability for the revenues collected by the clerks of the court. All clerks of the circuit court are members of the Corporation.²

The budget provided detailed information on the anticipated revenues and expenditures necessary for the performance of their court-related functions. The proposed budget was to be balanced, with estimated revenues equaling or exceeding anticipated expenditures.³ Upon review and certification of the individual clerk of court budgets by the Corporation, revenues in excess of the amount needed to fund each approved clerk of court budget was to be deposited in the General Revenue Fund.

If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, the clerk was to report a revenue deficit to the Corporation. If a deficit still existed after retaining all of the projected collections from court-related fines, fees, service charges, and costs, the Department of Revenue would certify the amount of the deficit to the Executive Office of the Governor and request the release of funds from the Department of Revenue Clerks of the Court Trust Fund.⁴

Additionally, the clerks of court were allowed to retain portions of the moneys collected from filing fees, service charges, court costs, and fines, while other portions were distributed to the General Revenue Fund or other trust funds. The clerks were required to remit one-third of all fines, fees, service charges, and costs collected for court-related functions to the Department of Revenue for deposit in the Department of Revenue Clerks of the Court Trust Fund.⁵ The Department of Revenue would then transfer those excess funds, not needed to resolve clerk deficits, from the Clerks of the Court Trust Fund to the General Revenue Fund.

The Corporation, by October of each year, certified to the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Department of Revenue, the amount of proposed budget for each clerk; the revenue projection supporting each clerk's budget; each clerk's eligibility to retain some or all of the state's share of fines, fees, service charges, and costs; the amount to be paid to each clerk from the Clerks of the Court Trust Fund within the Department of Revenue; the performance measures and standards approved by the Corporation for each clerk; and the results of each clerk meeting performance standards.⁶

The Legislative Budget Commission ("LBC") had authority to approve increases to the maximum annual budget approved for individual clerks if:

- The additional funding was necessary to pay the cost of performing new or additional functions required by changes in law or court rule.
- The additional funding was necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the legislature.⁷

The LBC is comprised of seven members appointed by the Senate President, and seven members appointed by the Speaker of the House.⁸ The LBC, among other things, approves budget amendments during the interim between sessions.

² s. 28.35, F.S.

³ s. 28.36(3), F.S. (2008)

⁴ s. 28.36(4), F.S. (2008)

⁵ s. 28.37(2), F.S. (2008)

⁶ s. 28.35(1)(f), F.S. (2008)

⁷ See s. 28.36(6), F.S. (2008)

During the 2009 legislative session, the Legislature substantially amended the statutory budget process and procedures for these entities, most noticeably by bringing the clerks and the Corporation into the state budget and appropriating their funds in the annual General Appropriations Act. While employees of the individual clerk offices remained local government employees, staff with the Corporation became state employees.

Ch. 2009-204, L.O.F., provided that all revenues received by the clerk in the fine and forfeiture fund from court-related fees, fines, costs and service charges are considered state funds and are remitted to the Department of Revenue for deposit in to the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).⁹ The Corporation, moreover, was housed within the JAC but was not subject to the control, supervision, or direction of the JAC.

The new budget procedure also provided that the Corporation was responsible for preparing budget requests for resources necessary to perform its duties and submitting the request pursuant to Ch. 216, F.S., to be funded as a budget entity in the General Appropriations Act.¹⁰ Each clerk was required to submit in his or her budget request the number of personnel and the proposed budget for a specified list of core services, and include the unit cost for each service unit within each core services.¹¹ The Corporation was then required to compare the proposed unit costs for a given clerk to that of a peer group based on counties with similar sized population and case filings. If the proposed unit costs were higher than a clerk's peers, the clerk was required to justify the increased costs.

The Corporation had to recommend to the Legislature the unit costs for each clerk and a statewide budget amount for the clerks by December 1. Beginning in the Fiscal Year 2010-11, the Corporation was required to release appropriations to each clerk quarterly. If funds in the Clerks of Court Trust Fund were insufficient for the first quarter release, the Corporation could make a request to the Governor for a trust fund loan pursuant to chapter 215. The amount of the first three releases was based on one quarter of the estimated budget for each clerk as identified in the General Appropriations Act.¹²

The Chief Financial Officer (CFO) reviewed unit costs proposed by the Corporation and made recommendations to the Legislature and if necessary, could conduct an audit of a clerk or the Corporation. The Legislature could then reject or modify the proposed unit costs, and appropriate the total amount of the clerk budgets in the General Appropriations Act.

Current Law

In 2013, the Legislature reversed many of the changes made in 2009 legislative session and expanded the role of the LBC. Most notably, funding for the clerks is no longer appropriated in the General Appropriations Act.

Rather, the clerks of court work together with the Corporation, the Legislative Budget Commission, and the Judicial Administrative Commission in requesting, modifying, and finalizing a budget for the clerks of court.

Florida Clerks of Court Operations Corporation

All clerks of the circuit court are still members of the Corporation and hold their position and authority in an ex officio capacity. The Corporation's current functions include:

⁹ s. 28.37(2), F.S.

¹⁰ Each year the General Appropriations Act is enacted during the annual 60-day session of the Legislature to cover state spending for the fiscal year that begins on July 1 and ends on June 30. Each budget request from each agency, as well as the request from the judicial branch, is required to be reviewed by the Legislature. This review may include a request for information or testimony from the agency, the Auditor General, the Office of Program Policy Analysis and Government Accountability, the Governor's Office of Planning and Budgeting, and the public regarding the proper level of funding for the agency to carry out its mission. See 216.023(8), F.S.

¹¹ Those core services included circuit criminal; county criminal; juvenile delinquency; criminal traffic; circuit civil; county civil; civil traffic; probate; family; and juvenile dependency. s. 28.36, F.S. (2011).

¹² s. 28.36(10), F.S. (2011)

Rather, the clerks of court work together with the Corporation, the Legislative Budget Commission, and the Judicial Administrative Commission in requesting, modifying, and finalizing a budget for the clerks of court.

Florida Clerks of Court Operations Corporation

All clerks of the circuit court are still members of the Corporation and hold their position and authority in an ex officio capacity. The Corporation's current functions include:

- Adopting a plan of operations;
- Conducting an election of an executive council;
- Recommending to the Legislature changes in the amounts of various court-related fines, fees, service charges, and costs to ensure reasonable and adequate funding of the clerks of court;
- Developing and certifying a uniform system of performance measures and applicable performance standards for court-related functions as developed by the Corporation and clerk workload performance in meeting the workload performance standards;
- Entering into a contract with the Department of Financial Services for the department to audit the court-related expenditures of individual clerks;
- Reviewing, certifying, and recommending proposed budgets submitted by clerks of the court;
- Developing and conducting clerk educational programs; and
- Submitting a proposed budget for the clerks of court to the LBC on or before August 1 of each year.¹³

Before October 1 of each year, the LBC must consider the submitted budgets and approve, disapprove, or amend the Corporation's budget and approve, disapprove, or amend and approve the total of the clerks' combined budgets or any individual clerk's budget. If the LBC fails to approve or amend and approve the Corporation's budget or the clerks' combined budgets before October 1, the clerks must continue to perform their court-related functions based upon their budget for the previous fiscal year.¹⁴

Clerks of Court Court-Related Functions

Pursuant to authority granted in Art. V, s. 14(b) of the Florida Constitution, the list of court-related functions clerks may perform is limited to those functions expressly authorized by statute or court rule. Presently, the court-related functions clerks may perform are:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Processing the assignment, reopening, and reassignment of cases;
- Processing appeals;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing of bond forfeiture payments;
- Payment of jurors and witnesses;
- Payment of expenses for meal or lodging provided to jurors;
- Data collection and reporting;
- Processing of jurors;
- Determinations of indigent status; and
- Reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.¹⁵

¹³ s. 28.35(2), F.S.

¹⁴ s. 28.35(2)(h), F.S.

¹⁵ s. 28.35(3)(a), F.S.

The list of functions clerks may not fund from state appropriations include:

- Those functions not listed above;
- Functions assigned by administrative orders which are not required for the clerk to perform the functions listed above;
- Enhanced levels of service which are not required for the clerk to perform the functions listed above; and
- Functions identified as local requirements in law or local optional programs.¹⁶

Juror Payments and Costs

The Justice Administrative Commission ("JAC" or "Commission") is authorized in statute pursuant to s. 43.16, F.S. Its members are appointed and consist of two state attorneys and two public defenders.¹⁷ The commission's duties include maintaining a central state office for administrative services and assistance to and on behalf of the state attorneys and public defenders, the Capital Collateral Regional Counsel, the Office of Criminal Conflict and Civil Regional Counsel, and the Guardian Ad Litem Program

Chapter 40, F.S., provides for juries, their payment, and due process costs. The chief judge of each judicial circuit is authorized and responsible for the management, operation, and oversight of the jury system. The clerk of the circuit court is delegated specific responsibilities regarding the processing of jurors, including qualifications, summons, selection lists, reporting, and compensation of jurors. The clerk of the circuit court may contract with the chief judge for the court's assistance in the provision of services to process jurors. The chief judge may also designate to the clerk of the circuit court additional duties consistent with established uniform standards of jury management practices that the Supreme Court adopts by rule or issues through administrative order.¹⁸

Prior to 2008, state general revenue funds were used to pay juror and witness payments, as well as juror meals and lodging. Each clerk of court prepared quarterly estimates of the needed funds for the Office of State Courts Administrator. Based on these estimates, state funding was distributed to each clerk of courts. In 2008, the Legislature amended the law to require the clerk of the courts to pay those costs from filing fees, service charges, court costs and fines.

Section 28.35, F.S., currently requires the clerks to pay for juror meals and lodging as well as juror and witness payments from filing fees, service charges, costs and fines. Chapter 40, F.S. provides for the management and operations of the state jury system. The chapter specifies that the clerk of the court is responsible for paying for juror payments and meals and lodging. It also provides for the payment process for jury and due process related costs. Juror service is defined and eligibility criteria for payment to jurors for service is provided. Such payments are to be made by the clerk of the circuit court.

The JAC must pay all due process service related invoices after review for compliance with applicable rates and requirements that were submitted by a state attorney, a private court-appointed counsel, a public defender, and the Office of Criminal Conflict and Civil Regional Counsel. If the funds required for payment of witnesses in civil traffic cases and witnesses of the state attorney, the public defender, criminal conflict and civil regional counsel, private court-appointed counsel, and persons determined to be indigent for costs in any county during a quarterly fiscal period exceeds the amount of the funds received from the CFO, the state attorney, public defender, or the Office of Criminal Conflict and Civil Regional Counsel, as applicable, must make a further request upon the JAC for the amount necessary to allow for full payment.

¹⁶ s. 28.35(3)(b), F.S.

¹⁷ s. 43.16(2), F.S.

¹⁸ s. 40.001, F.S.

The budget implementing bill for fiscal year 2016-2017 required the state, instead of the clerks of court, to pay the costs of juror payments, juror meals and lodging and juror related personnel expenditures for that fiscal year only.¹⁹

Effect of Bill

Florida Clerks of Court Operations Corporation

The bill removes the requirement that the LBC annually approve, disapprove, or amend the total combined budget of the clerks of court for court-related functions, and the budget of the Corporation. Instead, the Corporation is responsible for approving the proposed budget for each clerk of court. Moreover, the bill places a cap on combined budgets of the clerks of court; the total combined budgets are not allowed to exceed the revenue estimates established by the Revenue Estimating Conference.

The bill requires that the Corporation prepare and submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committee by January 1 of each year on the operations and activities of the Corporation. The report must also detail the budget development for the clerks of court and the end-of-year reconciliation of actual expenditures versus projected expenditures for each clerk.

Court-Related Functions: Juror Costs

The bill transfers the responsibility for the costs of juror payments, juror meals and lodging, and related personnel costs to the JAC.

This bill amends s. 28.35, F.S., to remove the authorization of the clerks to pay for juror payments and meals and lodging from filing fees, service charges, costs and fines. The bill amends s. 40.29, F.S., to provide that each clerk of court will prepare quarterly estimates of the funds needed to compensate jurors for payments and meals and lodging for the JAC and, based on these estimates, state funding will be distributed to each clerk of courts. The Corporation must prepare quarterly estimates of the funds needed to compensate for jury related personnel costs.

The bill also amends s. 40.31, F.S., to provide that if the amount of the appropriation is not sufficient to fund such jury costs during the fiscal year, the JAC may apportion the funds to the clerks and any deficit would be paid by warrant. Likewise, in a deficit situation the clerks would pay jurors by certificate of the amount of compensation still due. This procedure mirrors current law in respect to witness payments.

Additionally, ss. 40.24, 40.32, 40.33, and 40.34, F.S., are amended to conform to the provisions of the bill.

B. SECTION DIRECTORY:

Section 1 amends s. 11.90, F.S., relating to the Legislative Budget Commission.

Section 2 amends s. 28.35, F.S., relating to the Florida Clerks of Court Operations Corporation.

Section 3 amends s. 28.36, F.S., relating to budget procedure.

Section 4 amends s. 40.24, F.S., relating to compensation and reimbursement policy.

Section 5 amends s. 40.29, F.S., relating to payment of due-process costs.

¹⁹ See 2016-62, L.O.F., s. 66.
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Section 6 amends s. 40.31, F.S., relating to Justice Administrative Commission appropriations.

Section 7 amends s. 40.32, F.S. relating to payments to jurors and witnesses.

Section 8 amends s. 40.33, F.S., relating to deficiencies.

Section 9 amends s. 40.34, F.S., relating to clerks making triplicate payroll.

Section 10 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The budget implementing bill for Fiscal Year 2016-17, HB 5003, required the state, instead of the clerks of court, to pay the costs of juror payments, juror meals and lodging and juror related personnel expenditures for that fiscal year only.²⁰ The Legislature included \$11.7 million of recurring general revenue for juror related costs in the FY 2016-17 General Appropriations Act (GAA).²¹ This bill codifies provisions included in HB 5003 requiring the state to continue to pay for juror costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill provides that the total combined budgets of the 67 clerks may not exceed the revenue estimates for the clerks established by the Revenue Estimating Conference. The Florida Clerks of Court Corporation will approve the individual budgets for the 67 clerks and may amend those budgets to ensure compliance.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

²⁰ See 2016-62, L.O.F., s. 66.

²¹ See 2016-17 GAA, ch. 2016-66, L.O.F., line 772A.

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

None.

1 A bill to be entitled
2 An act relating to clerks of the circuit court;
3 amending s. 11.90, F.S.; removing duties of the
4 Legislative Budget Commission regarding budgets of the
5 Florida Clerks of Court Operations Corporation and the
6 clerks of the court; amending s. 28.35, F.S.; revising
7 duties of the corporation; prohibiting the total
8 combined proposed budgets of clerks of the court from
9 exceeding specified limits; requiring the corporation
10 to provide an annual report to the Governor,
11 Legislature, and chairs of the legislative
12 appropriations committees regarding court operations
13 and budgets; deleting duties of the commission in
14 considering budgets of the clerks of the court;
15 amending s. 28.36, F.S.; authorizing the corporation
16 to amend budgets of the clerks of the court; amending
17 s. 40.24, F.S.; transferring the responsibility of
18 paying jurors from clerks of the court to the state;
19 amending s. 40.29, F.S.; requiring clerks of the
20 circuit court to forward quarterly estimates of funds
21 necessary for certain jury-related costs to the
22 commission; revising procedures governing the payment
23 of due-process service-related costs; amending s.
24 40.31, F.S.; authorizing the commission to apportion
25 appropriations, and requiring the Chief Financial

26 Officer to issue a warrant to pay apportioned amounts,
 27 to counties for jury-related expenses; providing
 28 procedures for clerks of the court to follow if the
 29 apportioned amounts are insufficient to pay all jury-
 30 related expenses; amending s. 40.32, F.S.; removing a
 31 provision regarding funding of jury-related costs to
 32 conform to changes made by the act; amending s. 40.33,
 33 F.S.; authorizing clerks of the circuit court to
 34 request from the commission additional funds to pay
 35 jury-related expenses in the event of a deficiency;
 36 amending s. 40.34, F.S.; requiring clerks of the court
 37 to provide for payroll in triplicate for the payment
 38 of jurors; specifying information to be included in
 39 such payroll; providing an effective date.

40

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

42

43 Section 1. Subsection (6) of section 11.90, Florida
 44 Statutes, is amended to read:

45 11.90 Legislative Budget Commission.—

46 (6) The commission has ~~shall have~~ the power and duty to:

47 (a) Review and approve or disapprove budget amendments
 48 recommended by the Governor or the Chief Justice of the Supreme
 49 Court as provided in chapter 216.

50 (b) Develop the long-range financial outlook described in

51 s. 19, Art. III of the State Constitution.

52 ~~(c) Review and approve, disapprove, or amend and approve~~
 53 ~~the budget of the Florida Clerks of Court Operations~~
 54 ~~Corporation.~~

55 ~~(d) Review and approve, disapprove, or amend and approve~~
 56 ~~the total combined budgets of the clerks of the court or the~~
 57 ~~budget of any individual clerk of the court for court-related~~
 58 ~~functions. As part of this review, the commission shall consider~~
 59 ~~the workload and expense data submitted pursuant to s. 28.35.~~

60 (c)~~(e)~~ Exercise all other powers and perform any other
 61 duties prescribed by the Legislature.

62 Section 2. Paragraphs (a), (f), and (h) of subsection (2)
 63 and subsection (3) of section 28.35, Florida Statutes, are
 64 amended to read:

65 28.35 Florida Clerks of Court Operations Corporation.—

66 (2) The duties of the corporation shall include the
 67 following:

68 (a) Adopting a plan of operation including a detailed
 69 budget for the corporation.

70 (f) Approving the Reviewing, certifying, and recommending
 71 proposed budgets submitted by clerks of the court pursuant to s.
 72 28.36. The corporation must ensure that the total combined
 73 budgets of the clerks of the court do not exceed the total
 74 estimated revenues available for court-related expenditures as
 75 determined by the most recent Revenue Estimating Conference. The

76 corporation may amend any individual clerk of the court budget
 77 to ensure compliance with this paragraph and must consider
 78 performance measures, workload performance standards, workload
 79 measures, and expense data before modifying the budget. As part
 80 of this process, the corporation shall:

81 1. Calculate the minimum amount of revenue necessary for
 82 each clerk of the court to efficiently perform the list of
 83 court-related functions specified in paragraph (3)(a). The
 84 corporation shall apply the workload measures appropriate for
 85 determining the individual level of review required to fund the
 86 clerk's budget.

87 2. Prepare a cost comparison of similarly situated clerks
 88 of the court, based on county population and numbers of filings,
 89 using the standard list of court-related functions specified in
 90 paragraph (3)(a).

91 3. Conduct an annual base budget review and an annual
 92 budget exercise examining the total budget of each clerk of the
 93 court. The review shall examine revenues from all sources,
 94 expenses of court-related functions, and expenses of noncourt-
 95 related functions as necessary to determine that court-related
 96 revenues are not being used for noncourt-related purposes. The
 97 review and exercise shall identify potential targeted budget
 98 reductions in the percentage amount provided in Schedule VIII-B
 99 of the state's previous year's legislative budget instructions,
 100 as referenced in s. 216.023(3), or an equivalent schedule or

101 instruction as may be adopted by the Legislature.

102 4. Identify those proposed budgets containing funding for
 103 items not included on the standard list of court-related
 104 functions specified in paragraph (3)(a).

105 5. Identify those clerks projected to have court-related
 106 revenues insufficient to fund their anticipated court-related
 107 expenditures.

108 6. Use revenue estimates based on the official estimate
 109 for funds accruing to the clerks of the court made by the
 110 Revenue Estimating Conference. The total combined budgets of the
 111 clerks of the court may not exceed the revenue estimates
 112 established by the most recent Revenue Estimating Conference.

113 7. Identify ~~and report~~ pay and benefit increases in any
 114 proposed clerk budget, including, but not limited to, cost of
 115 living increases, merit increases, and bonuses.

116 8. Identify ~~Provide detailed explanation for~~ increases in
 117 anticipated expenditures in any clerk budget that exceeds the
 118 current year budget by more than 3 percent.

119 9. Identify ~~and report~~ the budget of any clerk which
 120 exceeds the average budget of similarly situated clerks by more
 121 than 10 percent.

122 (h) Preparing and submitting a report to the Governor, the
 123 President of the Senate, the Speaker of the House of
 124 Representatives, and the chairs of the legislative
 125 appropriations committees by January 1 of each year on the

126 operations and activities of the corporation and detailing the
 127 budget development for the clerks of the court and the end-of-
 128 year reconciliation of actual expenditures versus projected
 129 expenditures for each clerk of court. Beginning August 1, 2014,
 130 ~~and each August 1 thereafter, submitting to the Legislative~~
 131 ~~Budget Commission, as provided in s. 11.90, its proposed budget~~
 132 ~~and the information described in paragraph (f), as well as the~~
 133 ~~proposed budgets for each clerk of the court. Before October 1~~
 134 ~~of each year beginning in 2014, the Legislative Budget~~
 135 ~~Commission shall consider the submitted budgets and shall~~
 136 ~~approve, disapprove, or amend and approve the corporation's~~
 137 ~~budget and shall approve, disapprove, or amend and approve the~~
 138 ~~total of the clerks' combined budgets or any individual clerk's~~
 139 ~~budget. If the Legislative Budget Commission fails to approve or~~
 140 ~~amend and approve the corporation's budget or the clerks'~~
 141 ~~combined budgets before October 1, the clerk shall continue to~~
 142 ~~perform the court-related functions based upon the clerk's~~
 143 ~~budget for the previous county fiscal year.~~

144 (3)(a) The list of court-related functions that clerks may
 145 fund from filing fees, service charges, costs, and fines is
 146 limited to those functions expressly authorized by law or court
 147 rule. Those functions include the following: case maintenance;
 148 records management; court preparation and attendance; processing
 149 the assignment, reopening, and reassignment of cases; processing
 150 of appeals; collection and distribution of fines, fees, service

151 charges, and court costs; processing of bond forfeiture
 152 payments; ~~payment of jurors and witnesses; payment of expenses~~
 153 ~~for meals or lodging provided to jurors;~~ data collection and
 154 reporting; ~~processing of jurors;~~ determinations of indigent
 155 status; and paying reasonable administrative support costs to
 156 enable the clerk of the court to carry out these court-related
 157 functions.

158 (b) The list of court-related functions that clerks may
 159 not fund from filing fees, service charges, costs, and fines
 160 includes:

- 161 1. Those functions not specified within paragraph (a).
- 162 2. Functions assigned by administrative orders which are
 163 not required for the clerk to perform the functions in paragraph
 164 (a).
- 165 3. Enhanced levels of service which are not required for
 166 the clerk to perform the functions in paragraph (a).
- 167 4. Functions identified as local requirements in law or
 168 local optional programs.

169 Section 3. Paragraph (a) of subsection (2) and subsection
 170 (4) of section 28.36, Florida Statutes, are amended to read:

171 28.36 Budget procedure.—There is established a budget
 172 procedure for the court-related functions of the clerks of the
 173 court.

174 (2) Each proposed budget shall further conform to the
 175 following requirements:

176 (a) On or before June 1 ~~of each year beginning in 2014,~~
 177 the proposed budget shall be prepared, summarized, and submitted
 178 by the clerk in each county to the Florida Clerks of Court
 179 Operations Corporation in the manner and form prescribed by the
 180 corporation. The proposed budget must provide detailed
 181 information on the anticipated revenues available and
 182 expenditures necessary for the performance of the court-related
 183 functions listed in s. 28.35(3)(a) of the clerk's office for the
 184 county fiscal year beginning October 1.

185 (4) The corporation ~~Legislative Budget Commission~~ may
 186 approve increases or decreases to the previously authorized
 187 budgets approved for individual clerks of the court pursuant to
 188 s. 28.35 for court-related functions, if:

189 (a) The additional budget authority is necessary to pay
 190 the cost of performing new or additional functions required by
 191 changes in law or court rule; or

192 (b) The additional budget authority is necessary to pay
 193 the cost of supporting increases in the number of judges or
 194 magistrates authorized by the Legislature.

195 Section 4. Paragraph (a) of subsection (3) and subsections
 196 (4) and (5) of section 40.24, Florida Statutes, are amended to
 197 read:

198 40.24 Compensation and reimbursement policy.—

199 (3)(a) Jurors who are regularly employed and who continue
 200 to receive regular wages while serving as a juror are not

201 entitled to receive compensation from the state ~~clerk of the~~
 202 ~~circuit court~~ for the first 3 days of juror service.

203 (4) Each juror who serves more than 3 days is entitled to
 204 be paid by the state ~~clerk of the circuit court~~ for the fourth
 205 day of service and each day thereafter at the rate of \$30 per
 206 day of service.

207 (5) Jurors are not entitled to additional reimbursement by
 208 the state ~~clerk of the circuit court~~ for travel or other out-of-
 209 pocket expenses.

210 Section 5. Subsections (1), (3), and (4) of section 40.29,
 211 Florida Statutes, are amended to read:

212 40.29 Payment of due-process costs.—

213 (1) (a) Each clerk of the circuit court, on behalf of the
 214 state attorney, private court-appointed counsel, the public
 215 defender, and the criminal conflict and civil regional counsel,
 216 shall forward to the Justice Administrative Commission, by
 217 county, a quarterly estimate of funds necessary to pay for
 218 ordinary witnesses, including, but not limited to, witnesses in
 219 civil traffic cases and witnesses of the state attorney, the
 220 public defender, criminal conflict and civil regional counsel,
 221 private court-appointed counsel, and persons determined to be
 222 indigent for costs. Each quarter of the state fiscal year, the
 223 commission, based upon the estimates, shall advance funds to
 224 each clerk to pay for these ordinary witnesses from state funds
 225 specifically appropriated for the payment of ordinary witnesses.

226 (b) Each clerk of the circuit court shall forward to the
 227 Justice Administrative Commission a quarterly estimate of funds
 228 necessary to compensate jurors for their service, to provide
 229 jurors with meals and lodging, and for personnel costs related
 230 to jury management.

231 (3) Upon receipt of the funds from the Chief Financial
 232 Officer, the clerk of the court shall pay all invoices approved
 233 and submitted by the state attorney, the public defender, the
 234 clerk of the court, criminal conflict and civil regional
 235 counsel, and private court-appointed counsel for the items
 236 enumerated in subsection (1).

237 (4) After review for compliance with applicable rates and
 238 requirements, the Justice Administrative Commission shall pay
 239 all due-process service-related ~~due process service related~~
 240 invoices, except those enumerated in subsection (1), approved
 241 and submitted by the state attorney, the public defender, the
 242 clerk of the court, criminal conflict and civil regional
 243 counsel, or private court-appointed counsel in accordance with
 244 the applicable requirements of ss. 29.005, 29.006, and 29.007.

245 Section 6. Section 40.31, Florida Statutes, is amended to
 246 read:

247 40.31 Justice Administrative Commission may apportion
 248 appropriation.—

249 (1) If the Justice Administrative Commission believes ~~has~~
 250 ~~reason to believe~~ that the amount appropriated by the

251 Legislature is insufficient to meet the expenses of witnesses
 252 during the remaining part of the state fiscal year, the
 253 commission may apportion the money in the treasury for that
 254 purpose among the several counties, basing such apportionment
 255 upon the amount expended for the payment of witnesses in each
 256 county during the prior fiscal year. In such case, each county
 257 shall be paid by warrant, issued by the Chief Financial Officer,
 258 only the amount so apportioned to each county, and, when the
 259 amount so apportioned is insufficient to pay in full all the
 260 witnesses during a quarterly fiscal period, the clerk of the
 261 court shall apportion the money received pro rata among the
 262 witnesses entitled to pay and shall give to each witness a
 263 certificate of the amount of compensation still due, which
 264 certificate shall be held by the commission as other demands
 265 against the state.

266 (2) If the Justice Administrative Commission believes that
 267 the amount appropriated by the Legislature is insufficient to
 268 pay jurors for their service or to provide jurors with meals and
 269 lodging during the remaining part of the state fiscal year, the
 270 commission may apportion the money in the treasury for that
 271 purpose among the counties, basing such apportionment upon the
 272 amount expended for such purposes in each county during the
 273 prior fiscal year. In such case, the Chief Financial Officer
 274 shall issue a warrant to pay only the apportioned amount that is
 275 due to each county. If the amount so apportioned is insufficient

276 to pay in full all jury-related expenses during a quarterly
 277 fiscal period, the clerk of the court shall:

278 (a) Pay jurors entitled to pay before reimbursing any
 279 other jury-related expenses described in this subsection; and

280 (b) Apportion the money received pro rata among the jurors
 281 entitled to pay and give each juror a certificate of the amount
 282 of compensation still due, which certificate shall be held by
 283 the commission as other demands against the state.

284 Section 7. Subsection (3) of section 40.32, Florida
 285 Statutes, is renumbered as subsection (2), and subsections (1)
 286 and (2) of that section are amended to read:

287 40.32 Clerks to disburse money; payments to jurors and
 288 witnesses.-

289 (1) All moneys drawn from the treasury under ~~the~~
 290 ~~provisions of~~ this chapter by the clerk of the court shall be
 291 disbursed by the clerk of the court as far as needed in payment
 292 of jurors and witnesses, except for expert witnesses paid under
 293 a contract or other professional services agreement pursuant to
 294 ss. 29.004, 29.005, 29.006, and 29.007, for the legal
 295 compensation for service during the quarterly fiscal period for
 296 which the moneys were drawn and for no other purposes.

297 ~~(2) The payment of jurors and the payment of expenses for~~
 298 ~~meals and lodging for jurors under the provisions of this~~
 299 ~~chapter are court related functions that the clerk of the court~~
 300 ~~shall fund from filing fees, service charges, court costs, and~~

301 ~~finer.~~

302 Section 8. Section 40.33, Florida Statutes, is amended to
 303 read:

304 40.33 Deficiency.—If the funds required for payment of the
 305 items enumerated in s. 40.29(1) in any county during a quarterly
 306 fiscal period exceeds the amount of the funds provided pursuant
 307 to s. 40.29(3), the state attorney, public defender, clerk of
 308 the circuit court, or criminal conflict and civil regional
 309 counsel, as applicable, shall make a further request upon the
 310 Justice Administrative Commission for the items enumerated in s.
 311 40.29(1) for the amount necessary to allow for full payment.

312 Section 9. Subsections (1) and (3) of section 40.34,
 313 Florida Statutes, are amended to read:

314 40.34 Clerks to make triplicate payroll.—

315 (1) The clerk of the court shall make out a payroll in
 316 triplicate for the payment of jurors and witnesses, which
 317 payroll shall contain:

318 (a) The name of each juror and witness entitled to be paid
 319 with state funds.†

320 (b) The number of days for which the jurors and witnesses
 321 are entitled to be paid.†

322 (c) The number of miles traveled by each juror and
 323 witness.† ~~and~~

324 (d) The total compensation each juror and witness is
 325 entitled to receive.

326 (3) Compensation paid to a juror or witness shall be
327 attested as provided in s. 40.32. The payroll shall be approved
328 by the signature of the clerk, or his or her deputy, except for
329 the payroll as to jurors or witnesses appearing before the state
330 attorney, which payroll shall be approved by the signature of
331 the state attorney or an assistant state attorney.

332 Section 10. This act shall take effect July 1, 2017.